



WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY

P.O. BOX 381, Windsor, CO 80550

www.windsordda.com

BOARD OF DIRECTORS MEETING

December 18, 2019 | 7:30AM– 9:00AM

301 Walnut Street, First Floor Conference Room, Windsor, CO 80550

Agenda

- A. Call to Order **7:30AM****
- B. Roll Call –
- C. Public Invited to be Heard (*3 Minutes Per Person*)
- D. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board
- E. KEY INITIATIVES: **7:45AM****
1. Mill Project Update – Payment Update, Façade Easement Status.
 2. Backlot Boardwalk Update
 - i. Brinkman – Draft Agreements Status
 - ii. DOLA Grant – Alley, Design RFP Timing
 - iii. 512 Ash – Utility Discussions
 3. District Expansion/Sustainability – No Updates
- F. Approval of Minutes from the Regular Board of Directors Meeting November 20, 2019 – M. Ashby
- G. Report of Bills & Financial Report – M. Ashby
- H. Executive Director’s Report – M. Ashby
 - i. Ayres Associates – Contract for Services 2020
 - ii. Discussion of CO Main Street Mini Grant
 - iii. Chocolate Walk Update/Direction
- I. COMMITTEE REPORTS: **8:30AM****
1. Marketing Committee
- J. COMMUNICATIONS & NEWS:**
National Main Street Conference – Dallas, TX | May 18-20
- K. Adjourn **9:15AM****

Note: Double Underlined items indicate attachments.



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November 20, 2019 | 7:30AM– 9:00AM

301 Walnut Street, First Floor Conference Room, Windsor, CO 80550

Draft Minutes:

Attendance: Dan Stauss, Kristie Melendez, Dean Koehler, Sean Pike, Brent Phinney, Dan Brunk. Staff: Matt Ashby, Josh Liley. Public: None.

A. Call to Order 7:30AM

B. Roll Call –

C. Public Invited to be Heard (3 Minutes Per Person) - *None*

D. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board - **Approved as presented. DK, BP. Approved unanimously.**

E. KEY INITIATIVES: 7:45AM

1. Mill Project Update – *None. Working with the developer on the final cost checks and façade easement recording. We are looking to pay out the public infrastructure funding in 2019. MA – Follow up on the property tax.*

2. Backlot Boardwalk Update

i. Brinkman – Draft Agreements Status – *MA – Presented information regarding the status of the draft agreements. Attorneys are scheduled to review on December 3. Anticipating DDA review at Dec meeting.*

ii. DOLA Grant – Alley – *Readying prep to submit. MA – Prep RFP for construction drawings.*

iii. 512 Ash Utility Removal Costs – *MA – Presented the anticipated costs. Xcel provided a cost of \$10,000. Check on the Undergrounding fund use. MA – Call Lucas McConnell regarding. John Thornhill regarding undergrounding account – who controls the fund?*

3. District Expansion/Sustainability – *No Updates*

F. Approval of Minutes from the Regular Board of Directors Meeting October 16, 2019 – M. Ashby
Motion: **Approve – BP, Second, DB. Approved unanimously.**

G. Report of Bills (\$12,247.33) & Financial Report – M. Ashby

Motion: **Approve in the amount of \$12,247.33 - DK, Second - BP. Approved Unanimously.**

H. A resolution of the Board of Directors of the Windsor, Colorado, Downtown Development Authority recommending to the Town Board of the Town of Windsor the determining and fixing of the mill levy of the Windsor Downtown Development Authority for the fiscal year ending December 31, 2020 – Resolution – **Motion to approve the resolution. KM, Second, BP. Approved unanimously.**

I. A resolution of the Board of Directors of the Windsor, Colorado, Downtown Development Authority approving and recommending to the Town Board of the Town of Windsor the budget of the estimated amounts required to pay the expenses of conducting the business of said authority, and the appropriation of funds therefor, for the fiscal year ending December 31, 2020 – Resolution, 2020 Final Budget, 2020 Final Workplan – *MA Presented updates to the budget and workplan.*

Motion to approve the Resolution approving the Budget 2020. BP, Second, DB. Approved unanimously.

Note: Double Underlined items indicate attachments.



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J. A resolution of the Board of Directors of the Windsor, Colorado Downtown Development Authority supporting submission of an application by the Town of Windsor for Energy and Mineral Assistance Grants from the Colorado Department of Local Affairs for the backlots alley improvement program – Resolution **Motion: Approve resolution. KM, BP second. Approved unanimously.**

K. Executive Director's Report – M. Ashby

- i. Approval of the Conceptual Alley Design – *MA presented the concept design in support of the Alley design. The contingency is requested to be increased to 15%. DA – Request update on the Erlich property. We should review what amount might be reasonable. Staff identify an offer. MA – Provide survey information and appraisal on thru lot to Dan Brunk.*

Motion to approve the concept plan with removing parking and increasing contingency to 15%. – BP, Second KM. Approved unanimously.

- ii. Approval of Chocolate Walk *Event Assistance Proposal – Reductions of social media, timing on deadlines, no booth required. MA to get adjustments made.*
- iii. Consideration of closure of checking account – *MA – Discussion of purpose of account. Motion – Close out the checking account and move back to the Town in our budget, with funds provided in a certified check made out to the Town of Windsor. DK. DB. Second. Approved unanimously.*
- iv. Board Terms Ending June 30, 2020: Pike, Brunk. *MA – Discussion of when board limits are upcoming. KM – A good idea would be to invite candidates to attend a regular board meeting. DS – What's the status of the IGA. Should we move forward with an extension? KM – It would be a good idea to make that request. DS – Requesting that Josh begin to draft language. JL – I'll propose to draft a version that updates the dates. KM – We would need to get a work session scheduled in January for a joint meeting. MA and DS to request session from Shane.*
- v. Parking RFP – *MA provided information, Town is requesting a budget not to exceed \$70,000. KM – Potential for multi-modal funding projects. Also a transit stop connecting UNC and CSU. Discussion at Coffee with the Mayor. BP – The angle of the parking spaces could be sharper to increase visibility.*

L. **COMMITTEE REPORTS:**

8:30AM

1. Marketing Committee –
 - i. Elf Hunt/Small Business Saturday planning
 - ii. *We have updated the website for events. All materials have been ordered.*
 - iii. NEXT YEAR -
2. Approval of Proposal with Townsquare Media for Event Promotion
 - i. *KM – We did get a proposal from Townsquare.*
 - ii. **Motion – Approve authorizing the Chairman to execute proposal. BP, DK. Approved unanimously.**

MA – Put together a 1-page on Lodging Tax to help in identifying a lead.

3. Wayfinding Project – Next Steps

M. **COMMUNICATIONS & NEWS:**

N.

O. Adjourn

9:15AM

Motion to adjourn – DK. Second. BP. Approved unanimously at 9:24AM.

Note: Double Underlined items indicate attachments.



WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY

Executive Director Report

Date: December 13, 2019
To: Downtown Development Authority Board of Directors
From: Matt Ashby, DDA Executive Director
Re: November – December Report

Meeting Summary:

The Backlot, Budget and Small Business Saturday were primary focuses this month. Extensive time was spent advancing the Backlot project, reviewing developer comments. The budgeting process wrapped up with approval by the Town Board on December 9. Additional time was spent finalizing and submitting the DOLA grant for the Alley improvements. Several discussions regarding the Brinkman agreements were conducted, and documents are approaching the point where they will be ready for consideration by the Town and DDA boards.

The following meetings occurred between November 13 – December 13, including:

- DDA Board Meeting – November 20
- Small Business Saturday Distribution – November 27
- EPA Grant Kickoff Call – December 5
- Town Board – Budget Approval – December 9
- Brinkman Agreement Review (Staff) – December 10
- Brinkman Agreement Review – December 11

Billing Breakdown (As of 12/13/19):

General (YTD) - \$58,760 = 78% of Budgeted \$75,560 (with 94% of year completed)

Backlot (YTD) - \$31,061

Mill (YTD) - \$1,061

Brunner - \$2,253

DOLA Grant (Alley) - \$7,027

Anticipated Workload December-January:

- Brinkman Development Agreement Finalization
- 512 Demolition Bidding and Site Planning for Parking
- Wayfinding Plan – Redirect
- Undergrounding Design
- Alley Grant Follow Up

Current Initiatives:

Mill – Complete construction costs have been delivered to staff for review. We are currently reviewing to ensure that all provisions of the agreements are met. Finalization and recording of the façade easement will be forthcoming.



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Backlot –

Brinkman: Comments on the draft agreement were reviewed jointly by Brinkman and Town/DDA Staff. Refinements were suggested and made to clarify several elements. Brinkman will be updating the financial analysis and construction costs to formalize the final numeric request. A joint work session with the Town to confirm the final direction is anticipated in January with consideration of final agreements shortly thereafter.

512 Ash: The updated demolition RFP has been reviewed by DDA legal. We have held off on issuing the RFP as the cost is being leveraged for our DOLA alley grant. We received an estimate from Xcel to disconnect the overhead electric lines and gas. The total is approximately \$10,000. Staff have reached out to Xcel to discuss and are scheduling a time to meet. Once we have that information, we will look to issue the updates to the RFP. Staff have developed a site plan for the transitional parking area and have confirmed with Town Planning that the angled parking could be an option. We are working to identify how much detail needs to be provided with the site plan in terms of construction drawings.

Alley Design/DOLA Grant: The alley grant was completed and submitted December 2. Town Staff were critical in completing the application, working through the online portal with DOLA. We have a meeting scheduled with the regional director of DOLA to review the application. Following this meeting, we anticipate needing to solidify the grant match of \$800,000 to help bolster our application. This may be a topic of discussion during our joint meeting with the Town. Staff have also completed an RFP for the Construction Drawings. The DDA should consider selecting a consultant in advance of a decision being made by DOLA regarding the grant to streamline the process. This advance step may also help in demonstrating the readiness of the project.

Utility Undergrounding: Communications are ongoing.

Brunner

No Updates.

Parking / Crosswalk / Plantings

Parking Study – The parking study RFP has been published. Proposals are due January 15. The study should take approximately 12 months.

Wayfinding Project

Staff are working with legal to terminate the contract.

Business Engagement

Small Biz Saturday/Elf hunt - Preliminary feedback regarding Small Business Saturday was positive. The swag box from Amex was slightly delayed resulting in the packets being delivered to businesses on Wednesday prior to Thanksgiving.

Chocolate Walk – Adjustments to the scope were provided to our proposed contractor for the event. As the proposal was being reviewed by the DDA, several additional events were booked



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by the contractor and she will no longer be able to assist the DDA. We are reviewing other options for this event.

EPA Grant - An EPA Targeted Brownfield Assessment Grant was submitted for 500 Main Street. We received word that the grant was approved, and a contractor assigned to complete the study. Staff have called the property owner to confirm a time for a site visit to initiate the work.

Business Feedback – The Town received and shared the concerns of a business owner in the 600 Block of Main. To summarize, there is concern about the lack of streetscape and Christmas lights on the 600 block. The DDA should discuss opportunities for considering these concerns. Staff will schedule a follow up once a direction is identified by the board.

New Business – A boutique is opening on the south side of Main next to Fusion lighting.

Business Inquiry – DDA was contacted by a business looking to identify space to lease. We are working to connect them with several property owners who may have space available.

Lodging/Tourism

Staff have requested that additional facilitation be provided through Colorado Main Street as a follow up to our prior discussion. Staff have completed a summary of goals associated with the lodging tax to share with possible champions.

Branding

Nearly all the Windsor Stickers have been distributed. The DDA should consider an additional order. With Small Business Saturday, many of the tote bags have been distributed. Consider producing new bags for 2020 with the destination branding.

Main Street

The Main Street Mini Grant was extended. Due to the timing on the installation of the corner plantings at 5th/Main, the funds will need to be redirected to a different project by the DDA. We have \$5000 from 2019 and an additional \$5000 from 2020 to utilize.

Action Checklist Review:

New Items –

- MA – Provide business listing periodically to the board to review and update. Quarterly. (Inventory and communication sheet is updated. Web updates are in progress.)
- MA – Circle back with the Town to take the lead on the Lodging Tax. (To Do)
- MA – Check on Platting Requirements for DDA Property. Completed.)
- MA – Revisit meter/service questions with Xcel. (Request for Meeting Completed.)
- MA – Pedestrian crossing feedback card. Include crosswalk info in next Newsletter.
- MA – Request restriping of spaces in front of 4th Street garage bays. (Request presented to owner.)
- MA – Add action item to next agenda authorizing closure of checking account. (Will close after 12/18 meeting)



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Carryover –

- MA - Update the Rack Card and print additional. (To Do - Discussed)
- MA – Request that Colorado Main Street consider assisting with attracting a Google support session in Colorado. (Completed, Follow Up)
- Grant – Ayres to proceed with DOLA Grant, bill separately. (Completed.)
- MA – Talk to Stacy Miller to see if there's any information for Downtown Hotel. (To Do)
- MA – Research policies for food trucks on DDA Lot for future discussion. (Completed, Ready for Discussion)
- MA – Schedule conversation with Erlich and Marquardt. (Dean K. or Dan) (To Do)
- Identify Grants for Wayfinding Implementation (In process)
- Josh - Review the easement on the property and may issue a cease and desist letter for parking on the DDA's through lot. (To Do.)
- Josh – Provide a 1-page form contract in support of the parking program. (To Do.)

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT is made and entered into on December 18, 2019, by and between the Windsor Downtown Development Authority, 301 Walnut Street, Windsor, CO 80550 (OWNER), and Ayres Associates Inc., 3433 Oakwood Hills Parkway, Eau Claire, WI 54701 (CONSULTANT).

OWNER intends to retain CONSULTANT from time to time to perform certain professional services as described in the Scope of Services (Attachment A). Individual Project Supplements describing additional work to be performed under the Scope of Services will be attached to and considered a part hereof on a project by project basis.

OWNER and CONSULTANT agree to performance of professional services by CONSULTANT and payment for those services by OWNER as set forth below, and on the terms and conditions contained in any attached document. The following Attachments are attached to and made a part of this Agreement.

- Attachment A - Scope of Services; 1 page,
- Attachment B - Period of Services; 1 page,
- Attachment C - Compensation and Payments; 1 page,
- Attachment D - Terms and Conditions, consisting of 5 pages,
- Attachment E – Insurance, consisting of 2 pages and
- Attachment F – Time/Budget Allocation Overview, consisting of 1 page.

This Master Agreement (consisting of 1 page), together with the Attachments identified above, constitute the entire agreement between OWNER and CONSULTANT and supersede all prior written or oral understandings (the Master Agreement and such attachments referred to hereinafter as the "Agreement"). This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

OWNER:
Windsor Downtown Development Authority

CONSULTANT:
Ayres Associates Inc.

_____	(Signature)	
Dan Stauss	(Typed Name)	Scott Wilson
Chairman	(Title)	Vice President
_____	(Date)	December 18, 2019
_____	(Attest)	
Dean Koehler, Secretary	(Name/Title)	Matthew J. Ashby, Urban Planner/Project Manager
_____	(Date)	December 18, 2019

ATTACHMENT A - SCOPE OF SERVICES

This is an attachment to the Master Agreement dated December 18, 2019, between the Windsor Downtown Development Authority (OWNER) and Ayres Associates Inc. (CONSULTANT).

The Project consists of various community development services required to provide support for the Windsor Downtown Development Authority.

CONSULTANT shall provide professional services for OWNER as requested by the OWNER and may include, but are not limited to the following (the "Scope of Services"):

ARTICLE 1 – BASIC SERVICES

- Attendance and management of DDA Board Meetings including production of agendas, minutes and reports;
- Provide monthly updates to the website;
- Draft and issue monthly newsletter and social media updates;
- Facilitate creation of annual committee work plans;
- Provide budget management and oversight in coordination with OWNER;
- Miscellaneous meetings as deemed necessary by OWNER.

ARTICLE 2 - ADDITIONAL SERVICES

The professional services to be provided by CONSULTANT under the Scope of Services shall be performed when requested by the OWNER. OWNER and CONSULTANT will agree upon the time frame in which the requested services will be provided prior to the services being scheduled. Additional services may include a diversity of work products as directed, including grant writing, event management, additional meeting attendance, and development of products associated with annual work plans. This list is not exhaustive of the additional services that OWNER may request of CONSULTANT. This Agreement does not guarantee to CONSULTANT any work except as authorized in accordance with the terms contained herein, nor does it create an exclusive contract for services.

ARTICLE 3 - OWNER'S RESPONSIBILITIES

OWNER will provide general support services to CONSULTANT including timely response to requests for information. Additionally, OWNER agrees to provide monthly financial reporting.

ATTACHMENT B - PERIOD OF SERVICES

This is an attachment to the Master Agreement dated December 18, 2019, between Windsor Downtown Development Authority (OWNER) and Ayres Associates Inc. (CONSULTANT).

ARTICLE 4 - PERIOD OF SERVICES

The professional services provided by CONSULTANT shall be performed when requested by OWNER. OWNER and CONSULTANT will agree upon the time frame in which the requested scope of services will be provided prior to the services being scheduled. Services shall be provided starting January 1, 2020, and ending December 31, 2020, unless sooner terminated as hereinafter provided.

ATTACHMENT C - COMPENSATION AND PAYMENTS

This is an attachment to the Master Agreement dated December 18, 2019, between Windsor Downtown Development Authority (OWNER) and Ayres Associates Inc. (CONSULTANT).

ARTICLE 5 - COMPENSATION AND PAYMENTS

5.1.1 Compensation. CONSULTANT shall perform the Scope of Services on a time and reimbursable direct cost basis. Compensation for time shall be paid in accordance with the rates set forth on Attachment F. Mileage will be charged at standard federal rate. Travel time will be billed at cost. The foregoing notwithstanding, the maximum amount payable pursuant to this Agreement for CONSULTANT'S time and direct costs (or that of any authorized subconsultant) for each year this Agreement is in effect shall be Seventy-Five Thousand Five Hundred Sixty Dollars (\$78,560.00). (Attachment F contains the estimated hours, direct expenses, and billing rates for staff anticipated to be assigned to the project.)

5.1.2 Billing. CONSULTANT shall submit to OWNER detailed monthly invoices which set forth the following: (1) each service rendered, and the identity of the person who performed it; (2) the cost of each service rendered by CONSULTANT (or any authorized subconsultant); and (3) direct costs eligible for reimbursement. CONSULTANT shall include with the invoice sufficient evidence of direct costs it has incurred for which it seeks reimbursement from OWNER. CONSULTANT'S failure to comply with these requirements may, at OWNER'S option, suspend processing of payment requests until CONSULTANT is in compliance with said requirements. OWNER shall be obligated to pay invoices that conform to the requirements contained herein within thirty (30) days of receipt.

5.1.3 Additional Compensation. The maximum amount of compensation for CONSULTANT'S time and direct costs established in Article 5.1.1 may be increased upon the approval of the board of directors of the OWNER (the "Board") at a regular or special meeting of the Board by such amount as the Board, in its discretion, deems appropriate.

5.1.4 Travel and Training Expenses. The OWNER may require the CONSULTANT'S attendance at trainings and meetings in addition to regular duties. When directed in writing to attend trainings and meetings, the CONSULTANT shall bill separately for reimbursement of actual expenses associated with travel and time. The OWNER, in its writing, may establish a maximum amount of authorized expenses for travel and time. If no such amount is provided, travel costs incurred by the CONSULTANT shall be reasonable. The CONSULTANT must provide receipts or other proof of purchase for all reimbursable expenses. Reimbursement for travel and training costs described herein shall not be subject to the maximum compensation amount established in 5.1.1.

5.1.5. Expenses Incurred on Behalf of OWNER. If the OWNER requests that the CONSULTANT incur expenses on the OWNER'S behalf, and the CONSULTANT incurs such expenses, then the CONSULTANT shall be entitled to reimbursement. Such requests may be authorized pursuant to the bylaws of the Windsor DDA. The CONSULTANT must provide to the OWNER receipts or other proof of purchase for all reimbursable expenses. Reimbursement for such expenses shall not be subject to the maximum compensation amount established in 5.1.1

ATTACHMENT D - TERMS AND CONDITIONS

This is an attachment to the Master Agreement dated December 18, 2020, between Windsor Downtown Development Authority (OWNER) and Ayres Associates Inc. (CONSULTANT).

ARTICLE 6 - GENERAL CONSIDERATIONS

6.1 Standard of Performance

The standard of care for all professional services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. CONSULTANT does not make any warranty or guarantee, expressed or implied, nor is this Agreement or contract subject to the provisions of any uniform commercial code. Similarly, CONSULTANT will not accept those terms and conditions offered by OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgment of receipt or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

6.2 Work Product

OWNER shall own and retain all right, title and interest in and to all reports, documents, drawings, specifications, plans, designs, and all other information or work product produced, created, developed or made by CONSULTANT or its subconsultants pursuant to this Agreement ("Work Product"), and such Work Product shall be the sole property of OWNER. OWNER hereby agrees that CONSULTANT shall be granted a limited, non-exclusive license to use the Work Product for promotional materials associated with the CONSULTANT'S business.

6.3 Electronic Files

6.3.1 OWNER and CONSULTANT agree that any electronic files furnished by either party shall conform to the specifications agreed to at the time this Agreement is executed and listed elsewhere. Any changes to the electronic specifications by either OWNER or CONSULTANT are subject to review and acceptance by the other party. Additional services by CONSULTANT made necessary by changes to the electronic file specifications shall be compensated for as Additional Services.

6.3.2 Electronic files furnished by either party shall be subject to an acceptance period of 60 days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

6.3.3 OWNER is aware that differences may exist between the electronic files delivered and the printed hard-copy documents. In the event of a conflict between the hard-copy documents prepared by CONSULTANT and electronic files, the hard-copy documents shall govern.

6.4 Insurance

6.4.1 Insurance Coverage. CONSULTANT shall procure and maintain, at its own expense, the insurance coverage described on Attachment E.

6.4.2 Insurance Requirements. Certificates of insurance and/or insurance policies required above shall be subject to the following stipulations and additional requirements:

- i. Any and all deductibles or self-insured retentions contained in any insurance policy shall be

assumed by and at the sole risk of CONSULTANT.

- ii. If any of the required insurance policies shall fail at any time to meet the requirements contained above, as to form or substance, or if the company issuing such policy shall be or at any time ceases to be approved by the State of Colorado, a new policy shall be promptly obtained.
- iii. All required insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to OWNER, in its reasonable discretion.
- iv. OWNER shall all be named as additional insureds on the commercial general liability and automobile liability insurance policies required above.
- v. Coverage required of CONSULTANT shall be primary over any insurance or self-insurance program carried by OWNER.
- vi. The above insurance policies shall include provisions preventing cancellation or non-renewal without at least forty-five (45) days' prior notice to OWNER.
- vii. All insurance policies in any way related to this Agreement and secured and maintained by the CONSULTANT shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against OWNER.
- viii. CONSULTANT shall provide to OWNER certificates showing insurance coverage required under this Agreement within seven (7) business days of execution of this Agreement. No later than fifteen (15) days prior to the expiration date of any such coverage, CONSULTANT shall deliver to OWNER certificates of insurance evidencing renewal of any such coverage. In addition, upon request by OWNER at any time during the term of this Agreement, CONSULTANT shall, within ten (10) days of such request, supply to OWNER evidence satisfactory to OWNER of compliance with the insurance requirements contained in this Agreement.

6.5 Termination

6.5.1 Termination by OWNER. OWNER may terminate this Agreement at any time without cause upon fifteen (15) days' prior written notice to CONSULTANT. If this Agreement is terminated by OWNER, OWNER will pay CONSULTANT for work accomplished through date of termination. Notwithstanding the above, CONSULTANT shall not be relieved of liability to OWNER for damages sustained by OWNER by virtue of any breach of this Agreement by CONSULTANT and OWNER may withhold any payments to CONSULTANT for the purpose of setoff until such time as the exact amount of damages due OWNER from CONSULTANT is determined. All work accomplished by CONSULTANT prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of OWNER prior to payment for services rendered.

6.5.2 Termination by CONSULTANT. CONSULTANT may terminate this Agreement at any time without cause upon fifteen (15) days' prior written notice to OWNER. Delivering notice of early termination to OWNER shall not in any way relieve CONSULTANT of its obligation to perform services under this Agreement through the effective date of such early termination, or relieve OWNER of its obligation to pay the CONSULTANT for such performance through the effective date of such early termination.

6.5.3 Breach. This Agreement may be terminated at any time without notice upon a material breach of the terms of this Agreement.

6.6 Controlling Law

The laws of the State of Colorado shall govern the execution, construction, interpretation, and enforcement of this Agreement. The parties hereto agree that jurisdiction and venue for any dispute arising under this Agreement shall be exclusive to Weld County District Court.

6.7 Successors and Assigns

6.7.1 OWNER and CONSULTANT each is hereby bound to the other party, and to their respective successors (or assigns, as authorized by 6.7.2 below), in respect of all covenants, agreements, and obligations of this Agreement.

6.7.2 Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

6.7.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.

6.8 Exclusion of Special, Indirect, Consequential, and Liquidated Damages

CONSULTANT shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, or similar damages arising out of or connected in any way to the Project or this Agreement. The foregoing shall not apply to breach of the provisions contained in Section 6.17 below, concerning the employment of illegal aliens.

6.9 Betterment

If due to CONSULTANT's negligence, a required item or component of the project is omitted from any construction documents, CONSULTANT's liability shall be limited to the reasonable cost of correction of the construction, less what OWNER's cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that CONSULTANT will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

6.10 Acceptance Not Waiver

OWNER's approval of drawings, designs, plans, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve CONSULTANT of responsibility for the quality or technical accuracy of the work. OWNER'S approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to OWNER under this Agreement.

6.11 Independent Contractor

6.11.1 Status as Independent Contractor. The parties hereto agree that the services CONSULTANT will be performing hereunder are those of an independent contractor, and not of an agent or employee of OWNER. CONSULTANT, as an independent contractor, is obligated to pay federal and state income tax on moneys earned. The personnel employed by the CONSULTANT are not and shall not become employees, agents or servants of OWNER, nor shall he or she be entitled to any employee benefits from OWNER because of the performance of any work or as a result of the execution of this Agreement.

6.11.2 Solicitation of Agreement. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this

contract, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONSULTANT, any commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, OWNER will have the right to annul this Agreement without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

6.12 Use of Subconsultants, Responsibility for Employees and Subconsultants

6.12.1 Use of Subconsultants. CONSULTANT understands and agrees that it must obtain the written consent of OWNER prior to utilizing any subconsultant for work to be performed hereunder, which consent shall not be unreasonably withheld. CONSULTANT shall employ and contract with only those persons or entities that are properly skilled, accredited, certified, and/or licensed, as applicable, to safely and competently perform work of the type and scope which they will be performing.

6.12.2 Responsibility for Employees and Subconsultants. CONSULTANT agrees that it shall be fully responsible for the acts and omissions of its employees and agents and for those of its subconsultants, and any persons either directly or indirectly employed by any subconsultants to the same degree as acts and omissions of persons CONSULTANT directly employs. CONSULTANT shall be responsible for the coordination of all services between CONSULTANT and its subconsultants. Nothing contained in this Agreement shall create any contractual relationship between any subconsultant and OWNER.

6.13 Legal Compliance

CONSULTANT at all times agrees to observe all federal and state laws, and resolutions and ordinances of the local jurisdiction, and all rules and regulations which in any manner affect or govern the work under this Agreement. CONSULTANT represents and warrant that, as of the date of execution of this Agreement, and continuing throughout the term hereof, it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by applicable law to perform work under this Agreement.

6.14 Subject to Annual Appropriations

OWNER is a Colorado public entity and all financial obligations extending beyond the current fiscal year are subject to funds being budgeted and appropriated, therefore. Nothing in this Agreement shall be deemed a waiver of the Colorado Governmental Immunity Act and no portion of this Agreement shall be deemed to create an obligation on the part of OWNER to expend funds not otherwise appropriated in each succeeding year.

6.15 Technical Accuracy, Indemnification, Default

6.15.1 Technical Accuracy. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all services rendered by CONSULTANT and its subconsultants, which services shall include, by way of example and without limitation, designs, plans, reports, specifications, and drawings, and CONSULTANT shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies.

6.15.2 Indemnification. CONSULTANT shall indemnify, save and hold harmless Owner, its officers and employees, in accordance with Colorado law, from all damages whatsoever claimed by third parties against OWNER and for OWNER's costs and reasonable attorney's fees arising directly or indirectly out of the CONSULTANT'S negligent performance, or that of any of its subconsultants, of any of the services furnished under this Agreement.

6.15.3 Default. If CONSULTANT defaults in any obligation under this Agreement, CONSULTANT shall be liable for all costs, expenses, and payment incurred by OWNER in connection therewith, including any reasonable attorney's fees.

6.16 Inspection and Retention of Documents, Public Records

6.16.1 Inspection of Records. During all phases of the work and services to be provided hereunder the Contractor agrees to permit duly authorized agents and employees of OWNER to enter the CONSULTANT'S offices for the purpose of inspections, reviews, and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

6.16.2 Retention of Records. CONSULTANT and its subconsultants shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for five (5) years from the date of final payment, for inspection by OWNER and copies thereof shall be furnished if requested.

6.16.3 Open Records Act. CONSULTANT understands that any records created by CONSULTANT in performing the Scope of Services, including, but not limited to, written communications, documents, photographs, and recordings, will likely constitute a public record under the Colorado Open Records Act, C.R.S. 24-72-201 et seq. Accordingly, CONSULTANT agrees to provide to OWNER any such records which OWNER determines are subject to disclosure under said Act.

6.17 Prohibition Against Employing Illegal Aliens

CONSULTANT, as of the date of execution of this Agreement, hereby certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that it will participate in either the e-Verify program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "e-Verify Program") or the Department Program, an employment verification program established pursuant to C.R.S. § 8-17.5-102(5)(c) and administered by the Colorado Department of Labor and Employment, Division of Labor, in order to confirm the employment eligibility of all newly hired employees to perform work under this Agreement. CONSULTANT shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subconsultant who knowingly employs or contracts with an illegal alien to perform work under this Agreement. CONSULTANT shall not use the e-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants during the term hereof. If CONSULTANT obtains actual knowledge that a subconsultant performing work under this Agreement knowingly employs or contracts with an illegal alien, the CONSULTANT shall: (i) notify such subconsultant and the OWNER within three days that the CONSULTANT has actual knowledge that the subconsultant is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subconsultant if within three days of receiving the notice required pursuant to this section the subconsultant does not cease employing or contracting with the illegal alien; except that the CONSULTANT shall not terminate the contract with the subconsultant if during such three days the subconsultant provides information to establish that the subconsultant has not knowingly employed or contracted with an illegal alien. CONSULTANT shall comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102 (5). If CONSULTANT violates any provision of this Agreement pertaining to the duties imposed by C.R.S § 8-17.5-102 OWNER shall have the right to immediately terminate this Agreement. If this Agreement is so terminated, CONSULTANT shall be liable for actual and consequential damages to OWNER arising out of CONSULTANT'S violation of C.R.S. § 8-17.5-102. OWNER will notify the Office of the Secretary of State if CONSULTANT violates this provision of this Agreement and OWNER terminates the Agreement for such breach.

ATTACHMENT E -INSURANCE

This is an attachment to the Master Agreement dated December 18, 2020, between Windsor Downtown Development Authority (OWNER) and Ayres Associates Inc. (CONSULTANT).

ARTICLE 8 - INSURANCE

8.1 Workers' Compensation

Workers' Compensation insurance covering the CONSULTANT for any and all claims which may arise against the CONSULTANT because of Workers' Compensation and Occupational Disease Acts shall be carried. The Employer's Liability Section shall have limits of not less than the following, or in such other amount as may be required by applicable law:

Each Accident:	\$	100,000
Disease, Policy Limit:	\$	500,000
Disease, Each Employee:	\$	100,000

8.2 Commercial General Liability

Commercial General Liability insurance protecting the CONSULTANT against any and all general liability claims which may arise in the course of performance of this Agreement shall be carried. The limits of liability shall not be less than the following:

General Aggregate:	\$	1,000,000
Products-Completed Operations Aggregate:	\$	1,000,000
Personal and Advertising Injury:	\$	1,000,000
Each Occurrence:	\$	1,000,000

Property damage liability coverage shall not exclude explosion, collapse, and underground perils if CONSULTANT is engaged in these activities.

Commercial General Liability coverage shall also protect the CONSULTANT for the same limits of liability for claims which may arise because of the indemnity or contractual liability agreement contained within this Agreement.

8.3 Business Automobile Liability

Business Automobile Liability insurance including Owned, Non-Owned, and Hired vehicles shall be carried with a limit of not less than the following:

Bodily Injury and Property Damage,
Combined Single Limit: \$1,000,000

Automobile Liability coverage shall also protect the CONSULTANT for the same limits of liability for claims which may arise because of the indemnity or contractual liability agreement contained within this Agreement.

8.4 Umbrella Excess Liability

Excess liability insurance (umbrella form) over underlying Employer's Liability, Commercial General Liability, and Business Automobile Liability shall be carried. The limits of liability shall be not less than the

following:

Each Occurrence:	\$1,000,000
Aggregate:	\$1,000,000

8.5 Professional Liability (Errors and Omissions)

Professional Liability insurance protecting the CONSULTANT against Professional Liability claims which may arise in the course of this Agreement shall be carried. The limits of liability shall be not less than the following:

Each Claim:	\$	1,000,000
Aggregate:	\$	1,000,000

8.6 Valuable Papers

During the life of this Agreement, the CONSULTANT shall maintain in force Valuable Papers and Records insurance in an amount equal to the maximum exposure to loss of written, printed, or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts as shall be required and/or produced in the completion of this Agreement by the CONSULTANT.

ATTACHMENT F - TIME/BUDGET ALLOCATION OVERVIEW

This is an attachment to the Master Agreement dated December 18, 2020, between the Windsor Downtown Development Authority (OWNER) and Ayres Associates Inc. (CONSULTANT).

Ayres Associates anticipates providing administrative services to the Windsor Downtown Development Authority. Basic services generally include:

- Attendance and management of DDA Board Meetings, production of agendas, minutes and reports;
- Consultant management for projects initiated by the DDA;
- Content guidance for monthly updates to the website;
- Content assistance for monthly newsletter and social media updates;
- Facilitate drafting of annual work plans;
- Budget management and oversight in coordination with DDA;
- Main Street grant management and reporting;
- Attendance at meetings as deemed necessary by DDA, including stakeholder updates.

Based upon the approved budget for the organization, the following budget worksheet provides guidance for the allocation of hours as necessary to provide the requested services. Services are provided on-demand, at the direction of the Windsor DDA Board; actual costs and labor allocation will be determined upon direction of the Board.

Staff time is allocated between regular hours and administrative hours. Regular hour will be the default for work activities. Administrative hours will be used for tasks including copying, assembling board packets, and other similar non-professional tasks.

Windsor DDA - 2020 Rate Table							
	Task Type/Rate		Est. Hours (Monthly)		Labor Cost		Total
	Regular	Admin	Regular	Admin	Regular	Admin	
Staff							
Ashby	\$ 164.00	\$ 131.00	24	3	\$ 3,936.00	\$ 393.00	\$ 4,329.00
Ward	\$ 105.50	\$ 66.50	8	4	\$ 844.00	\$ 266.00	\$ 1,110.00
Scholl	\$ 154.00	\$ 128.00			\$ -	\$ -	\$ -
Clermont	\$ 77.00	\$ 46.00	0	8	\$ -	\$ 368.00	\$ 368.00
Estimated Monthly Hours			32	15			47
Estimated Monthly Total							\$ 5,807.00
Annual Labor							\$69,684.00
Annual Expenses							\$ 3,069.00
Grand Total							\$78,560.00
<i>On-call services for Key Initiatives, Expenses for Owner, and Travel/Training will be billed hourly (for labor) and expenses categorized to reflect budget line items and are not subject to the contract limits.</i>							
<i>Prior to utilizing additional staff members, Consultant shall notify Owner of staff identity and his or her hourly rate. Owner reserves the right to decline Consultant's use of such additional staff members.</i>							
<i>Monthly contract updates will be provided to the Windsor DDA Board regarding the balance of the contract. Contract shall not exceed \$75,560.00 without direction and prior approval by the Owner.</i>							