**TOWN BOARD WORK SESSION**
October 12, 2012 – 6:00 P.M.
301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

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**GOAL of this Work Session is to have the Town Board receive information on topics of Town business from the Town Manager, Town Attorney and Town staff in order to exchange ideas and opinions regarding these topics.**

**Members of the public in attendance who have a question related to an agenda item are requested to allow the Town Board to discuss the topic and then be recognized by the Mayor prior to asking their question.**

## AGENDA

| | | |
|---|---|---|
| 6:00 p.m. | 1. | Boardwalk Park review – M. Chew & J. Michaels |
| 6:40 p.m. | 2. | Davis seepage pipe overview – K. Arnold, I. McCargar, D. Wagner |
| 7:10 p.m. | 3. | I-25/SH392 agreements and fee implementation – J. Frey |
| 7:40 p.m. | 4. | Future Meetings Agenda |
| | 5. | Adjourn |

TOWN OF WINDSOR
COLORADO

# M E M O R A N D U M

**Date:** October 1, 2012
**To:** Mayor and Town Board
**Via:** Kelly Arnold, Town Manager
**From:** John Michaels, Chief of Police
Melissa M. Chew, CPRP, Director of Parks, Recreation & Culture
**Re:** Boardwalk Park Issues: End of summer review

**Background / Discussion:**

In July, we brought forward a status report on operations relative to Boardwalk Park, both by the Police Department (PD) and the Parks, Recreation & Culture Department (PRC), along with several collaborative areas we have pursued. Below is a statistical update and following that, some recommendations for future operations.

- From May 20th to August 4th, 65 incidents have received Case Reports, ranging from dog issues, ordinance violations to felony arrests.
- Information received from several individuals contacted as to why they come to Boardwalk Park indicates they can do things here they cannot do in parks in their hometown, such as swim beach, alcohol allowed, pets and the ability to cook/grill.

Efforts this summer focused on increasing police presence, working with the PRC staff crew to be additional observers and bringing in outside agencies to assist us with increasing safety at Boardwalk Park. Additionally, a volunteer program was initiated – Park Ambassadors – to be extra eyes and ears in the park. Volunteers were not recruited until July; in 2013 they will be recruited in April and May. These individuals would receive training from PD and PRC staff, where identifying t-shirts, carry a variety of literature (maps, brochures, etc.) and must have a cell phone.

In considering future changes that may eliminate certain concerns or assist in enforcement, several surrounding cities were contacted to survey park rules governing some of the bigger issues:

| City | Hours | Glass Containers | Grills | Alcohol | Dogs |
|---|---|---|---|---|---|
| Loveland | 6a-10:30p | No | In provided grills only | No | Leashed |
| Ft. Collins | 5a-11p | No | In provided grills or Portable propane grills | No | Leashed |
| Greeley | 5a-11p | No | In provided grills only | No | No |
| **City** | **Hours** | **Glass Containers** | **Grills** | **Alcohol** | **Dogs** |

| | | | | | |
|---|---|---|---|---|---|
| Longmont | 5a-11p | No | In provided grills only | No | Leashed |
| Windsor | 5a-10p | No | No regulations | 3.2 beer | Leashed |

Based on this brief survey and the statistics from 2012, we propose some adjustments in the park rules and regulations for all parks, as follows:

- **Grilling allowed in designated grills only** (not all parks would have grills, excluding authorized vendors (caterers) and town authorized events). This was a major concern on July 4th as many propane grills were present in the park. Many of these were quite large, requiring a truck to load and unload as well as posing an explosion or burn safety hazard with propane. Charcoal grills also posed a safety and fire hazard, and damaged the turf when hot coals were left behind.

- **No alcohol allowed - special event license only** Staff has researched parks as a licensed premise or an entertainment district with a common consumption area. While these might be a viable option in the future, they are not feasible right now due to size, control of area, or license issues. However, each non-profit organization may apply for up to 12 licenses per year. Staff has considered all Town events and feels that between the two local service clubs who carry appropriate insurance, and other non-profits that might assist our partner or private events, this is a viable solution (see attached chart of events). This would allow each event to determine the level of alcohol (malted beverages only or malted, vinous and distilled) but served in a designated area (some type of temporary fencing other than snow fence may be needed). Public would NOT be allowed to bring their own alcohol at any time.

- **Tents must be removed after 6pm** (excluding authorized vendors and town authorized displays). Although park visitors were very cooperative in lowering personal tents when requested, we see this as a potential area of conflict as concerts, fireworks or other evening events begin. This would allow individuals to utilize tents during the day, but at an evening public event, they would be down at a set time.

- **Supplemental law enforcement** In 2012, the Police Department utilized outside assistance from the Weld County Warrant Team, Colorado Parole Officers and the Division of Parks and Wildlife, groups comprised of trained law enforcement professionals. There is a desire to have a stronger police presence, especially in June and July. Weld County Reserve Officers are $20 per hour. Working in pairs for 6 hours on Saturdays and Sundays for 7 selected weekends between Memorial Day thru July 30th, this equates to approximately $3,360 (PD Contract Services Budget). The other 3 weekends during this timeframe would be filled with Windsor officers for $3,600 (PD OT Budget). This may be challenging due to the cost and having a uniformed presence in the park every weekend may be welcomed by some visitors, and cause concern in others.

It should be noted that on July 4, 2012, the entire Windsor PD was on duty. Due to the day of the week it falls on, shifts can be arranged to do this again in 2013 and 2014. However, after that, it becomes an overtime situation and strains our own resources. Contract services may be needed for this in the future as well.

- **Bring parks rules under an ordinance for municipal enforcement.** As you may know, certain park rules and regulations are included in the Municipal Code, mostly under Section 11. However, this is not all inclusive and certainly does not address any new rules or regulations as discussed above. It also does not allow for easy updating as changes need to be adopted by Ordinance. Working with legal counsel, we can develop an Ordinance that adopts all park rules and regulations, by reference. Specific rules and regulations, such as those already adopted and those proposed above, would be adopted by resolution (and posted on sites as we currently do). This makes it much easier for law enforcement to cite violations and impose fines, but also allows for easily updating in the case Town Board needed to modify rules and regulations.

We believe that these modifications will make it easier for the Police Department and staff to provide safe and quality services, as well as enforce existing laws.

**Financial Impact:**

| | |
|---|---|
| Outside Law enforcement / Over Time: | $3360 |
| | $3600 |
| | $6960 |
| Temporary fencing | Unknown at this time |

**Relationship to Strategic Plan:**

Goal 1 A, B, F

**Recommendation:**

**For discussion only, and any direction to staff**

**Attachments:**

b. Special Events with possible Special Event Liquor License
c. Report for 2012 Boardwalk Park
d. Draft Ordinance (revised)
e. Draft Resolution

**Special Events – possible candidates for Special Event Liquor License**

**Town of Windsor (total 12 events):**

- Oktoberfest
- Summer Concert Series - 9 (excluding 4th of July)
- Street DANCE!
- Windsor Cruise – In

**Partnered (total 5 events):**

- All Town BBQ
- Taste of Windsor
- Fine Arts Festival
- Front Range Wine Festival
- Harvest Festival

**Private events - obtain a license or not serve alcohol (total unknown):**

- Company picnics
- Private family rental

***Police Calls - Boardwalk Park***

| Date Reported | Classification | Sub-Category | Report # | Address |
|---|---|---|---|---|
| 5/20/2012 | Trespass | Government Prop | 12-4605 | 100 N 5th Street |
| 5/22/2012 | Animal Call | Dog at Large | 12-4698 | 100 N 5th Street |
| 5/31/2012 | Criminal Mischief | | 12-5031 | 100 N 5th Street |
| 6/6/2012 | Muni Ordinance | Other | 12-5312 | 100 N 5th Street |
| 6/9/2012 | Suspicious Person | | 12-5428 | 100 N 5th Street |
| 6/10/2012 | Parking Violation | | 12-5477 | 100 N 5th Street |
| 6/10/2012 | Parking Violation | | 12-5483 | 100 N 5th Street |
| 6/12/2012 | Traffic Accident | Private Prop Damage | 12-5576 | 100 N 5th Street |
| 6/13/2012 | Juvenile Problem | | 12-5619 | 100 N 5th Street |
| 6/17/2012 | Suspicious Activity | | 12-5790 | 100 N 5th Street |
| 6/17/2012 | Suspicious Person | | 12-5785 | 100 N 5th Street |
| 6/19/2012 | Theft | | 12-5885 | 100 N 5th Street |
| 6/23/2012 | Animal Call | Dog at Large | 12-6027 | 100 N 5th Street |
| 6/23/2012 | Animal Call | Other | 12-6039 | 100 N 5th Street |
| 6/23/2012 | Muni Ordinance | Other | 12-6052 | 100 N 5th Street |
| 6/23/2012 | Parking Violation | | 12-6032 | 100 N 5th Street |
| 6/23/2012 | Suspicious Activity | | 12-6042 | 100 N 5th Street |
| 6/23/2012 | Traffic | | 12-6024 | 100 N 5th Street |
| 6/23/2012 | Other Ordinance Violation | Possession of glass container in park. | 12-6034 | 100 N 5th Street |
| 6/23/2012 | Warrant | Underage Consumption/Possession | 12-6021 | 100 N 5th Street |
| 6/23/2012 | Warrant | Suspicious Activity | 12-6037 | 100 N 5th Street |
| 6/24/2012 | Animal Call | Dog at Large | 12-6090 | 100 N 5th Street |
| 6/24/2012 | Found Property | | 12-6088 | 100 N 5th Street |
| 6/24/2012 | Miscellaneous | Disturbance | 12-6073 | 100 N 5th Street |
| 6/24/2012 | Parking Violation | | 12-6085 | 100 N 5th Street |
| 6/24/2012 | Parking Violation | | 12-6087 | 100 N 5th Street |
| 6/24/2012 | Parking Violation | | 12-6098 | 100 N 5th Street |
| 6/24/2012 | Suspicious Vehicle | | 12-6094 | 131 N 6th Street |
| 6/25/2012 | Found Property | | 12-6118 | 100 N 5th Street |
| 6/25/2012 | Parking Violation | | 12-6137 | 100 N 5th Street |
| 6/26/2012 | Muni Ordinance | Other | 12-6182 | 100 N 5th Street |
| 6/28/2012 | Lost Property | | 12-6258 | 100 N 5th Street |

| | | | | |
|---|---|---|---|---|
| 6/30/2012 | Parking Violation | | 12-6328 | 100 N 5th Street |
| 7/1/2012 | Parking Violation | | 12-6367 | 100 N 5th Street |
| 7/2/2012 | Miscellaneous | Open Door | 12-6422 | 100 N 5th Street |
| 7/3/2012 | Other Crimes Against Person | Restraining Order | 12-6442 | 100 N 5th Street |
| 7/3/2012 | Warrant | Fujitive of Justice | 12-6464 | 100 N 5th Street |
| 7/4/2012 | Animal Call | Dog at Large | 12-6478 | 100 N 5th Street |
| 7/4/2012 | Found Property | | 12-6531 | 100 N 5th Street |
| 7/4/2012 | Miscellaneous | Disturbance | 12-6500 | Windsor Lake Trail |
| 7/4/2012 | Muni Ordinance | Possession of glass container in park. | 12-6498 | 100 N 5th Street |
| 7/4/2012 | Muni Ordinance | Possession of glass container in park. | 12-6501 | 100 N 5th Street |
| 7/4/2012 | Muni Ordinance | Possession of glass container in park. | 12-6503 | 100 N 5th Street |
| 7/4/2012 | Muni Ordinance | Possession of glass container in park. | 12-6508 | 100 N 5th Street |
| 7/4/2012 | Muni Ordinance | Possession of glass container in park. | 12-6504 | 100 N 5th Street |
| 7/4/2012 | Parking Violation | | 12-6487 | 100 N 5th Street |
| 7/4/2012 | Parking Violation | | 12-6490 | 100 N 5th Street |
| 7/4/2012 | Parking Violation | | 12-6495 | 100 N 5th Street |
| 7/4/2012 | Parking Violation | | 12-6515 | 100 N 5th Street |
| 7/4/2012 | Theft | | 12-6525 | 100 N 5th Street |
| 7/4/2012 | Theft | | 12-6526 | 100 N 5th Street |
| 7/4/2012 | Welfare Check | | 12-6485 | 100 N 5th Street |
| 7/5/2012 | Trespassing | Tresspass, Vehicle | 12-6540 | 100 N 5th Street |
| 7/6/2012 | Missing Person | Juvenile | 12-6584 | 100 N 5th Street |
| 7/10/2012 | Warrant | Other Agency | 12-6782 | 100 N 5th Street |
| 7/12/2012 | Found Property | | 12-6846 | 100 N 5th Street |
| 7/14/2012 | Ambulance | Ambulance Assist | 12-6921 | 100 N 5th Street |
| 7/14/2012 | Parking Violation | | 12-6922 | 100 N 5th Street |
| 7/14/2012 | Miscellaneous | Disturbance | 12-6929 | 100 N 5th Street |
| 7/14/2012 | Found Property | | 12-6930 | 100 N 5th Street |
| 7/15/2012 | Parking Violation | | 12-6962 | 100 N 5th Street |
| 7/21/2012 | Animal Call | Animal Cruelty | 12-7207 | 100 N 5th Street |
| 7/30/2012 | Damaged Property | | 12-7554 | 100 N 5th Street |
| 8/10/2012 | Miscellaneous | Open Door | 12-8007 | 100 N 5th Street |
| 8/14/2012 | Found Property | Found Property | 12-8198 | 100 N 5th Street |

TOWN OF WINDSOR

ORDINANCE NO. 2012- _____

AN ORDINANCE AMENDING CHAPTER 10 OF THE WINDSOR MUNICIPAL CODE WITH RESPECT TO REGULATIONS APPLICABLE TO THE CONDUCT OF PERSONS WITHIN TOWN-OWNED PARKS AND OPEN SPACE AREAS

WHEREAS, the residents of the Town of Windsor ("Town") consistently place high value on the availability of quality parks and open space; and

WHEREAS, in the past, the Town has administratively adopted and enforced standards of conduct applicable to parks and open space visitors, which standards have been administered by the Director of Parks, Recreation and Culture; and

WHEREAS, since the administrative adoption of parks and open space standards of conduct, the use of the Town's parks and open space has intensified to the point where administrative protocols cannot adequately address public safety and public health; and

WHEREAS, public safety, public health and public welfare require that the Town's Police Department have a role in enforcing standards of conduct for park and open space visitors, including the ability to cite offenders into the Municipal Court for prosecution; and

WHEREAS, at present, the administratively-adopted standards of conduct for visitors to Town parks and open space cannot be enforced by the issuance of criminal citations, as the current standards are not adopted as Code provisions; and

WHEREAS, there is a need to give the Town more tools for effectively addressing non-compliance with Town-approved standards of conduct for visitors to Town parks and open space; and

WHEREAS, the Town's Director of Parks, Recreation and Culture has worked cooperatively with the Town's Chief of Police to arrive at standards of conduct which, if adopted within the *Windsor Municipal Code* pursuant to this Ordinance, will be enforceable in the Municipal Court; and

WHEREAS, the Town's Director of Parks, Recreation and Culture and the Town's Chief of Police have recommended the within revisions to the *Windsor Municipal Code*, in order that the experience for all visitors to Town parks and open space will be safe, secure and comfortable; and

WHEREAS, attached hereto is a true and correct copy of the 2012 Parks and Open Space Regulations ("Regulations") developed by the Director of Parks, Recreation and Culture and Chief of Police; and

DRAFT

WHEREAS, the Town's Parks, Recreation and Culture Advisory Board has reviewed the attached Regulations, and has recommended approval of them; and

WHEREAS, the Town Board has studied the attached Regulations, as well as the increased powers afforded to the Town as set forth therein; and

WHEREAS, the Town Board has concluded that the within Ordinance is necessary and proper for the preservation of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD FOR THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

**Section 1.** Chapter 10 of the Windsor Municipal Code is hereby amended by the addition of a new Article VIII, which shall read as follows:

## ARTICLE VIII

## REGULATIONS APPLICABLE TO CONDUCT OF PERSONS IN TOWN-OWNED PARKS AND OPEN SPACE

### Sec. 10-8-10. Applicability of 2012 Parks and Open Space Regulations.

(a) The conduct of persons within Town-owned parks and open space shall be governed by the 2012 Parks and Open Space Regulations approved by Town Board Resolution No. 2012-[XXXX], and shall be maintained by the Town's Director of Parks, Recreation and Culture. The Director of Parks, Recreation and Culture shall post, circulate and otherwise make the 2012 Parks and Open Space Regulations, together with any amendments thereto, available for inspection by the public.

(b) The Director of Parks, Recreation and Culture shall have the authority to make minor modifications to the 2012 Parks and Open Space Regulations. However, major modifications or amendments of the 2012 Parks and Open Space Regulations shall take place only upon formal resolution adopted by the Town Board as recommended by the Director of Parks, Recreation and Culture in cooperation with the Town's Chief of Police.

### Sec. 10-8-20. Non-compliance with 2012 Parks and Open Space Regulations.

It shall be unlawful for any person to violate any provision of the 2012 Parks and Open Space Regulations, as well as any amendments thereto. Upon conviction, any person so convicted shall be subject to a fine not to exceed the limits

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established under *Windsor Municipal Code* Section 1-4-20. Each day during which a violation takes place shall be deemed a separate offense.

Introduced, passed on first reading, and ordered published this ____ day of _____, _____.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

Introduced, passed on second reading, and ordered published this _____ day of _____, ____.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

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TOWN OF WINDSOR

RESOLUTION NO. 2012-_____

A RESOLUTION ADOPTING THE TOWN OF WINDSOR 2012 PARKS AND OPEN SPACE REGULATIONS WITH RESPECT TO THE CONDUCT OF PERSONS WITHIN TOWN-OWNED RECREATIONAL FACILITIES

WHEREAS, the Town of Windsor ("Town") is a Colorado home rule municipality with all powers and authority provided by Colorado law; and

WHEREAS, the residents of the Town consistently place high value on the availability of quality parks and open space; and

WHEREAS, in the past, the Town has administratively adopted and enforced standards of conduct applicable to parks and open space visitors, which standards have been administered by the Director of Parks, Recreation and Culture; and

WHEREAS, since the administrative adoption of parks and open space standards of conduct, the use of the Town's parks and open space has intensified to the point where administrative protocols cannot adequately address public safety and public health; and

WHEREAS, public safety, public health and public welfare require that the Town's Police Department have a role in enforcing standards of conduct for park and open space visitors, including the ability to cite offenders into the Municipal Court for prosecution; and

WHEREAS, at present, the administratively-adopted standards of conduct for visitors to Town parks and open space cannot be enforced by the issuance of criminal citations, as the current standards have not been adopted by the Town Board and have not been integrated into the *Windsor Municipal Code*; and

WHEREAS, the Town Board believes there is a need to give the Town more tools for effectively addressing non-compliance with Town Board-approved standards of conduct for visitors to Town parks and open space; and

WHEREAS, the Town's Director of Parks, Recreation and Culture has worked cooperatively with the Town's Chief of Police to arrive at standards of conduct which, if adopted by the Town Board and separately incorporated into the *Windsor Municipal Code* by Ordinance, will be enforceable in the Municipal Court; and

WHEREAS, the Town's Director of Parks, Recreation and Culture and the Town's Chief of Police have recommended that the Town Board approve the attached 2012 Parks and Open Space Regulations ("Regulations"); and

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WHEREAS, the Town's Parks, Recreation and Culture Advisory Board has reviewed the attached Regulations, and has recommended Town Board approval of them; and

WHEREAS, the Town Board has studied the attached Regulations and has concluded that their adoption promotes the public health, safety and welfare; and

WHEREAS, the Town Board has concluded that the adoption of the Regulations by this Resolution, in tandem with a separate incorporation into the *Windsor Municipal Code* by Ordinance, is necessary and proper for the preservation of the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The Town Board hereby adopts the attached Town of Windsor 2012 Parks and Open Space Regulations.

2. The Town Board approves the Town of Windsor 2012 Parks and Open Space Regulations, as well as any amendments thereto, as being applicable to all persons visiting Town parks and open space areas.

3. The Director of Parks, Recreation and Culture shall keep, maintain, post, and make available to the public the 2012 Parks and Open Space Regulations, as well as any amendments thereto.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this ____ day of _____, _____.

TOWN OF WINDSOR, COLORADO

By:_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

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TOWN OF WINDSOR
COLORADO

# M E M O R A N D U M

**Date:** October 1, 2012
**To:** Mayor and Town Board
**From:** Kelly Arnold, Ian McCargar, Dennis Wagner
**Re:** Davis Seepage Pipe
**Item #:** Work Session - 2

Background / Discussion:

In April, 1919, various land owners entered into a Contract and Grant ("1919 Agreement") with Great Western Sugar Company. This agreement called for the construction of a 5300-foot tile drain pipe within a portion of what was then known as the Davis Seep Ditch. Each of the parties ("subscribers") contributed varying sums of money for the construction of the pipeline. The clear intent of the 1919 Agreement was to increase the arable land of the subscribers, thus increasing the supply of sugar beets to Great Western's operations. The 1919 Agreement affirmed that the seep water flowing through the pipeline belongs to the Great Western Sugar Company. The 1919 Agreement gave ownership of the pipeline to the Great Western Sugar Company, and required the Great Western Sugar Company to "each year clean out the sand pockets in the man-holes" at its sole expense. It also goes on to say that the other subscribers "…shall bear any other expense of maintenance and repair of said drain line *pro rata* as their respective subscriptions for the construction of said line shall bear to the total cost of the construction thereof." The 1919 Agreement expressly states that its terms are covenants running with the land of each subscriber, binding on their heirs, successors and assigns.

The 1919 Agreement remains in effect. Since that time, the various subscribers' lands have been transferred to other owners, including but not limited to the lot owners within the Greenspire and Peak View Estates subdivisions. The former Great Western Sugar site is now owned by Broe Companies and Carestream. Literal enforcement of the 1919 Agreement exposes the present owners of the affected lands to the cost of maintenance and repairs to the pipeline, as these burdens run with ownership of the land formerly held by the original subscribers to the 1919 Agreement. The Town of Windsor was not a subscriber to the 1919 Agreement, but is now an owner of park land and open space within Greenspire and Peak View Estates; the Town, therefore, is responsible for some percentage of the repair and maintenance costs under the 1919 Agreement.

Enforcement of the 1919 Agreement is complicated by the multiple owners who now control the land area within the original subscribers' farms. If repair and maintenance costs are presented to a court for allocation as contemplated by the 1919 Agreement, the court will be required to sort through potentially hundreds of owners and corresponding acreage ownership equivalents. For this reason, resorting to the 1919 Agreement for cost recovery on the proposed pipeline repair is not recommended. The simplicity of the cost allocation has been erased by the development of

the original lands for residential use.

One concept that may assist in a fair allocation of pipeline repair expenses is a special district structure, under which property owners benefitted by the improvements will be assessed by the district in some way reflecting the benefits of the repaired pipeline. Both the Town's Home Rule Charter and Colorado statutory law allow the Town to create a special district for this purpose. Given the need to work against a tight construction timeline, the statutory special district requirements appear to be a workable method for establishing the district and allocating the repair costs. There are some strategies for drawing the district boundaries and evaluating the relative benefits conferred on different classes of property owners, but the first decision for the Town Board is whether to consider a special district structure or rely on the 1919 Agreement. As stated above, the Town Attorney does not favor litigating enforcement of the 1919 Agreement, and recommends the Town Board consider a special district to achieve cost recovery from the land owners benefitted by the proposed repairs.

The Town of Windsor is currently under contract with Anderson Consulting Engineers to develop a preliminary design of an underdrain pipe system to replace the existing Davis Seepage Pipe and a preliminary design of a separate storm drainage system. Also included in the scopes of work are estimates of cost. Delivery of their work is expected mid-October.

# DAVIS SEEPAGE DITCH DRAIN TILE ALIGNMENT

# M E M O R A N D U M

**Date:** October 1, 2012
**To:** Mayor and Town Board
**Via:** Kelly Arnold, Town Manager
**From:** John Frey, Ian McCargar, Town Attorneys
**Re:** I-25/SH392 Benefit Fee implementation
**Item #:** Work Session - 3

**Background / Discussion:**

The materials attached to this Memorandum reflect the efforts of the combined staffs of Windsor and Fort Collins to generate a methodology for the assessment of the properties in the Corridor Activity Center ("CAC"). All of the properties in the CAC will benefit from the construction of the new I-25/SH392 Interchange, and will be assessed an amount totaling one-half of the joint Fort Collins/Windsor investment in this project.

The documents attached to this Memorandum will be the framework for the discussion during your upcoming work session. They are as follows:

1. A revised study performed by Foster Valuation LLC identifying the benefitted properties and recommending the appropriate assessment amount for each parcel.

2. Draft of a First Amended IGA between Windsor and Fort Collins. This updates the original IGA dated January 3, 2011.

3. Draft of the proposed fee ordinance that will assess the CAC properties in Windsor. An identical ordinance is proposed for the Fort Collins properties.

4. Drafts of two proposed agreements between the Town and the CAC property owners. One relates to developed properties and the other to undeveloped properties. These agreements are described in the fee ordinance. They create a methodology for delayed payment of the assessment, at the option of the property owner. Identical agreements exist for the Fort Collins CAC property owners.

5. Copy of a self-explanatory letter of transmittal that went out to the CAC property owners on September 26. This letter was accompanied by copies of the documents attached to this Memorandum.

**Financial Impact:**
The approval of the First Amended IGA and the proposed assessment ordinance will allow the Town to recover 50% of the amounts the Town has appropriated for the construction of the I-25 Interchange and local improvements in the Interchange area.

**Recommendation:**

Referral to the Town Board for consideration ordinances approving the First Amended IGA and the fee ordinance as described herein.

**Attachments:**

- Revised Foster Study
- First Amended IGA between the Town of Windsor and the City of Fort Collins
- Proposed fee ordinance
- Property owner agreements (2x)
- Transmittal letter to property owners in the CAC

FOSTER VALUATION COMPANY LLC

September 24, 2012

Mr. Rick Richter
Capital Projects Manager
Engineering Department
City of Fort Collins
P.O. Box 580
Fort Collins, Colorado 80522-0580

John P. Frey, Esq.
Frey McCargar & Plock, LLC
The Historic Harmony Mill
131 Lincoln Avenue, Suite 100
Fort Collins, CO 80524

RE: Interstate 25 and Colorado State Highway 392 Reimbursement Study-Revised September 24, 2012

Dear Mr. Richter and Mr. Frey:

At your request, I am submitting my revised appraisal consulting report, which involves a reimbursement study prepared to estimate an equitable manner to assess property owners within the Fort Collins Growth Management Area (GMA) and the Windsor GMA who benefit from the capital improvement project proposed to improve traffic flow and reduce congestion at the Interstate 25 and Colorado State Highway 392 interchange.

**Scope of the Assignment**

City of Fort Collins and Town of Windsor officials have committed to fund approximately $2.3 million as their share of the proposed interchange construction costs and an additional $250,000 for interchange enhancements. This study is to determine a fair and equitable manner for the two municipalities to assess property owners and be reimbursed based on the estimated influence the project is to have on the value of those properties in proximity to the project.

The study involves making a determination of which properties within the City of Fort Collins and the Town of Windsor growth management areas in proximity to the Interstate 25 and Colorado State Highway 392 interchange are

W. West Foster, MAI, CRE, SR/WA ♦ Sue Anne Foster, MAI, SRA
Jon M. Vaughan, MAI ♦ Christine M. Antonio ♦ Michael A. Smith

Certified General Real Estate Appraisers ♦ 910 54th Avenue, Suite 210, Greeley, Colorado 80634
Phone (970) 352-1117 ♦ FAX (970) 353-2753

being benefitted from the proposed interchange improvements and to what extent the properties are enhanced by the proposed access enhancements. The properties within the two growth management areas in proximity to the interchange were studied to formulate an opinion as to the extent they are estimated to benefit from the proposed interchange improvements. The areas of influence are reduced typically based on the diminished proximity to the interchange. The conclusion was reached that when confined to properties within both communities' growth management areas, the sites within the corridor activity center (CAC) boundary were those deemed to possess the most influence from the interchange improvements.

The initial focus of my investigation was to study the influences on land value in proximity to newly developed interstate highway interchanges. The four interchanges that had the most significant and relevant data were in the Denver Metropolitan area. The two interchanges where the most significant data were found included the recently constructed Interstate 25 and 144th Avenue interchange and the Interstate 25 and 136th Avenue interchange. Data in proximity to the E-470 and East Smoky Hill Road interchange and the E-470 and the South Gartrell Road interchange were also studied.

These data were then utilized to estimate the extent to which the land around this interchange would increase in value after the interchange improvements are made. Based on the data gathered at the four interchanges mentioned, it was concluded that there are four areas of influence, which I have labeled Value Enhancement Zones A through D. On the attached I25 - State Highway 392 Interchange Value Enhancement Zones map, Zones A and A-1 are highlighted in red, Zones B and B-1 are in orange, Zone C is shown in pale green, and Zone D is highlighted in darker green.

Zones A and A-1 feature the best proximity to the interchange and, in my opinion, will benefit the greatest from the interchange improvements. Zone A consists strictly of vacant commercially-zoned land. Fees are estimated to be assessed within Zone A when the vacant sites are developed. Zone A-1 consists of fully developed commercial lots on the east side of Interstate 25 straddling Colorado State Highway 392 that have been completely built out with improvements. Fees within Zone A-1 apply only when the sites are redeveloped. Based on the investigation of data surrounding the four interchanges discussed above, Zone A prices increased from the period before the interchanges were

constructed to the period after the interchanges were nearing completion on the average of $7.00 to $7.50 per square foot.

Zones B and B-1 are slightly farther removed from the interchange, but still possess strong influence for potential commercial uses. Zone B consists strictly of vacant commercially-zoned land. Fees are estimated to be assessed within Zone B when the vacant sites are developed. The Zone B-1 parcel consists of a commercial site on the west side of Interstate 25 north of Colorado State Highway 392 that has been significantly improved with buildings. Fees within Zone B-1 apply only when the site is redeveloped. Zone B prices increased from the period before the interchanges were constructed to the period after the interchanges were nearing completion on the average of $4.50 to $4.75 per square foot.

Zone C is farther removed from the interchange, and the data at the interchanges studied suggest that these sites are influenced by interstate frontage and benefit from good accessibility. Zone C prices increased from the period before the interchanges were constructed to the period after the interchanges were nearing completion on the average of $3.50 to $4.00 per square foot.

Zone D is yet farther removed from the interchange, and the data at the interchanges studied suggest that these sites are also influenced by interstate frontage and benefit from good accessibility due to the interchange improvements. Zone D prices increased from the period before the interchanges were constructed to the period after the interchanges were nearing completion on the average of $2.00 to $2.25 per square foot.

The preceding data are generated from newly developed interchanges where none previously existed. The value increases at the Interstate 25 and Colorado State Highway 392 interchange are not expected to be quite as dramatic.

**Value Enhancement Fee Estimates**

Each property within the four primary zones discussed above is shown in the attached Value Enhancement Zone Analysis spreadsheet and is identified by Larimer County assessor's parcel number and ownership as indicated in county records. The gross land area has been calculated using the best available information; and the non-developable areas have been calculated using City of

Fort Collins Geographical Information System (GIS) data, which then results in a developable land area calculation per square foot. The value enhancement fees will be assessed based on developable land area per square foot at the time the sites are developed or when the sites are redeveloped.

At the newly constructed interchanges studied, the Zone A prices increased on the average of $7.00 to $7.50 per square foot. Since no interchanges existed before, these average increases are greater than what would be expected at Interstate 25 and Colorado State Highway 392 when the interchange improvements are completed since that interchange already exists. Using 25 to 50 percent of the $7.00 to $7.50 per square foot estimated value after the interchange improvements are made results in a forecast increase from $1.88 to $3.75 per square foot for Zones A and A-1. There are 1,576,345 square feet of developable land area in Zones A and A-1. It is forecast that value increases in Zone A category will be from just over $2.9 million to nearly $6 million.

In Zones B and B-1 prices increased on the average of $4.50 to $4.75 per square foot at the interchanges studied. Again, since an interchange already exists at Interstate 25 and Colorado State Highway 392, the increase is not expected to be as great. If a range of 25 to 50 percent is utilized again, it results in a forecast increase from $1.16 to $2.32 per square foot within Zones B and B-1. There are 4,333,889 square feet of developable land area in Zones B and B-1. It is forecast that value increases in Zones B and B-1 will be from $5.0 to nearly $10.1 million.

Land prices in Zone C at the interchanges studied increased on the average of $3.50 to $4.00 per square foot due to the new interchange construction. Again, since the Interstate 25 and Colorado State Highway 392 interchange already exists, the increase is not expected to be as great. If a range in forecast value increases of 25 to 50 percent is utilized again, it results in a forecast increase from $0.94 to $1.88 per square foot within Zone C. There are 6,682,600 square feet of developable land area in Zone C. It is forecast that value increases in the Zone C category will be from $6.3 to nearly $12.6 million.

At the interchanges studied, land prices in Zone D increased on the average of $2.00 to $2.25 per square foot as a result of the new interchange being constructed. As with the preceding zones analyzed, since the Interstate 25 and Colorado State Highway 392 interchange already exists, the increase is not expected to be as great. If a range in forecast value increases of 25 to 50 percent is

utilized again, it results in a forecast increase from $0.53 to $1.06 per square foot within Zone D. There are 9,320,291 square feet of developable land area in Zone D. It is forecast that value increases in the Zone C category will be from $4.9 to nearly $9.9 million.

It is clear from the data gathered at the four interchanges studied that the improvements proposed at the Interstate 25 and Colorado State Highway 392 interchange will enhance property values within the CAC at a minimum of $19.1 million, which is greater than the $2.55 million being assessed.

Respectfully submitted,

W. West Foster, MAI, CRE, SR/WA
CO Certification #CG00001795

Attachment One

# ATTACHMENT ONE VALUE ENHANCEMENT ZONE ANALYSIS

## September 2012 Foster Valuation Company LLC

| | OWNER | GROSS LAND AREA | NON-DEV LAND AREA | DEVELOPABLE LAND AREA | PROJECT CONST FEE/SF | PROJECT TOTAL CONST FEE | ENHANCEMENT FEE/SF | TOTAL ENHANCEMENT FEE | TOTAL FEES | REMARKS |
|---|---|---|---|---|---|---|---|---|---|---|
| **ZONE A** | | | | | | | | | | |
| 86150-00-007 | INTERSTATE LAND HOLDINGS, LLC | 645,519 | 347,609 | 297,910 | $0.25 | $74,766 | $0.03 | $8,127 | $82,892 | NWQ of I-25 and SH 392 Interchange |
| 86154-05-001 | WINDSOR INVESTMENTS LTD | 73,410 | 0 | 73,410 | $0.25 | $18,423 | $0.03 | $2,003 | $20,426 | Ptarmigan Business Park Developed Lot |
| 86154-05-002 | WINDSOR INVESTMENTS LTD | 73,324 | 0 | 73,324 | $0.25 | $18,402 | $0.03 | $2,000 | $20,402 | Ptarmigan Business Park Developed Lot |
| 86154-07-001 | BANK OF CHOICE | 55,889 | 0 | 55,889 | $0.25 | $14,026 | $0.03 | $1,525 | $15,551 | Ptarmigan Business Park Developed Lot |
| 86154-07-002 | WINDSOR INVESTMENTS LTD | 74,479 | 0 | 74,479 | $0.25 | $18,692 | $0.03 | $2,032 | $20,723 | Ptarmigan Business Park Developed Lot |
| 86154-05-007 | BUSINESS PARK I OF 392 | 49,185 | 0 | 49,185 | $0.25 | $12,344 | $0.03 | $1,342 | $13,686 | Ptarmigan Business Park Developed Lot |
| 86220-00-014 | VPD392/PRATO, LLC | 186,550 | 0 | 186,550 | $0.25 | $46,818 | $0.03 | $5,089 | $51,907 | Prime SW Quadrant of I-25 and SH 392 |
| **ZONE A-1** | | | | | | | | | | |
| 86154-05-003 | KHUONG HUONG TANG, et al | 26,196 | 0 | 26,196 | $0.25 | $6,574 | $0.03 | $715 | $7,289 | Ptarmigan Business Park Developed and Improved Lot |
| 86154-05-004 | WESTGATE PARTNERS LLC | 36,568 | 0 | 36,568 | $0.25 | $9,177 | $0.03 | $998 | $10,175 | Ptarmigan Business Park Developed and Improved Lot |
| 86154-05-006 | WESTGATE PARTNERS LLC | 60,807 | 0 | 60,807 | $0.25 | $15,261 | $0.03 | $1,659 | $16,919 | Ptarmigan Business Park Developed and Improved Lot |
| 86221-45-002 | MICHAEL I. MAXWELL, et al | 55,178 | 0 | 55,178 | $0.25 | $13,848 | $0.03 | $1,505 | $15,353 | Westgate Commercial Center Developed and Improved Lot |
| 86221-45-001 | THE BAILEY COMPANY | 43,963 | 0 | 43,963 | $0.25 | $11,033 | $0.03 | $1,199 | $12,233 | Westgate Commercial Center Developed and Improved Lot |
| 86221-43-001 | SCHRADER PROPERTIES, LLC | 66,211 | 0 | 66,211 | $0.25 | $16,617 | $0.03 | $1,806 | $18,423 | Westgate Commercial Center Developed and Improved Lot |
| 86221-43-002 | TACO JOHNS INTERNATIONAL INC | 49,223 | 0 | 49,223 | $0.25 | $12,353 | $0.03 | $1,343 | $13,696 | Westgate Commercial Center Developed and Improved Lot |
| 86221-45-003 | FORMER TCE, LLC | 100,887 | 0 | 100,887 | $0.25 | $25,319 | $0.03 | $2,752 | $28,071 | Westgate Commercial Center Developed and Improved Lot |
| 86221-45-004 | WESTGATE HOSPITALITY LLC | 96,118 | 0 | 96,118 | $0.25 | $24,122 | $0.03 | $2,622 | $26,744 | Westgate Commercial Center Developed and Improved Lot |
| 86221-47-001 | MEYERS 4701 LLC | 152,444 | 0 | 152,444 | $0.25 | $38,258 | $0.03 | $4,159 | $42,417 | Westgate Commercial Center Developed and Improved Lot |
| 86221-43-003 | KINDERCARE LEARNING CENTERS | 78,003 | 0 | 78,003 | $0.25 | $19,576 | $0.03 | $2,128 | $21,704 | Westgate Commercial Center Developed and Improved Lot |
| **ZONE B** | | | | | | | | | | |
| 86154-06-001 | WINDSOR INVESTMENTS LTD | 772,886 | 21,283 | 751,603 | $0.19 | $141,471 | $0.02 | $15,377 | $156,848 | I-25 Frontage in NEQ of interchange |
| 86150-00-014 | YEAGER, NANCY L TRUSTEE | 786,783 | 53,648 | 733,135 | $0.19 | $137,994 | $0.02 | $14,999 | $152,994 | North side of SH 392 east of Bus. Park |
| 86154-08-001 | WINDSOR INVESTMENTS LTD | 653,873 | 242,410 | 411,463 | $0.19 | $77,448 | $0.02 | $8,418 | $85,866 | East of Frontage Rd. N. of SH 392 |
| 86222-47-701&2 | LODGEPOLE INVESTMENTS, LLC | 578,912 | 0 | 578,912 | $0.19 | $108,966 | $0.02 | $11,844 | $120,810 | West of Frontage Rd. S. of SH 393 |
| 86221-47-002 | POUDRE VALLEY HEALTH CARE INC | 995,327 | 85,593 | 909,734 | $0.19 | $171,235 | $0.02 | $18,612 | $189,847 | Frontage on east side of I-25 S. Of SH 392 |
| 86220-00-003 | POUDRE VALLEY HEALTH CARE INC | 1,324,499 | 711,956 | 612,543 | $0.19 | $115,296 | $0.02 | $12,532 | $127,828 | Frontage on east side of I-25 S. Of SH 392 |
| **ZONE B - 1** | | | | | | | | | | |
| 86150-00-009 | B3 VENTURES LLC | 407,722 | 71,223 | 336,499 | $0.19 | $63,338 | $0.02 | $6,885 | $70,222 | I-25 Frontage N of SH 392 in NWQ of interchange |
| **ZONE C** | | | | | | | | | | |
| 86150-00-005 | FOSSIL POINT, LLC | 1,026,879 | 71,728 | 955,151 | $0.10 | $99,880 | $0.01 | $10,856 | $110,736 | Frontage on west side of I-25 N. Of SH 392 |
| 86150-00-013 | BURNETTE/YOUNG INVESTMENTS | 939,698 | 352,269 | 587,429 | $0.10 | $61,427 | $0.01 | $6,677 | $68,104 | Frontage on east side of I-25 N. Of SH 392 |
| 86154-06-003 | WINDSOR INVESTMENTS LTD | 126,260 | 85,128 | 41,132 | $0.10 | $4,301 | $0.01 | $468 | $4,769 | East of I-25 and North of SH 392 |
| 86154-06-004 | WINDSOR INVESTMENTS LTD | 317,882 | 15,897 | 301,985 | $0.10 | $31,578 | $0.01 | $3,432 | $35,011 | East of I-25 and North of SH 392 |
| 86154-06-005 | WINDSOR INVESTMENTS LTD | 291,695 | 0 | 291,695 | $0.10 | $30,502 | $0.01 | $3,315 | $33,818 | East of I-25 and North of SH 392 |
| 86154-06-006 | WINDSOR INVESTMENTS LTD | 37,858 | 0 | 37,858 | $0.10 | $3,959 | $0.01 | $430 | $4,389 | East of I-25 and North of SH 392 |
| 86150-00-017 | JBT ASSOCIATES, LLC | 1,767,708 | 236,095 | 1,531,613 | $0.10 | $160,160 | $0.01 | $17,409 | $177,569 | West Side of LC Road 5 N. of SH 392 |
| 86220-00-014 | VPD392/PRATO, LLC | 1,041,071 | 444,571 | 596,500 | $0.10 | $62,376 | $0.01 | $6,780 | $69,156 | South of SH 392; West of Wetlands |
| 86222-47-701 | LODGEPOLE INVESTMENTS, LLC | 244,668 | 163,264 | 81,404 | $0.10 | $8,512 | $0.01 | $925 | $9,438 | West of Frontage Rd. S. of SH 393; West of wetlands |
| 86222-47-702 | LODGEPOLE INVESTMENTS, LLC | 903,159 | 221,691 | 681,468 | $0.10 | $71,261 | $0.01 | $7,746 | $79,006 | West of Frontage Rd. S. of SH 393; West of wetlands |
| 86220-00-017 | VAN CLEAVE, TERRY/MARY | 1,708,402 | 132,037 | 1,576,365 | $0.10 | $164,840 | $0.01 | $17,917 | $182,757 | Farther South of SH 392 West of I-25 |
| **ZONE D** | | | | | | | | | | |
| 86220-00-004 | WINDSOR GOLD COAST LLC | 2,544,953 | 224,297 | 2,320,656 | $0.04 | $97,068 | $0.00 | $10,551 | $107,619 | Farther South of SH 392 on east side of I-25 |
| 86150-00-021 | HORTON, MARY A/ET AL | 1,555,303 | 501,653 | 1,053,650 | $0.04 | $44,072 | $0.00 | $4,790 | $48,862 | Farther North of SH 392 on east side of I-25 |
| 86100-00-016 | HORTON, MARY A/ET AL | 1,030,219 | 419,817 | 610,402 | $0.04 | $25,532 | $0.00 | $2,775 | $28,307 | Farther North of SH 392 on east side of I-25 |
| 86100-00-011 | THREE T INVESTMENTS LLLP | 1,045,838 | 486,358 | 559,480 | $0.04 | $23,402 | $0.00 | $2,544 | $25,945 | Farther North of SH 392 on east side of I-25 |
| 86150-00-001 | THREE T INVESTMENTS LLLP | 1,444,331 | 381,052 | 1,063,279 | $0.04 | $44,475 | $0.00 | $4,834 | $49,309 | Farther North of SH 392 on east side of I-25 |
| 86100-00-002 | THREE T INVESTMENTS LLLP | 94,626 | 69,233 | 25,393 | $0.04 | $1,062 | $0.00 | $115 | $1,178 | Farther North of SH 392 on east side of I-25 |
| 86100-00-015 | HORTON FEEDLOTS INC | 1,625,207 | 469,646 | 1,155,561 | $0.04 | $48,335 | $0.00 | $5,254 | $53,588 | Farther North of SH 392 east of I-25 to LC Road 5 |
| 86150-00-020 | HORTON FEEDLOTS INC | 3,452,929 | 921,059 | 2,531,870 | $0.04 | $105,903 | $0.00 | $11,511 | $117,414 | Farther North of SH 392 east of I-25 to LC Road 5 |
| | | | | 9,320,291 | | | | | | |
| | | | | 31,233,416 | | $2,300,000 | | $250,000 | $2,550,000 | |

# FIRST AMENDED INTERGOVERNMENTAL AGREEMENT PERTAINING TO THE DEVELOPMENT OF THE INTERSTATE 25/STATE HIGHWAY 392 INTERCHANGE

THIS AGREEMENT is entered into this _____ day of _____, 2012, by and between the City of Fort Collins, Colorado, a Colorado home rule municipality (the "City"), and the Town of Windsor, Colorado, a Colorado home rule municipality (the "Town"), collectively referred to herein as the "Parties".

## RECITALS

WHEREAS, the City and the Town are situated on opposite sides of Interstate 25 and are both committed to planned and orderly development; to regulating the location and activities of development which may result in increased demand for services; to providing for the orderly development and extension of urban services; to simplifying governmental structure when possible; to promoting the economic vitality of both municipalities; to protecting the environment; and to raising revenue sufficient to meet the needs of their citizens; and

WHEREAS, on January 3, 2011, the City and the Town entered into an Intergovernmental Agreement ("the Original Agreement") setting forth certain understandings between the City and the Town with regard to the development of the Interstate 25/State Highway 392 Interchange; and

WHEREAS, the Original Agreement anticipated the future adoption of ordinances and resolutions by the City and the Town necessary to implement the provisions of that Agreement; and

WHEREAS, since the adoption of the Original Agreement, the City and the Town have agreed upon a number of changes to the Original Agreement; and

WHEREAS, the changes agreed to are of sufficient substance to require a full amendment of the Original Agreement; and

WHEREAS, this First Amended Intergovernmental Agreement ('this Agreement") reflects the changes agreed to by the City and the Town as well as restating and reaffirming those provisions of the Original Agreement which the City and the Town desire to remain in full force and effect; and

WHEREAS, the Colorado Constitution, Section 29-20-101 *et seq*., of the Colorado Revised Statutes, and the home rule charters of both the City and Town authorize the City and the Town to enter into mutually binding and enforceable agreements regarding the joint exercise of planning, zoning and related powers as those powers are exercised in the provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows.

## SECTION 1. DEFINITIONS

In this Agreement, unless a different meaning clearly appears from the context, the following definitions shall apply:

1.1. "Agreement" means this First Amended Intergovernmental Agreement and attachments hereto.

1.2. "City" means the City of Fort Collins, Colorado.

1.3. "CDOT" means the Colorado Department of Transportation.

1.4. "Corridor Activity Center" or "CAC" means that joint planning area referred to above and more fully described on Exhibit "A," attached hereto and incorporated herein by this reference.

1.5. "Developable Land" means that portion of each parcel of real property within the CAC upon which buildings, infrastructure or other improvements may lawfully be constructed, taking into consideration the physical characteristics of the property and all applicable state and local laws and regulations.

1.6. "Development Proposal" means an application for the development of a parcel of land within the CAC.

1.7. "Effective Date" means the date that the last party signs this Agreement, or ten days after the final approval by the last governing board of the City or Town.

1.8. "Enhanced Improvements" means any improvements within the vicinity of the Interchange that are deemed necessary or appropriate by the governing bodies of the City and the Town, which improvements shall be constructed and maintained by the City and the Town.

1.9. "Foster Study" means the report prepared by Foster Valuation Company, LLC, attached hereto as Exhibit "B"

1.10. "Interchange" means the Interstate 25 and State Highway 392 interchange.

1.11. "Original Agreement" means the Intergovernmental Agreement between the City and the Town dated January 3, 2011.

1.12. "Project" means the construction by CDOT of a new Interchange at Interstate Highway 25 and Colorado State Highway 392.

1.13. "Property Owner" shall mean and include the current and any future fee owner of a CAC property.

1.14. "Property Tax Increment" means the net new revenue generated by property taxes on real property located within the boundaries of the CAC, using a base rate of 9.797 mils, as applied to the assessed valuation developed by Larimer County as of the Effective Date as the baseline.

1.15. "Redevelopment Proposal" means an application for the redevelopment of a previously developed parcel of land within the CAC.

1.16. "Sales Tax Increment" means the net new sales tax revenues generated by sales within the boundaries of the CAC, using a base rate of 2.25% and the amount of tax revenue received in the twelve (12) months immediately preceding the Effective Date as the baseline.

1.17. "Town" means the Town of Windsor, Colorado.

## SECTION 2. CONFIGURATION OF THE CAC

For the purposes of this Agreement, the Parties have agreed upon the boundaries of the CAC and those boundaries are more fully described on Exhibit "A" to this Agreement.

## SECTION 3. REVIEW OF DEVELOPMENT AND REDEVELOPMENT PROPOSALS

3.1. Permitted uses. Pursuant to the Original Agreement, the Parties have by ordinance adopted approved land uses for the CAC. Except by written agreement approved by both Parties, the Parties hereby agree that for a term of twenty-five (25) years from the date of the execution of this Agreement, neither Party shall repeal or otherwise amend their respective ordinances adopting these land uses.

3.2. Applicable Standards. Pursuant to the Original Agreement, the Parties have lawfully adopted standards and guidelines for development of the properties in the CAC, including, but not limited to, the standards contained in the Northern Colorado Regional I-25 Corridor Plan (2001). These standards and guidelines are referred to herein collectively as the CAC Design Standards. Except by written agreement approved by both Parties, these CAC Design Standards shall remain in full force and effect for a term of twenty-five (25) years.

3.3. Review and Approval of Site Specific Development Proposals.

3.3.1 In order to promote and maintain the commitments of the City and Town with regard to development within the CAC, the Parties hereby jointly agree to the following review process for Development or Redevelopment Proposals for property within the CAC.

a. Neither the City nor Town shall, without the prior written consent of the other Party, approve the construction of any improvements within the CAC which are inconsistent with the CAC Design Standards.

b. Plans and specifications for any Development or Redevelopment Proposal on land located within the CAC that are received by either Party after the Effective Date shall, no later than thirty (30) business days prior to taking action, be submitted by the Party having jurisdiction over the proposal to the other Party for review and comment; provided, however, that the Parties may mutually agree to a shorter or longer review and comment period.

c. Such plans and specifications shall include a brief written description of the Development or Redevelopment Proposal and the surrounding vicinity, development maps and graphics, and renderings of all proposed improvements.

d. The receiving Party shall review the materials and respond to the other Party with written comments within the aforementioned thirty (30) business days. Each party agrees that it shall use its best efforts to provide comments in a timely fashion. However, the Parties expressly agree that any delay in submitting comments shall not require the delay of hearings or decisions by the party having jurisdiction over the Development Proposal.

e. The Parties shall designate a single point of contact for the communication of materials and comments contemplated by this Section.

f. The review and comment provided for herein is intended to be cooperative in nature, and is not intended to be binding upon the party having jurisdiction to grant, modify, or deny a Development or Redevelopment Proposal and shall not preclude the approval of any such proposal that is consistent with the CAC Design Standards and the provisions of this Agreement.

3.3.2. Notice of Incentives.

In the event that either Party extends, or agrees to extend, to any applicant for approval of a Development or Redevelopment Proposal within the CAC, any financial or other incentives in connection with such Development or Redevelopment Proposal, such Party shall provide the other Party with a detailed description of such financial or other incentives prior to the formal approval of the same, excluding only such information as is proprietary in nature. The provision and funding of any such incentives shall be the sole responsibility of the Party having jurisdiction over the Development or Redevelopment Proposal, unless the Parties agree to the contrary in a written amendment to this Agreement.

## SECTION 4. COST SHARING

4.1. Funding of the Project.

4.1.1 The Project, which is now nearing completion, has been constructed, managed, and in large part funded by CDOT. Each of the Parties has appropriated the necessary amounts to complete the funding of the Project pursuant to an Intergovernmental Agreement between the Parties and CDOT dated January 3, 2011. In addition to this contribution to the funding of the construction of the Project, the City and the Town have also appropriated funds for the construction of the Enhanced Improvements. The Enhanced Improvements shall not include enhanced wetland mitigation on the west side of Interstate 25. The City may, in its discretion, pay for the cost of such enhanced wetland mitigation, and the Town shall have no obligation to help fund such mitigation.

4.1.2 The Parties have agreed to recover an amount not to exceed Fifty Percent (50%) of the actual contribution made by the City and the Town for the construction of the Project and the Enhanced Improvements from the Property Owners in the CAC. The City and the Town shall each adopt ordinances authorizing such recovery and establishing fees and appropriate methodologies for such recovery.

4.1.3 There shall be no further contributions to the Project by the Parties except by a written agreement approved by the governing bodies of both Parties.

4.2. CAC Fee Revenue Fund.

4.2.1 The Parties shall, within sixty (60) days after collecting any fee revenues from Property Owners as described in Section 4 of this Agreement, deposit such revenues into a CAC Fee Revenue Fund ("Fee Revenue Fund") to be established and administered by one of the Parties pursuant to a written administrative agreement approved by the Town Manager and the City Manager, which agreement shall include a provision whereby the Parties will equitably share the costs incurred in administering the Fee and managing the Fee Revenue Fund. The amounts deposited into the Fee Revenue Fund shall be disbursed annually to the Parties in equal amounts, without regard to whether the properties that generated the Fee revenues are located with the territorial limits of the City or the Town. Such disbursements shall continue until the City and the Town have been fully reimbursed in accordance with the provisions of Section 4 of this Agreement.

4.2.2 Either Party may elect to forego the collection of all or any portion of the fee revenues due from a particular Property Owner in exchange for the Property Owner's provision of a reciprocal benefit to such Party, which benefit may include, but need not be limited to, the setting aside or

dedication to the public of a portion of the developable land within the parcel for purposes such as wetlands, open space, parks or other improvements or amenities. In the event that either party elects to forego the collection of any fee revenue pursuant to this provision, such Party shall nonetheless pay into the Fee Revenue Fund the full amount of the Fee that would have been due from the Property Owner had such election not been made.

## SECTION 5. REVENUE SHARING

5.1. Terms and Conditions. The Parties shall, pursuant to the following terms and conditions, share the Property Tax Increment and Sales Tax Increment generated by properties and businesses located within the boundaries of the CAC.

5.1.1 All tax revenues generated by the Property Tax Increment and Sales Tax Increment shall be deposited by each Party in a separate account and shall not be intermingled with any other funds of that Party.

5.1.2 Sixty-five percent (65%) of the Property and Sales Tax Increment revenues generated in the CAC shall be retained by each Party for use as that Party sees fit. The remaining thirty-fix percent (35%) of such revenues shall be transferred to the other Party within sixty (60) days of December 31 of each year. Annual statements showing calendar year total receipts of all such revenues from each of the Property Owners and retailers within the CAC shall be shared with the other Party within thirty (30) days of December 31 of each year, and the Parties agree that these statements are being disclosed solely for tax-related purposes and are therefor to remain confidential.

5.1.3 Any interest earned on deposits in the account described in Section 5.1.1 above shall remain the property of the Party that collected the revenue upon which the interest was earned and shall not be shared.

5.1.4 The share distribution shall begin on the Effective Date.

5.1.5 Any increase or decrease in the sales or property tax rates of either the City or the Town shall not affect the Property Tax Increment or the Sales Tax Increment due from the City or the Town for the revenue sharing purposes of this Section.

5.1.6 In the event either the City or the Town creates one or more exemptions from sales taxes or property taxes, and such exemption(s) results in a reduction in the amount of revenue collected by such Party in the CAC, the Party creating the exemption(s) shall include the exempted amount in its calculation of the amount of Property and Sales Tax Increment revenue that is due to the other Party under this Section as if the exemption(s) had not been created.

5.1.7 To the extent permitted by law, this sharing of revenues shall continue in perpetuity.

5.2. Cooperation in Attracting New Development. The Parties acknowledge and agree that they may need to cooperate in an effort to attract desirable development. Nothing herein shall preclude the Parties from entering into a subsequent agreement modifying the within Section and creating incentives for development in the CAC beneficial to both Parties. This shall include, but shall not be limited to, an agreement to reduce or eliminate the revenue sources identified in this Section. Any such agreement shall be in writing and set forth the terms under which a modification of this Section will occur.

5.3. Bonding. Nothing in this Agreement is intended to restrict either Party from being able to utilize its sixty-five percent (65%) share of the Property Tax Increment revenue and Sales and Use Tax Increment revenue as collateral or use in underwriting any bond, note, debenture, or other municipal borrowing.

## SECTION 6. INSPECTION OF RECORDS.

The City and the Town shall each have the right to inspect and audit the tax revenue and fee collection records of the other pertaining to this Agreement. If any discrepancy is discovered, the auditing Party shall provide written notice, including a copy of the audit report, to the other Party. Any amount due must be paid within thirty (30) days following the written notice or the Parties must engage in negotiations regarding the discrepancy. If a mutual agreement is not reached in sixty (60) days, the provisions of Section 8 below will apply.

To the extent permitted by law, all tax and revenue collection information which is obtained by and pursuant to the inspection and audit provisions of this Agreement shall be deemed privileged, confidential and proprietary information and is being disclosed solely for tax-related purposes, including the calculation of revenue sharing payments pursuant to this Agreement.

The Parties agree that they will not disclose any information to any person not having a legitimate need-to-know for purposes authorized by this Agreement.

The period of limitation for the recovery of any funds payable under this Agreement shall be three (3) years from the date on which the payment is due. Upon the expiration of this period of limitation and any action for collection or recovery of unpaid revenue sharing funds shall be barred.

Each Party and its authorized agents may, upon thirty (30) days' advance written notice to the other, audit the other's records of those taxes and fees which are collected within the CAC and which are being shared pursuant to this Agreement.

## SECTION 7. ANNEXATION

7.1. Amendment of Growth Management Area Boundaries. In order to promote ongoing cooperation and collaboration between the Parties with respect to land use planning on both sides of Interstate 25, and to further the purposes contained in C.R.S. Section 31-12-102 of the Municipal Annexation Act of 1965, the Parties agree that Interstate 25 shall become the boundary between the Fort Collins Growth Management Area ("FCGMA") and the Windsor Growth Management Area ("WGMA"). Accordingly, after the Effective Date, neither Party shall annex, or accept any petition to annex, property within the other Party's growth management area as amended in accordance with this provision. Nor shall either Party annex, or accept any petition to annex, or include within its growth management area, the right of way for Interstate 25 adjacent to the other Party's growth management area without the prior written consent of the other Party. Any future amendments to the contiguous boundaries of the FCGMA and the WGMA shall be made only if agreed upon in writing by both Parties.

7.2. County Approval of GMA Boundary Amendments. Both Parties have heretofore entered into intergovernmental agreements with Larimer County that establish the growth management areas of the Parties, which agreements provide for, among other things, the way in which development applications for properties within the FCGMA and the WGMA will be processed by Larimer County. Accordingly, in order to ensure the cooperation of Larimer County in implementing the provisions of this Section, each Party shall, within one (1) year of the Effective Date, seek the approval of Larimer County to amend its agreement with Larimer County so as to reflect the amendments to the FCGMA and WGMA required hereunder. However, the failure of Larimer County to approve either or both such amendments shall not affect the obligation of the Parties to refrain from annexing territory within the FCGMA, the WGMA or the right of way for Interstate 25 as required in Section 7.1 above.

7.3. Effect on Prior Annexation Agreements. The provisions of this Section shall supersede and take precedence over any conflicting provisions contained in those certain agreements between the Parties entitled "Intergovernmental Agreement (Regarding Annexations East of Interstate Highway 25)" and "Intergovernmental Agreement (Regarding Annexations in the Fort Collins Cooperative Planning Area Adjacent to Fossil Creek Reservoir), both of which are dated June 28, 1999.

## SECTION 8. MEDIATION/ARBITRATION

8.1. Enforceability of Agreement. The parties acknowledge that agreements between municipalities for the purposes set forth herein are mutually binding and enforceable. The parties likewise acknowledge that the unique nature of agreements between municipalities often require equally unique remedies to ensure compliance with the provisions of such agreements while preserving the obligations of the parties to one and other and promoting the continued existence and effectiveness of such agreements. It is the intent of the parties to this Agreement to provide enforcement remedies through a combination of alternative dispute methodologies including mediation and binding arbitration, and thereby eliminate the necessity of judicial enforcement of this

Agreement. Nothing herein shall be deemed to preclude either party from seeking judicial enforcement of any mediation agreement reached between the parties or binding arbitration order entered as a result of the alternate dispute methodologies set forth herein.

8.2. Mediation/Arbitration Process in General. Should either party fail to comply with the provisions of this Agreement, the other party, after providing written notification to the non-complying party, and upon the failure of the non-complying party to achieve compliance within forty five (45) days after said notice, the issue of non-compliance shall be submitted to mediation and thereafter, assuming no resolution has been reached through the mediation process, shall be submitted to binding arbitration. The mediation and binding arbitration processes shall in accordance with the provisions hereinafter set forth. These mediation and arbitration provisions shall be in addition to questions of non-compliance as aforesaid, apply to all disagreements or failure of the parties to reach agreement as may be required by the terms of this Agreement. This shall include, but shall not be limited to, the creation of joint land use designs and standards, approval or rejection of Development Proposals, and disputed matters concerning shared revenues.

8.3. Sharing of Costs. All costs of the mediation/binding arbitration process shall be divided equally between the Parties.

8.4. Mediation Process. The dispute resolution process shall commence with the appointment of a mediator who shall be experienced in matters of local government and the legal obligations of local government entities. In the event the parties are unable to agree upon a mediator within fifteen (15) days of the commencement of the process, each party shall within five (5) days appoint an independent third party, and the third parties so appointed shall select a mediator within fifteen (15) days of their appointment. Mediation shall be completed no later than sixty (60) days after a mediator is selected by the parties or by the independent third parties. The procedures and methodology for mediation shall be determined by the mediator, but shall be in compliance with applicable law.

8.5. Binding Arbitration Process. In the event the parties are unable to reach agreement through the mediation process, the matter in dispute shall be submitted to binding arbitration. The parties agree that the order resulting from the arbitration process shall be deemed a final and conclusive resolution of the matter in dispute. The parties shall agree on the appointment of an arbitrator who shall be experienced in matters of local government and the legal obligations of local government entities. It is understood and agreed that the parties may agree upon the appointment of that person who conducted the mediation portion of this process as the arbitrator, but are not bound to do so. In the event the parties are unable to agree upon an arbitrator within fifteen (15) days, each party will appoint an independent third party, and the third parties so appointed shall select a mediator within fifteen (15) days of their appointment. Arbitration shall be completed no later than ninety (90) days after an arbitrator is selected by the parties or by the independent third parties. The procedures and methodology for binding arbitration shall be determined by the arbitrator, but shall be in compliance with applicable law.

## SECTION 9. CONTINGENT ON APPROPRIATIONS

The obligations of the City and Town do not constitute an indebtedness of the City or Town within the meaning of any constitutional or statutory limitation or provision. The obligations of the City and Town for payment of the Sales Tax Increment under this Agreement shall be from year to year only and shall not constitute a mandatory payment obligation of the City or Town in any fiscal year beyond the present fiscal year. This Agreement shall not directly or indirectly obligate the City or Town to make any payments of Sales Tax Increment beyond those appropriated for any fiscal year in which this Agreement shall be in effect. The City and Town Manager (or any other officer or employee at the time charged with the responsibility of formulating budget proposals) is hereby directed to include in the budget proposals and appropriation ordinances submitted to the City Council and the Town Board, in each year prior to expiration of this Agreement, amounts sufficient to meet its obligations hereunder, but only if it shall have received such amounts in the form of Sales Tax Increment, it being the intent, however, that the decision as to whether to appropriate such amounts shall be at the discretion of the City Council and Town Board.

## SECTION 10. MISCELLANEOUS

10.1. Amendment. This Agreement is the entire and only agreement between the Parties regarding the sharing of (1) costs for the Project; and (2) net new tax revenues generated with the CAC boundaries. There are no promises, terms, conditions, or other obligations other than those contained in this Agreement. This Agreement may be amended only in writing signed by the Parties.

10.2. Severability. Except as otherwise provided in this Agreement, if any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision of this Agreement and the rights of the Parties will be construed as if that part, term, or provision was never part of this Agreement.

10.3. Colorado Law. This Agreement is made and delivered with the State of Colorado and the laws of the State of Colorado will govern its interpretation, validity, and enforceability.

10.4. Jurisdiction of Courts. Personal jurisdiction and venue for any civil action commenced by any of the Parties to this Agreement for actions arising out of or relating to this Agreement will be the District Court of Larimer County, Colorado.

10.5. Representatives and Notice. Any notice or communication required or permitted under the terms of this Agreement will be in writing and may be given to the Parties or their respective legal counsel by (a) hand delivery; (b) deemed delivered three business days after being deposited in the United States mail, with adequate postage prepaid, and sent via registered or certified mail with return receipt requested; or (c) deemed delivered one business day after being deposited with an overnight courier service of national

reputation have a delivery area of Northern Colorado, with the delivery charges prepaid. The representatives will be:

If to the City: City Manager
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80524

With a copy to
City Attorney
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80524

If to the Town: Town Manager
Windsor Town Hall
301 Walnut Street
Windsor, CO 80550

With a copy to
Town Attorney
c/o Town Manager
Windsor Town Hall
301 Walnut Street
Windsor, CO 80550

10.6. Good Faith. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition or delay any approval, acceptance or extension of time required or requested pursuant to this Agreement.

10.7. Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary action, notices, meetings, and hearings pursuant to any law required to authorize their execution of this Agreement have been made.

10.8. Assignment. Neither this Agreement, nor the City or Towns' rights, obligations or duties may be assigned or transferred in whole or in part by either Party without the prior written consent of the other Party.

10.9. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same agreement.

10.10. No Third Party Beneficiary. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, are strictly reserved to the Parties and nothing in this Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Agreement. It is the express intention of the Parties that no person and/or entity, other than the undersigned Parties, receiving services or benefits under this Agreement shall be deemed any more than an incidental beneficiary only.

10.11. Recordation of Agreement. The City shall record a copy of this Agreement in the office of the Clerk and Recorder of Larimer County, Colorado.

10.12. Execution of Other Documents. The Parties agree to execute any additional documents and to take any additional actions necessary to carry out the terms of this Agreement.

Approved as to Form:

_____
City Attorney

ATTEST:

_____
City Clerk

CITY OF FORT COLLINS

_____
Mayor

TOWN OF WINDSOR

_____
Mayor

ATTEST:

_____
Town Clerk

**PLACEHOLDER FOR**
**Exhibit A – Map**

**PLACEHOLDER FOR**
**Exhibit B –Foster Study**

ORDINANCE NO. 2012 - _____

AN ORDINANCE ESTABLISHING A SPECIAL FEE TO BE PAID BY THE OWNERS OF PROPERTY WITHIN CLOSE PROXIMITY TO THE RECONSTRUCTED INTERCHANGE AT THE INTERSECTION OF INTERSTATE 25 AND STATE HIGHWAY 392

WHEREAS, on or about December 13, 2010, the City of Fort Collins ("City") and the Town of Windsor, Colorado, ("Town") entered into an intergovernmental agreement ("IGA") concerning, among other things, the reconstruction of the Interstate 25/State Highway 392 Interchange ("Interchange); and

WHEREAS, the reconstruction of the Interchange was made possible by a combination of federal, state and local funding, totaling approximately $25 million, with the City and the Town jointly contributing approximately $4.6 million; and

WHEREAS, the City and the Town have also appropriated an additional $500,000 to defray the costs of certain local enhancements to the Interchange (the "Local Enhancements"); and

WHEREAS, the construction of the Interchange improvements and the Local Enhancements (collectively, the "Improvements") is nearing completion; and

WHEREAS, the City and the Town are home rule municipalities that, under Article XX, Section 6 of the Colorado Constitution, have the authority to enact fees to recover the cost of providing infrastructure or services to properties within their respective jurisdictions; and

WHEREAS, the Colorado Supreme Court has affirmed this authority in several separate decisions, including *Bloom v. City of Fort Collins*, 784 P.2d 304 (Colo. 1989), and *E-470 Public Highway Authority v. The 455 Company,* 3 P.3d 18 (Colo. 2000); and

WHEREAS, under the IGA, the City and the Town have agreed to impose a fee upon the owners of properties located within the Corridor Activity Center ("CAC"), which is shown on Exhibit "A," attached hereto and incorporated herein by this reference, because such properties ("Benefitted Properties") are located in close proximity to the Interchange and will especially benefit from the reconstruction of the Interchange, and because the development or redevelopment of those properties will add more traffic to the Interchange; and

WHEREAS, in recognition of the fact that the Windsor and Fort Collins communities as a whole will also benefit from the construction of the Improvements, the City and the Town have concluded that the amount of the fee to be assessed against said properties should be limited to fifty percent (50%) of the total amount expended by the City and the Town for the Improvements; and

WHEREAS, in order to fairly apportion the amount to be recovered from the Property Owners, the City and the Town have commissioned a study by a licensed MAI appraiser to determine the amount of appreciation in value that will be experienced by the Benefitted Properties, which

study ("Foster Study") has been completed and submitted to the City and the Town and is attached hereto and incorporated herein by this reference as Exhibit "B"; and

WHEREAS, the Foster Study indicates that the appreciation in value the Benefitted Properties will experience as a result of the reconstruction of the Interchange will be more than sufficient to support the imposition of a fee in the total amount of 50% of the local share of the cost of the Improvements; and

WHEREAS, City and Town staff have recommended that the fee be apportioned not only according to the anticipated appreciation in value that the Benefitted Properties will experience as a result of the construction of the Interchange, but also according to the relative impacts that the development or redevelopment of such properties will have on the Interchange, as measured by the estimated number of additional vehicular trips that will be generated by the developed use of the properties; and

WHEREAS, staff has further recommended that, upon adoption of this Ordinance, the Property Owners should immediately begin paying that portion of the fee that reflects the appreciation in value of their properties since the amount of that appreciation can be immediately determined on the basis of the Foster Study, and that the balance of each Property Owner's fee should be deferred until the development or redevelopment of the Benefitted Properties, since the nature of the developed use of each such property, and the resulting increase in vehicular trips, will not be known until that point in time; and

WHEREAS, during staff's outreach to the Property Owners, some of the Property Owners have questioned the legal validity of the proposed fee and have expressed an intention to challenge the imposition of the same through the commencement of legal proceedings; and

WHEREAS, in order to avoid the expense of litigation, the staff of the City and the Town have attempted to negotiate a settlement agreement with the Property Owners and have proposed that, in exchange for the release of any such claims, the Property Owners signing the settlement agreement would be permitted to defer payment of the entire amount of the fee until their properties are developed or redeveloped, the amount of their fee would be capped at the amount estimated in the agreement, and no interest would accrue on their fee for a period of two years from the date of execution of the agreement; and

WHEREAS, some but not all of the Property Owners have expressed a willingness to enter into such an agreement; and

WHEREAS, the Town Board believes it to be in the best interests of the Town to proceed with the imposition of the fee and to extend the period of time within which the Property Owners may elect to enter into a settlement agreement with the City and the Town upon the terms and conditions described above.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, as follows:

Section 1. The foregoing recitals are hereby adopted by the Town Board as findings in support of the adoption of this Ordinance.

Section 2. Chapter 17 of the *Windsor Municipal Code* shall be amended by the addition of a new Article XVI, which shall read as follows:

**ARTICLE XVI**

**Special Fee**
**For**
**Property In Close Proximity To The Interstate 25 – State Highway 392 Interchange**

**Sec. 17-16-10. Definitions.**

(a) In addition to the defined terms contained within the recitals to Ordinance No. 2012-[number assigned to this Ordinance], which are incorporated into this Article as if set forth fully, the following definitions shall be applicable to the provisions of this Article:

(1) *CAC Property* shall mean a parcel of real property within the CAC.

(2) *Developed Property* shall mean a CAC Property for which a development proposal has been approved as of the effective date of this Article, either by the Town or by Larimer County prior to annexation of the property to the Town, whether or not any improvements have been constructed on such property.

(3) *Development Proposal* shall mean an application for the development of an Undeveloped Property.

(4) *Foster Study* shall mean that document, with attachments, prepared by Foster Valuation Company, LLC and attached hereto as Exhibit "B".

(5) *Local Contribution* shall mean the total contributions of the City of Fort Collins and the Town of Windsor to the reconstruction of the Interchange and the construction of the Local Enhancements, in the approximate amount of Five Million One Hundred Thousand Dollars ($5,100,000.00).

(6) *Property Owner* shall mean and include the current and any future fee owner of a CAC Property.

(7) *Redevelopment Proposal* shall mean an application for the redevelopment of a Developed Property.

(8) *Undeveloped Property* shall mean a vacant CAC Property for which no development or redevelopment proposal plan of development has been

approved as of the effective date of this Article, either by the Town or Larimer County prior to the annexation of the property to the Town.

**Sec. 17-16-20. Imposition of the fee.**

(1) There is hereby established a special fee that shall be imposed pursuant to the provisions of this Article upon the owners of all CAC Properties. Said fee shall consist of a Proximity Component and a Trip Generation Component, and shall be calculated as follows:

a. The Proximity Component of the fee shall be determined for all Developed and Undeveloped Properties by dividing the sum of One Million Two Hundred Thousand Seventy-five Dollars ($1,275,000.00), which represents one-half of the Property Owners' share of the Local Contribution, by the amount of developable square footage shown in the Foster Study for each CAC Property, and multiplying the remainder by the percentage shown in the Foster Study that is applicable to the zone in which the property is located.

b. The Trip Generation Component shall be calculated by identifying the number of vehicular trips that each CAC Property, as developed or redeveloped, will generates or will generate, using the ITE Trip Generation Manual, 8th Edition, as amended, and by multiplying that number by seven and seventy five one hundredths dollars ($7.75) per trip, which amount is derived by dividing the estimated total number of trips generated in the CAC into the remaining one-half of the Property Owners' share of the Local Contribution.

**Sec. 17-16-30. Payment of the fee.**

(1) The Proximity Component of the fee shall be payable in equal quarterly installments, with interest to accrue at the rate of three and five one-hundredths percent (3.05%) per annum from the effective date of this Article. The first such installment shall be due and payable on or before March 31, 2013, and the last such installment shall be due and payable on or before March 21, 2020.

(2) The Trip Generation Component of the fee shall also be payable in equal quarterly installments, with interest at the rate of three and five one-hundredths percent (3.05%) per annum from the effective date of this Article. For Developed Properties, the first installment of the Trip Generation Component shall be due and payable on or before March 31, 2013, and the last such installment shall be due and payable on or before March 31, 2020. For Undeveloped Properties, the first installment of the Trip Generation Component shall be due and payable ninety (90) days after the date of the Town's final approval of any Development Proposal for such property, and the last installment shall be due and payable no later than seven (7) years thereafter.

**Sec. 17-16-40. Unpaid charges a lien.**

If any amount due and payable to the Town under the provisions of this Article is not paid on or before the due date specified in the billing notice sent to the Property Owner by the Director of Finance, penalty interest shall accrue on such amount at the rate of _____ percent, and the entire unpaid balance, plus interest and collection costs, if any, shall constitute a perpetual lien on the CAC Property to which the fee applies.

**Sec. 17-16-50. Appeals.**

Property Owners may appeal to the Director of Finance in writing at any time the question of whether properties owned or occupied by them are being charged the proper fee under the provisions of this Article. The burden shall be on the appellant to provide substantial, competent evidence that the CAC Property that is the subject of the appeal is not being charged the proper fee. The Director of Finance may hold a hearing on the appeal in his or her discretion, and may consider other competent evidence provided by Town staff. The Director of Finance‘s written decision shall be mailed to the applicant within thirty (30) days of receipt of the appeal. The appellant may appeal the Director of Finance’s decision to the Town Manager, whose determination of the appeal shall be deemed final agency action for purpose of judicial review.

**Sec. 17-16-60. Fee not an impact fee or development charge subject to state regulation.**

It is the intention of the Town Board that the fee imposed under the provisions of this Article not be construed as an impact fee or development charge within the meaning of Section 29-20-104.5, C.R.S. but a special fee imposed under the home rule authority of the Town. Accordingly, to the extent that any of the provisions of said Section 29-20-104.5 may conflict with the provisions of this Article, the provisions of this Article shall control.

**Sec. 17-16-70. Payment by agreement.**

(a) In lieu of paying the fee imposed by this Article according to the terms and conditions contained in Section 1 above, Property Owners may elect to pay the fee pursuant to the terms and conditions of a written agreement with the Town, which agreement shall include the following provisions:

(1) No interest will be due on the principal amount of the fee for the first two years following the execution of the agreement; thereafter, interest will accrue at the rate of 2.35% for the first eight years and at the rate of 3.05% for each additional year until the fee, together with accrued interest, is paid in full.

(2) Payment of the full amount of the fee, and all interest due thereon, will be deferred, in its entirety, for Undeveloped Properties in the CAC until the first building

permit is issued for such properties pursuant to an approved Development Proposal for the property.

(3) Payment of the fee will not be required for Developed Properties in the CAC unless the amount of traffic that will be generated by such property, as redeveloped under a Redevelopment Proposal, will increase by at least thirty-five percent (35%), as compared to the amount of traffic generated by the current use of the property.

(4) The total amount of the fee will be capped at the amount stated in the agreement.

(b) No such agreement may be entered into by the Town unless the Property Owner electing to enter into the same notifies the Town Manager in writing of his or her desire to do so on or before November 30, 2012, and the agreement is approved by the Town Board on or before December 31, 2012.

**Sec. 17-16-70. Severability.**

If any section, clause, phrase, word or other provision of this Article is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this Article or the validity of this Article as an entirety, it being the legislative intent that this Article shall stand, notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Introduced, passed on first reading, and ordered published this ____ day of _____, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

Introduced, passed on second reading, and ordered published this ____ day of _____, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

# AGREEMENT CONCERNING THE FUNDING OF A CERTAIN PORTION OF THE COST OF THE IMPROVEMENTS TO THE INTERSTATE 25/COLORADO STATE HIGHWAY 392 INTERCHANGE (DEVELOPED PROPERTY)

THIS AGREEMENT is entered into this _____ day of _____, 2012, by and between the Town of Windsor, Colorado, a Colorado home rule municipality (the "Town") and _____ (referred to hereinafter collectively as the "Property Owner").

## RECITALS

WHEREAS, on or about January 3, 2011, the City and the Town entered into an Intergovernmental Agreement ("the IGA") concerning the funding and construction of improvements to the Interstate 25/State Highway 392 Interchange ("the Interchange") and related enhancements (the "Local Enhancements"), collectively referred to herein as the "Improvements;" and

WHEREAS, in recognition of the special benefit that properties in close proximity to the Interchange will realize from the construction of the Improvements, including the increased capacity that the reconstruction and expansion of the Interchange will provide, the IGA states that a fee will be imposed by the City and the Town upon such property owners to recoup at least a portion of the funding that the City and the Town have contributed to make the Improvements possible (the "Local Share"); and

WHEREAS, in recognition of the fact that the Windsor and Fort Collins communities as a whole will also benefit from the construction of the Improvements, the City and the Town have concluded that the amount of the fee to be assessed against said properties should be limited to fifty percent (50%) of the Local Share; and

WHEREAS, the Property Owner is the owner of a parcel of real property in the immediate vicinity of the Interchange; and

WHEREAS, the Town and the Property Owner have informally agreed on the amount and methodology for the assessment of the above-referenced fee, and by the terms of this Agreement desire to formally agree to same.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

## SECTION 1. DEFINITIONS

In this Agreement, unless a different meaning clearly appears from the context, the following definitions shall apply:

1.1. "Agreement" means this Agreement and its attachments.

1.2. "City" means the City of Fort Collins, Colorado.

1.3. "Corridor Activity Center" or "CAC" means that area described on Exhibit "A," attached hereto and incorporated herein by this reference.

1.4. "Effective Date" means January 1, 2013.

1.5. "Fee" means the fee to be paid by the Property Owner under the terms and conditions of this Agreement.

1.6. "Foster Study" means that document with attachments prepared by Foster Valuation, LLC, attached hereto as Exhibit "B" and incorporated herein by this reference.

1.7. "Interchange" means the Interstate 25 and State Highway 392 interchange.

1.8. "Interchange Improvements" means those improvements to the Interchange which constitute the Project.

1.9. "Improvements" means the Interchange Improvements and the Local Enhancements.

1.10. "Local Enhancements" means improvements to and near the Interchange that are being constructed and maintained by the Town and/or City and that are not part of the Project.

1.11. "Project" means the construction by CDOT of a new Interchange at Interstate Highway 25 and Colorado State Highway 392.

1.12. "Property" means that certain real property described on Exhibit "C," attached hereto and incorporated herein.

1.13. "Redevelopment Proposal" means any application for the redevelopment of the Property.

1.14. "Town" means the Town of Windsor, Colorado.

## SECTION 2. ASSESSMENT OF FEE

2.1 Assessment of Fee. The Property Owner agrees that there shall be a Fee assessed against the Property in the amount of $_____ to help defray the costs of Improvements, which amount represents the Property Owner's share of the cost of both the Interchange Improvements and the Local Enhancements. The Property Owner hereby acknowledges and agrees that the amount of the Fee is fair and reasonable in view of the special benefit that the Property will receive from the Improvements, and the increased amount of vehicular traffic that the future use of the Property will likely contribute to the Interchange.

2.2 Payment of Fee. The entire amount of the Fee shall be payable as a condition of the issuance of the first building permit for any improvements to be constructed pursuant to an approved Redevelopment Proposal for the Property, but only if the amount of traffic that will be generated by the Property, as redeveloped under such Redevelopment Proposal, will increase by at least thirty-five percent (35%) the current volume of traffic on Property as of the Effective Date. In order that the projected increase in traffic generation under the Redevelopment Proposal may be determined for the purpose of this provision, the Redevelopment Proposal shall include a traffic study if deemed necessary by the Traffic Engineer of the Town.

2.3 Interest on assessed amount. Interest on the amount of the Fee shall begin to accrue on a compounded basis two (2) years after the Effective Date; provided, however, that there shall be no interest due in the event that the Fee is paid in full during the first two-year period. Once interest commences, it shall accrue at the rate of 2.35% per annum for a period of eight (8) years. Thereafter, interest shall accrue at the rate of 3.05% and shall continue at that rate until the Fee, plus all accrued interest, is paid in full. Once a year during each year of the term of this Agreement, the Property Owners shall have the right to prepay all or a portion of the Fee, including accrued interest thereon, by sending a written request to the Town for a statement of accrued interest to date.

## SECTION 3. ONLY FEE TO BE ASSESSED

It is understood and agreed that the City and Town shall, for a period of at least twenty-five (25) years from the Effective Date, assess no further fees or other charges upon the Property Owner related to the Improvements; provided, however, that nothing herein shall be deemed to preclude the Town from charging development fees and costs generally applicable in the Town and unrelated to the Improvements. In the event that this Section 3, or any part thereof, is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, then the Property Owner shall be entitled, during the term of this Agreement, to offset any and all amounts paid pursuant to the provisions of this Agreement against any new fee or other charge related to the Improvements.

## SECTION 4. NON-SIGNING PROPERTY OWNERS

The Town and the Property Owner acknowledge that there are a number of other property owners within the CAC who may choose not to sign this Agreement, although they have been afforded an opportunity to do so, and that the governing bodies of the City and Town have each enacted an ordinance within their respective jurisdictions imposing a separate fee upon such property owners for the purpose of recovering their fair share of the cost of the Improvements (the "Ordinance"). In the event that the Town for any reason is unable to collect any portion of the fee imposed by the Ordinance upon such other property owners, that failure shall not increase the amount of the Fee due from the Property Owner under this Agreement, and the Property Owner shall not be liable to the Town for any portion of the other property owners' share of the cost of the Improvements.

## SECTION 5. WAIVER AND RELEASE

In consideration of the concessions and compromises made by the Town and reflected in this Agreement, the Property Owner, on its own behalf and on behalf of its officers, employees, agents, successors and assigns, hereby releases the Town, its officers, employees, agents and assigns from, and waives, any and all present and future liability, claims, causes of action, losses, costs or expenses of any kind whatsoever arising from or in any way relating to the construction of the Improvements, including but not limited to the creation of the CAC benefit area, the findings of the Foster Study, the methodology used by the City to calculate the Fee, or the assessment of the Fee.

## SECTION 6. MISCELLANEOUS

6.1. Amendment. This Agreement is the entire and only agreement between the Parties regarding the assessment of fees for the Improvements. There are no promises, terms, conditions, or other obligations other than those contained in this Agreement. This Agreement may be amended only in writing signed by the Town and the Property Owner.

6.2. Severability. Except as provided in this Agreement, if any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision of this Agreement, and the rights of the Parties will be construed as if that part, term, or provision was never part of this Agreement.

6.3. Colorado Law. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado will govern its interpretation, validity, and enforceability.

6.4. Jurisdiction of Courts. Personal jurisdiction and venue for any civil action commenced by any of the Parties to this Agreement for actions arising out of or relating to this Agreement will be the District Court of Larimer County, Colorado.

6.5. Representatives and Notice. Any notice or communication required or permitted under the terms of this Agreement will be in writing and may be given to the Parties or their respective legal counsel by (a) hand delivery; (b) deemed delivered three business days after being deposited in the United States mail, with adequate postage prepaid, and sent via registered or certified mail with return receipt requested; or (c) deemed delivered one business day after being deposited with an overnight courier service of national reputation have a delivery area of Northern Colorado, with the delivery charges prepaid. The representatives will be:

If to the City: Town Manager
301 Walnut Street
Windsor, CO 80550

With a copy to

Town Attorney
c/o Town Manager
301 Walnut Street
Windsor, CO 80550

If to the Property Owner:

6.6. Good Faith. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition or delay any approval, acceptance or extension of time required or requested pursuant to this Agreement.

6.7. Authorization. The Parties affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary action, notices, meetings, and hearings pursuant to any law required to authorize their execution of this Agreement have been made.

6.8. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same agreement.

6.9. No Third Party Beneficiary. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, are strictly reserved to the Parties and nothing in this Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Agreement. It is the express intention of the Parties that no person and/or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed any more than an incidental beneficiary only.

6.10. Recordation of Agreement. The Town shall record a copy of this Agreement in the office of the Clerk and Recorder of Larimer County, Colorado.

6.11. Execution of Other Documents. The Parties agree to execute any additional documents and to take any additional actions necessary to carry out the terms of this Agreement.

TOWN OF WINDSOR

_____
Mayor

ATTEST:

_____
Town Clerk

PROPERTY OWNER

By: _____

**Legal Description goes here**

# AGREEMENT CONCERNING THE FUNDING OF A CERTAIN PORTION OF THE COST OF THE IMPROVEMENTS TO THE INTERSTATE 25/COLORADO STATE HIGHWAY 392 INTERCHANGE (UNDEVELOPED PROPERTY)

THIS AGREEMENT is entered into this _____ day of _____, 2012, by and between the Town of Windsor, Colorado, a Colorado home rule municipality (the "Town") and _____ (referred to hereinafter collectively as the "Property Owner").

## RECITALS

WHEREAS, on or about January 3, 2011, the City of Fort Collins and the Town of Windsor entered into an Intergovernmental Agreement ("the IGA") concerning the funding and construction of improvements to the Interstate 25/State Highway 392 Interchange ("the Interchange") and related enhancements (the "Local Enhancements"), collectively referred to herein as the "Improvements;" and

WHEREAS, in recognition of the special benefit that properties in close proximity to the Interchange will realize from the construction of the Improvements, including the increased capacity that the reconstruction and expansion of the Interchange will provide, the IGA states that a fee will be imposed by the City and the Town upon such property owners to recoup at least a portion of the funding that the City and the Town have contributed to make the Improvements possible (the "Local Share"); and

WHEREAS, in recognition of the fact that the Windsor and Fort Collins communities as a whole will also benefit from the construction of the Improvements, the City and the Town have concluded that the amount of the fee to be assessed against said properties should be limited to fifty percent (50%) of the Local Share; and

WHEREAS, the Property Owner is the owner of a parcel of real property in the immediate vicinity of the Interchange; and

WHEREAS, the Town and the Property Owner have informally agreed on the amount and methodology for the assessment of the above-referenced fee, and by the terms of this Agreement desire to formally agree to same.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

## SECTION 1. DEFINITIONS

In this Agreement, unless a different meaning clearly appears from the context, the following definitions shall apply:

1.1. "Agreement" means this Agreement and its attachments.

1.2. "City" means the City of Fort Collins, Colorado.

1.3. "Corridor Activity Center" or "CAC" means that area described on Exhibit "A," attached hereto and incorporated herein by this reference.

1.4. "Effective Date" means January 1, 2013.

1.5. "Fee" means the fee to be paid by the Property Owner under the terms and conditions of this Agreement.

1.6. "Foster Study" means that document with attachments prepared by Foster Valuation, LLC, attached hereto as Exhibit "B" and incorporated herein by this reference.

1.7. "Interchange" means the Interstate 25 and State Highway 392 interchange.

1.8. "Interchange Improvements" means those improvements to the Interchange which constitute the Project.

1.9. "Improvements" means the Interchange Improvements and the Local Enhancements.

1.10. "Local Enhancements" means improvements to and near the Interchange that are being constructed and maintained by the Town and/or City and that are not part of the Project.

1.11. "Project" means the construction by CDOT of a new Interchange at Interstate Highway 25 and Colorado State Highway 392.

1.12. "Property" means that certain real property described on Exhibit "C," attached hereto and incorporated herein.

1.13. "Redevelopment Proposal" means any application for the redevelopment of the Property.

1.14. "Town" means the Town of Windsor, Colorado.

## SECTION 2. ASSESSMENT OF FEE

2.1 Assessment of Fee. The Property Owner agrees that there shall be a Fee assessed against the Property in the amount of $_____ to help defray the costs of the Improvements, which amounts represents the Property Owners' share of the cost of both the Interchange Improvements and the Local Enhancements. The Property Owner hereby acknowledges and agrees that the amount of the Fee is fair and reasonable in view of the special benefit that the Property will receive from the Improvements, and the increased amount of vehicular traffic that the future use of the Property will likely contribute to the Interchange.

2.2 Payment of Fee. The entire amount of the Fee shall be payable in full as a condition of the issuance of any building permit for improvements to be constructed pursuant to an approved Development Proposal for such property; provided, however, that in the event the approved Development Proposal and the subsequently issued building permit are for less than the entire property, the amount of the Fee shall be proportionally reduced to reflect the amount of property for which the building permit is issued, related to the entire property.

2.3 Interest on assessed amount. Interest on the amount of the Fee shall begin to accrue on a compounded basis two (2) years after the Effective Date; provided, however, that there shall be no interest due in the event that the Fee is paid in full during the first two-year period. Once interest commences, it shall accrue at the rate of 2.35% per annum for a period of eight (8) years. Thereafter, interest shall accrue at the rate of 3.05% and shall continue at that rate until the Fee, plus all accrued interest, is paid in full. Once a year during each year of the term of this Agreement, the Property Owners shall have the right to prepay all or a portion of the Fee, including accrued interest thereon, by sending a written request to the Town for a statement of accrued interest to date.

## SECTION 3. ONLY FEE TO BE ASSESSED

It is understood and agreed that the City and Town shall, for a period of at least twenty-five (25) years from the Effective Date, assess no further fees or other charges upon the Property Owner related to the Improvements; provided, however, that nothing herein shall be deemed to preclude the Town from charging development fees and costs generally applicable in the Town and unrelated to the Improvements. In the event that this Section 3, or any part thereof, is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, then the Property Owner shall be entitled, during the term of this Agreement, to offset any and all amounts paid pursuant to the provisions of this Agreement against any new fee or other charge related to the Improvements.

## SECTION 4. NON-SIGNING PROPERTY OWNERS

The Town and the Property Owner acknowledge that there are a number of other property owners within the CAC who may choose not to sign this Agreement, although they have been afforded an opportunity to do so, and that the governing bodies of the City and Town have each enacted an ordinance within their respective jurisdictions imposing a separate fee upon such property owners for the purpose of recovering their fair share of the cost of the Improvements (the "Ordinance"). In the event that the Town for any reason is unable to collect any portion of the fee imposed by the Ordinance upon such other property owners, that failure shall not increase the amount of the Fee due from the Property Owner under this Agreement, and the Property Owner shall not be liable to the Town for any portion of the other property owners' share of the cost of the Improvements.

## SECTION 5. WAIVER AND RELEASE

In consideration of the concessions and compromises made by the Town and reflected in this Agreement, the Property Owner, on its own behalf and on behalf of its officers, employees, agents, successors and assigns, hereby releases the Town, its officers, employees, agents and assigns from, and waives, any and all present and future liability, claims, causes of action, losses, costs or expenses of any kind whatsoever arising from or in any way relating to the construction of the Improvements, including but not limited to the creation of the CAC benefit area, the findings of the Foster Study, the methodology used by the Town to calculate the Fee, or the assessment of the Fee.

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If to the City: Town Manager
301 Walnut Street
Windsor, CO 80524

With a copy to

Town Attorney
c/o Town Manager, Town of Windsor
301 Walnut Street
Windsor, CO 80550

If to the Property Owner:

6.6. Good Faith. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition or delay any approval, acceptance or extension of time required or requested pursuant to this Agreement.

6.7. Authorization. The Parties affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary action, notices, meetings, and hearings pursuant to any law required to authorize their execution of this Agreement have been made.

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6.11. Execution of Other Documents. The Parties agree to execute any additional documents and to take any additional actions necessary to carry out the terms of this Agreement.

TOWN OF WINDSOR

_____
Mayor

ATTEST:

_____
Town Clerk

PROPERTY OWNER

By: _____

**Legal Description goes here**

# MEMORANDUM

September 24, 2012

<Name>
<Company / Affiliation>
<Address>
<City, State, Zip>

RE: Proposed Fees for the I-25/392 Interchange Improvements

Dear Property Owner:

This letter will update you on the progress that has been made by Fort Collins and Windsor with regard to the I-25/SH 392 Interchange and the Corridor Activity Center (CAC) that surrounds that area. You have received this letter as a property owner within the CAC.

The construction work on the interchange is nearly complete. We anticipate that within a matter of weeks the roadway will be fully functional, and much of the landscaping and other enhancements will be in place. Some of the enhancement work may need to be deferred to the construction season of 2013, but that will constitute a very small portion of the entire job. We are proud to say that CDOT, the City of Fort Collins, and the Town of Windsor have delivered this project on schedule and under budget.

With regard to the proposed collection of fees from the properties in the CAC that will benefit from the interchange improvements, we have listened to your comments and criticisms, and we believe we have now crafted a fair and equitable plan for the collection of these fees.

We are now prepared to take this plan to the Fort Collins City Council and Windsor Town Board for final approval. In accordance with the provisions of the existing IGA between the City and the Town, you will find attached to this letter drafts of the documents that the Council and the Town Board will be considering. These attachments are as follows:

1. A copy of a revised report prepared by Foster Valuation LLC (the Foster Study). Exhibit B (Value Enhancement Zone Analysis), contains the exact amounts to be assessed against each parcel in the CAC. These amounts reflect the agreement of the City Council and Town Board to collect the reduced amount of 50% of the Town and City actual investment in the construction expenses and local enhancements.

2. A copy of the proposed ordinance that, if approved by our City and Town Councils, will establish a special fee to be paid by the owners of property in the CAC. Please note that separate ordinances will be adopted by Fort Collins and Windsor. The ordinance you have received for review should reflect the location of your property. The most important change from the documents last circulated is the elimination of

the requirement that property owners elect whether or not to sign a separate agreement *before* knowing exactly what the ordinance language would be. The ordinance as drafted affords property owners *until October 31, 2012* to make that decision. Any such agreements need to be in place before December 31, 2012.

3. A copy of the draft agreements that the City and Town are willing to enter into with the property owners as referenced in the ordinance.

4. A copy of the First Amended Intergovernmental Agreement. This document amends the original IGA between Windsor and Fort Collins dated January 3, 2011. The amendments reflect the changes that have occurred with regard to process for establishing the fee since that date.

The adoption schedule for Windsor, as now constituted, calls for a Town Board work session on this topic on October 1, 2012 beginning at 6:00 pm at the Windsor Town Hall. This is an open meeting, but the Town Board generally does not take public comment during work sessions. First reading on the amended IGA, and the ordinance establishing the fee, will occur at the regular meeting of the Board on October 8, 2012 or October 22, 2012, with second reading to follow. The Board will take public comment before the final adoption of the amended IGA and the ordinance.

The Fort Collins City Council will consider the amended IGA and first reading of the proposed ordinance on October 16, 2012 with the second reading to occur in November. These proceedings will take place at the Council Chambers at City Hall. Public comment will be taken.

Thank you for taking the time to read this letter and the attachments thereto. We urge you to review these documents carefully and call the undersigned with any questions you may have.

Sincerely,

Rick Richter
Capital Projects Program Manager
City of Fort Collins Engineering Department
970.221.6798
rrichter@fcgov.com

John P. Frey
I 25/ SH 392 Project Manager,
Town of Windsor
970.482.0212 x 302
john@freymccargar.com

**ATTACHMENTS**

1. Revised Foster Report
2. Proposed Ordinance
3. Proposed Agreements With Property Owners
4. Fort Collins - Windsor Amended IGA

**FUTURE TOWN BOARD MEETINGS**

Work Sessions & Regular Meetings will be held in the Board Chambers unless otherwise noted.

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| October 8, 2012<br>6:00 p.m. | Discussion of golf carts on public streets – J. Michaels & I. McCargar |
| October 8, 2012<br>7:00 p.m. | Town Board Meeting |
| October 15, 2012<br>6:00 p.m. | Town Board Work Session<br>A Woman's Place funding request – Lotte Muster<br>Community Recreation Center ad hoc committee report – D. Moyer & T. Fotsch |
| October 22, 2012<br>6:00 p.m. | Town Board Work Session<br>Budget Wrap Up<br>DDA Budget Presentation |
| October 22, 2012<br>7:00 p.m. | Town Board Meeting |
| October 29, 2012 | Fifth Monday |
| November 5, 2012<br>6:00 p.m. | Town Board Work Session<br>Dormant Land Use Projects Update – J. Plummer<br>Liquor licensing - fee review & collection of occupation tax – P. Garcia |
| Tuesday, November 13, 2012<br>Windsor High School – Fireside Room<br>5:30 p.m. | Joint meeting with Fire, School and Library Districts |
| Tuesday, November 13, 2012<br>7:00 p.m. | Town Board Meeting<br>Kern Board Meeting |
| November 19, 2012<br>6:00 p.m. | Town Board Work Session<br>Economic Development Update – S. Johnson |
| November 26, 2012<br>6:00 p.m. | Town Board Work Session |
| November 26, 2012<br>7:00 p.m. | Town Board Meeting |

**Additional Events**

| | |
|---|---|
| October 4, 2012<br>4:00 p.m.<br>Loveland, CO | CML Fall District Meeting (RSVP's required) – Attending: Jeremy Rose, Ivan Adams, Don Thompson, Kristie Melendez |
| October 6, 2012<br>CRC | Budget work session |
| October 13, 2012<br>12:30 p.m.<br>31725 Great Western Drive | Windsor Readiness Center Ribbon Cutting –Attending: Robert Bishop-Cotner, Don Thompson, Kristie Melendez, Ivan Adams, John Vazquez |

**Future Work Session Topics**

None at this time.