TOWN BOARD REGULAR MEETING
October 22, 2012 - 7:00 P.M.
Town Board Chambers, 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.

AGENDA

A. CALL TO ORDER

1. Roll Call
2. Pledge of Allegiance
3. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board
4. Board Liaison Reports
   - Town Board Member Baker – Parks, Recreation and Culture Advisory Board; Cache La Poudre Trail Board Alternate
   - Town Board Member Thompson – Planning Commission; Tree Board; Great Western Trail Board
   - Mayor Pro-Tem Melendez – Downtown Development Authority; Chamber of Commerce; North Front Range/MPO Alternate
   - Town Board Member Rose – Water & Sewer Board; Windsor Housing Authority, Planning Commission Alternate
   - Town Board Member Bishop-Cotner – Historic Preservation Commission; Clearview Library Board
   - Town Board Member Adams – Cache La Poudre Trail Board; Student Advisory Leadership Team (SALT)
   - Mayor Vazquez – North Front Range/MPO
5. Public Invited to be Heard
   Individuals wishing to participate in Public Invited to be Heard (non-agenda item) are requested to sign up on the form provided in the foyer of the Town Board Chambers. When you are recognized, step to the podium, state your name and address then speak to the Town Board.

   *Individuals wishing to speak during the Public Invited to be Heard or during Public Hearing proceedings are encouraged to be prepared and individuals will be limited to three **(3) minutes**. Written comments are welcome and should be given to the Town Clerk prior to the start of the meeting.*

B. CONSENT CALENDAR

1. Minutes of the October 8, 2012 Regular Town Board Meeting and October 15, 2012 Special Meeting – P. Garcia
2. Liquor License Renewal – Otie's Wine & Spirits, Retail Liquor License – P. Garcia
3. Liquor License Renewal – Ayutla, Inc., dba Guadalajara Family Mexican Restaurant, Hotel & Restaurant Liquor License – P. Garcia
4. A Woman's Place Funding Request – P. Garcia
5. Advisory Board Appointments – P. Garcia

C. BOARD ACTION

1. Outside Agency Funding Request – Windsor Community Choir Request
   - Staff presentation: Melissa Chew, Director of Parks, Recreation & Culture

2. Resolution No. 2012-63 - A Resolution Approving a No-Surface-Occupancy Oil and Gas Lease, and Related Terms, between the Town of Windsor, Colorado, and Tekton Windsor, LLC, and Authorizing the Mayor to Execute the Same (Various 9.637 Acres)
    - Legislative Action
    - Staff Presentation: Ian McCargar, Town Attorney
    - Legal Counsel Presentation: Jonathan Blatt – Lind & Ottenhoff LLP

3. Resolution No. 2012-68 - 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
    - Legislative Action
    - Staff presentation: Melissa Chew, Director of Parks, Recreation & Culture and John Michaels, Chief of Police

4. Ordinance No. 2012-1438 - 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
    - First Reading
    - Legislative Action
    - Staff presentation: Melissa Chew, Director of Parks, Recreation & Culture and John Michaels, Chief of Police

5. Ordinance No. 2012-1439 – An Ordinance Approving the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange, and Authorizing the Mayor to Execute the Same
    - First Reading
    - Legislative Action
    - Staff presentation: John Frey, Town Attorney

6. Ordinance No. 2012-1440 - 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
    - First Reading
    - Legislative Action
    - Staff presentation: John Frey, Town Attorney

7. Resolution No. 2012-69 – A Resolution Approving an Infrastructure Improvements Agreement between the Town of Windsor and Eagle Crossing Windsor, LLC, for the Installation of Public Improvements and Reimbursement for the Cost Thereof, the Purpose of Which is to Encourage Retail Activity within the Vicinity of Crossroads Boulevard and Fairgrounds Avenue
    - Legislative Action
    - Staff presentation: Ian McCargar, Town Attorney & Stacy Johnson, Business Development Manager

8. Financial Report
    - Staff presentation: Dean Moyer, Director of Finance

D. COMMUNICATIONS

1. Communications from the Town Attorney
2. Communications from Town Staff
3. Communications from the Town Manager
4. Communications from Town Board Members

E. ADJOURN

TOWN BOARD REGULAR MEETING
October 8, 2012 - 7:00 P.M.
Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

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MINUTES

A. CALL TO ORDER

Mayor Vazquez called the regular meeting to order at 7:11 p.m.

1. Roll Call

		Mayor John Vazquez
		Mayor Pro-Tem Kristie Melendez
		Myles Baker
		Don Thompson
		Jeremy Rose
		Robert Bishop-Cotner
		Ivan Adams
Also present:	Town Attorney	Ian McCargar
	Town Clerk	Patti Garcia
	Chief of Police	John Michaels
	Business Development Manager	Stacy Johnson
	Director of Planning	Joe Plummer
	Director of Parks & Recreation	Melissa Chew
	Director of Finance	Dean Moyer
	Director of Human Resources	Mary Robins
Excused:	Town Manager	Kelly Arnold
	Management Assistant	Lindsey Blomberg
	Director of Public Works	Terry Walker
	Director of Engineering	Dennis Wagner

2. Pledge of Allegiance
Mayor Pro Tem Melendez led the Pledge of Allegiance.

3. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board
Town Board Member Thompson motioned to approve the agenda as presented; Town Board Member Bishop-Cotner seconded the motion. Roll call on the vote resulted as follows:
Yeas – Thompson, Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion carried.

4. Board Liaison Reports
   - Town Board Member Baker – Parks, Recreation and Culture Advisory Board (PReCAB); Cache La Poudre Trail Board Alternate
     Town Board Member Baker reported that PReCAB had met last week; they discussed the Capital Improvement Budget along with the proposed fee increases. The fee increases were approved by PReCAB and the information was forwarded to the Town Board.

   - Town Board Member Thompson – Planning Commission; Tree Board; Great Western Trail Board
     Town Board Member Thompson stated he had nothing new to report.

   - Mayor Pro-Tem Melendez – Downtown Development Authority; Chamber of Commerce; North Front Range/MPO Alternate
     Mayor Pro-Tem Melendez stated she had nothing new to report.

DRAFT

- Town Board Member Rose – Water & Sewer Board; Windsor Housing Authority, Planning Commission Alternate
  Town Board Member Rose stated the Water & Sewer Board meeting had been cancelled due to lack of agenda items. The Windsor Housing Authority was scheduled to meet on October 16, 2012.

- Town Board Member Bishop-Cotner – Historic Preservation Commission; Clearview Library Board
  Town Board Member Bishop-Cotner reported the Historic Preservation Commission would be meeting on Wednesday. Clearview Library Board had met last week but he was unable to attend.

- Town Board Member Adams – Cache La Poudre Trail Board; Student Advisory Leadership Team (SALT)
  Town Board Member Adams reported the Cache la Poudre Trail Board had met last week and that the current project is preparing the trail for winter. Mr. Adams noted that John Fielder would be providing a presentation on October 30 at 7 p.m. in Greeley. SALT is meeting the 2nd and 4th Thursday of each month and is working on the Halloween bash scheduled for October 26. Representatives of SALT will be providing a report the last meeting of the month.

- Mayor Vazquez – North Front Range/MPO
  Mayor Vazquez reported that MPO information will be presented at the next Town Board meeting.

5. Public Invited to be Heard
   Individuals wishing to participate in Public Invited to be Heard (non-agenda item) are requested to sign up on the form provided in the foyer of the Town Board Chambers. When you are recognized, step to the podium, state your name and address then speak to the Town Board.

   Individuals wishing to speak during the Public Invited to be Heard or during Public Hearing proceedings are encouraged to be prepared and individuals will be limited to three ***(3) minutes****. Written comments are welcome and should be given to the Town Clerk prior to the start of the meeting.*

   Mayor Vazquez opened the meeting for public comment, to which there was none.

B. CONSENT CALENDAR

1. Minutes of the September 24, 2012 Regular Town Board Meeting – P. Garcia
2. Liquor License Renewal – Windsor Arena Sports, Beer & Wine License – P. Garcia
3. Liquor License Renewal – 7 Eleven Store #39081, 3.2% Beer Retail License (Off Premises) – P. Garcia
4. Report of Bills – D. Moyer
   Town Board Member Rose motioned to approve the Consent Calendar as presented; Town Board Member Bishop-Cotner seconded the motion. Roll call on the vote resulted as follows:
   Yeas – Thompson, Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
   Nayes – None. Motion carried.

C. BOARD ACTION

1. Ordinance No. 2012-1437 – An Ordinance Annexing certain territory known as the 15th Street Park Site Annexation to the Town of Windsor, Colorado – Melissa M. Chew, CPRP, Town of Windsor representative
   - Legislative Action
   - Second Reading
   - Staff presentation: Melissa M. Chew, CPRP, Director of Parks, Recreation, and Culture

   Town Board Member Bishop-Cotner motioned to approve Ordinance No. 2012-1437, An Ordinance Annexing certain territory known as the 15th Street Park Site Annexation to the Town of Windsor, Colorado; Town Board Member Adams seconded the motion.

Director of Parks, Recreation, and Culture Chew reported on the ordinance and noted that first reading was on September 24, 2012. Ms. Chew reviewed the background of the property and acknowledged that it the Town accepted 27.75 acre in park land north of the Windshire Park subdivision; it was envisioned that additional acreage could be added to the site in the future to create a community park. Although the Town holds the deed to the property, it was never annexed into the Town. In cleaning up annexation lines and park property deeds, staff concurred that property owned by the Town should be annexed into the Town. Ms. Chew reported that there have been no changes since first reading.

Mayor Vazquez opened the meeting for public comment to which there was none.

Roll call on the vote resulted as follows:
Yeas – Thompson, Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion carried.

2. Resolution No. 2012-63 - A Resolution Approving a No-Surface-Occupancy Oil and Gas Lease, and Related Terms, between the Town of Windsor, Colorado, and Tekton Windsor, LLC, and Authorizing the Mayor to Execute the Same (Various 7.427 Acres)
   - Legislative Action
   - Staff Presentation: Ian McCargar, Town Attorney
   - Legal Counsel Presentation: Jonathan Blatt – Lind & Ottenhoff LLP

   Mayor Pro-Tem Melendez motioned to approve Resolution No. 2012-63; Town Board Member Bishop-Cotner seconded the motion.

   Town Attorney McCargar opened the discussion and noted that the Town owns mineral rights under the parcels noted on the lease; Mr. McCargar deferred to Mr. Blatt for the background information.

   Mr. Blatt reported on the lease noting it covers three parcels of land as noted on the maps included in the town board packets. The terms of the lease included a primary term of three years, lease royalty of 17.5%, a bonus consideration of $750 per mineral acre, net mineral acreage of 7.427 acres more or less, and an initial bonus payment of $5,570.25. The lease is a "no surface occupancy" oil and gas lease which prohibits all activities of any type regarding oil and gas development on the surface of the properties.

   Town Board Member Baker inquired if this would be a forced-pooling situation; Mr. Blatt stated that the areas around have already been leased and if the lease was not approved it would probably come to a forced-pooling situation.

   Town Board Member Rose inquired if there would be any tanks as they are not addressed in the lease; Mr. Blatt stated there is no surface activity related to the leases.

   Michael Cuba, Tekton Energy Vice President of Land & Business Development, addressed the Town Board and reported that there was some possibly confusion over the Town's ownership of the minerals under a 1.56 acre portion of the 7.427 acres that are subject to the lease being presented.

   Town Attorney McCargar recommended that the Town Board defer consideration of the lease until the details get worked out.

   Town Board Member Bishop-Cotner motioned to table Resolution No. 2012-63 indefinitely; Mayor Pro-Tem Melendez seconded the motion. Roll call on the vote resulted as follows:
   Yeas – Thompson, Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
   Nayes – None. Motion carried.

3. Resolution No. 2012-64 - A Resolution Approving an Intergovernmental Agreement Between the Town of Windsor and the Windsor Housing Authority with Respect to Community Development Grant Administration
   - Legislative Action
   - Staff presentation: Ian McCargar, Town Attorney

- Windsor Housing Authority presentation: John Moore

Town Board Member Bishop-Cotner motioned to approve Resolution No. 2012-64; Town Board Member Thompson seconded the motion.

Town Attorney McCargar addressed the Town Board and provided a review of the agenda item. In August, 2012 representatives of the Windsor Housing Authority (WHA) and Loveland Housing Authority had asked the Town to approve an arrangement under which the Town would administer a Colorado Division of Housing CDBG grant; the purpose would be to provide pass-through "gap" funding for the Windshire Workforce Housing Project. The Town Board approved the request subject to several conditions:

1. Before Town signs the grant documents, WHA must enter into a written agreement that indemnifies the Town for any regulatory exposure associated with administration of the grant.

2. Before Town signs grant documents, WHA must enter into a written agreement that requires the grant funds will be disbursed as closely to the final phases of the project as legally and fiscally possible.

3. Before Town signs grant documents, WHA must enter into a written agreement that covers any other details that arise after full contract review by Town staff and the Town Attorney.

4. Staff will keep the Town Board informed of contract negotiations, and status of funds once received.

5. Until there is a signed agreement, WHA representatives are not authorized to represent there is an agreement on the Town's part to serve in this capacity - - the terms of the Town's participation have yet to be determined.

The Intergovernmental Agreement that is being considered addresses the conditions. The disbursement of funds noted in Condition #2 is noted in Section 4 of the intergovernmental agreement (IGA); disbursement of the grant funds are to be tied to two events – the closing of the land acquisition by the WHA and Execution of the partnership agreement with Wells Fargo. The land closing will use a short-term "bridge" loan; the WHA has indicated that without early access to the CDBG funds that interest charges of $21,000 will be incurred. The closing with Wells Fargo will trigger an investment of approximately $1.9M and a commitment of over $7.8M in the Windshire Project. The WHA representatives have noted that although the disbursement will take place fairly early in the project timframe, the two closings create an assurance that the project will be completed.

John Moore, Windsor Housing Authority, addressed the Town Board and provided an overview of the grant process noting the grant was always set up in order to purchase the land. Mr. Moore indicated that regular progress reports on the project would be provided to the Town Board along with all the grant reporting requirements that are being met.

The project is currently going through the Town review process; the WHA is meeting obligations and deadlines in order to keep the project moving forward. The WHA Board is ready to enter into the agreement as presented.

Town Board Member Thompson stated there had been concerns brought forward in August regarding indemnification and noted it was included in Condition #1 and inquired if the WHA had the resources in order to indemnify the Town. Mr. Moore stated the indemnification would extend to the WHA development partners. Town Attorney McCargar noted the agreement only refers to the WHA. Mr. Moore noted there is a development agreement between WHA and their development partners which is their equity investor and Loveland Housing Authority.

Mr. Thompson included concerns regarding regulatory exposure along with the indemnification.

The Town Board discussed the indemnification concern that Mr. Thompson had brought forward with Mayor Pro-Tem Melendez stating the WHA have met the conditions requested to the best of their

ability and the WHA now has the opportunity to take the project to the next step. It was noted they had been working with the WHA group for some time and a trust level has been established.

Town Board Member Thompson stated that his concerns are not related to trust issues as the Town has experience with the WHA and he knows that Mr. Moore is dedicated to the project and will do everything he can to make it successful. Mr. Thompson reiterated that there is exposure out there that we don't know about and he doesn't feel comfortable with indemnification.

Town Board Member Adams noted the IGA states that the WHA agrees to fully indemnify the Town. Mr. McCargar responded that he believes Mr. Thompson is concerned that the WHA may not have the wherewithal to financially back the promise.

Town Board Member Rose stated the request of the Town Board was that the funds would be used at the end of the project; the IGA for consideration does not provide for that. He understands the financial reason for the WHA wanting to disperse the funds earlier but it still does not change the fact that was not what the Board agreed to; the Town has lost the protection we had agreed to.

Town Board Member Baker concurred with the indemnification concerns and noted that timing is the least of his worries as he believes even after the project is completed that the Town is still liable for certain conditions of operation that could still come after the fact.

Roll call on the vote resulted as follows:
Yeas – Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – Thompson, Baker, Rose. Motion carried.

4. Resolution No. 2012-65 - A Resolution Accepting the Deed of Easement for the sign easement for the Welcome to Windsor monument sign to be constructed on the northeast corner of Crossroads Boulevard and Fairgrounds Avenue in the Town of Windsor, Colorado
   - Legislative Action
   - Staff presentation: Joe Plummer, Director of Planning

   Mayor Pro-Tem Melendez motioned to approve Resolution No. 2012-65; Town Board Member Rose seconded the motion.

   Director of Planning Plummer addressed the Town Board regarding the agenda item noting that the Town Board had appropriated funds for the design and construction for "Welcome to Windsor" signs. In order to install the signs, sign easements needed to be acquired from the property owners of each respective site. The resolution would approve the Deed of Easement which grants the sign easement or the installation of the large monument sign on the northeast corner of Crossroads Boulevard and Fairgrounds Avenue. Mr. Plummer noted that there are no issues with the locates and the Town has worked with local companies to assure that electricity will be provided.

   Mayor Pro-Tem Melendez stated she had been part of the sign committee and thanked the members along with Martin Lind. The Town Board members concurred and thanked the group for their work.

   Roll call on the vote resulted as follows:
   Yeas – Thompson, Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
   Nayes – None. Motion carried.

5. Resolution No. 2012-66 - A Resolution Accepting the Deed of Easement for the sign easement for the Welcome to Windsor monument sign to be constructed along the west side of Weld County Road 17 in the Town of Windsor, Colorado
   - Legislative Action
   - Staff presentation: Joe Plummer, Director of Planning

   Town Board Member Thompson motioned to approve Resolution No. 2012-66; Mayor Pro-Tem Melendez seconded the motion.

Director of Planning Plummer noted the resolution for consideration was similar to the previous agenda item except for the sign location which is for the west side of Weld County Road 17 north of U.S. Highway 34.

Roll call on the vote resulted as follows:
Yeas – Thompson, Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion carried.

6. Resolution No. 2012-67 - A Resolution Establishing Rates for Town of Windsor Water Service Customers, and Authorizing the Implementation of Such Rates
   - Legislative Action
   - Staff presentation: Dean Moyer, Director of Finance

   Town Board Member Rose motioned to approve Resolution No. 2012-67; Town Board Member Baker seconded the motion.

   Director of Finance Moyer reported on the resolution noting the water rates had been discussed at the September 17, 2012 work session. The Town had a water conservation rate study conducted several years ago and one of the recommendations of the study was to go to a three-tier system. Pursuant to meetings with the Water & Sewer Board and the Town Board, the three-tiered rate was reviewed for single family homes with ¾ inch taps, no dual systems would be included. The tiers are tied to the Colorado-Big Thompson (CBT) water share allocation; one tier at the historical allocation of 16,000 gallons per month, the second tier at 16,001 up to 22,500 per month, and the third tier being consumption over 22,500 gallons per month. Mr. Moyer reviewed the corresponding dollar amounts for the proposed tiers which were included in the Town Board packet and noted the effective date would be January 15, 2013.

   Roll call on the vote resulted as follows:
   Yeas – Thompson, Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
   Nayes – None. Motion carried.

D. COMMUNICATIONS

1. Communications from the Town Attorney
   Town Attorney McCargar reported the I25 SH392 cost recovery documents are being modified by Fort Collins and the Windsor Town Board would be reviewing it in two weeks for official action. Mr. McCargar also reported the Colorado Court of Appeals would be at Windsor High School on November 7.

2. Communications from Town Staff
   - Police Chief Michaels reported the September 29, 2012 Drug Take Back Day had brought in 140 pounds of drugs which were picked up by the DEA for disposition. The annual Police Department/Optimist Halloween Party is scheduled for October 31 from 6-8 p.m. at the Community Recreation Center.
   - Director Parks, Recreation & Culture Chew reported that a contract had been awarded to Duran Excavating for the paving of the trail behind Windsor High School.

2. Communications from the Town Manager
   No communications.

3. Communications from Town Board Members
   No communications.

E. EXECUTIVE SESSION

An executive session pursuant to § 24-6-402 (4) (e), C.R.S., for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators; Eagle Crossing development incentives (Stacy Johnson & Ian McCargar)

Town Board Member Thompson motioned to go into executive session at 8:13 p.m. pursuant to § 24-6-402 (4) (e), C.R.S., for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators; Eagle Crossing

development incentives; Town Board Member Adams seconded the motion. Roll call on the vote resulted as follows:

Yeas – Thompson, Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion carried.

Upon a motion duly made at 8:43 p.m., the Executive Session was closed and the Town Board returned to the Regular Meeting.

Upon returning to the regular meeting, Mayor Vazquez advised that if any participants in the Executive Session believed the session contained any substantial discussion of any matters not included in the motion to convene the Executive Session, or believed any improper action occurred during the Session in violation of the Open Meetings Law, such concerns should now be stated. Hearing none, the regular meeting resumed.

F. ADJOURN

Town Board Member Thompson motioned to adjourn at 8:45 p.m., Town Board Member Baker seconded the motion. Roll call on the vote resulted as follows:

Yeas – Thompson, Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion carried.

_____
Patti Garcia, Town Clerk

TOWN BOARD SPECIAL MEETING
October 15, 2012 – Immediately following the work session
Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

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Individuals wishing to speak during the Public Invited to be Heard or during Public Hearing proceedings are encouraged to be prepared and individuals will be limited to three (3) minutes. Public comments are expected to be constructive. Written comments are welcome and should be given to the Town Clerk prior to the start of the meeting. Written materials will not be accepted during the meeting in the interest of time.

MINUTES

A. CALL TO ORDER

Mayor Vazquez called the regular meeting to order at 8:11 p.m.

1. Roll Call

		Mayor John Vazquez
		Mayor Pro-Tem Kristie Melendez
		Myles Baker
		Jeremy Rose
		Robert Bishop-Cotner
		Ivan Adams
Excused:		Don Thompson
Also present:	Town Manager	Kelly Arnold
	Town Attorney	Ian McCargar

B. EXECUTIVE SESSION

1. An executive session pursuant to § 24-6-402 (4) (f)(I) to discuss personnel matters where the employees who are the subject of the executive session have not both requested an open meeting - Town Manager annual review, Town Attorney annual review (K. Arnold and I. McCargar).
Town Board Member Rose motioned to go into an executive session at 8:16 p.m. pursuant to § 24-6-402 (4) (f)(I) to discuss personnel matters where the employees who are the subject of the executive session have not both requested an open meeting - Town Manager annual review, Town Attorney annual review (K. Arnold and I. McCargar); Town Board Member Bishop-Cotner seconded the motion.

Roll call on the vote resulted as follows:
Yeas – Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion carried.

Upon a motion duly made at 8:43 p.m., the Executive Session was closed and the Town Board returned to the Special Meeting.

Upon returning to the regular meeting, Mayor Vazquez advised that if any participants in the Executive Session believed the session contained any substantial discussion of any matters not included in the motion to convene the Executive Session, or believed any improper action occurred during the Session in violation of the Open Meetings Law, such concerns should now be stated. Hearing none, the regular meeting resumed.

C. ADJOURN

Town Board Member Bishop-Cotner motioned to adjourn the Special Meeting at 8:45 p.m.; Mayor Pro-Tem Melendez seconded the motion. Roll call on the vote resulted as follows:

DRAFT

Yeas – Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion carried.

_____
Patti Garcia, Town Clerk

M E M O R A N D U M

Date: October 22, 2012
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Patti Garcia, Town Clerk
Re: Liquor License Renewal – Otie's Wine and Spirits, Inc., Retail Liquor License
Item #: B.3.

Background / Discussion:

Otie's Wine & Spirits, located at 4630 Royal Vista Circle, Windsor, CO has applied for a renewal of their Retail Liquor License. The current license has an expiration date of November 5, 2012 and the application was received by the Town of Windsor prior to it expiring. The application has been reviewed by the Town Clerk's office and the respective license fees have been submitted.

The application was turned over to the Windsor Police Department for investigation. The Department's review did not find any issues that would affect the consideration of the renewal.

The application was also provided to the Finance Department. The Department's review did not present any unfavorable information which would affect the status of the license.

Financial Impact:
None

Relationship to Strategic Plan (optional):
Develop, grow, and strengthen the local retail and industrial economy.

Recommendation:
Staff recommends approval of the liquor license renewal.

Attachments:
None.

M E M O R A N D U M

Date: October 22, 2012
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Patti Garcia, Town Clerk
Re: Liquor License Renewal – Ayutla, Inc., dba Guadalajara Family Mexican Restaurant III, Hotel & Restaurant License
Item #: B.3.

Background / Discussion:

Guadalajara Family Mexican Restaurant III, located at 1281 Main Street, Windsor, CO has applied for a renewal of their Hotel/Restaurant Liquor License. The current license has an expiration date of November 30, 2012 and the application was received by the Town of Windsor prior to it expiring. The application has been reviewed by the Town Clerk's office and the respective license fees have been submitted.

The application was turned over to the Windsor Police Department for investigation. The Department's review did not find any issues that would affect the consideration of the renewal.

The application was also provided to the Finance Department. The Department's review did not present any unfavorable information which would affect the status of the license.

Financial Impact:
None

Relationship to Strategic Plan (optional):
Develop, grow, and strengthen the local retail and industrial economy.

Recommendation:
Staff recommends approval of the liquor license renewal.

Attachments:
None.

M E M O R A N D U M

Date: October 22, 2012
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Patti Garcia, Town Clerk
Re: A Woman's Place Funding Request
Item #: B.4.

Background / Discussion:
Pursuant to the presentation by A Woman's Place at the October 15, 2012 work session, the Town Board advised that the funding request of $5,000 be placed on the October 22, 2012 consent agenda for approval.

Financial Impact:
See attached Outside Agency Funding Report.

Relationship to Strategic Plan:
Goal 1. Build Community Spirit and Pride

Recommendation:
Approve the funding request of $5,000 to A Woman's Place.

Attachments:
A Woman's Place request letter
Outside Agency funding report

A WOMAN'S PLACE

Weld County's domestic violence agency

Dear Members of the Board,

The Town of Windsor continues to be a very much appreciated supporter of A Woman's Place. As we have in the past, we are requesting continued funding from the Town of Windsor. In the past we have been the grateful recipients of funding in the amount of $5,000, and would like to ask for continued funding at the same level.

In 2011 AWP provided safe shelter, legal advocacy, crisis support and counseling to 9 residents of Windsor. In addition, our legal advocate and volunteer attorney provided five civil protection order clinics in Windsor to any interested community members, free of charge.

The cost for A Woman's Place to serve victims and survivors of domestic violence equates to approximately $1,000 per client per stay. This amount is figured by taking our yearly shelter operating costs divided by the number of clients served in a year. Our shelter has been at capacity since late April of 2011, and we expect that our client numbers will exceed those served in 2011 due to the continued increase in need in client services throughout the last 18 months. We continue to offer Windsor residents our full range of services confidentially and free of charge, and outreach to the Windsor Community through local community and professional presentations, and civil protection order clinics available to victims and survivors at the Weld County Courts complex.

Thank you for your consideration,

Lotte Muster,
Executive Director
A Woman's Place, Inc.

P.O. Box 70 – Greeley, Colorado 80632
Information/Donations: (970) 351-0476 – Toll Free: 1-866-356-4226
Fax: (970-351-6686 – 24-hour Crisis Line: (970) 356-4226
Web Site: www.awpdv.org
Email: info@awpdv.org

ORGANIZATION BACKGROUND

A Woman's Place (AWP) is the only agency in Weld County that provides a continuum of services specifically designed to provide safe shelter and services to victims/survivors of domestic violence, and ultimately to assist them in achieving self-sufficiency. The mission of AWP is *to shelter and help empower victims/survivors of domestic abuse to become safe, secure and self-reliant; and through education and collaboration, to mobilize our community to help prevent domestic violence.* A Woman's Place was founded in 1978. After incorporating as a non-profit agency along with the donation of an older home by the Greeley Urban Renewal Authority, we opened our safe-house in 1981. In 2003 a completed renovation/addition project doubled the size of our safe-house. In 2005 we created a 30 day self-sufficiency program designed to assist women and their children, who are homeless due to domestic violence, to lead safer lives and access resources necessary to becoming economically independent. In 2007 we expanded our legal advocacy services, including establishing a presence in the Courthouse where we can be more available to victims of domestic violence seeking protection orders. Consequently, by 2009 our Legal Advocacy program doubled, and it continues to increase as our presence at the Courthouse provides an essential service to victims seeking protection orders . In 2008 we created a Prevention and Intervention Counseling program that provides individual and/or group counseling and support to adults and children who are victims of domestic violence. In 2009 we were included in a grant with Crossroads Safe House and Bringing Justice Home which enables clients to access attorneys on a part time basis with assistance in complex and critical legal matters. Also, in 2009 AWP began expanding our internship program to include masters level counseling interns, and to date, this program has become a vital part of our service provision. In 2011, AWP expanded services to an offsite location addressing the increasing demand for nonresidential services. AWP hired a Program Coordinator to implement prevention and intervention programming including counseling services. We are able to offer services to children, adolescents, and adults in a location that does not compromise the safety and confidentiality of our residents at our Safehouse.

CURRENT PROGRAMS

A Woman's Place serves a diverse population of domestic violence victims. Some have been rendered homeless, without financial resources, due to the abuse. In 2011 AWP provided 3,413 nights of stay to 219 women and children who were victims of domestic violence. Our legal advocacy provided over 2,500 legal advocacy services, and our counseling program provided 1,496 individual counseling sessions. We have a 24-hour dedicated phone line for crisis calls, and in 2011 we handled 10,480 phone calls. In 2011 nine women /families identified themselves as Windsor residents. This represents 2% of our clients served in 2011.

City of Windsor funds support core client services and more specialized support and prevention purpose areas, which include: emergency shelter; screenings and intakes; crisis intervention and crisis line coverage 24 hours per day, 365 days per year with access to a confidential language line; crisis and domestic violence advocacy; prevention and intervention individual and group counseling for residents and non-residents including adults, children, and adolescents; life skills programs, including domestic violence education and support groups, financial literacy, job skills and parenting education and support groups; resource referral and assistance; comprehensive legal advocacy services; outreach and education to professional and community agencies, family and friends presentation, and prevention training to youth. In order to maintain a client-centered approach, all of our services remain free of charge and are available in English and Spanish. AWP will also be available for presentations and trainings on domestic violence as well as provide resources for the town of Windsor and its residents.

We are deeply appreciative of the ongoing support from the Town of Windsor to support the ongoing operations of our residential facility and nonresidential programs which together provide safe shelter and a range of professional services for victims of domestic violence.

M E M O R A N D U M

Date: October 15, 2012
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Dean Moyer, Director of Finance
Re: Detail of Outside Agency Funding Budget
Item #: Work Session - 1

Background / Discussion:

The 2012 Budget included a line item for outside agency funding. As the name suggests, this line is used for funding agencies requests to the Town Board at the Board's discretion. Detailed below is the activity and remaining balance as of October 15, 2012. The chart reflects only cash we have paid or will pay out on these requests.

Financial Impact:

2012 Budget Figure	$62,372.00
-	
NoCO Energy Star Homes, Inc.	$1,000.00
Harvest Festival (cash only items)	$370.00
Fine Arts Festival (cash only items)	$8,919.50
Lauren Project	$6,000.00
Lauren Project - return of previous funding	($14.75)
Alzheimer's Association	$364.00
Christopher Birdwell Memorial	$10,000.00
Balance as of October 15, 2012	$35,733.25

M E M O R A N D U M

Date: October 22, 2012
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Patti Garcia, Town Clerk
Re: Advisory Board Appointments
Item #: B.5.

Background / Discussion:
Pursuant to interviews conducted by members of the Town Board on October 16, 2012, the following appointments are being recommended:

- Parks, Recreation & Culture Advisory Board – 1 vacated term expiring December, 2015
  Shannon de Jesus

- Windsor Housing Authority – 1-4 year term expiring June, 2016
  John Moore

Financial Impact:
None.

Relationship to Strategic Plan:
Goal 1. Build Community Spirit and Pride

Recommendation:
Approve the recommended appointments

Attachments:
Application – Shannon de Jesus
Application – John Moore

Attn: Ms. Garcia /via email.
2 pages.

Rec'd 9/20/12

TOWN OF WINDSOR
COLORADO

Advisory Board/Commission Application

To be considered a candidate for a board or commission, please complete this application and return it to the Town Clerk's Office, 301 Walnut Street, Windsor, CO 80550, fax to (970) 686-7180 or email to pgarcia@windsorgov.com. Application deadlines vary. Late applications will be kept on file for one year for future vacancies. 674 2456

Qualifications: All positions require residency within the Town of Windsor and some positions require a particular area of experience or vocation.

Additional information can be found on the Town's website under Boards and Commissions or contact the Town Clerk's office at (970) 674-2400.

Candidates will be invited to an interview with the Town Board and appointments are made by the Town Board as a whole.

Name of Board or Commission: Parks, Recreation, and Culture Advisory Board (PReCAB)

Name: SHANNAN D. DE JESUS

Address: 65 Chestnut Street, Windsor, Co 80550

Day Phone: 970-498-6248 Night Phone: 970-686-8779

E-Mail Address: shannan.dejesus@gmail.com

How long have you been a resident in Windsor? Since April 2012

Current Occupation: law clerk Employer: State of Colorado, 8th Judicial District

Do you currently serve, or have you served previously, on a board or commission? If so, which one(s)?

I have not previously served on a board or commission.

Why do you want to become a member of this particular board or commission? It is important to me to be involved in my community. I believe, knowledge of the policies and procedures that affect how decisions are made - and direct involvement - will make me a stronger member of the community.

Briefly explain what you believe are the two most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) Windsor Lake - It is clear the lake is critical to the community. The lake has historical, environmental, and cultural importance. I would like to see students and volunteer groups be more active around the lake and other water sources - for clean up, planting, and fun.

2) Public Participation - I understand Windsor residents are happy, overall, with what PReCAB has been doing. I would like to look in to providing transportation to meetings for seniors and residents with disabilities and making video recordings of important issues that can be viewed at the library, rec center, etc.

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

I am on the events committee at work and have extensive volunteering experience. I enjoy the events in Windsor and would like to be involved in the continuing success of the community/town.

Please specify any activities which might create a conflict of interest that would prevent you from official action if you should be appointed to this board or commission:

I have confirmed with my judge and our Chief judge, that I may serve on this Board.

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? (Yes) No

Comments: I cannot attend a meeting before applications are due. I have communicated via e-mail with Melissa Chew, and received some helpful information.

If not appointed at this time, would you be interested in serving on any other advisory boards or commissions at the Town of Windsor? If so, please list any preferences: yes, any board or commission that I can work for while maintaining my work schedule.

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying.

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 for assistance.

I certify that all statements on this form are true and complete. I further understand that false statements shall be sufficient cause for rejection of this application or for grounds to apply the penalty provisions of the Code of Ethics.

Signature: [signature] Date: 9/20/2012

Thank you for your consideration of my application. Although I have not lived in Windsor very long, my husband and I enjoyed visiting the Town when we lived in Fort Collins and look forward to being active members of the community. One of the things we like about Windsor is that we do not see an overwhelming need for change. However, once committed, I am eager to help and offer suggestions as I become more familiar with the needs of who I am serving. I look forward to hearing from you.

SAD

TOWN OF WINDSOR
COLORADO

Advisory Board/Commission Application

To be considered a candidate for a board or commission, please complete this application and return it to the Town Clerk's Office, 301 Walnut Street, Windsor, CO 80550, fax to (970) 686-7180 or email to pgarcia@windsorgov.com. Application deadlines vary. Late applications will be kept on file for one year for future vacancies.

Qualifications: All positions require residency within the Town of Windsor and some positions require a particular area of experience or vocation.

Additional information can be found on the Town's website under Boards and Commissions or contact the Town Clerk's office at (970) 674-2400.

Candidates will be invited to an interview with the Town Board and appointments are made by the Town Board as a whole.

Name of Board or Commission: Windsor Housing Authority

Name: John Moore

Address: 724 Elm St

Day Phone: 970-381-4199 Night Phone: 970-686-5924

E-Mail Address: Jcmco@comcast.net

How long have you been a resident in Windsor? 30+ yrs

Current Occupation: Consultant/Retired Employer: Weld RE-4 -

Do you currently serve, or have you served previously, on a board or commission? If so, which one(s)?

Windsor Housing Authority

Why do you want to become a member of this particular board or commission?

Continue Serving My Community, See Project Thru (Windsor Meadows

Briefly explain what you believe are the two most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) Provide obtainable housing opportunities in Windsor. Use Input from Surveys, Town & Residents to Identify & Meet housing needs.

2) Work with Town, Residents, and others to bring a "Win-Win" To housing Needs in Windsor. Work To make WHA an Asset To Windsor.

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:
Chair of Windsor Housing Auth - Past 4 years
Ops Director Weld RE-4 - 24 years
Project & Maint. Manage Experience -

Please specify any activities which might create a conflict of interest that would prevent you from official action if you should be appointed to this board or commission:
I have Not nor will I Ever Consult with
Any one or organization doing business with WHA.
I am Not Reimbursed for anything I do for or with WHA.

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? (Yes) No
Comments:
WHA-AS Chair - Also attend Neighborhood Meetings
Town Board & work sessions.

If not appointed at this time, would you be interested in serving on any other advisory boards or commissions at the Town of Windsor? If so, please list any preferences: Planning Commission

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying.

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 for assistance.

I certify that all statements on this form are true and complete. I further understand that false statements shall be sufficient cause for rejection of this application or for grounds to apply the penalty provisions of the Code of Ethics.

Signature: John C Moore Date: 10-1-12

M E M O R A N D U M

Date: October 22, 2012
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Melissa M. Chew, CPRP, Director of Parks, Recreation & Culture
Re: Outside Agency Funding Request – Windsor Community Choir Request
Item #: C.1.

Background / Discussion:

The Windsor Community Choir is an not for profit loosely formed organization that provides chorale opportunities to approximately 30 residents and offers free performances at a variety of community venues and events. They are requesting support in order to purchase music for performances. If Town Board is interested, "support" could be via a cash contribution or by actually purchasing music. The organization is NOT a registered 501c3.

Financial Impact:

See attached Outside Agency Funding Report. Request if for a one time contribution of $1,200 and annual contributions of $400.

Relationship to Strategic Plan:
Goal 1. Build Community Spirit and Pride

Recommendation:

For discussion, and provide direction to staff as to Outside Agency Funding for the Windsor Community Choir.

Attachments:

Windsor Community Choir request letter
Outside Agency funding report

To: Windsor City Council
From: Windsor Community Choir
Subject: Music Funding

The Windsor Community Choir was started in 2006 as a non-profit organization by a group of people who just liked to sing. The first year we met at the Recreation Center. Because of funding issues, we began meeting at the Methodist Church. We now meet at the Faith United Church of Christ. Our Director and Accompanist both donate their time. Our present Director is Alise Brown, a member of the Music Department of Northern Colorado University. Currently the Choir consists of Thirty members.

Community Events:

A. Thanksgiving Program
B. Two Community Concerts each year to which the public is invited and encouraged to attend. These are free of charge.
C. Programs for Good Samaritan Retirement Community and for the Windsor Health Care Center.
D. We have been willing to participate in other programs, such as Caroling during the Christmas Holidays.

The Choir as a whole does not meet during the summer; however, most of the men meet to sing Barbershop and have also presented programs in the Community.

The Choir in the past was able to borrow music but these sources are no longer available. Presently we have contributed Thirty Dollars each to buy music to begin a music library for present and future Events. This has caused some who would like to be involved not to be able to.

The Choir requests funding to obtain music for a wide variety of Events. We are asking for an initial amount of Twelve Hundred Dollars and a yearly stipend of Four Hundred Dollars to be spent on buying music to accumulate a music library. Currently each piece of music costs between two and three dollars.

Shirley O. Kelly
460 0226

M E M O R A N D U M

Date: October 22, 2012
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Dean Moyer, Director of Finance
Re: Detail of Outside Agency Funding Budget
Item #:

Background / Discussion:

The 2012 Budget included a line item for outside agency funding. As the name suggests, this line is used for funding agencies requests to the Town Board at the Board's discretion. Detailed below is the activity and remaining balance as of October 15, 2012. The chart reflects only cash we have paid or will pay out on these requests.

Financial Impact:

2012 Budget Figure	$62,372.00
NoCO Energy Star Homes, Inc.	$1,000.00
Harvest Festival (cash only items)	$370.00
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Lauren Project	$6,000.00
Lauren Project - return of previous funding	($14.75)
Alzheimer's Association	$364.00
Christopher Birdwell Memorial	$10,000.00
Balance as of October 15, 2012	$35,733.25

LIND
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Attorneys at Law
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Telephone: (970) 674-9888 · Fax: (970) 674-9535
Email: jonathan@lolaw.us

Kenneth F. Lind
George H. Ottenhoff
Chrysten S. Hinze
Jonathan E. Batt
Special Counsel

Date: October 4, 2012
To: Kelly Arnold; Ian McCargar, Town Attorney
From: Jonathan Batt, Esq., Special Counsel for Oil and Gas Matters
Re: Proposed Oil and Gas Lease with Tekton Windsor, LLC.

Proposed Oil and Gas Lease:

Our law firm was contacted by Tekton Windsor, LLC to review and present to the Town of Windsor a proposed Oil and Gas Lease. The Lease covers three separate parcels of land in Sections 29 and 32 in Township 6 North, Range 67 West, 6th P.M. and consisting of approximately 7.427 acres, more or less. The significant terms of the Lease are as follows:

1. Primary Term: three (3) years;

2. Lease royalty: 17.5%;

3. Bonus consideration: $750.00 per net mineral acre;

4. The net mineral acreage: 7.427 acres more or less;

5. Initial bonus payment: $5,570.25;

6. Surface use: This Lease is a "No Surface Occupancy" Oil and Gas Lease prohibiting all activities of any type regarding oil and gas development upon the surface of the subject properties.

7. Development plan: This acreage is part of a potential 21 well drilling program under an existing lease with Tekton.

Comments on Proposed Oil and Gas Lease:

The recommendation of the proposed Oil and Gas Lease takes into consideration the following:

1. At this time, the terms and conditions of the Oil and Gas Lease are consistent with or better than prevailing market provisions. In fact, this lease offers a higher royalty than the original Patriot Lease which granted surface use rights to the Lessee. Also, this Lease royalty rate is the same as leases recently accepted by the majority of mineral owners in the area.

2. Tekton Windsor, LLC already has leased the majority of mineral rights in this area, including other mineral rights owned by the Town. It is advisable for the Town to consolidate the lease rights with the entity that will directly drill and operate the development plan.

3. This proposed Lease is a "double dip" since the acreage is part of the potential 21 well development plan which will pay the Town $10,000.00 per well drilled. Also, the Town will receive an additional $5,570.25 for including the additional acreage under the proposed Lease.

4. Tekton Windsor, LLC has drilled nine successful wells in and near the Town of Windsor. In addition, they have conducted a 3D seismic program in the area that provides important information in planning and drilling better performing wells.

Recommendation:

Approval of Oil and Gas Lease.

Attachments:
Proposed Town of Windsor Lease
Proposed Town of Windsor Lease – Exhibit A (Description of Premises)

TOWN OF WINDSOR

RESOLUTION NO. 2012-63

A RESOLUTION APPROVING A NO-SURFACE-OCCUPANCY OIL AND GAS LEASE, AND RELATED TERMS, BETWEEN THE TOWN OF WINDSOR, COLORADO, AND TEKTON WINDSOR, LLC, AND AUTHORIZING THE MAYOR TO EXECUTE SAME (VARIOUS 7.427 ACRES)

WHEREAS, the Town of Windsor ("Town") is a Colorado Home Rule Municipality, with all powers and authority vested pursuant to law; and

WHEREAS, the Town is the owner of certain mineral interests located beneath Town-owned property within Sections 29 and 32, Township 6, Range 67 West, 6th P.M; and

WHEREAS, under Colorado law, the owners of mineral interests have a right to exploit, extract and put to beneficial use all minerals beneath the surface of the land; and

WHEREAS, the oil and gas deposits located within Weld County have drawn increasing interest from oil and gas extraction firms; and

WHEREAS, as is the case within Weld County, the Town's oil and gas interests have become a source of interest to oil and gas extraction firms; and

WHEREAS, Tekton Windsor, LLC ("Tekton") has approached the Town with terms and conditions for the leasing of Town-owned oil and gas rights beneath Town-owned property, consisting of approximately 7.427 net mineral acres; and

WHEREAS, the Town's Oil and Gas Special Counsel has negotiated a proposed Lease Agreement with Tekton, the terms and conditions of which are set forth in the attached "Oil and Gas Lease", incorporated herein by this reference as if set forth fully; and

WHEREAS, the terms and conditions of the attached Oil and Gas Lease are consistent with the market and with prevailing oil and gas exploration practices within Weld County; and

WHEREAS, the attached Oil and Gas Lease specifically provides that no oil and gas activity will take place on the surface of any Town-owned property; and

WHEREAS, the Town's Oil and Gas Special Counsel has recommended that the attached Oil and Gas Lease be approved by the Town Board; and

WHEREAS, the Town Board has concluded that the attached Oil and Gas Lease is beneficial to the public interest, in that it allows the Town to derive revenue from existing Town-owned resources; and

WHEREAS, the within Resolution is deemed to promote 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 attached Oil and Gas Lease is hereby approved.

2. The Mayor is hereby authorized to execute the attached Oil and Gas Lease on behalf of the Town.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 8th day of October, 2012.

TOWN OF WINDSOR, COLORADO

By:_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

PRODUCERS 88-PAID UP
Rev. No. 1 (CO)

OIL AND GAS LEASE

NO SURFACE OCCUPANCY

This Oil and Gas Lease ("Lease") is made this 17th day of September, 2012 by and between the T**own of Windsor, a Colorado municipal corporation** whose address is 301 Walnut Street, Windsor, CO 80550 ("Lessor"), (whether one or more) and **Tekton Windsor, LLC** with a mailing address of 640 Plaza Drive, Suite 290, Highlands Ranch, CO 80129 ("Lessee").

WITNESSETH, For and in Consideration of TEN DOLLARS, the covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Lessor does hereby grant, demise, lease and let exclusively unto said Lessee, its successors and assigns, with the exclusive rights for the purposes of drilling (including but not limited to straight, directional or horizontal wells), mining, exploring by geophysical and other methods and operating for and producing therefrom oil and all gas of whatsoever nature or kind (including coalbed gas), and laying pipelines, telephone and telegraph lines, building tanks, plants, power stations, roadways and structures thereon to produce, save and take care of said products (including dewatering of coalbed gas wells), and the exclusive surface or subsurface rights and privileges related in any manner to any and all such operations, including the injection of water, brine and other substances into the subsurface, and any and all other rights and privileges necessary, incident to, or convenient for the operation alone or conjointly with neighboring land for such purposes, all that certain tract or tracts of land situated in Weld County, State of Colorado, described to wit:

SEE EXHIBT 'A' ATTACHED HERETO AND MADE A PART HEREOF FOR DESCRIPTION OF PREMISES

together with all lakes, streams, roads, easements, and rights-of-way which traverse or adjoin said lands owned or claimed by Lessor, or which may hereinafter be established to be owned by Lessor, and also in addition to the above described lands and rights, any and all strips or parcels of land other than those constituting regular governmental subdivisions, adjoining or contiguous to the above described land owned or claimed by Lessor, all of the above described lands being hereinafter referred to as (the "Premises") and containing 7.427 acres, more or less.

1. It is agreed that this Lease shall remain in full force for a term of three (3) years from this date ("Primary Term") and as long thereafter as oil or gas of whatsoever volume, nature or kind is produced from the Premises or on acreage pooled or unitized therewith, or operations are continued as hereinafter provided. If, at the expiration of the Primary Term, oil or gas is not being produced from the Premises or on acreage pooled or unitized therewith but Lessee is then engaged in drilling, reworking or dewatering operations thereon, then this Lease shall continue in force so long as such operations are being continuously prosecuted. Operations shall be considered to be continuously prosecuted if not more than one hundred eighty (180) days shall elapse between the completion or abandonment of one well and the beginning of operations for the drilling of a subsequent well. If after discovery of oil or gas on the Premises or on acreage pooled or unitized therewith, the production thereof should cease from any cause after the primary term, this Lease shall not terminate if Lessee commences additional drilling, reworking or dewatering operations within one hundred eighty (180) days from date of cessation of production or from date of completion of a dry hole. If oil or gas shall be discovered and produced as a result of such operations at or after the expiration of the Primary Term, this Lease shall continue in force so long as oil or gas is produced from the Premises or on acreage pooled or unitized therewith. If at the expiration of this Lease, Lessee has in use surface or subsurface easements granted to Lessee pursuant to the terms hereof, such easements shall survive the termination of this Lease for as long thereafter as so utilized by Lessee.

2. This is a PAID-UP LEASE. In consideration of the payment made herewith, Lessor agrees that Lessee shall not be obligated, except as otherwise provided herein, to commence or continue any operations during the Primary Term. Lessee may at any time or times during or after the Primary Term surrender this Lease as to all or any portion of the Premises and as to any strata or stratum, by delivering to Lessor or by filing for record a release or releases, and be relieved of all obligations thereafter accruing as to the acreage surrendered.

3. The royalties to be paid by Lessee are: (a) on oil and other liquid hydrocarbons, seventeen and one half percent (17.5%) of that produced and saved from said land, the same to be delivered at the wells, or to the credit of Lessor into the pipeline to which the wells may be connected; Lessee may from time to time purchase any royalty oil in its possession, paying the market price therefore prevailing for the field where produced on the date of purchase; (b) on gas and the constituents thereof produced from said land and sold or used off the premises or in the manufacture of products therefrom, the market value at the well of seventeen and one half percent (17.5%) of the product sold or used. On product sold at the well, the royalty shall be seventeen and one half percent (17.5%) of the net proceeds realized from such sale. All royalties paid on gas sold or used off the Premises or in the manufacture of products therefrom will be paid after deducting from such royalty Lessor's proportionate amount of all post-production costs, including but not limited to gross production and severance taxes, gathering and transportation costs from the wellhead to the point of sale, treating, compression, and processing. On product sold at the well, the royalty shall be seventeen and one half percent (17.5%) of the net proceeds realized from such sale, after deducting from such royalty Lessor's proportionate amount of all of the above post-production costs and expenses, if any.

4. Where gas from a well capable of producing gas (or from a well in which dewatering operations have commenced), is not sold or used after the expiration of the Primary Term, Lessee shall pay or tender as royalty to Lessor at the address set forth above **Five Dollar ($5.00**) per year per net mineral acre, such payment or tender to be made on or before the anniversary date of this Lease next ensuing after the expiration of one hundred twenty (120) days from the date such well is shut in or dewatering operations are commenced and thereafter on or before the anniversary date of this Lease during the period such well is shut in or dewatering operations are being conducted.

5. If Lessor owns a lesser interest in the Premises than the entire and undivided fee simple estate therein, then the royalties (including any shut-in gas royalty) herein provided for shall be paid to Lessor only in the proportion which Lessor's interest bears to the whole and undivided fee.

6. Lessee shall have the right to use, free of cost, gas, oil ~~and water~~ produced on the Premises for Lessee's operations thereon, except water from the wells of Lessor.

7. ~~When requested by Lessor,~~ Lessee shall bury Lessee's pipeline below plow depth.

8. No well shall be drilled nearer than 200 feet to the house or barn now on the Premises without written consent of Lessor.

9. Lessee shall pay for damages caused by Lessee's operations ~~to growing crops~~ on the Premises.

10. Lessee shall have the right at any time to remove all machinery and fixtures (including casing) Lessee has placed on the Premises.

11. The rights of the Lessor and Lessee hereunder may be assigned in whole or part. No change in ownership of Lessor's interest (by assignment or otherwise) shall be binding on Lessee until Lessee has been furnished with notice, consisting of certified copies of all recorded instruments or documents and other information necessary to establish a complete chain of record title from Lessor, and then only with respect to payments thereafter made. No other kind of notice, whether actual or constructive, shall be binding on Lessee. No present or future division of Lessor's ownership as to different portions or parcels of the Premises shall operate to enlarge the obligations or diminish the rights of Lessee, and all Lessee's operations may be conducted without regard to any such division. If all or any part of this Lease is assigned, no leasehold owner shall be liable for any act or omission of any other leasehold owner.

12. Lessee, at its option, is hereby given the right and power at any time and from time to time as a recurring right, either before or after production, as to all or any part of the Premises and as to any one or more of the formations thereunder, to pool or unitize the leasehold estate and the mineral estate covered by this Lease with other land, lease or leases in the immediate vicinity for the production of oil and gas, or separately for the production of either, when in Lessee's judgment it is necessary or advisable to do so, and irrespective of whether authority similar to this exists with respect to such other land, lease or leases. Likewise units previously formed to include formations not producing oil or gas may be reformed to exclude such non-producing formations. The forming or reforming of any unit shall be accomplished by Lessee executing and filing of record a declaration of such unitization or reformation, which declaration shall describe the unit. Any unit may include land upon which a well has theretofore been completed or upon which operations for drilling have theretofore been commenced. Production, drilling, reworking or dewatering operations or a well shut in for want of a market anywhere on a unit which includes all or a part of this Lease shall be treated as if it were production, drilling, reworking or dewatering operations or a well shut in for want of a market under this Lease. In lieu of the royalties elsewhere herein specified, including shut-in gas royalties, Lessor shall receive royalties on production from such unit only on the portion of such production allocated to this Lease; such allocation shall be that proportion of the unit production that the total number of surface acres covered by this Lease and included in the Unit bears to the total number of surface acres in such Unit. In addition to the foregoing, Lessee shall have the right to unitize, pool, or combine all or any part of the Premises as to one or more of the formations thereunder with other lands in the same general area by entering into a cooperative or unit plan of development or operation approved by any governmental authority and, from time to time, with like approval, to modify, change or terminate any such plan or agreement and, in such event, the terms, conditions and provisions of this Lease shall be deemed modified to conform to the terms, conditions, and provisions of such approved cooperative or unit plan of development or operation and, particularly, all drilling and development requirements of this Lease, expressed or implied, shall be satisfied by compliance with the drilling and development requirements of such plan or

agreement, and this Lease shall not terminate or expire during the life of such plan or agreement. In the event that the Premises or any part thereof, shall hereafter be operated under any such cooperative or unit plan of development or operation whereby the production therefrom is allocated to different portions of the land covered by said plan, then the production allocated to any particular tract of land shall, for the purpose of computing the royalties to be paid hereunder to Lessor, be regarded as having been produced from the particular tract of land to which it is allocated and not to any other tract of land; and royalty payments to be made hereunder to Lessor shall be based upon production only as so allocated. Lessor shall formally express Lessor's consent to any cooperative or unit plan of development or operation adopted by Lessee and approved by any governmental agency by executing the same upon request of Lessee.

13. All expressed or implied covenants of this Lease shall be subject to all Federal, State and Local Laws, Executive Orders, Rules or Regulations, and this Lease shall not be terminated, in whole or in part, nor Lessee held liable in damages, for failure to comply therewith if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation. Any delay or interruption caused by storm, flood, act of God or other event of force majeure shall not be counted against Lessee. If Lessee is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Lease, other than the obligation to make money payments, Lessee shall give to Lessor, prompt written notice of the force majeure with reasonably full particulars concerning it; thereupon, the obligations of Lessee, so far as they are affected by the force majeure, shall be suspended during, but no longer than, the continuance thereof. Lessee shall use all reasonable diligence to remove the force majeure situation as quickly as practicable. However, Lessee shall not be required against its will to settle any labor dispute. The term force majeure shall mean an act of the public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion, governmental action, governmental delay, restraint or inaction, unavailability or failure of equipment, including drilling rigs, delays in obtaining drilling and other required permits despite its diligent efforts, freeze-up of wells or pipelines, and any other cause, whether of the kind specifically enumerated herein or not, which is not reasonably within the control of the Party claiming force majeure. If, due to the above causes or any cause whatsoever beyond the control of Lessee, Lessee is prevented from conducting operations hereunder, such time shall not be counted against Lessee, and this Lease shall be extended for a period of time equal to the time Lessee was so prevented, anything in this Lease to the contrary notwithstanding.

14. If Lessee shall fail to pay any royalty, rental or other payment when due, and if such default shall continue for a period of fifteen (15) days after receipt by Lessee of written notice thereof from Lessor, then at the option of Lessor, Lessor may terminate this lease as to those lands as to which Lessee is in default; provided, however, that if there be a bona fide dispute as to the amount due and all undisputed amounts are paid, said fifteen (15) day period shall be extended until five (5) days after such dispute is settled by final court decree, arbitration or agreement. If Lessee shall be in default in the performance of any of its obligations under this lease other than the payment of rentals, royalties or other payments, and if, for a period of ninety (90) days after receipt by Lessee of written notice thereof from Lessor, Lessee shall fail to commence and thereafter diligently and in good faith to prosecute the remedy of such default, Lessor may terminate this lease as to those lands which Lessee is in default.

15. Lessor hereby ~~warrants and agrees to defend the title to the lands herein described, and~~ agrees that the Lessee shall have the right at any time to redeem for Lessor by payment any mortgages, taxes or other liens on the above described lands, in the event of default of payment by Lessor, and be subrogated to the rights of the holder thereof, and the undersigned Lessors, for themselves and their heirs, successors and assigns, hereby surrender and release all right of dower and homestead in the Premises, insofar as said right of dower and homestead may in any way affect the purposes for which this Lease is made, as recited herein.

16. Should any one or more of the parties named as Lessor herein fail to execute this Lease, it shall nevertheless be binding upon all such parties who do execute it as Lessor. The word "Lessor", as used in this Lease, shall mean any one or more or all of the parties who execute this Lease as Lessor. All the provisions of this Lease shall be binding on the heirs, successors and assigns of Lessor and Lessee.

17. Notwithstanding the provisions hereof, Lessee at any time prior to the expiration of this Oil Gas Lease, shall have the exclusive right and option, but not the obligation, to extend the Primary Term hereof for an additional two (2) year period. The full monetary consideration payable to Lessor by Lessee ("Extension Payment") should Lessee so elect to extend this lease shall be equivalent to the amount originally paid for the execution and delivery of this lease. Lessor hereby agrees to execute a recordable document confirming such extension upon its receipt of the Extension Payment.

18. Lessor does hereby grant, transfer and convey unto Lessee a right-of-way and easement to drill and operate under the surface of and through the Premises or any other lands adjacent thereto one or more directional wells to be bottomed on lands other than the Premises for the purposes of exploring, drilling, operating for, developing and producing oil and gas under the terms of this Oil and Gas lease or any oil and gas lease(s) now owned or hereinafter acquired by Lessee, covering lands other than the Premises and to take any actions necessary or desirable in the exercise of the rights granted herein. This right-of-way and easement shall remain in full force and effect for the primary term hereof and as long thereafter for the purposes therein granted.

19. **Notwithstanding anything to the contrary herein contained, this lease is a "No Surface Occupancy" Oil and Gas Lease.** It is agreed and understood that Lessee, its successors or assigns shall not conduct any actual drilling operations or locate any production facilities on the surface of the leased lands, without the express written consent of Lessor. It is understood that Lessee, its successors or assigns shall not be allowed access to the surface of the leased lands without the express written consent of Lessor other than use of existing roads.

IN WITNESS WHEREOF, this instrument is executed as of the date first above written.

Lessor:

TOWN OF WINDSOR

_____ ATTEST: _____

Name: **John S. Vazquez** By: **Patricia Garcia, Town Clerk**
Title**: Mayor**

(ACKNOWLEDGMENT)

STATE OF COLORADO)
) SS.
COUNTY OF WELD)

(CORPORATE ACKNOWLEDGMENT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by John Vazquez, as Mayor, and Patricia Garcia, as Town Clerk, of the Town of Windsor, a Colorado municipal corporation, on behalf of said corporation.

My Commission Expires: _____

_____
Notary Public

EXHIBIT “A”

This "EXHIBIT A" is attached. to and made a part of that certain Oil and Gas Lease, dated September 17, 2012, by and between Town of Windsor, a Colorado municipal corporation, as Lessor, Tekton Windsor, LLC, as Lessee. Said oil and Gas Lease covering lands situated in Weld County, Colorado, and being more particularly described as follows to-wit:

The Premises

Township 6 North, Range 67 West, 6th P.M.

Section 29: Tract G, Poudre Heights Subdivision Second Filing, a subdivision of the town of Windsor, Weld County, State of Colorado containing 5.223 acres, more or less. Weld County Assessor Parcel No.080729410001.

Section 32: Portion of Northwest Quarter as described in Warranty Deed of October 20, 2000 from Martin Lind, Theodore Lind, and Steve Freeman to Town of Windsor recorded at Book 1602, Page 851, Reception No. 2454841 of the records of Weld County, Colorado containing 1.56 acres, more or less.

Section 32: That parcel described in the Warranty Deed recorded in Book 796, Page 225 in the records of Weld County, Colorado (less the 1.06 acre portion thereof described in the Special Warranty Deed recorded at Reception No. 3340774 (being a portion of Lot 1 of the South Hill Subdivision), as follows:

> Beginning at the North quarter corner of Section 32, T6N, R67W; thence S89°55' E. a distance of 2,266.5 feet to point No. 1 which is point of actual beginning; thence S55°0' E. a distance of 442.7 feet to point No.2; thence S2°40' E. a distance of 284.2 feet to point No.3; thence N48°36' W. a distance of 419.2 feet to point No.4; thence N14°39' W. a distance of 262.5 feet to point No.1 or place of beginning containing 0.95 acres, more or less.

SAID OIL AND GAS LEASE CONTAINING 7.427 ACRES, MORE OR LESS.

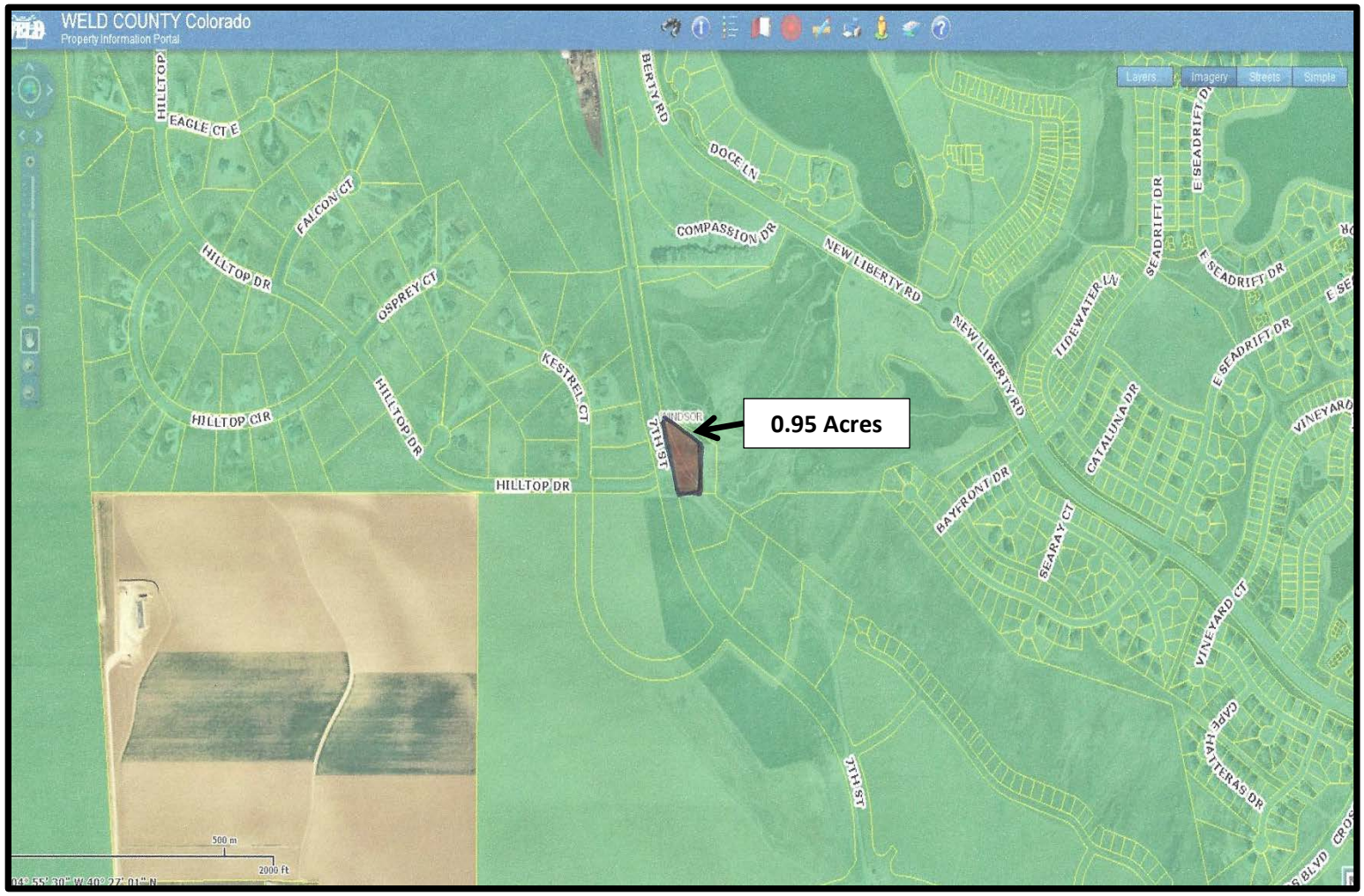
SIGNED FOR IDENTIFICATION PURPOSES:

_____

John S. Vazquez, Mayor

TOWN OF WINDSOR MINERAL LANDS IN SEC. 32-T6N-R67W – LEASE REQUEST BY TEKTON

(Northwest South Water Valley Subdivision)



TOWN OF WINDSOR MINERAL LANDS IN SEC. 29-T6N-R67W – LEASE REQUEST BY TEKTON

TOWN OF WINDSOR MINERAL LANDS IN SEC. 32-T6N-R67W – LEASE REQUEST BY TEKTON

(North Side of Hilltop Estates Along New Liberty Road)

M E M O R A N D U M

Date: October 22, 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: Resolution 2012-68 - Concerning Park Rules and Regulations
Ordinance 2012-1438 - Concerning Park Rules and Regulations
Item #: C.3. & C.4.

Background / Discussion:

In the work session on October 1, 2012 you were presented with information concerning proposed park rules and regulations. It is our belief that some activities in our parks has in some cases attracted individuals that pose other concerns or threats to the public or our community. The proposed rules and regulations place limitations on activities that were problematic in 2012.

One of the changes that we suggested is to bring all the park rules and regulations under one Ordinance for ease of enforcement. Currently, they exist in several separately adopted Ordinances in the Municipal Code. We have worked with the Town Attorney to develop an Ordinance that accepts all the Rules and Regulations as set forth and adopted via a Resolution. We have also worked with the Town Attorney to develop a Resolution that adopts the attached Town of Windsor 2012 parks and Open Space Regulations. This strategy allows for more efficient and effective law enforcement by compiling all park regulations under one Ordinance. The regulations are attached for your review, containing both the three new regulations discussed on October 1st as well as existing regulations. In the future, any changes to park regulations may be done by adopting an updated Resolution, rather than an Ordinance which would require re-codifying.

We believe that these modifications will provide safe and quality services, as well as provide am more efficient mechanism to enforce park regulations.

Financial Impact:

As indicated, additional funds were budgeted in the 2013 budget for additional law enforcement. Staff is still exploring options for temporary event fencing.

Relationship to Strategic Plan:

Goal 1: Build Community Spirit and Pride

Recommendation:

Move to adopt Resolution 2012-68 adopting Town of Windsor 2012 Parks and Open Space Regulations

Move to adopt Ordinance 2012-1438 supporting Resolution 2012-68 adopting Town of Windsor 2012 Parks and Open Space Regulations

Attachments:

Resolution 2012-68
Ordinance 2012-1438
Town of Windsor 2012 Parks and Open Space Regulations

Town of Windsor 2012 Parks and Open Space Regulations

The items listed below represent the rules and regulations discussed on 10-1-12 and would be added in abbreviated format to park signs:

1. **(Alcohol Prohibited)**
   It shall be unlawful for any person to possess alcoholic beverages unless otherwise authorized by Colorado Law.

2. **(Portable Grills Prohibited)**
   It shall be unlawful for any person to bring into the park any gas, electric or charcoal grill. Only grills where provided by the Town of Windsor may be used, unless otherwise authorized by the Town of Windsor for programs or events.

3. **(Tents Restricted)**
   It shall be unlawful for any person to erect a portable tent or shade structure between the hours of 6:00 pm and 5:00 am, unless otherwise authorized by the Town of Windsor for programs or events.

The following are already addressed in the municipal code, and will be included in abbreviated format on park signage:

4. **(Parks are open to the public from 5:00 am to 10:00 pm)**
   It shall be unlawful for any person to be in any park or recreational facility or to use any trail within the Town during those hours of 10:00 pm to 5:00 am unless otherwise authorized by the Town of Windsor for programs or events.

5. **(Windsor Lake Night Fishing Permitted)**
   Notwithstanding the general park closure hours set forth in Subsection (a) above, fishing on Windsor Lake is permitted subject to the following conditions:
   - Fishing on Windsor Lake may take place only along the west edge of Windsor Lake adjacent to State Highway 257, between the southerly pavement edge of the Town's parking lot and the inlet bridge for the Greeley #2 Ditch.
   - Nothing in this Subsection shall be construed to permit fishing on Windsor Lake from a boat or aquatic vessel of any kind between the hours of 10:00 pm and 5:00 am.

6. **(Glass Bottles Prohibited)**
   It shall be unlawful for any person to bring, or to have in his or her possession, any glass beverage container in any park, recreational facility or on any trail within the Town.

7. **(Dumping/Littering Prohibited)**
   It shall be unlawful for any person to bring in and dump, deposit or leave any bottles or other containers made of glass, any broken glass, ashes, papers, boxes, cans, dirt, rubbish, waste, tree leaves and limbs, garbage, refuse or other trash in or upon any park, recreational facility or trail within the Town.

8. **(Trash Disposal Required)**

It shall be unlawful for any person utilizing any park, recreational facility or trail within the Town to leave such park, recreational facility or trail without first placing in provided trash disposal receptacles all trash, of whatever kind or nature, generated by his or her usage of the park, recreational facility or trail. In the event no trash disposal receptacle is available, then such person shall carry away said trash and dispose thereof in a proper and legal manner.

9. **(Dogs Must be Leashed)**
   Dogs shall be allowed in public parks and on trails within the Town under appropriate supervision and specifically in accordance with the provisions appearing elsewhere in this Code concerning dogs.

10. **(Dog Waste Removal Required)**
    The owner or keeper of any dog shall be responsible for the removal of any feces deposited by such animal in any public park or on or adjacent to any trail within the Town.

11. **(Horses Prohibited)**
    Except in areas specifically designated for equestrian activities, it shall be unlawful for any person to allow any horse or pony in any public park, recreational facility, public open space or on any trail within the Town.

12. **(Golfing Prohibited)**
    Unless specifically allowed in designated areas, it shall be unlawful for any person to drive or hit golf balls in any public park, recreational facility or on any trail within the Town.

13. **(Operation of Motor Vehicles Prohibited)**
    It shall be unlawful for any person to operate any motor vehicle including, but not limited to, automobiles, trucks, motorcycles, motorbikes, motorscooters, go-carts or mobile homes in any public park, recreational facility, public open space or on any trail within the Town. This provision shall not apply to duly authorized employees of the Town in the performance of work activities in the scope of their employment or unless otherwise authorized by the Town of Windsor for programs or events.

TOWN OF WINDSOR

RESOLUTION NO. 2012-68

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

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 22nd day of October, 2012.

TOWN OF WINDSOR, COLORADO

By:_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

TOWN OF WINDSOR

ORDINANCE NO. 2012-1438

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

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. 2012-68, 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

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 22nd day of October, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

Introduced, passed on second reading, and ordered published this 13th day of November, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

M E M O R A N D U M

Date: October 22, 2012
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: John Frey and Ian McCargar, Town Attorneys
Re: First Reading of Ordinance Approving First Amended Intergovernmental Agreement ("IGA") with the City of Fort Collins regarding the development of Interstate 25 and State Highway 392 Interchange.

First Reading of Ordinance Establishing a Special Fee to be Paid by the Property Owners Within Close Proximity to the Interstate 25 and State Highway 392 Interchange.

Item #: C.5. & C.6.

Summary:

These ordinances reaffirm and redefine the on-going relationship between the Town and the City of Fort Collins with regard to the improvement of the I-25 Interchange. They also establish a fee to be paid by property owners in the Corridor Activity Center ("CAC"), the area that surrounds the Interchange.

The documents presented for adoption by the Town Board on first reading were last discussed with the Board in a work session on October 1, 2012.

Background and Discussion:

The Town Board and the City of Fort Collins entered into an IGA in December, 2010. That IGA provided for joint cooperation between the City and the Town in accomplishing the reconstruction of the I-25 Interchange. The original IGA addressed the funding to be provided by the City and Town, established the boundaries of the CAC, provided for the sharing of sales and property tax revenue, and required the establishment of a fee to be paid by the property owners in the CAC sufficient to allow the Town and the City to recover their respective contributions to the funding of the Interchange.

Since the adoption of the original IGA, a number of benchmarks established by the IGA have been reached. The project has moved forward on schedule and under budget. The accomplishments to date include:

- The City and the Town entered into an agreement with CDOT for the re-construction of the Interchange. The re-construction project will be complete before the end of 2012.
- The City and Town adopted land use and design standards for development in the CAC.
- The City and the Town have jointly contributed approximately $5.1 million to the costs of the Interchange project.
- The City and Town jointly funded an analysis of the CAC area ("the Foster Study") to determine the increase in value of that area as a result of the re-construction of the Interchange.
- Several joint work sessions of the City Council and the Town Board have been conducted to address the continuing requirements of the original IGA and to approve the design of enhancements to the Interchange.
- Informational meetings have been held with the property owners in the CAC to obtain feedback on the project, the requirements of the IGA, and methodologies for establishment of the special fee.

The First Amended IGA

The initial action item is consideration of an Ordinance adopting the First Amended IGA. This Ordinance and the IGA are attached to this Memorandum, along with a map of the CAC and the Foster Study, both of which are exhibits to the IGA.

The new IGA recognizes the modifications that the City and Town have agreed to since the adoption of the original IGA. The IGA recites the financial contributions of the City and the Town, and restates the Fort Collins-Windsor revenue sharing formula. It also authorizes the adoption of ordinances by both communities to enable recovery of fifty percent (50%) of the City and Town contributions to the cost of re-constructing the Interchange and local improvements in the CAC. The Windsor ordinance enabling this recovery is the second action item for your consideration on October 22.

Special Fee Ordinance

This ordinance imposes a fee upon Windsor properties located within the Corridor Activity Center ("CAC"). These properties are located in close proximity to the Interchange and, according to the Foster Study, will especially benefit from the reconstruction of the Interchange. It was originally proposed that 100% of the City and Town contribution to the Interchange be recovered through this ordinance. The City and Town subsequently agreed to reduce the recovery percentage to 50%. This reduction recognizes that the Windsor and Fort Collins communities as a whole will also benefit from the construction of the Interchange and the local improvements in the CAC.

In order to fairly apportion the amount to be recovered within the CAC, the City and the Town commissioned a study by a licensed MAI appraiser to determine the amount of appreciation in value that will be experienced by the benefitted properties. This analysis,

known as the "Foster Study" is attached. 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.

The fee, as implemented by this Ordinance, can be summarized as follows:

- The Proximity Component of the fee is in proportion to the anticipated appreciation in property value for each CAC property. This amount has been determined from the Foster Study.

- The Trip Generation Component of the fee is based on the relative traffic impact that the properties will have on the Interchange, as measured by the estimated number of vehicular trips that will be generated by the developed use of the properties.

- Payments will be due quarterly beginning on March 31, 2013. The Proximity Component of the fee will be paid by both the developed and undeveloped properties. The Trip Generation Component of the fee will be also be paid quarterly, but initially only by the developed properties. This is because we are now able to determine the actual vehicular trips generated by those developed properties. The undeveloped properties will begin paying the Trip Generation Component when development occurs and the trips generated by such development can be determined. These undeveloped properties will be responsible for the interest component established by the Ordinance, back to the effective date of the Ordinance.

The Ordinance creates a second alternative for property owners in the CAC. In exchange for the release of any future legal claims that might be brought against the Town regarding the validity of the Special Fee, the property owners in the CAC who agree to sign a settlement agreement would be permitted to defer payment of the entire amount of the fee until their properties are developed or redeveloped. No interest would accrue on their fee for a period of two years from the date of execution of the agreement.

Fiscal Impact:

The approval of the First Amended IGA and the special fee ordinance will allow the Town to recover 50% of the amounts the Town has appropriated for the construction of the Interchange and local improvements in the Interchange area. This amounts to a recovery of approximately $2.6 million which is less than 10% of the cost of the total cost of the project.

Recommendation:

Town Staff recommends the adoption of both of the proposed Ordinances.

Attachments:

- First Amended IGA between the Town of Windsor and the City of Fort Collins.
- Ordinance adopting First Amended IGA.
- CAC Vicinity Map
- Foster Study with attachments.
- Special Fee Ordinance.

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 as the baseline a base rate of 9.797 mils, as applied to the assessed valuation developed by Larimer County as of the Effective Date.

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 as the baseline a base rate of 2.25% and the amount of tax revenue received in the twelve (12) months immediately preceding the Effective Date.

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

CITY OF FORT COLLINS

_____
Mayor

ATTEST:

_____
City Clerk

TOWN OF WINDSOR

_____
Mayor

ATTEST:

_____
Town Clerk

PLACEHOLDER FOR
Exhibit A – Map

PLACEHOLDER FOR
Exhibit B –Foster Study

TOWN OF WINDSOR

ORDINANCE NO. 2012-1439

AN ORDINANCE APPROVING THE FIRST AMENDED INTERGOVERNMENTAL AGREEMENT PERTAINING TO THE DEVELOPMENT OF THE INTERSTATE 25/STATE HIGHWAY 392 INTERCHANGE, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, on January 3, 2011, the City of Fort Collins ("City") and the Town of Windsor ("Town") entered into an Intergovernmental Agreement ("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, staff of the City and the Town have developed a number of proposed changes to the Original Agreement; and

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

WHEREAS, the changes to the Original Agreement have been set forth in the attached First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange, incorporated herein by this reference as if set forth fully; and

WHEREAS, the Town Board believes that approval of the changes recommended by staff are in the best interests of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, that the attached First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange is hereby approved, and the Mayor is hereby authorized to execute the same on behalf of the Town.

Introduced, passed on first reading, and ordered published this 24th day of September, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

Introduced, passed on second reading, and ordered published this 8th day of October, 2012.

TOWN OF WINDSOR, COLORADO

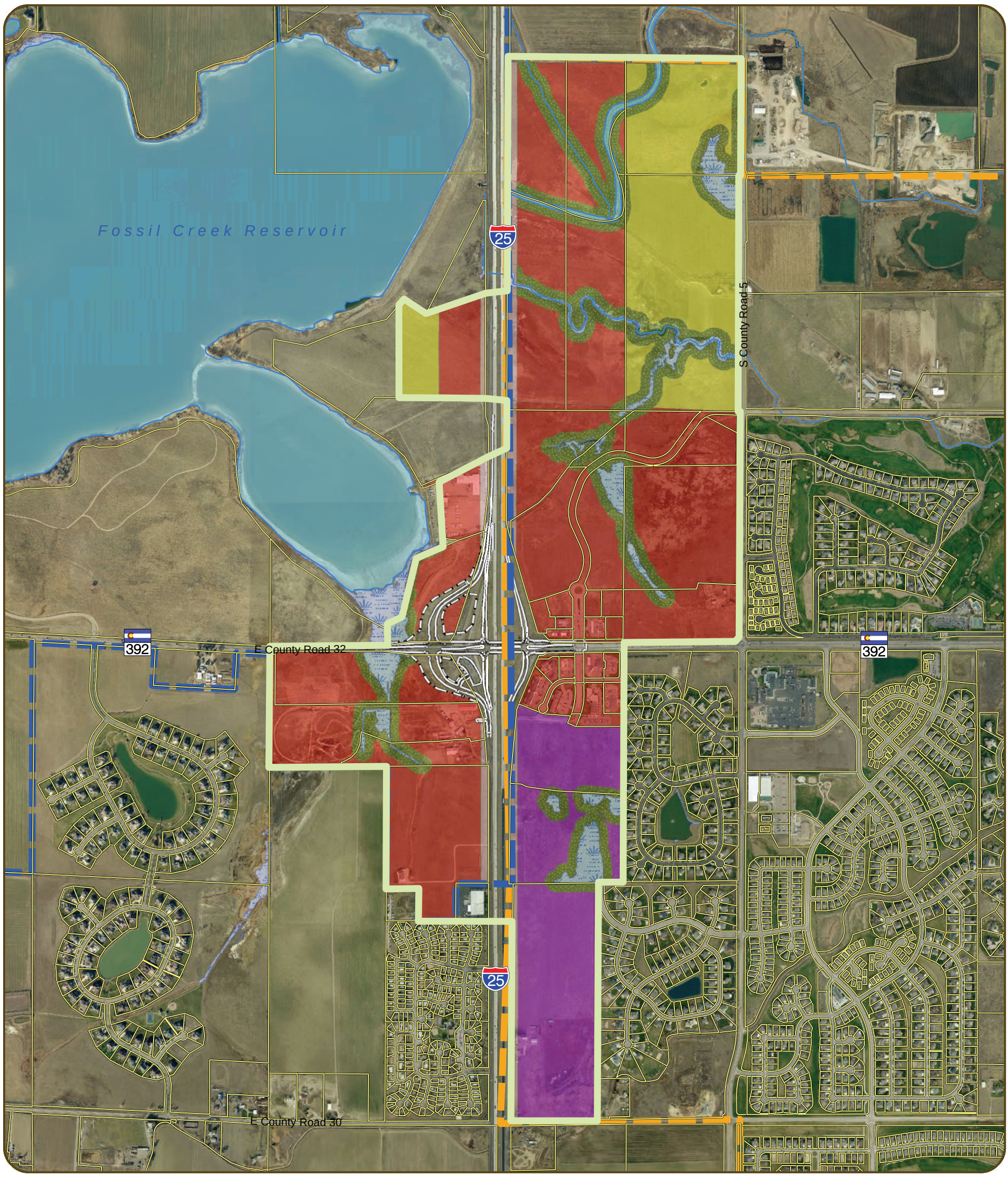
By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

I25 - State HWY 392 Interchange

Corridor Activity Center



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Land Use
- Commercial
- Employment
- Residential
- Natural Resource Buffer
- I-25 Setback
- Wetlands

Boundaries
- CAC
- Fort Collins GMA
- Windsor GMA
- Parcels

Proposed Interchange Redesign
- Interchange Footprint
- Right of Way Changes

CITY OF FORT COLLINS
GEOGRAPHIC INFORMATION SYSTEM MAP PRODUCTS

These map products and all underlying data are developed for use by the City of Fort Collins for its internal purposes only, and were not designed or intended for general use by members of the public. The City makes no representation or warranty as to its accuracy, timeliness, or completeness, and in particular, its accuracy in labeling or displaying dimensions, contours, property boundaries, or placement of location of any map features thereon. THE CITY OF FORT COLLINS MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTY FOR FITNESS OF USE FOR PARTICULAR PURPOSE, EXPRESSED OR IMPLIED, WITH RESPECT TO THESE MAP PRODUCTS OR THE UNDERLYING DATA. Any users of these map products, map applications, or data, accepts them AS IS, WITH ALL FAULTS, and assumes all responsibility of the use thereof, and further covenants and agrees to hold the City harmless from and against all damage, loss, or liability arising from any use of this map product, in consideration of the City's having made this information available. Independent verification of all data contained herein should be obtained by any users of these products, or underlying data. The City disclaims, and shall not be held liable for any and all damage, loss, or liability, whether direct, indirect, or consequential, which arises or may arise from these map products or the use thereof by any person or entity.

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City of Fort Collins GIS

Printed: February 24, 2011

FOSTER VALUATION COMPANY LLC

October 3, 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 October 3, 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, SR/WA ♦ Christine Antonio ♦ Michael Smith

Certified General Real Estate Appraisers ♦ 910 54th Avenue, Suite 210, Greeley, Colorado 80634
Phone (970) 352-1117 ♦ FAX (970) 323-2753

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 of commercially-zoned land. Zone A-1 consists of commercial lots on the east side of Interstate 25 straddling Colorado State Highway 392. 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. 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. 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,

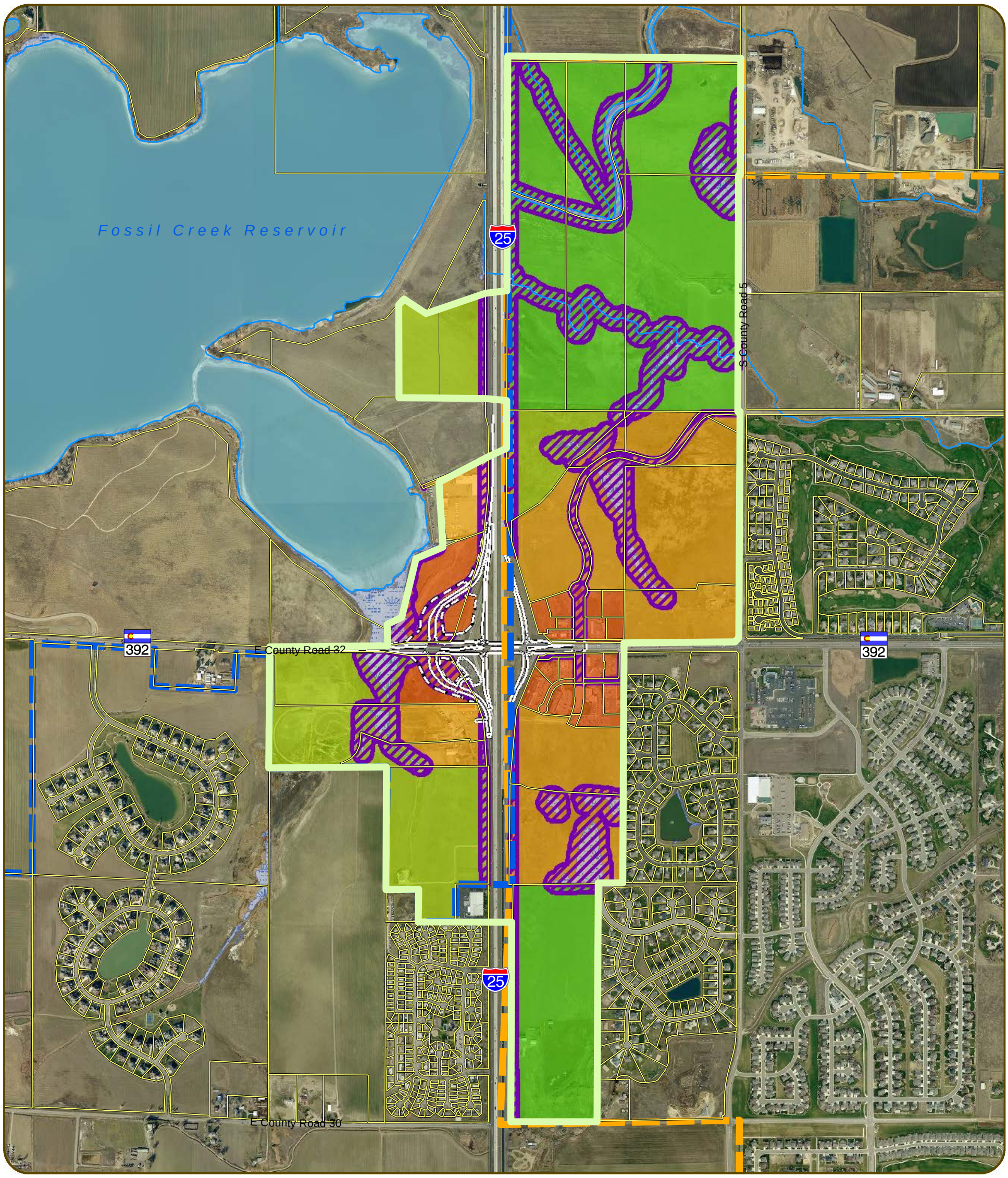
W. West Foster, MAI, CRE, SR/WA
CO Certification #CG00001795

Exhibit A: I25 - State HWY 392 Interchange Map
Exhibit B: Value Enhancement Zone Analysis spreadsheet
Exhibit C: Qualifications of W. West Foster
Exhibit D: Certification

ADDENDA
EXHIBIT A

I25 - State HWY 392 Interchange

Value Enhancement Zones



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W E
S

Value Enhancement
- Zone A
- Zone B
- Zone C
- Zone D
- No Use Areas

Boundaries
- CAC
- Fort Collins GMA
- Windsor GMA
- Parcels
- Wetlands

Proposed Interchange Redesign
- Interchange Footprint
- Right of Way Changes

CITY OF FORT COLLINS
GEOGRAPHIC INFORMATION SYSTEM MAP PRODUCTS

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0 0.1 0.2 0.3 0.4 0.5 Miles

City of Fort Collins GIS

Printed: August 10, 2011

ADDENDA
EXHIBIT B

VALUE ENHANCEMENT ZONE ANALYSIS
October 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	

ADDENDA
EXHIBIT C

QUALIFICATIONS OF W. WEST FOSTER

Education

M.S. Degree in Regional Economics, Colorado State University.
B.S. Degree in General Business, Colorado State University.
All of the basic courses required for the MAI designation given by the American Institute of Real Estate Appraisers; Course III (Rural Properties); Course IV (Litigation Valuation); Course VI (Real Estate Investment Analysis); Course VII (Industrial Valuation); Course 520 (Highest and Best Use and Market Analysis); Course 550 (Advanced Applications); and all Litigation courses offered in the Professional Development Program. This partial list of courses was all given by the Appraisal Institute or its predecessor organizations.
Principles of Real Estate Engineering, The Appraisal of Partial Acquisitions, and several relocation courses, given by the International Right of Way Association.
Management and Leasing of Shopping Centers, by the Institute of Real Estate Management.
Advanced Ranch Appraisal, by the American Society of Farm Managers and Rural Appraisers.
Seminars: Computer-Enhanced Cash Flow Modeling, Subdivision Appraisal, Uniform Appraisal Standards for Federal Land Acquisitions, plus numerous real estate seminars given by the American Institute of Real Estate Appraisers and later by the Appraisal Institute.

Memberships and Designations

Appraisal Institute: Designated Member (MAI)

1982 to 1986	- National Division of Curriculum
1986 to 1987	- National committee to write *The Appraisal of Real Estate*, 9th Edition
1987 to 1991	- Board of Examiners, General Demonstration Appraisal Reports
1987 to 1994	- Regional Member, Review and Counseling Division
1991 to 1994	- Regional Representative, Region II
1992 to 2008	- Contributor to *The Appraisal of Real Estate*, 10th through 13th Editions
1995	- National Vice Chair, Review and Counseling Division
1995	- Vice Chair, Region II and National Board of Directors
1996 to 1997	- Chair, Region II and National Board of Directors
1996	- National Chair, Ethics Administration Division
1997 to 2008	- National Chair, Professional Ethics and Counseling Committee

American Society of Real Estate Counselors: Counselor of Real Estate (CRE)

1994	- Vice Chair, Colorado Chapter
1995	- Chair, Colorado Chapter

International Right of Way Association: Senior Right of Way Professional (SR/WA)
Northern Colorado Commercial Association of Realtors
Certified General Real Estate Appraiser: State of Colorado, #CG00001795

Professional Experience

Foster Valuation Company: Fee Appraiser, April 1981 to present, specializing in valuation and counseling with respect to a variety of nonresidential properties.
Robert J. Mitchell, MAI, & Associates: Fee Appraiser, March 1976 to March 1981, specializing in rural and income property valuation.
Qualified in District and Federal Courts as an Expert Valuation Witness.

ADDENDA
EXHIBIT D

CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.

2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, conclusions, and recommendations.

3. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.

4. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

5. I have no bias with respect to any property that is the subject of this report or to the parties involved with this assignment.

6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.

7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal consulting assignment.

8. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.

9. I have made a personal inspection of the property that is the subject of this report.

10. No one provided significant real property appraisal or appraisal consulting assistance to the person signing this certification.

11. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

12. As of the date of this appraisal consulting report, I have completed the requirements of the continuing education program of the Appraisal Institute.

I estimate the reimbursement amounts to be based as shown on the attached Value Enhancement Zone Analysis, as of October 3, 2012, to be as shown in the attached:

October 3, 2012
Date

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

TOWN OF WINDSOR

ORDINANCE NO. 2012-1440

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 January 3, 2011, the City of Fort Collins ("City") and the Town of Windsor, Colorado, ("Town") entered into an intergovernmental agreement ("Original IGA") concerning, among other things, the reconstruction of the Interstate 25/State Highway 392 Interchange ("Interchange); and

WHEREAS, prior to the adoption of this Ordinance, the Town Board has approved a First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange (the "First Amended IGA") restating and reaffirming those provisions of the Original IGA that the City and the Town desire to remain in full force and effect; 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 First Amended 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, 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 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. 2012-1440, 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.

(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 and the Town 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 by 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. The Proximity Component of the fee is intended to reflect the relative benefit derived by each CAC Property from the construction of the Improvements, as determined by the Foster Study, while the Trip Generation Component of the fee is intended to reflect the relative traffic impacts of each CAC Property.

a. The Proximity Component of the fee for all Developed and Undeveloped Properties shall be in the amounts shown in the following spreadsheet except to the extent that: (i) the Town Manager or the Director of Finance adjusts the amount due for a particular CAC Property pursuant to an appeal taken under the Section 17-16-60; or (ii) the Town Manager, upon the recommendation of the Director of Finance, increases or decreases the amount due for a particular CAC Property to more accurately reflect the developable square footage of such parcel, and so notifies the affected Property Owner in writing no less than thirty (30) days prior to the date that the first installment of the Proximity Component is due under Section 17-16-30. These amounts represent each CAC Property's proportionate share of the sum of One Million Two Hundred Thousand Seventy-five Dollars ($1,275,000.00), which is one-half of the Property Owners' share of the Local Contribution.

Larimer County Parcel #	Owner	Gross Land Area	Developable Land Area	Total Fee/SF	Total Fee	Proximity Component of Fee
Zone A						
86154-05-001	Windsor Investments LTD	73,410	73,410	$0.28	$20,426	$10,213
86154-05-002	Windsor Investments LTD	73,324	73,324	$0.28	$20,402	$10,201
86154-07-001	Bank of Choice	55,889	55,889	$0.28	$15,551	$7,776
86154-07-002	Windsor Investments LTD	74,479	74,479	$0.28	$20,723	$10,362
86154-05-007	Business Park I of 392	49,185	48,185	$0.28	$13,686	$6,843
Zone A-1						
86154-05-003	Khuong Huong Tang, et al	26,196	26,196	$0.28	$7,289	$3,645
86154-05-004	Westgate Partners LLC	36,568	36,568	$0.28	$10,175	$5,088
86154-05-006	Westgate Partners LLC	60,807	60,807	$0.28	$16,919	$8,460
86221-45-002	Michael I. Maxwell, et eal	55,178	55,178	$0.28	$15,353	$7,677
86221-45-001	The Bailey Company	43,963	43,963	$0.28	$12,233	$6,117
86221-43-001	Schrader Properties, LLC	66,211	66,211	$0.28	$18,423	$9,212
86221-43-002	Taco Johns International Inc.	49,223	49,223	$0.28	$13,696	$6,848

86221-45-003	Former TCE, LLC	100,887	100,887	$0.28	$28,071	$14,036
86221-45-004	Westgate Hospitality LLC	96,118	96,118	$0.28	$26,744	$13,372
86221-47-001	Meyers 4701 LLC	152,444	152,444	$0.28	$42,417	$21,209
86221-43-003	Kindercare Learning Centers	78,003	78,003	$0.28	$21,704	$10,852
Zone B						
86154-06-001	Windsor Investments LTD	772,886	751,603	$0.21	$156,848	$78,424
86150-00-014	Yeager, Nancy L Trustee	786,783	733,135	$0.21	$152,994	$76,497
86154-08-001	Windsor Investments LTD	653,873	411,463	$0.21	$85,866	$42,933
86221-47-002	Poudre Valley Health Care Inc	995,327	909,734	$0.21	$189,847	$94,924
86220-00-003	Poudre Valley Health Care Inc	1,324,499	612,543	$0.21	$127,828	$63,914
Zone C						
86154-06-003	Windsor Investments LTD	126,260	41,132	$0.12	$4,769	$2,385
86154-06-004	Windsor Investments LTD	317,882	301,985	$0.12	$35,011	$17,506
86154-06-005	Windsor Investments LTD	291,695	291,695	$0.12	$33,818	$16,909
86154-06-006	Windsor Investments LTD	37,858	37,858	$0.12	$4,389	$2,195
86150-00-017	JBT Associate, LLC	1,767,708	1,531,613	$0.12	$177,569	$88,785
Zone D						
86220-00-004	Windsor Gold Coast LLC	2,544,953	2,320,656	$0.04	$107,619	$53,810
86150-00-021	Horton, Mary A/ET AL	1,555,303	1,053,650	$0.04	$48,862	$24,431
86100-00-016	Horton, Mary A/ET AL	1,030,219	610,402	$0.04	$28,307	$14,154
86100-00-011	Three T Investments LLLP	1,045,838	559,480	$0.04	$25,945	$12,973
86150-00-001	Three T Investments LLLP	1,444,331	1,063,279	$0.04	$49,309	$24,655
86100-00-002	Three T Investments LLLP	94,626	25,393	$0.04	$1,178	$589
86100-00-015	Horton Feedlots Inc.	1,625,207	1,155,561	$0.04	$53,588	$26,794
86150-00-020	Horton Feedlots Inc.	3,452,929	2,531,870	$0.04	$117,414	$58,707

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

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

(1) The Proximity Component of the fee shall be payable in equal quarterly installments, with the first such installment due and payable on or before March

31, 2013, and the last such installment due and payable on or before March 31, 2020.

(2) The Trip Generation Component of the fee shall also be payable in equal quarterly installments. 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.

(3) Interest on the foregoing payments shall accrue at the rate of 3.05% per annum from the effective date of this Ordinance until the principal amount of such payments has been paid in full.

Sec. 17-16-40. Limitation on Total Fee Collection.

Notwithstanding any provision of this Ordinance that may be construed to the contrary, in the event that the total amount of fee revenues paid to the City and the Town by or on behalf of the CAC Property Owners, either under the provisions of this Ordinance or under agreements executed pursuant to Section 17-16-80, equals or exceeds the sum of Two Million Five Hundred Fifty Thousand Dollars ($2,550,000.00), plus interest on said amount from the effective date of this Ordinance at the rate of 3.05% per annum, all CAC Property Owners shall be relieved of any further obligation to pay the fee imposed by this Ordinance, notwithstanding the fact that all or a portion of said fee may remain unpaid.

Sec. 17-16-50. 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 and be payable on such amount at the rate of ten percent (10%) per annum, 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. 17-16-60. 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. 17-16-70. 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 C.R.S. may conflict with the provisions of this Article, the provisions of this Article shall control.

Sec. 17-16-80. Payment by agreement.

(a) In lieu of paying the fee imposed by this Article according to the terms and conditions set forth 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 shall accrue or 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% per annum 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 agreement 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. 17-16-90. 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 22nd day of October, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

Introduced, passed on second reading, and ordered published this 13th day of November, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

M E M O R A N D U M

Date: October 22, 2012
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Stacy Johnson, Business Development Manager
Re: Eagle Crossing Subdivision Infrastructure Improvements Agreement - Retail Incentive
Item #: C.7.

Background / Discussion:

In October of 2012 Patrick McMeekin on behalf of Eagle Crossing Windsor, LLC made a request for incentives to attract two retail clients to the North East Corner of Crossroads Blvd. and Fairgrounds Ave. The request is for $642,341.82 in a public improvement infrastructure incentive to assist in securing a Summit Companies family entertainment center and a 7-11 Convenience and Gas station.

The family entertainment center is designed as an entertainment and recreation destination featuring a wide range of activities including bowling, laser tag and video games, as well as event and meeting facilities for corporate, family or other group events. The centers incorporate the latest in Brunswick equipment including automated scoring, bowling and automated bumpers for children, providing a unique experience for all family members at any age and skill level.

At approximately 49,000 square feet, these facilities are 50% larger than traditional bowling centers; with 50% more bowling lanes (36 lanes) and additional areas of entertainment such as laser tag, enhanced food and beverage areas and larger arcades. This is a proven concept with similar facilities in Denver, Chicago & Philadelphia.

7-11 have been leaders in the convenience store industry since 1927. They are more than just a convenience store – they are the world's largest convenience retailer. There are approximately 7,750 stores in the U.S. and Canada and more than 44,700 stores worldwide. The proposed location at Crossroads and Fairgrounds Avenue will be a convenience and gas store.

The benefit of these improvements would not only allow the family entertainment center and 7-11 to come to Windsor, but also open up three additional spaces for retail development on the North East (Windsor) corner of the Crossroads & Fairgrounds intersection. This would be an opportunity to capture some of the activity in this part of Windsor, the three remaining corners of this particular intersection are currently/continuing to be developed by the City of Loveland.

Financial Impact:

The proposed Eagle Crossing Subdivision Second Filing, Lot 1 and Lot 5 Infrastructure Improvements Agreement requires that the Town pay the cost of the improvements identified in

the attached Exhibits B and B-1. It should be noted that the storm water detention pond and related facilities are included in the $642,341.82 cost, but this storm water facility will not be dedicated to the Town; the Developer will retain the pond and responsibility for its maintenance. The public benefit to paying the construction cost of these storm water detention facilities is both a matter of public safety and economic development. This storm water facility is temporary; it will eventually be decommissioned as development occurs within the area, and all storm water will be routed to a developer-owned storm water facility sized to accept storm water flows.

See attached sheet of financial analysis; payback for the public infrastructure improvement incentive is approximately 2.72 years.

Relationship to Strategic Plan:

Diversify, Grow & Strengthen the Local Retail and Industrial Economy

Attachments:

Economic Analysis

Exhibit A

Cost Estimate (Exhibit B-1 from Public Improvement Agreement)

Site map (Exhibit B from Public Improvement Agreement)

Resolution Approving an Infrastructure Improvements Agreement Between the Town of Windsor and Eagle Crossing Windsor, LLC, for the Installation of Public Improvements and Reimbursement for the Cost Thereof, the Purpose of Which is to Encourage Retail Activity Within the Vicinity of Crossroads Boulevard and Fairgrounds Avenue

Eagle Crossing Subdivision Second Filing, Lot 1 and Lot 5 Infrastructure Improvements Agreement

Eagle Crossing Subdivision,

Second Filing Lot 1 & 5 Revenue

One Time Cost:

$642,341.82 (see conceptual opinion of probable cost Exhibit B-1)

Annual Revenue:

Entertainment Venue (Brunswick equipment but will be a different name for business):

Annual Sales tax (Total Revenue $5.3mil (Food &Beverage $2,593,734 x .03 tax)	$77,812.02
(estimated 3% growth rate & .002 for CRC not included)	
Annual Property Tax ($12mil x 29% = 3,480,000 x .012030 mill levy)	$41,864.40
(depreciation schedule not included)	

7-11:

Annual Sales Tax ($2mil x .03 tax)	$60,000.00
(estimated 3% growth rate not included)	
Annual Property Tax ($1mil x 29% = $290,000 x .012030 mill levy)	$3,488.70
(depreciation schedule not included)	

PIF:

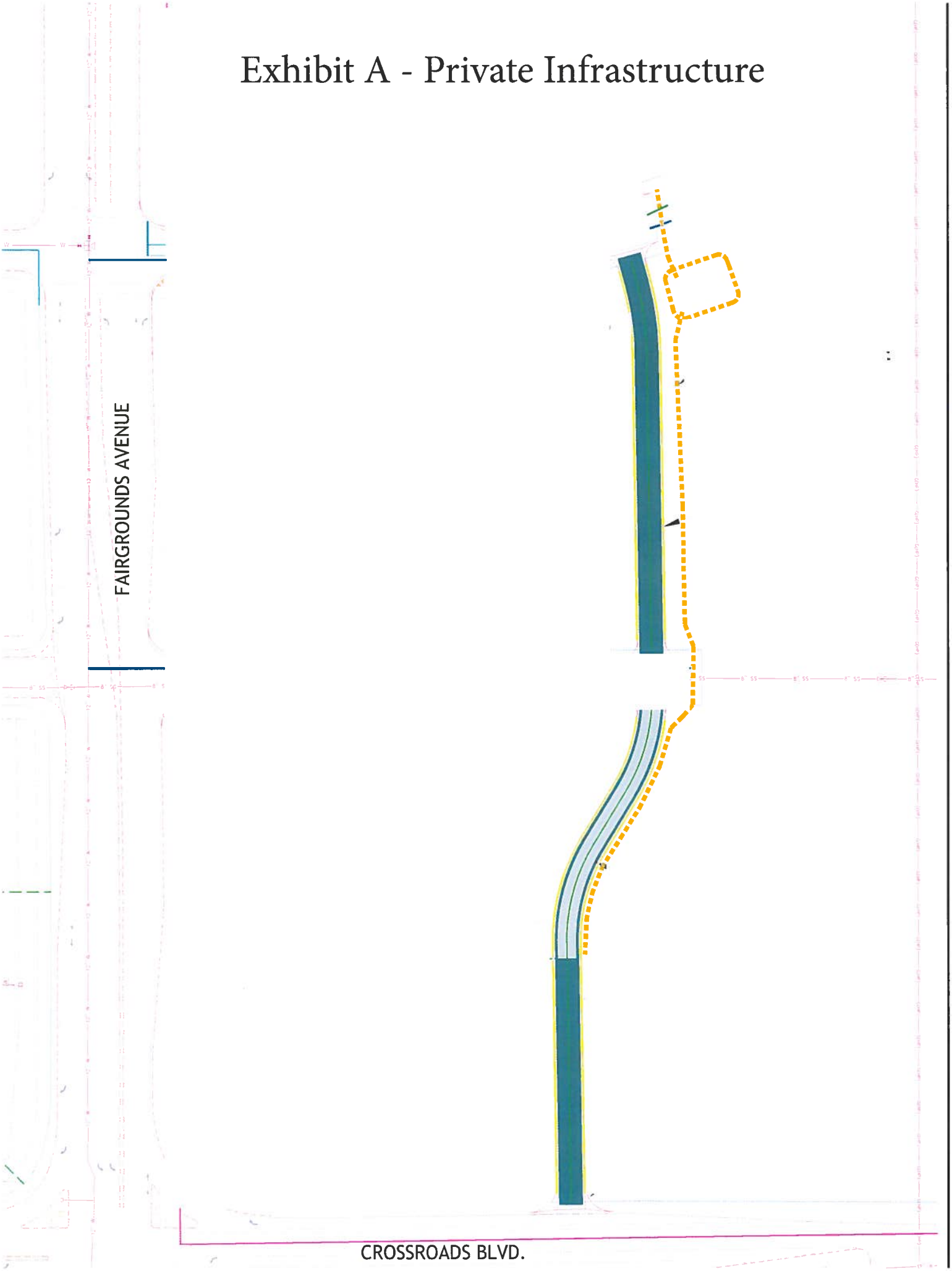
1% on Entertainment Venue total sales projections $5.3 million	$53,000 (years 1-3 only)
Annual Total	**$236,165.12**

Year 1 $236,165.12 ($19,680.42 per month)

Incentive Cost $642,641.82 / annual revenue $236,165.12 =

Payback 2.72 years approximately (2 years 9 months)

Exhibit A - Private Infrastructure



TST, INC. CONSULTING ENGINEERS

CONCEPTUAL OPINION OF PROBABLE COST

Client: Eagle Crossing Development

Date: January 9, 2012
Project No. 0732.0022.00
By: SAS

Project: Public Improvements

No.	Item	Quantity	Units	Unit Cost	Total
A. Crossroads Blvd. - North Side Improvements					
1	MOBILIZATION	1	L.S.	$5,000.00	$5,000
2	SAW CUT/REMOVE EXISTING ASPHALT (TIE IN)	745	L.F.	$2.50	$1,863
3	CLEAR AND GRUB (REMOVE & REPLACE 6" TOPSOIL)	593	C.Y.	$3.00	$1,778
4	EARTHWORK (ASSUME 1' OVER DISTURBED AREA)	1,185	C.Y.	$3.50	$4,148
5	INFLOW CURB & GUTTER	457	L.F.	$13.00	$5,941
6	10' CROSSPAN	1	EA.	$8,000.00	$8,000
7	SIDEWALK RETURNS W/ HANDICAP RAMP	2	EA.	$0.00	$0
8	6' SIDEWALK	400	L.F.	$0.00	$0
9	ASPHALT PAVING W/ BASE (5.5" HBP/7" ABC)	181	S.Y.	$26.00	$4,709
10	ASPHALT PATCHING ALONG CURB & GUTTER (5.5" HBP/7" ABC)	102	S.Y.	$26.00	$2,640
11	SUBGRADE PREP & STERILIZATION	283	S.Y.	$2.00	$565
12	PAVEMENT MARKINGS	1	L.S.	$4,000.00	$4,000
13	SIGNAGE	1	L.S.	$2,000.00	$2,000
14	STREET LIGHTS	2	EA.	$3,000.00	$6,000
15	TRAFFIC CONTROL	1	L.S.	$3,500.00	$3,500
16	EROSION CONTROL	1	L.S.	$1,500.00	$1,500
			SUBTOTAL		***$51,644***
	CONSTRUCTION CONTINGENCY (7% OF COSTS)			$	$3,615
			TOTAL COST	$	***$55,259***
B. Steeplechase Drive Improvements (540 L.F.)					
1	MOBILIZATION	1	L.S.	$2,000.00	$2,000
2	CLEAR AND GRUB (REMOVE & REPLACE 6" TOPSOIL)	866	C.Y.	$3.00	$2,597
3	EARTHWORK (ASSUME 1' OVER DISTURBED AREA)	1,620	C.Y.	$3.50	$5,670
4	12" WATERLINE & APPURTENANCES	654	L.F.	$70.00	$45,780
5	JOIN TO EXISTING WATERLINE IN FAIRGROUNDS AVE.	1	L.S.	$10,000.00	$10,000
6	8" SANITARY SEWER & APPURTENANCES	485	L.F.	$33.00	$16,005
7	4' DIA. SANITARY SEWER MANHOLE	6	EA.	$2,500.00	$15,000
8	DRAINAGE SWALE	100	L.F.	$10.00	$1,000
9	INFLOW CURB & GUTTER	953	L.F.	$13.00	$12,389
10	8' CROSSPAN	2	EA.	$5,000.00	$10,000
11	5' SIDEWALK	480	L.F.	$0.00	$0
12	SIDEWALK RETURNS W/ HANDICAP RAMP	4	EA.	$0.00	$0
13	ASPHALT PAVING W/ BASE (5.5" HBP/7" ABC)	3,032	S.Y.	$26.00	$78,823
14	SUBGRADE PREP & STERILIZATION	3,032	S.Y.	$2.00	$6,063
15	PAVEMENT MARKINGS	1	L.S.	$3,000.00	$3,000
16	SIGNAGE	1	L.S.	$1,500.00	$1,500
17	STREET LIGHTS	5	EA.	$3,000.00	$15,000
18	EROSION CONTROL	1	L.S.	$1,500.00	$1,500
			SUBTOTAL		***$226,328***
	CONSTRUCTION CONTINGENCY (7% OF COSTS)			$	$15,843
			TOTAL COST	$	***$242,170***
C. Stallion Drive Improvements (550 L.F.)					
1	MOBILIZATION	1	L.S.	$2,000.00	$2,000
2	CLEAR AND GRUB (REMOVE & REPLACE 6" TOPSOIL)	607	C.Y.	$3.00	$1,821
3	EARTHWORK (ASSUME 1' OVER DISTURBED AREA)	1,214	C.Y.	$3.50	$4,250
4	12" WATERLINE & APPURTENANCES	650	L.F.	$70.00	$45,500
5	JOIN TO EXISTING WATERLINE IN FAIRGROUNDS AVE.	1	L.S.	$10,000.00	$10,000
6	8" SANITARY SEWER & APPURTENANCES	0	L.F.	$33.00	$0
7	4' DIA. SANITARY SEWER MANHOLE	0	EA.	$2,500.00	$0
8	DRAINAGE SWALE	100	L.F.	$10.00	$1,000
9	INFLOW CURB & GUTTER	964	L.F.	$13.00	$12,532
10	6' CROSSPAN	2	EA.	$2,500.00	$5,000
11	4.5' SIDEWALK	950	L.F.	$0.00	$0
12	SIDEWALK RETURNS W/ HANDICAP RAMP	4	EA.	$0.00	$0
13	ASPHALT PAVING W/ BASE (5.5" HBP/7" ABC)	2,186	S.Y.	$26.00	$56,830
14	SUBGRADE PREP & STERILIZATION	2,186	S.Y.	$2.00	$4,372
15	PAVEMENT MARKINGS	1	L.S.	$2,000.00	$2,000
16	SIGNAGE	1	L.S.	$750.00	$750
17	STREET LIGHTS	5	EA.	$3,000.00	$15,000

TST, INC. CONSULTING ENGINEERS

CONCEPTUAL OPINION OF PROBABLE COST

Client: Eagle Crossing Development

Date: January 9, 2012
Project No. 0732.0022.00
By: SAS

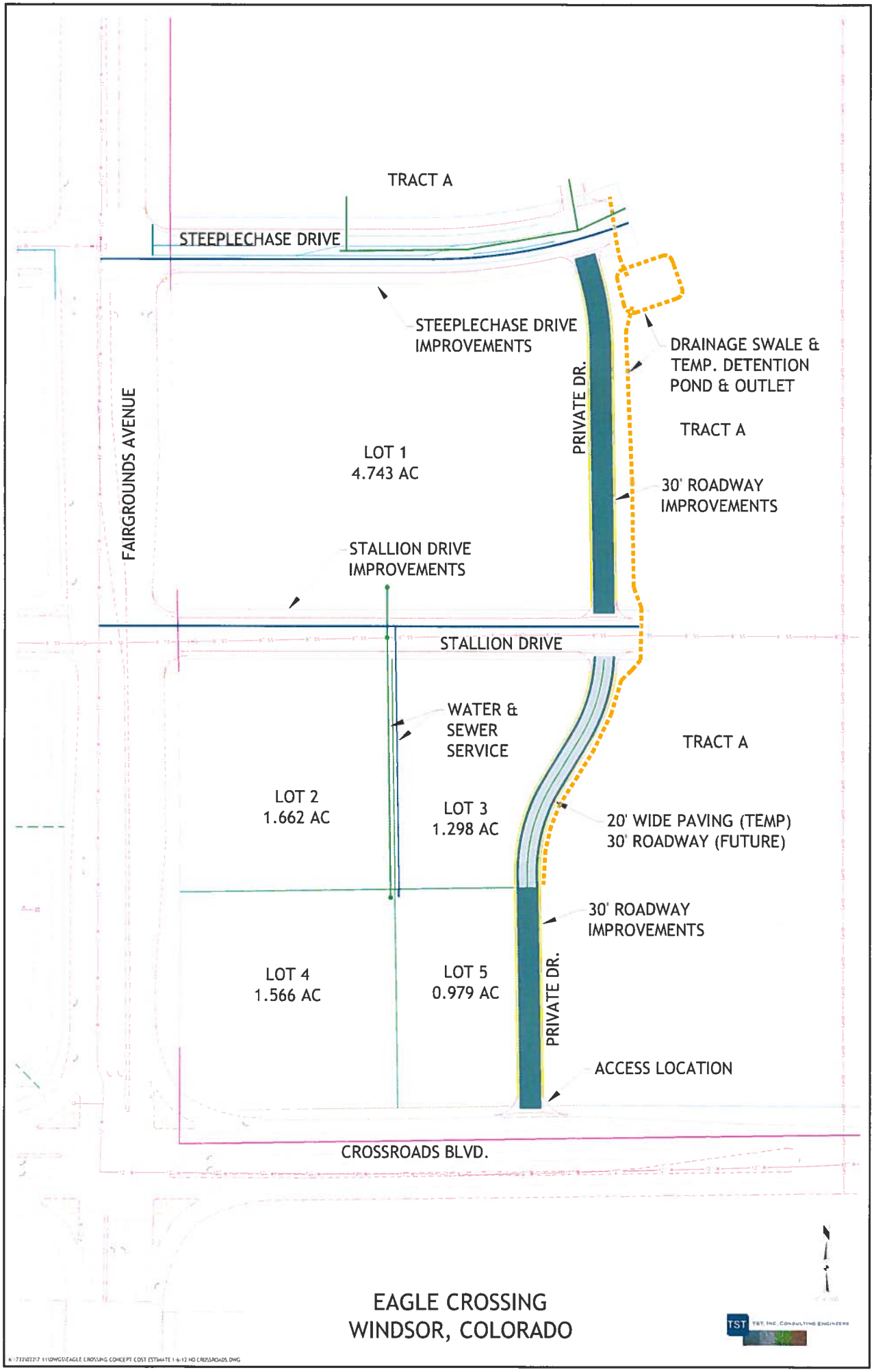
Project: Public Improvements

No.	Item	Quantity	Units	Unit Cost	Total
18	EROSION CONTROL	1	L.S.	$1,000.00	$1,000
			SUBTOTAL		*$162,055*
	CONSTRUCTION CONTINGENCY (7% OF COSTS)			$	$11,344
			TOTAL COST	$	*$173,399*
D. Site Grading, Drainage & Detention Pond					
1	MOBILIZATION	1	L.S.	$5,000.00	$5,000
2	CLEAR AND GRUB (REMOVE & REPLACE 6" TOPSOIL)	9,259	C.Y.	$3.00	$27,778
3	EARTHWORK (ASSUME 1' OVER DISTURBED AREA)	18,519	C.Y.	$3.50	$64,815
4	DRAINAGE SWALE	650	L.F.	$10.00	$6,500
5	DETENTION POND GRADING	3,000	C.Y.	$5.00	$15,000
6	DETENTION POND OUTLET & DISSIPATION STRUCTURE	1	L.S.	$20,000.00	$20,000
7	RESEEDING	11.00	AC.	$1,200.00	$13,200
8	EROSION CONTROL	1	L.S.	$8,000.00	$8,000
			SUBTOTAL		*$160,293*
	CONSTRUCTION CONTINGENCY (7% OF COSTS)			$	$11,220
			TOTAL COST	$	*$171,513*

SUMMARY

A. Crossroads Blvd. - North Side Improvements	*$55,259.18*
B. Steeplechase Drive Improvements (540 L.F.)	*$242,170.44*
C. Stallion Drive Improvements (550 L.F.)	*$173,399.13*
D. Site Grading, Drainage & Detention Pond	*$171,513.07*
	$642,341.83

This is an Opinion of Cost and supplied only as a guide. TST is not responsible for fluctuation in costs of material, labor, or unforeseen contin



EAGLE CROSSING
WINDSOR, COLORADO

EAGLE CROSSING SUBDIVISION
SECOND FILING, LOT 1 AND LOT 5
INFRASTRUCTURE IMPROVEMENTS AGREEMENT

THIS INFRASTRUCTURE IMPROVEMENTS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the TOWN OF WINDSOR, a Colorado home rule municipality ("Town") and EAGLE CROSSING WINDSOR, LLC, a Colorado limited liability company ("Developer").

WITNESSETH:

WHEREAS, the Developer seeks permission to subdivide and improve certain property within the Town, known as the Eagle Crossing Subdivision, Second Filing ("Subdivision" or "the Property"); and

WHEREAS, the Developer represents that it has an equitable or legal interest in the Property and that all other persons holding legal or equitable interest in the Property are bound by this Agreement; and

WHEREAS, The Developer has provided to the Town an Ownership and Encumbrance report from a title company to verify the ownership and any encumbrances associated with the Property; and

WHEREAS, the Developer has represented to the Town that, upon approval of the Minor Subdivision Plat, Developer intends that two lots within the Subdivision, presently individually identified as Lot 1 and Lot 5, will be occupied by national retail outlets; and

WHEREAS, the parties acknowledge that the intended retail operations upon Lot 1 and Lot 5, and each of them, are expected to generate sales tax and property tax revenue to the Town, thus creating a general benefit to the public; and

WHEREAS, in agreeing to its undertakings as set forth herein, the Town is relying upon the Developer's representation that infrastructure improvements to the Subdivision will bring about retail activity upon Lot 1 and Lot 5; and

WHEREAS, the Town and the Developer are entering into this Agreement regarding the Subdivision and certain infrastructure improvements serving Lot 1 and Lot 5 within the Subdivision, in order that retail activity may take place within the Subdivision and, thus a public benefit will occur; and

WHEREAS, this Agreement is also executed for the purpose of assuring the completion of certain infrastructure improvements necessary for the development of Lot 1 and Lot 5, and each of them, within the Subdivision, including but not limited to streets, water infrastructure and sewer

infrastructure, and the protection of the Town from the ultimate cost of completing the said certain infrastructure improvements; and

WHEREAS, this Agreement is not executed for the benefit of materialmen, laborers, or others providing work, services, or material to the Subdivision or for the benefit of lot buyers in the Subdivision; and

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by the statutes of the State of Colorado and the ordinances of the Town of Windsor; and

WHEREAS, the Developer has submitted a Minor Subdivision Plat for the subdivision of the Property; and

WHEREAS, upon completion of all applicable reviews and approvals, the Town has or shall contemporaneously herewith submit for recordation the aforesaid Minor Subdivision Plat to the Clerk and Recorder's Office in Larimer County, Colorado; and

WHEREAS, the Town seeks to protect the health, safety and general welfare of the community by providing for the completion of various improvements in the Subdivision, thereby limiting the harmful effects of substandard subdivisions, including premature subdivisions, which leaves property undeveloped and unproductive; and

WHEREAS, in conjunction with the Minor Subdivision Plat, the Developer has submitted a Public Improvement Plan for certain infrastructure improvements necessary for the development of Lot 1 and Lot 5, and each of them, within the Subdivision which has been reviewed and approved by the Town's Director of Engineering; and

WHEREAS, the aforesaid Minor Subdivision Plat and Public Improvement Plan were approved by the Town; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, payments, and performances of the parties, it is mutually agreed as follows:

PREAMBLE

The Town and the Developer agree that the aforesaid recitals are true and correct, and those recitals are hereby incorporated into the body of this Agreement.

ARTICLE I

PROVISION FOR CERTAIN INFRASTRUCTURE IMPROVEMENTS

1. **Intent of the Parties:**

In order to achieve the development of the Property and for the provision of public services, public uses, and infrastructure, all in the promotion of the health, safety and welfare of the Town and its citizens, the parties desire to enter into this Agreement relating to the Subdivision in conformance with the provisions of the *Windsor Municipal Code* and Colorado law.

2. **Infrastructure Improvements:**

Subject to all conditions set forth in this Agreement, the Developer shall construct and install those subdivision infrastructure improvements listed and identified on "Exhibit B," attached hereto and incorporated herein by this reference and otherwise illustrated on the Public Improvement Plan approved by the Town ("Public Improvements"). The Developer's obligation to undertake the Public Improvements will arise upon the execution of this Agreement.

Developer has retained the services of a civil engineering firm ("TST"), which firm has prepared or will prepare drawings, specifications and bid documents acceptable to the Town for use in design, bidding, construction management and construction of the Public Improvements. The cost of all services performed by TST in furtherance of this Agreement shall be paid solely by the Developer without reimbursement by the Town.

Additionally, Developer has retained the services of TST for the purpose of preparing drawings and specifications for the construction of infrastructure serving Lot 1 and Lot 5, and each of them, which infrastructure is not intended for dedication to public ownership or maintenance ("Private Infrastructure"). With the exception of the costs associated with the detention pond and related structures described in Exhibits B and B-1, the Private Infrastructure is described and set forth in Exhibit A, incorporated herein by this reference as if set forth fully, and has been reviewed by the Town for accuracy. With the exception of "hard" construction costs associated with the detention pond and related structures described in Exhibits B and B-1, the Town will bear no cost associated with the design, construction, construction management or maintenance of Private Infrastructure within the Subdivision.

3. **Cost Estimates:**

Attached hereto and incorporated herein as "Exhibit B-1" is the Developer's estimate of costs for the construction of the Public Improvements. These estimates have been reviewed and approved by the Town's Director of Engineering. The Developer has represented to the Town that Exhibit B-1 represents the anticipated fair market cost for completion of the Public Improvements, and the Town has relied upon such representations as an inducement to enter into the reimbursement provisions of the within Agreement.

4. **Waiver of Security for Completion of Public Improvements:**

The parties recognize that the Town ordinarily requires the posting of adequate security to assure the completion of public improvements within subdivisions. However, in this instance, the parties agree that the consequences for Developer's inability or failure to complete the Public Improvements will fall primarily on Developer and the intended owners of Lot 1 and Lot 5, and each of them. Therefore, no security will be required for the completion of Public Improvements constructed in accordance with this Agreement.

5. Conditions for Commencement of Public Improvements and Private Infrastructure:

Prior to undertaking any construction activity with respect to the Public Improvements or Private Infrastructure under this Agreement, the Developer shall comply in full with each of the following conditions:

a. **Mylar Drawings.** The Developer shall provide to the Director of Planning the required number of copies of the translucent original mylar drawings of the Subdivision Plat pursuant to the Windsor Municipal Code to be recorded in the office of the County Clerk and Recorder, as well as the complete set of translucent original mylar utility and drainage plan drawings. The mylars shall include signatures as required. Reproduction mylars, dark-colored or tinted mylars and sepias will not be accepted.

b. **Electronic Copy of Drawings.** The Developer shall provide to the Director of Planning a certified copy of a compact disc (CD) or other electronic data storage format as approved by the Town which shall contain the information exactly as is contained within the Subdivision Plat as finally approved by the Town. The CD shall be (1) formatted and certified in accordance with the Town's requirements, and (2) first approved by the Town's Geographic Information Systems (GIS) technician. Any Compact Disc (CD) or other approved digital media submitted pursuant to this Article shall conform to all requirements of the Town's then-current Electronic Document Submittal Standards, a copy of which are maintained by the Director of Planning. Incomplete or inaccurate CDs and CDs that are not certified will not be accepted.

c. **Street Lighting and Street Lighting Plan.** The Developer shall submit three (3) copies of the street lighting plan for the Subdivision to the Town, and said street lighting plan shall be reviewed and approved by the Town Engineer prior to the construction of electrical utilities. The Town shall not be responsible for reimbursement of any costs, deposits or effort associated with the installation of street lights within the Subdivision.

d. **Competitive Bidding**. With respect to all Public Improvements for which reimbursement is provided under this Agreement, the Developer shall publicly solicit proposals from qualified firms, the purpose of which will be the selection of the lowest responsive and responsible bidder to undertake completion of the Public Improvements. Prior to awarding any contract for the Public Improvements, the Developer shall provide the Town with the final Tabulation of Bids reflecting bidder cost proposals for the Public

Improvements. Any construction costs associated with such plans which deviate from Exhibits B or B-1 shall be subject to approval by the Town. Such approval shall be a condition of and obtained from the Town before award of the construction contract for Public Improvements. The bidding process, including notice, bidder evaluation and bid award, will generally comply with the requirements for competitive bidding under Chapter 4, Article V of the Windsor Municipal Code.

e. **Insurance.** The Developer shall require the chosen contractor to obtain the insurance required under this sub-section, otherwise comply with this sub-section, and receive approval from the Town as to the form and amount of such insurance. The chosen contractor shall maintain such insurance during the term of all construction activity undertaken pursuant to this Development Agreement. The insurance shall name the Town as an additional insured, and coverage shall extend to the Town, its electives and appointive boards, commissions, officers, agents, employees, and representatives, and to the Developer and each contractor and subcontractor performing work on the improvements.

(i) **Workers' Compensation Insurance**. The Developer shall require the chosen contractor to provide Workers' Compensation insurance for the contractors' or subcontractors' respective employees. The Developer agrees to indemnify the Town for all damages, loss, attorney fees and other expenses resulting from the Developer's failure to comply with the requirements of this section.

(ii) **Public Liability and Property Damage Insurance**. The Developer shall require the chosen contractor to maintain public liability insurance in an amount of not less than two million dollars ($2,000,000.00) to any one person and subject to the same limit of any one occurrence.

(iii) **Evidence of Insurance**. Concurrently with the execution of this Development Agreement, the Developer shall furnish the Town satisfactory evidence of the insurance required, including at the Town's sole election, copies of insurance policies and endorsements. The Developer shall also provide evidence that the insurance carriers are required to give the Town at least ten (10) days' prior written notice of the cancellation or reduction in coverage of any insurance policy required hereunder.

f. **Dedication of Street Right-of-Way**. Developer shall dedicate public streets within the Minor Subdivision Plat by separate Deed of Dedication in a form acceptable to the Town, which public streets shall be identified by specific tracts within the Subdivision Plat.

6. Stormwater Management Plan:

All construction activities must comply with the State of Colorado permitting process for

"Stormwater Discharges Associated with Construction Activity." Prior to the beginning of construction activities, the Developer shall provide one (1) copy of the Stormwater Construction Permit required by the Colorado Department of Health and Environment – Water Quality Control Division for all construction disturbing one acre or more inclusive of any construction phasing. Additionally the Developer shall provide one (1) copy of the Stormwater Management Plan required as part of the Stormwater Construction Permit.

7. Construction Standards and Specifications:

Developer shall construct and install all Public Improvements in accordance with the public improvement plans approved by the Town and all applicable provisions of the Windsor Municipal Code.

8. Notice to Mineral Estate Owners and Certification Thereof:

The Developer acknowledges that it has complied with the notification requirements of § 10-11-123, C.R.S., by providing notification to mineral estate owners, and by thereafter certifying to the Town, pursuant to § 24-65.5-103, C.R.S.

9. Provision for Other Improvements Within the Subdivision:

It is understood that the Public Improvements set forth in Exhibit B are intended to primarily serve Lots 1 and 5 of the Subdivision. The provision of any other or further public improvements serving other lots or sites within the Subdivision shall be provided for within future Subdivision Development Agreements or Site Plan Development Agreements for each site or lot within the Subdivision, and the cost of which shall be borne by either the Developer or the tenant or purchaser of the lot or site for which Site Plan approval is sought. The Town shall bear no cost associated with such improvements. Such future Subdivision Development Agreements or Site Plan Development Agreements shall provide for the construction of public improvements to serve each such site or lot, or to serve the need for public infrastructure within the Subdivision as a whole, each as may be deemed necessary by the Town.

10. Commencement and Completion Periods:

Following notification of bid award as provided in Section 5 (d) above, the Developer shall: (a) notify the Town in writing of the commencement date; (b) commence construction of the public improvements on said date; and (c) shall, absent weather delays as provided for herein, endeavor to complete the said Public Improvements within seventy-two (72) days of commencement. Should weather interfere with the completion of the Public Improvements, the Town's Director of Engineering may, in his sole discretion, extend the date of completion to accommodate any such weather-related delays.

11. Construction Acceptance of Public Improvements and Warranty Period:

Upon completion of construction of all Public Improvements in accordance with the terms and conditions of this Agreement, the Developer shall submit a written request of Construction Acceptance of all public improvements to the Director of Planning. Within a reasonable time following such written request by the Developer, but in no event more than thirty (30) days thereafter, the Town shall inspect the improvements in accordance with the relevant provisions of the Windsor Municipal Code. Upon Town inspection and confirmation that the Developer has complied with all Town Construction Acceptance requirements, the Town shall issue a letter or Certificate of Construction Acceptance. Before obtaining Construction Acceptance of any improvement, the Developer shall present to the Town valid lien waivers, or an alternative thereto acceptable to the Town, from all persons providing materials or performing work on the improvements for which certification is sought. Certification by the Town for Construction Acceptance purposes does not constitute a waiver by the Town of the right to require Developer compliance with the Town's Construction Standards and Specifications as a result of defects in or failure of any improvement that is detected or that occurs following such certification. The Warranty Period shall commence upon the date certification of Construction Acceptance is issued by the Town.

The Town shall provide timely notice to the Developer whenever inspection reveals that an improvement does not conform to the Construction Standards and Specifications of the Town, is not constructed in accordance with the approved public improvement plan, or is otherwise defective. The Developer shall have thirty (30) days from the issuance of such notice to cure or substantially cure the defect. The Town may not declare a default under this Agreement during the 30-day cure period on account of any such defect unless it is clear that the Developer does not intend to cure the defect or, because of health, safety and welfare concerns, the Town deems it necessary to act immediately.

The Developer warrants that the improvements, each and every one of them, will be free from defects for a period of one (1) year from the date of construction acceptance by the Town. Said period is hereinafter referred to as "Warranty Period." The Developer shall be responsible for the maintenance and repair of all improvements during the Warranty Period.

12. Final Acceptance of Dedication, Public Improvements:

In accordance with the provisions of the Windsor Municipal Code concerning final acceptance, the Town shall finally accept the dedication of any validly-certified improvement within thirty (30) days of the Developer's offer to finally dedicate the improvement. No offer of final dedication shall occur until the expiration of the Warranty Period described herein. The Town's final acceptance of dedication is expressly conditioned upon Developer providing sufficient evidence that there are no liens, encumbrances, or other restrictions on the improvement unacceptable to the Town in its reasonable judgment. The Town shall not accept dedication of the detention pond and related structures, even though such items are included in Exhibits B and

B-1, and Developer agrees that such items are for maintenance purposes considered Private Infrastructure not intended for dedication to public use.

13. Issuance of Building Permits for Lot 1 and Lot 5:

No building permit shall be issued by the Town for either Lot 1 or Lot 5 until the following conditions have been met and satisfied:

a. Presentation to the Town of evidence satisfactory to the Town that the Developer has provided adequate water rights and paid sufficient water plant investment fees to the Fort Collins-Loveland Water District to insure domestic water service to the Subdivision.

b. Developer's compliance with all applicable rules and regulations of the Fort Collins-Loveland Water District with regard to domestic water service to be provided to the Subdivision.

c. Presentation to the Town of evidence satisfactory to the Town that the Developer has paid sufficient sewer plant investment fees to the South Fort Collins Sanitation District to insure sanitary sewer service to the Subdivision.

d. Developer's compliance with all applicable rules and regulations of the South Fort Collins Sanitation District with regard to sanitary sewer service to be provided to the Subdivision.

e. Payment in full of all building permit fees, impact fees, and all other development fees and charges in effect at the time the building permit application is deemed complete. Such fees and charges shall include, but shall not be limited to, storm drainage fees, and road impact fees.

f. Removal of all existing overhead utility lines and poles within and directly adjacent to Lots 1 and 5, and relocation of all utility service lines underground.

g. Sufficient assurance that the utility easement dedication requirements of the South Fort Collins Sanitation District and the Fort Collins-Loveland Water District have been met, either by Plat dedication or by separate instrument.

h. A certificate of compliance from a licensed engineer or surveyor, evidencing that the storm water detention pond(s) have been constructed in accordance with the approved plans and drainage report, including but not limited to outlet structure size and elevation and pond volume.

i. Confirmation in writing from the Windsor-Severance Fire Rescue District ("Fire District") that an emergency and access and fire flow plan has been approved for all sites within which construction activity will take place within both Lot 1 and Lot 5 of the

Subdivision prior to issuance of a Certificate of Occupancy for either of said lots. Said confirmation shall contain details of both the emergency access and fire flow plans, in order that the Town may be aware of their particulars.

14. Issuance of Certificates of Occupancy:

No certificates of occupancy shall be issued by the Town for Lot 1 or Lot 5 within the Subdivision until:

(a) All applicable terms and conditions of any Site Plan approvals (including applicable provisions of any specific Site Plan Development Agreement) with respect to such lot or site have been satisfied; and

(b) The Developer has provided as-built drawings of all Public Improvements and Private Infrastructure;

(c) Presentation of satisfactory evidence to the Town Engineer that all of the street lights shown in the street lighting plan for the Subdivision as outlined in paragraph 5(c) of this Agreement have been installed and are fully operational;

(d) In accordance with the Town's specifications, completion of any trails which are located on the specific Lot for which a Certificate of Occupancy is being sought and which are intended for dedication to the Town.

(e) Construction Acceptance of all Public Improvements in accordance with the terms and provisions of this Agreement. This shall include all improvements, whether or not such improvements are scheduled for dedication to the Town under the terms and conditions of this Agreement;

15. **Other Conditions of Development:**

The following additional conditions of development shall be deemed a covenant running with the land:

a. **Landscape maintenance**: The Developer, its successors and/or assigns in interest, owners association or other entity other than the Town is responsible for maintenance and upkeep of entry features, walls, landscaping and landscaped areas and sidewalks between all paved streets (whether public or private) and each lot within the Subdivision. The Developer, its successors and/or assigns in interest, or some other entity other than the Town, agree to the responsibility of maintaining all other open space areas associated with the Subdivision including, but not limited to, storm drainage facilities, detention ponds and detention areas, open space tracts and storm water detention facilities.

b. **Drainage maintenance**: With respect to storm water detention facilities constructed pursuant to this Agreement, Developer shall be responsible for maintenance of such facilities in perpetuity. Developer's maintenance obligation under this sub-section may be assigned to another Developer or association or metropolitan district with the Town's prior written consent, which consent will not be unreasonably withheld or unreasonably conditioned. With respect to storm drainage facilities constructed pursuant to Site Plan Development Agreements within the Subdivision, each property respective owner within the Subdivision shall in perpetuity be responsible for maintenance of all storm drainage facilities installed pursuant to such Site Plan Development Agreement(s) for each respective lot or site within the Subdivision. Requirements include, but are not limited to maintaining the specified storm water detention/retention volumes, maintaining outlet structures, flow restriction devices and facilities needed to convey flow to the storm water basins. The Town shall have the right to enter properties to inspect said facilities at any time. If these facilities are not properly maintained, such failures may, in addition to any and all available legal and equitable remedies and at the Town's sole election, be addressed pursuant to Chapter 7, Article VIII of the Windsor Municipal Code.

c. **Commercial, industrial and multi-family landscaping maintenance:** The Developer, its successors and/or assigns in interest, owners association or other entity other than the Town, upon the issuance of any certificate of occupancy for any commercial, industrial or multi-family lot or lots, shall in perpetuity be responsible for maintaining any landscaping located thereon in compliance with the approved landscape plan for such lot or lots.

d. **Town not responsible**: With the exception of trees in public places as provided in Section 7-4-50 of the Windsor Municipal Code, the Town shall not have any responsibility for the perpetual maintenance and upkeep of entry features, walls, landscaping and landscaped areas and all other open space areas associated with the Subdivision including, but not limited to, storm drainage facilities, detention ponds and detention areas, irrigation systems, open space tracts and storm water detention facilities. Developer, either itself or through its successors and/or assigns in interest, owners association, or other capable entity, shall assure such perpetual maintenance and upkeep.

e. **Existing underground drainage facilities**. To the extent existing underground drainage facilities are proposed for integration into Developer's approved storm drainage facility improvement plans, such existing underground facilities will be preserved and maintained by the Developer, its successors and/or assigns in interest, owners association or other entity other than the Town. Even if Developer does not propose to integrate existing underground drainage facilities into Developer's approved storm drainage plans, Developer agrees to repair and restore any damage done to such underground drainage facilities by Developer or its agents during the construction of public improvements by parties other than the Town as required in this Agreement or as required in any Site Plan Development Agreement applicable to any lot or site within the Subdivision.

f. **I-25 Corridor Plan Design Standards.** Future development of all blocks, tracts and lots shall be subject to the I-25 Corridor Plan Design Standards and the design criteria and development standards contained in the Windsor Highlands Ninth Annexation agreement through the site plan process.

16. Compliance with Law:

When fulfilling its obligations under this Agreement, the Developer shall comply with all relevant laws, ordinances, and regulations in effect at the time of final subdivision plat approval. When necessary to protect the public health, safety and welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final plat approval.

17. **Dedication not required:**

The parties acknowledge that the Private Infrastructure are not scheduled for dedication to the Town, which improvements shall be specifically identified in applicable site plan approvals and related agreements approved by both parties with respect to individual lots or sites within the Subdivision. The Developer, its successors and/or assigns in interest, owners association or other entity other than the Town is responsible for maintenance and upkeep of the Private Infrastructure. The parties acknowledge that the storm water detention pond and related facilities, although set forth in Exhibits B and B-1, are not intended for dedication to public use.

ARTICLE II

THE TOWN'S OBLIGATIONS

19. Plat Approval, Site Plan Approval, Improvement Plan Approval:

The Town will grant final Subdivision Plat approval to the Subdivision under the terms and conditions consistent with all relevant Colorado laws and provisions of the *Windsor Municipal Code* in effect at the time of final Subdivision Plat approval.

The Town will grant final Site Plan approval for Lot 1 and Lot 5 prior to March 1, 2013, so long as complete Site Plan submittals for each such lot are received by the Town on or before December 31, 2012.

The Town will grant final approval to the detailed plans depicting all Public Improvements prior to March 1, 2013, so long as completed improvement plans are received by the Town on or before December 31, 2012.

20. Town's Obligation to Reimburse Certain Costs of Public Improvements:

In recognition of the general public benefit brought about by retail activity within the Subdivision, particularly the retail activity anticipated within Lot 1 and Lot 5, and subject to all requirements of this Agreement, the Town will pay directly to the chosen contractor certain costs associated with the construction of the Public Improvements. During construction of the Public Improvements, the Developer will tender for review and approval periodic applications for payment fully completed and signed by chosen contractor describing the work completed, and accompanied by such supporting documentation as may be requested by the Town. Such periodic applications shall not occur more frequently than monthly. The Town shall, within twenty (20) days of receipt of the contractor's completed application for payment, pay an amount equal to ninety-five percent (95%) of the requested payment, with the remaining five percent (5%) held as retainage and subject to disbursement as provided in this paragraph. Upon final acceptance of all Public Improvements, the Town shall within ten (10) days pay to the contractor the retainage accumulated under this paragraph.

The Town's obligation to pay said certain Public Improvements costs shall arise at such time as each and every one of the following conditions have been met:

a. Developer has executed this Agreement; and

b. Developer has executed the Assignment of Developer's rights to any Project Improvement Fee revenue as required by paragraph 22 of this Agreement; and

c. Developer has provided the Town with complete and satisfactory evidence that the construction of the Public Improvements has been competitively bid as provided in Section 5 (d) above; and

d. Developer has provided the Town with satisfactory evidence that Developer has secured a contract for the sale of Lot 1 Developer and Summit Companies, under which Summit Companies is obligated to purchase Lot 1 of the Subdivision, with a closing date scheduled for no later than March 30, 2013; and

e. Developer has provided the Town with satisfactory evidence that Developer has secured a contract for the sale of Lot 5 between Developer and Verdad Real Estate, under which Verdad Real Estate is obligated to purchase Lot 5 of the Subdivision, with a closing date scheduled for no later than March 30, 2013; and

f. The Town has received satisfactory evidence that, with the exception of the storm water detention pond and related facilities described in Exhibit B and Exhibit B-1, both Summit Companies and the corporate parent of 7-11 Stores have each committed to construction of the Private Infrastructure, whether in the form of a Site Plan Development Agreement or other written undertaking approved by the Town; and

g. The Developer has presented to the Town evidence that any lender or secured creditor to whom any portion of the Subdivision is pledged as collateral for any undertaking by Developer or any third party has in writing agreed to subordinate to any lien established pursuant to Section 23 of this Agreement.

The requirement for March 30, 2013, closing dates under either sub-section (e) or (f) of this Section 20, and each of them, may be extended with the Town's advance written consent.

21. Limitation on Town's Obligation to Pay Certain Costs of Public Improvements:

The parties hereby acknowledge that the Town's obligation to pay the cost of constructing the Public Improvements shall in no event exceed Six-Hundred Forty-Three Thousand Dollars ($643,000.00).

Should the actual cost of the Public Improvements, as reported by the Developer and approved by the Town, be less than the maximum amount set forth in this Section 21, the Town's obligation shall be limited to the actual cost. In no instance shall such amounts include costs for site-related improvements or other improvements attributable to the Developer as impacts of current or future development. The Town's obligation for payment shall extend only to those "hard" costs associated with construction of the Public Improvements as described within Exhibit B-1. In no instance shall such amounts include "soft" costs, such as civil engineering or design work performed by TST or any other third party.

It is understood and agreed, that should Developer refer for payment amounts in excess of those set forth above as the Town's maximum obligation, authority for the payment of such amounts shall require specific approval by the Windsor Town Board. Absent such approval, Developer shall be solely responsible for any payment amounts in excess of those set forth above as the Town's maximum obligation.

22. Assignment of Project Improvement Fee (PIF):

Developer acknowledges that on March 4, 2011, a Declaration of Covenants Imposing and Implementing a Project Improvement Fee ("Declaration") was recorded in the books and records of Larimer County, which Declaration is incorporated herein by this reference as if set forth fully. The Declaration imposes a requirement that certain economic activity within the Subdivision shall be subject to a Project Improvement Fee ("Fee"). Said Fee is payable to the Developer in accordance with the Declaration.

Simultaneously with its execution of the within Agreement, Developer will execute an Assignment of Project Improvement Fee Revenue in the form attached hereto as Exhibit D. Developer or its agent, in consideration of the Town's reimbursement of Public Improvement costs as set forth herein, agrees to serve as a fiduciary and remit all Fee revenue to the Town for a period of three (3) years. As used in this Agreement and Exhibit D, "Fee revenue" shall mean one percent (1%) of any exchange of goods or services for money or other media of exchange, including all sales by a

Retailer (as defined in the Declaration) of tangible personal property or services initiated, consumed, conducted, transacted or otherwise occurring from or within Lot 1 of the Subdivision. Subject to the terms of Exhibit D, the three (3)-year assignment of Fee revenue shall take effect at such time as the Summit Companies facility proposed for Lot 1 is fully open for public business ("Summit Companies Opening Date"), and shall conclude at 11:59 p.m. on the third anniversary of the Summit Companies Opening Date.

The Town shall have no responsibility for the collection of any assigned Fee revenue from any Retailer, except in conjunction with a default in payment by the Retailer as more-fully described in Exhibit D. In keeping with the terms of the Declaration, Developer or its agent shall be required to collect all Fee revenue and shall remit such collections to the Town on a calendar-year quarterly basis without deductions or offsets, commencing the first calendar quarter-year following the Summit Companies Opening Date as set forth in this Section. The Town shall have the independent right to audit retail activity within Lot 1 of the Subdivision during the term of the three (3)-year assignment, and for a period of six (6) months following its expiration. The Town, as assignee, shall have the same rights to Retailer reports and data as the PIF Collection Agent and the PIF Recipient under the Declaration.

23. Town's Right To Reimbursement of Public Improvement costs:

The Town, by undertaking to pay the cost of certain Public Improvements within the Subdivision as provided herein, is relying upon the Developer's representations as to the public benefit to be derived from retail activity within the Subdivision, including but not limited to economic activity associated with the retail activity associated with the Summit Companies facility and the 7-11 store. In the event either the Summit Companies facility or the 7-11 store shall, despite their execution of enforceable contracts for the purchase of Lot 1 and Lot 5, respectively, fail or refuse to commence retail activity by November 1, 2013, within Lot 1 or Lot 5 of the Subdivision, respectively, Developer acknowledges that the economic activity (and, thus, the public benefit) upon which the Town has relied in undertaking the Public Improvements will not come to pass as represented by Developer. The parties further acknowledge that, in such event, the Town will suffer damages, which damages will be practically impossible to prove with sufficient certainty in the event of litigation. Accordingly, Developer agrees in the event that, despite the execution of enforceable contracts for the purchase of Lot 1 and Lot 5, respectively, either Summit Companies or 7-11, or both Summit Companies and 7-11 shall by November 1, 2013, fail to commence retail activity upon Lot 1 or Lot 5, respectively, the Developer will reimburse the Town in the total amount paid by the Town for Public Improvements pursuant to this Agreement ("Reimbursement Amount"). Such reimbursement shall be payable in full at such time as Developer or the owner of any property within the Subdivision seeks any Town approval of whatever nature (including but not limited to site plan approvals and building permit approvals) for any location within the Subdivision, or by February 29, 2016, whichever occurs sooner. Such reimbursement shall be deemed liquidated damages for the Town's losses associated with the loss of the public benefit upon which this Agreement is based.

The November 1, 2013, date set forth in this Section may be extended with the Town's advance written consent. In the event that the Town consents to an extension of the November 1, 2013, date set forth in this paragraph, Developer shall pay interest on the reimbursement amount for the period of any such extension at a rate determined by adding two percent (2%) to the Town's rate of return for pooled investments as of November 1, 2013.

Further, in the event the Covenant is for any reason invalidated or declared unenforceable for any reason, the Developer will reimburse the Town in the total amount paid by the Town for Public Improvements pursuant to this Agreement. Such reimbursement shall be payable at such time as Developer or the owner of any property within the Subdivision seeks any Town approvals (including but not limited to site plan approvals and building permit approvals) for any location within the Subdivision, or by February 29, 2016, whichever occurs sooner. Such reimbursement shall be deemed liquidated damages for the Town's losses associated with the loss of the public benefit upon which this Agreement is based.

The Town's right to reimbursement under this Section 23 shall constitute a first lien upon all real property situated within the Subdivision.

SECTION III
GENERAL TERMS

24. Events of Default:

The following conditions, occurrences or actions shall constitute a default by the Developer:

a. The Developer's failure to reimburse the Town as provided in Section 23 above;

b. The Developer's failure to remit all or any portion of the Fee as required in Section 22 above;

c. The Developer's failure to pay liquidated damages as provided in Section 23 above;

d. The Developer's insolvency, the appointment of a receiver for the Developer, or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; and

e. Foreclosures of any lien against the Property, or a portion thereof, or assignment or conveyance of the Property in lieu of foreclosure, unless such conveyance has been approved by the Town in writing, prior to the transfer and subject to such conditions as the Town may deem appropriate.

The Town may not declare a default until written notice has been given to the Developer.

25. Governmental Immunity:

Notwithstanding any other provision of this Agreement, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., as now or hereafter amended, as enjoyed by the Town.

26. Third Party Beneficiaries:

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, shall be strictly reserved to the Town and the Developer. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Town and the Developer that any such person or entity, other than the Town and the Developer receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

27. Severability:

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

28. No Waiver:

The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

29. Compliance with TABOR:

It is the intent of the Town to fully comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado, including in particular the Town's undertakings under Section 20. Therefore, the parties agree that this Agreement is subject to an annual appropriation by the Windsor Town Board, and that the failure to make such appropriation, will relieve the Town of any multi-year fiscal obligations which may be created by the terms of this Agreement.

30. Entire Understanding:

This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein by writing.

31. Modification and Amendment:

This Agreement is subject to such modifications as may be required by changes in federal or state law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

32. Attorney Fees:

Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney fees and expert witness fees, from the opposing party. If the court, arbitrator, or mediator awards relief to both parties, each shall bear its own costs in their entirety.

33. Binding Effect:

This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns. This Agreement shall be deemed a covenant running with the land.

34. Personal Jurisdiction and Venue:

Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to this Agreement or the security, shall be deemed proper only if such action is commenced in the District Court for Larimer County, Colorado. The Developer expressly waives its right to bring such action in or to remove such action to any other court, whether state or federal.

35. Notice:

Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

IF TO DEVELOPER: The Developer's last known address set forth in records regularly maintained by the Town.

IF TO TOWN:	Town Manager Town of Windsor 301 Walnut Street Windsor, CO 80550	*Copies to:*	Director of Planning Town of Windsor 301 Walnut Street Windsor, CO 80550	Ian D. McCargar, Esq. Town Attorney 131 Lincoln Ave., Suite 100 Fort Collins, CO 80524

36. Recordation:

The Town shall record a copy of this Development Agreement, the PIF Assignment and the Monument Sign Easement with the Clerk and Recorder's Office in Larimer County, Colorado.

TOWN OF WINDSOR, COLORADO

By:_____
Mayor

ATTEST:

_____
Town Clerk

DEVELOPER:

Eagle Crossing Windsor, LLC, a Colorado Limited Liability Company

By:_____
Martin Lind, President

DRAFT

TOWN OF WINDSOR

RESOLUTION NO. 2012-69

A RESOLUTION APPROVING AN INFRASTRUCTURE IMPROVEMENTS AGREEMENT BETWEEN THE TOWN OF WINDSOR AND EAGLE CROSSING WINDSOR, LLC, FOR THE INSTALLATION OF PUBLIC IMPROVEMENTS AND REIMBURSEMENT FOR THE COST THEREOF, THE PURPOSE OF WHICH IS TO ENCOURAGE RETAIL ACTIVITY WITHIN THE VICINITY OF CROSSROADS BOULEVARD AND FAIRGROUNDS AVENUE

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

WHEREAS, the vicinity of Crossroads Boulevard and Fairgrounds Avenue (Weld County Road 5) is an important gateway to the Town in its southwest quadrant; and

WHEREAS, this southwestern gateway to Town is an important retail location for the Town, full development of which will bring employment, tax revenue and enhanced visitor traffic to the community; and

WHEREAS, the Eagle Crossing Subdivision ("Eagle Crossing") is located at this important gateway, and is suitable for retail development; and

WHEREAS, the owner of Eagle Crossing ("Owner") has approached the Town and has represented that construction of certain public infrastructure by the Town will enable the Owner to attract two national retail outlets to lots within Eagle Crossing; and

WHEREAS, the attraction of these two national retailers to Eagle Crossing is expected to generate significant sales tax, use tax, property tax and fee revenue for the Town; and

WHEREAS, in order to finance the cost of infrastructure construction, the Town and the Owner have negotiated an agreement under which the Town will pay the cost of infrastructure construction, and will receive various tax and retail fee revenue to offset the costs of such infrastructure construction; and

WHEREAS, based upon representations made by the Owner, it is expected that the tax and retail fee revenue from the two national retailers will enable the Town to recover the cost of the public infrastructure within approximately three and one-half years; and

WHEREAS, attached hereto and incorporated herein by this reference is a copy of the Eagle Crossing Subdivision, Second Filing, Lot 1 and Lot 5 Infrastructure Improvements Agreement ("Agreement") which contains the terms for construction of the public improvements and the means by which the Town will recover revenue to offset the costs of construction; and

WHEREAS, the Town Board has considered the economic advantages to retail activity within Eagle Crossing, and has concluded that there is a substantial public benefit to justify the expenditure of public monies within the structure of the Agreement; and

WHEREAS, the Town Board, in reliance upon the Owner's representations with respect to increased retail activity within Eagle Crossing, believes that the terms of the attached Agreement are fair, reasonable and in the public interest.

NOW, THEREFORE, be it resolved by the Town Board for the Town of Windsor, Colorado, as follows:

1. The attached Agreement, including all Exhibits incorporated therein, is hereby approved.

2. The Mayor is authorized to execute the Agreement on behalf of the Town.

3. The Town Attorney is authorized to make modifications to the form of the Agreement as may be necessary.

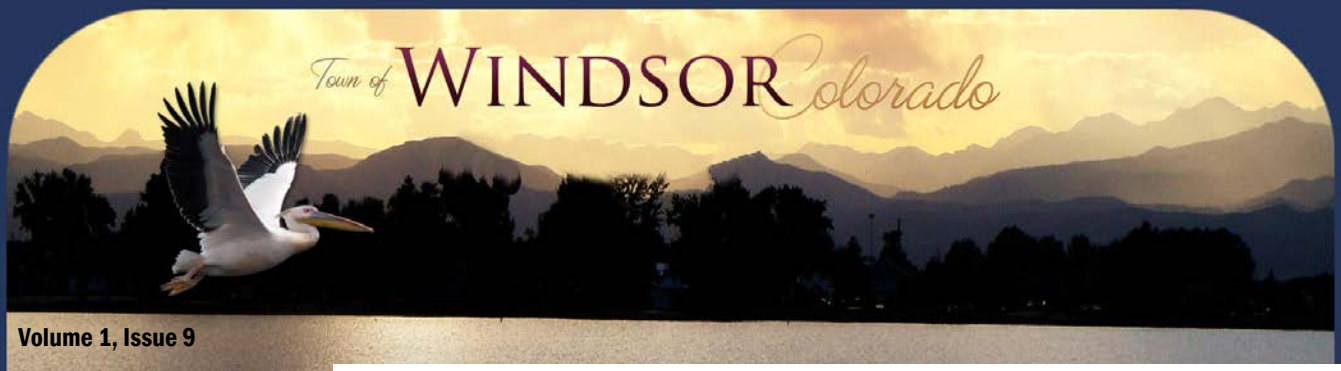
Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 22nd day of October, 2012.

TOWN OF WINDSOR, COLORADO

By:_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk



Volume 1, Issue 9

September 2012

2012 Monthly Financial Report

Special points of interest:

- Single Family Residential (SFR) building permits total 352 through the end of September.
- Highest YTD sales tax collection through September in Windsor history. Collections surpassed entire year of 2006 collections.

Inside this issue:

Sales, Use and Property Tax	2
Year-to-Date Sales Tax	4
Monthly Sales Tax	5
All Fund Expenditures	6
General Fund Expenditures	7

Highlights and Comments

- We recorded our second highest gross sales tax collection for the single month of September.
- September year-to-date sales tax increased 8.71% over September 2011.
- Construction use tax up 77% over 2011.
- Expenditure charts reflect September figures tracking as expected.
- Year-to-date September revenue total exceeded expenditures by roughly $3.1M.

Work Begins on Greeley #2 Trail

The trail work has started on the Windsor Trail between 15th Street and Grasslands. This is a $340,000 project with $200,000 paid through a Colorado State Trails grant. An underpass at the Grasslands end of the trail is scheduled to be designed in 2013 and projected to be built in 2014.

Items of Interest

- Construction continues on the I25/SH392 Interchange.
- Construction continues on WWTP Head Works Project.
- Began construction of three neighborhood parks.
- Visit us at the improved www.windsorgov.com and look for live streaming of Town Board and Planning Commission meetings.

Sales, Use and Property Tax Update			September 2012	
Benchmark = 75%	Sales Tax	Construction Use Tax	Property Tax	Combined
Budget 2012	$5,162,117	$959,105	$4,158,135	$10,279,357
Actual 2012	$4,336,507	$1,545,487	$3,938,491	$9,820,485
% of Budget	84.01%	161.14%	94.72%	95.54%
Actual Through September 2011	$3,988,938	$872,536	$4,199,102	$9,060,576
Change From Prior Year	8.71%	77.13%	-6.21%	8.39%

Ideally through the ninth month of the year you would like to see at least 75% collection rate on your annual budget number. We have reached that benchmark in all three tax categories.

At this point last year we had collected 94.5 of property taxes. The dollar amount will be less this year due to lower assessed value, but we are where we need to be at this point in the year.

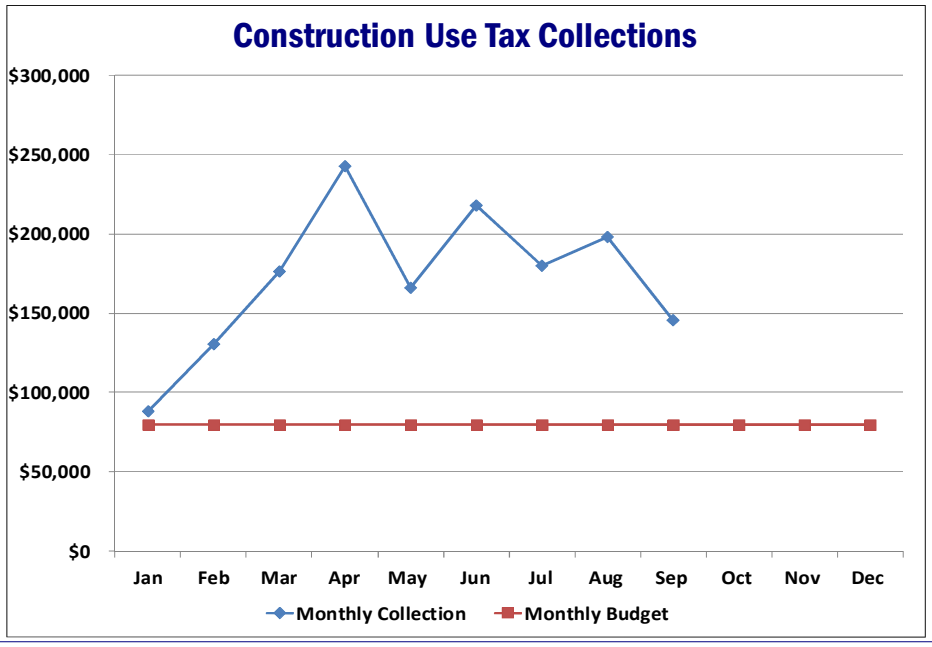
Building Permit Chart			September 2012	
	SFR	Commercial	Industrial	Total
Through September 2012	350	0	2	352
Through September 2011	194	1	1	196
% change from prior year				79.59%
2012 Budget Permit Total				207
% of 2012 Budget				170.05%

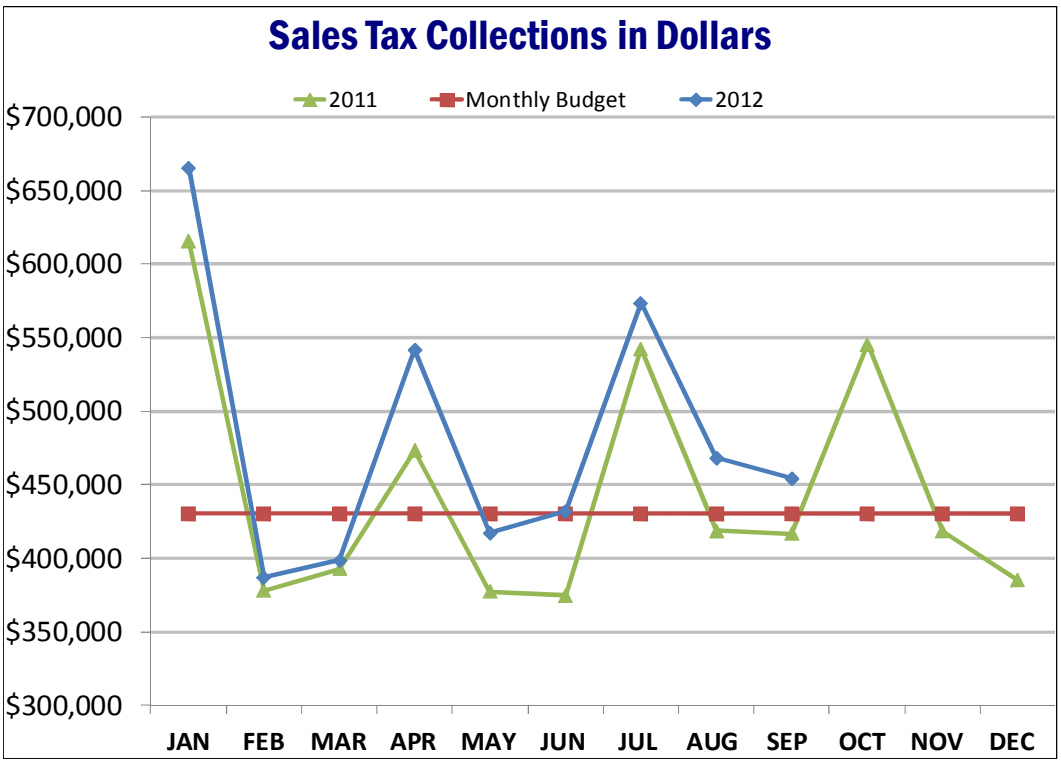
Building Permits and Construction Use Tax

We are showing a 79.59% increase in number of permits as compared to September 2011.

Construction use tax is well ahead of last year and more than doubled the 75% collection benchmark. This revenue is a key factor in funding our Capital Improvement Plan (CIP).

We increased our anticipated collections for 2012 for the first time in three budget years. We have surpassed the entire year of 2006, which was the last year we broke the 300 mark.





Gross Sales tax collections for September 2012 were approximately $40,000 higher than September 2011.

September Facts

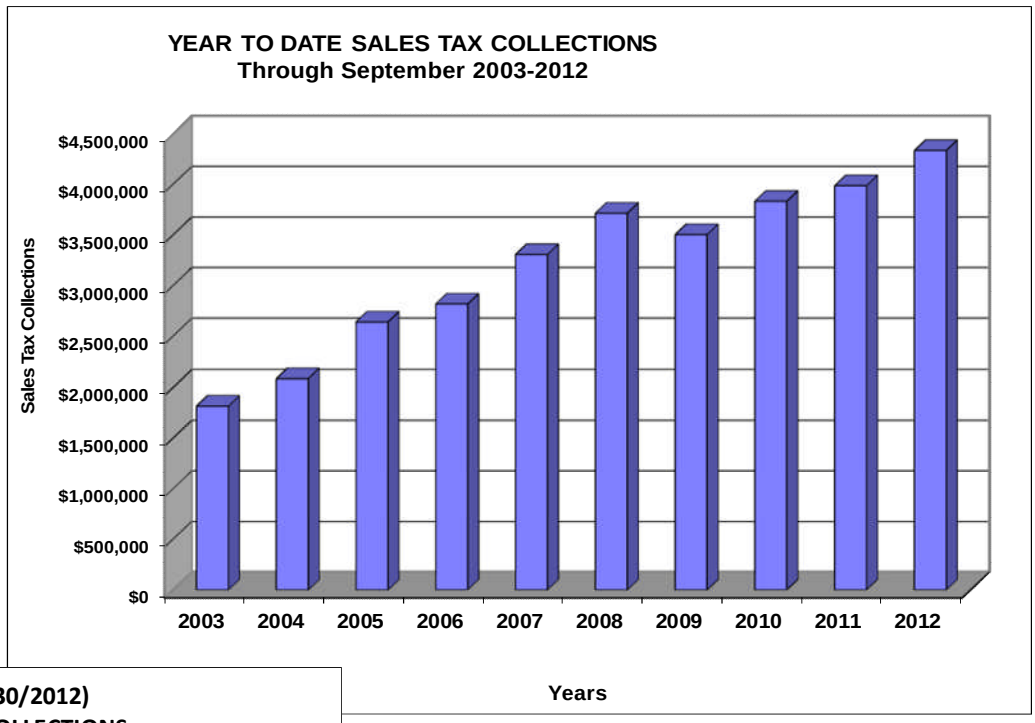
September is a "single collection" month, meaning that the collections are only for sales made in August.

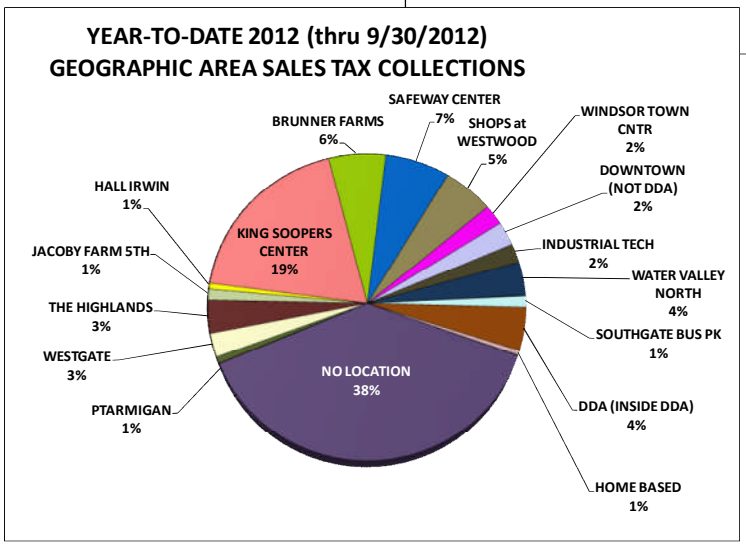
The numbers shown in the graphs reflect the gross collections for the month. We had a refund in September to Bobcat of the Rockies for $17,385 which represented the final payment of their economic incentive package. The e gross monthly collection of $454,220 less the refund of $17,385 leaves a net collection of $436,836. This net collection is still higher than the September 2011 collection of $416,784.

Looking Forward

We resolved the case for a large refund to possibly be made in October. The amount of this refund is $214,755. It will be paid to BP Energy for business done at Front Range Energy over a several year period. We may still reach the $5.7 million collection mark, but will need a strong fourth quarter collection.

Through September 2012, we are on a pace to collect $5.5-$5.7M in sales tax.



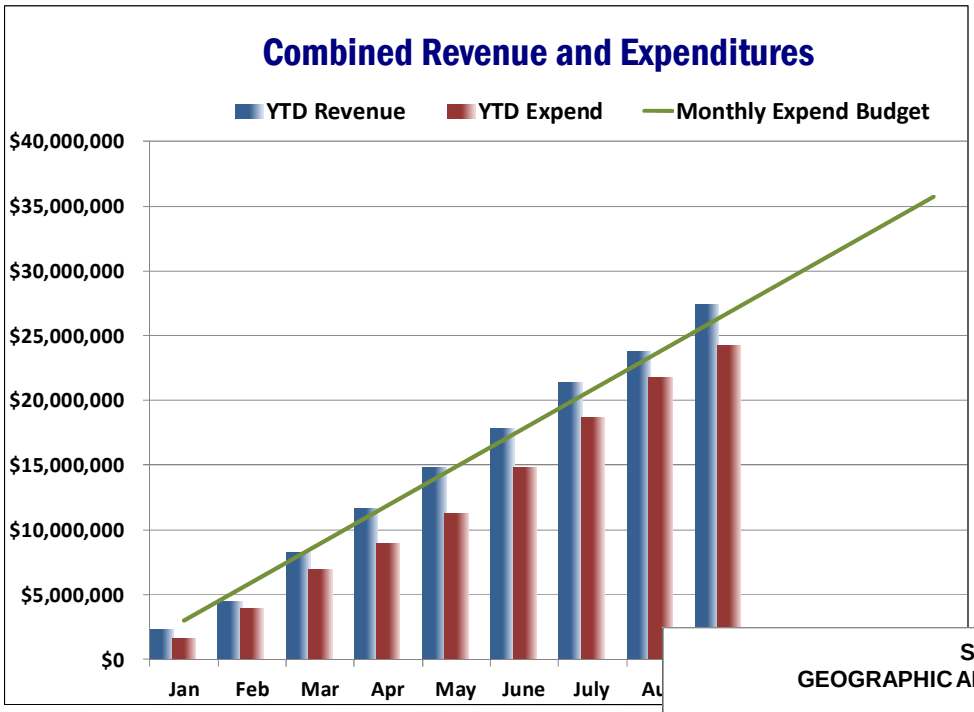


Our sales tax base is still anchored through groceries and utilities.

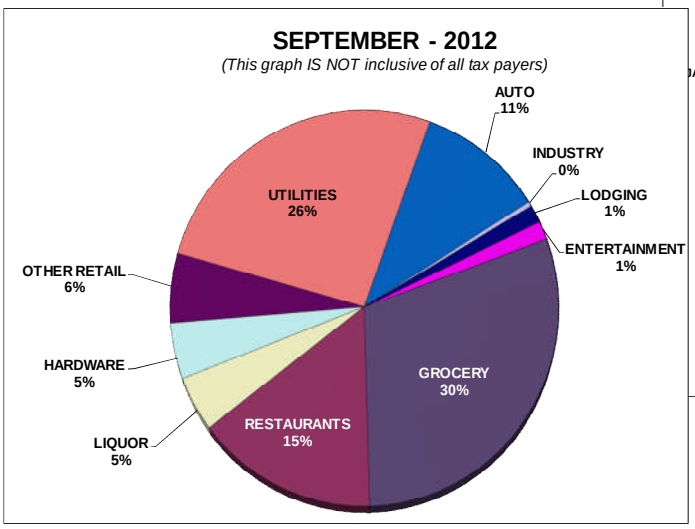
Year-to-Date Sales Tax

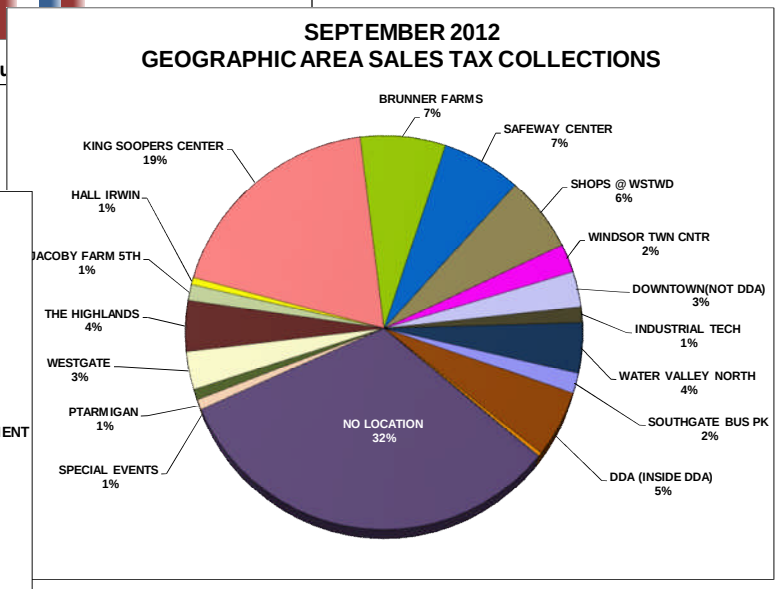
Our sales tax base has not changed a great deal over the past decade, with groceries and utilities leading our industry sectors in sales tax collection. Some of this increase can be attributed to an overall increase in prices and cost of living. Our existing base continues to generate increased 2012 year-to-date sales tax collections by 8.71% over September 2011 year-to-date collections described as follows.

- Grocery, restaurants, hardware, utilities and auto parts sales and repair all increased collections over September 2011.
- Out of town vendors making sales in Windsor (mostly utility and telecom) represent the largest geographic sales base while the King Soopers Center represents the largest portion of collections with a physical presence in Town.



Our September collections were lead by continuing strength in groceries and utilities.





Geographic area chart now shows a breakdown between the DDA and the rest of the Downtown

Monthly Sales Tax

- September 2012 gross collections of $454,220 were 8.98% higher than September 2011 collections of $416,784.
- September 2012 was the second highest September gross sales collection on record.
- As mentioned previously, we issued a tax refund in September that reduced our net collections to $436,836.

All Funds Expense Chart

September 2012

Benchmark =75%

OPERATIONS EXPENDITURES

General Government	Current Month	YTD Actual	2012 Budget	% of Budget
General Fund	$884,456	$8,865,784	$12,428,039	71%
Special Revenue	$349,234	$1,279,424	$4,066,635	31%
Internal Service	$161,453	$1,795,070	$2,620,576	68%
Other Entities(WBA)	$12,090	$108,815	$145,080	75%
Sub Total Gen Govt Operations	$1,407,234	$12,049,093	$19,260,330	63%
Enterprise Funds				
Water-Operations	$322,842	$2,296,967	$3,075,961	75%
Sewer-Operations	$53,665	$864,604	$970,326	89%
Drainage-Operations	$25,539	$375,598	$482,748	78%
Non-Potable Operations	$2,701	$58,644	$396,543	15%
Sub Total Enterprise Operations	$404,748	$3,595,813	$4,925,578	73%
Operations Total	**$1,811,982**	**$15,644,907**	**$24,185,908**	**65%**

plus transfers to CIF and Non-Potable for loan

Capital spending has overtaken operations as the summer construction season hits the peak. Costs are still in line with budget figures.

CAPITAL EXPENDITURES

General Govt Capital	Current Month	YTD Actual	2012 Budget	% of Budget
Capital Improvement Fund	$120,476	$4,097,080	$4,905,182	84%
Enterprise Fund Capital				
Water	$17,815	$135,325	$790,005	17%
Sewer	$509,934	$4,203,995	$5,242,100	80%
Drainage	$0	$9,137	$492,300	2%
Non-Potable	$0	$127,186	$140,668	90%
Sub Total Enterprise Capital	$527,749	$4,475,642	$6,665,073	67%
Capital Total	**$648,224**	**$8,572,722**	**$11,570,255**	**74%**
plus transfer to Non-Potable for loan				
Total Budget	**$2,460,206**	**$24,217,629**	**$35,756,163**	**68%**

Through September, operating and capital expenditures combined equal 68% of the 2012 Budget.

All Funds Expenditures

As a tracking tool, we would expend no more than 75% of our annual budgeted expenditures through the month of September.

The second and third quarters are usually highest in operations as we gear up for the summer and the addition of seasonal help and more operational costs. The third and fourth quarters usually show the highest capital expenditure cost, as we pay for projects as they are completed.

General Fund Expense Chart

September 2012

	Department	Current Month	YTD Actual	2012 Budget	%of Budget
410	Town Clerk/Customer Service	$38,721	$406,497	$544,564	74.6%
411	Mayor & Board	$15,687	$398,957	$1,090,631	36.6%
412	Municipal Court	$1,424	$14,255	$19,664	72.5%
413	Town Manager	$21,834	$189,578	$254,182	74.6%
415	Finance	$52,541	$434,088	$533,249	81.4%
416	Human Resources	$24,954	$214,045	$358,080	59.8%
418	Legal Services	$40,219	$310,424	$370,000	83.9%
419	Planning & Zoning	$38,299	$374,433	$522,474	71.7%
420	Business Retention & Growth	$10,041	$164,356	$192,140	85.5%
421	Police	$194,952	$1,929,588	$2,559,268	75.4%
429	Streets	$65,504	$730,889	$963,992	75.8%
430	Public Works	$32,039	$297,193	$398,028	74.7%
431	Engineering	$44,149	$452,909	$583,852	77.6%
432	Cemetery	$10,171	$84,718	$116,653	72.6%
433	Community Events	$6,861	$80,967	$103,485	78.2%
450	Forestry	$22,333	$229,091	$357,263	64.1%
451	Recreation Programs	$127,413	$1,220,977	$1,598,219	76.4%
452	Pool/Aquatics	$18,561	$175,548	$219,266	80.1%
454	Parks	$69,524	$644,104	$918,863	70.1%
455	Safety/Loss Control	$0	$1,709	$10,000	17.1%
456	Art & Heritage	$13,993	$183,002	$245,508	74.5%
457	Town Hall	$17,925	$171,614	$235,833	72.8%
458	Police Pension	$0	$107	$1,287	8.3%
467	Parks Construction	$17,314	$156,734	$231,538	67.7%
	Total General Fund Operations	**$884,456**	**$8,865,784**	**$12,428,039**	**71.3%**

General Fund Expenditures

The General Fund represents the bulk of our daily operations budget. Again judging by the ninth month 75% rule of thumb, expenditures are in line with where they should be after nine months.

Finance records property tax collection fees from the county treasurers. YTD property tax collections of 94% are also reflected in 94% of the fees at $49,000.

Legal services YTD reflect additional work on the IGA for the interchange.

Business Retention & Growth reflects the payment to the Chamber of Commerce and our retail consultant Katy Press. These two items together totaled $32,500, putting the percentage at 85.5%.

Community Events is higher because we are nearly through the season.

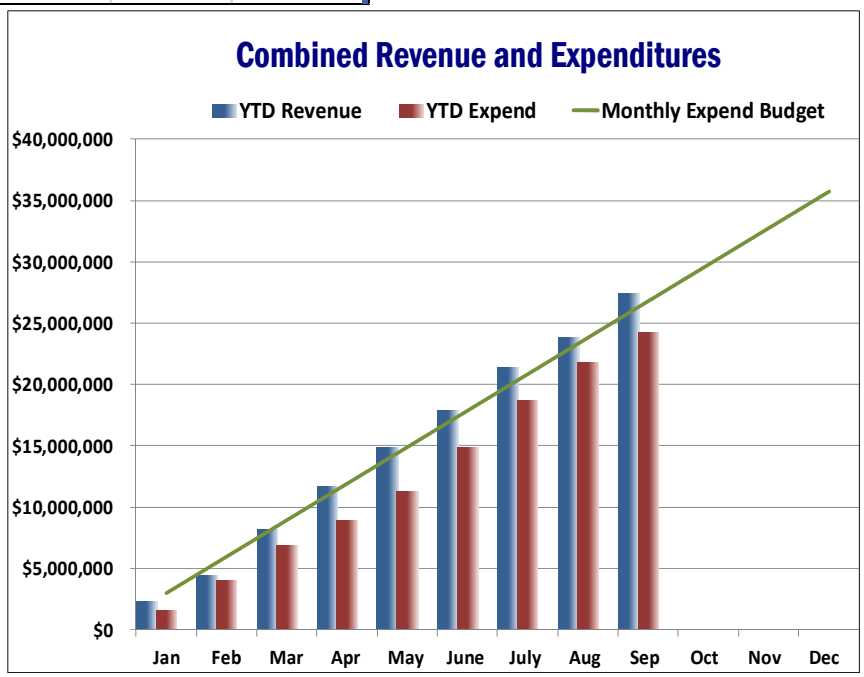
Pool/Aquatics is higher because we are nearly through the season.

Revenue and Expenditure Compared to Budget

The chart on the right shows monthly revenue compared to monthly expenditure as well as a trend line showing the total 2012 budget expended equally over twelve months.

September YTD revenue total exceeded expenditures by roughly $3.1M. This was higher based on the strength of our building permit and sales tax numbers.

As we move forward in the year, expenditures will be closer to, if not exceeding the budget trend line.



Vision: A View of What Windsor will be

WINDSOR'S hometown feel with vibrant COMMUNITY SPIRIT AND PRIDE makes our town a special place in Northern Colorado.

WINDSOR has a UNIQUE DOWNTOWN AND LAKE which is a community focal point and destination.

WINDSOR has a STRONG LOCAL ECONOMY with diverse businesses that provides jobs for residents and promotes quality development through MANAGED GROWTH.

WINDSOR residents enjoy a friendly community with HOUSING OPPORTUNITIES, CHOICES for LEISURE, CULTURAL ACTIVITIES, and RECREATION, and EASY MOBILITY for all.

WINDSOR is a GOOD ENVIRONMENTAL STEWARD.

TOWN OF WINDSOR
COLORADO

2012 Monthly Financial Report

Town of Windsor
301 Walnut Street
Windsor, CO 80550

Phone: 970-674-2400
Fax: 970-674-2456

Finding the balance between a small town environment and a developing economy

The key categories coming forth from the recommended 2012 Budget are:

COMPLETING STARTED OR PROMISED PROJECTS

STEWARDSHIP OF THE COMMUNITY ASSETS

CONTINUING TO PREPARE FOR THE FUTURE

MAINTAINING A MOTIVATED (PRIDE) EMPLOYEE GROUP

We're on the Web

www.windsorgov.com

Neighborhood Parks Construction 2012

Design Project Budget		
Site	Budget	Actual
Bison Ridge Park	$0.00	$0.00
Poudre Heights Park	$30,000.00	$21,606.80
DHM Design (03-23-12)		$5,587.17
DHM Design (05-04-12)		$9,396.79
DHM Design (06-08-12)		$6,622.84
Brunner Farm Park	$23,000.00	$14,547.39
DHM Design (03-23-12)		$3,761.66
DHM Design (04-20-12)		$6,326.54
DHM Design (05-22-12)		$4,459.19
Northern Lights Park	$30,000.00	$23,270.81
DHM Design (03-23-12)		$6,017.43
DHM Design (04-20-12)		$10,120.42
DHM Design (05-22-12)		$7,132.96
TOTAL	**$83,000.00**	**$59,425.00**

Construction Project Budget		
Site	TOW Budget Estimate	McCauley Bid
Bison Ridge Park	$330,417.00	$405,747.00
Poudre Heights Park	$1,170,000.00	$911,779.00
Brunner Farm Park	$400,000.00	$412,493.00
TOTAL	**$1,900,417.00**	**$1,730,019.00**

Bison Ridge Park			
Date	Description	Other Invoices	Project Total for Bison Ridge Park
6/8/2012	Olsson Associates	$3,500.00	
6/29/2012	Terracon Consultants	$3,000.00	
9/14/2012	TOW Planning Dept - permit	$53.46	
9/21/2012	FCLWD/SFCSD - water tap	$41,422.00	
	Bison Ridge Total	$47,975.46	$453,722.46

Poudre Heights Park			
Date	Description	Other Invoices	Project Total for Poudre Heights Park
9/14/2012	TOW Planning Dept - permit	$87.48	
9/21/2012	Hines, Inc. - Irrigation Submittal Review	$425.00	
9/28/2012	Xcel Energy - gas line lowering	$1,430.00	
	Poudre Heights Total	$1,942.48	$913,721.48

Brunner Farm Park			
Date	Description	Other Invoices	Project Total for Brunner Farm Park
9/14/2012	TOW Planning Dept - permit	$38.88	
	Brunner Farm Total	$38.88	$412,531.88

		YTD Other Invoices	NPC 2012 Project Total
	TOTALS	**$49,956.82**	**$1,779,975.82**