TOWN BOARD WORK SESSION MEETING
April 4, 2016 – 6:00 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.

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

Members of the Public in attendance are asked to be recognized by the Mayor before participating in any discussions of the Town Board.

AGENDA

1. Review of I-25/SH 392 Corridor Activity Center (CAC) draft intergovernmental agreement (IGA) and pre-development agreements – Ian D. McCargar, Town Attorney

2. Review of I-25/SH 392 Corridor Activity Center (CAC) draft enhanced design standards – Scott Ballstadt, Director of Planning

3. Public comment
   Individuals wishing to provide comment 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 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.

4. Future meetings agenda

M E M O R A N D U M

Date: April 4, 2016
To: Mayor and Town Board
Via: Work Session materials, April 4, 2016
From: Ian D. McCargar, Town Attorney
Re: I-25 & 392; Amended and Restated IGA, pre-development agreements
Item #: 1

Background / Discussion:

This evening's work session will focus on receiving comment on the following documents in your materials:

- Draft Amended and Restated Intergovernmental Agreement ("Draft IGA");
- Draft pre-development agreements with landowners.

The Draft IGA is in the same form presented on March 28, 2016, a copy of which has been provided to the Fort Collins City Attorney's Office. This version amends the list of permitted uses to include auto dealers and single-family detached homes, modifies the revenue-sharing formula, and speaks to the need for Fort Collins to require the identification of a transit site as a condition of future annexations on the west side of the interchange. Any questions and modifications will be open for discussion on April 4. Once approved, the Draft IGA will be packaged for referral to Fort Collins on April 11.

The referral to Fort Collins will take the form of a Resolution authorizing the Town Manager to present the proposed Draft IGA as an offer to amend the existing IGA. We anticipate there will be further negotiations with Fort Collins over this document before it comes back to the Town Board for formal approval and subsequent legislative action.

Since the March 28 work session, the pre-development agreements have been the subject of further conversation with both Windsor landowner groups. The DownsMore (Moreland/Tynan) group is still considering the roadway improvement language in Article II. We are narrowing language for the single-family portion of the Muth property. We are targeting April 11 to have these documents approved and, if possible, signed.

Relationship to Strategic Plan: Diversify, Grow, and Strengthen the Local Economy; Develop and Maintain Effective Infrastructure

Recommendation: Receive public comment; provide further direction; consider referral to Fort Collins

Attachments:

Draft Amended and Restated Intergovernmental Agreement;

Draft DownsMore Agreement in Anticipation of Development;

Draft Windsor Investments/JBT Agreement in Anticipation of Development

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT PERTAINING TO THE DEVELOPMENT OF THE INTERSTATE 25/STATE HIGHWAY 392 INTERCHANGE

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT PERTAINING TO THE DEVELOPMENT OF THE INTERSTATE I25/STATE HIGHWAY 392 INTERCHANGE ("Amendment") is entered into this _____ day of _____, 2016, 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;
- regulating the location and activities of development which may result in increased demand for services;
- providing for the orderly development and extension of urban services;
- simplifying governmental structure when possible;
- promoting the economic vitality of both municipalities;
- protecting the environment; and
- raising revenue sufficient to meet the needs of their citizens;

and

WHEREAS, on March 22, 2006 the City and Town entered into an intergovernmental agreement (the "2006 Agreement") that, among other things, defined a Corridor Activity Center in the immediate vicinity of the Interchange (the "CAC"); and

WHEREAS, the 2006 Agreement also set forth the willingness of the City and the Town to work cooperatively toward developing a comprehensive development plan for the CAC and surrounding areas, to explore financing mechanisms for reconstructing the Interchange, and to evaluate potential revenue sharing alternatives; and

WHEREAS, in 2008, the City and the Town authorized the execution of two additional intergovernmental agreements, the purposes of which were to pursue funding for the Interchange and expedite its design and approval by CDOT, and also passed resolutions reaffirming their

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commitment to continued cooperation in the planning, design and construction of the Interchange and approving certain basic principles related to that cooperative effort, including a commitment to long-term, equitable sharing of revenues derived from new development within the CAC; and

WHEREAS, because of the proximity of the two municipalities on either side of the Interchange, the way in which the Interchange is reconstructed and the way in which the property within the CAC is developed will affect the economic and environmental well-being of both communities; and

WHEREAS, the City and the Town worked diligently with each other, with CDOT, and with various elected federal officials, landowners, local officials, and others to promote and fund the design and construction of improvements to the Interchange; and

WHEREAS, the efforts of the City and the Town were successful, and the construction of improvements to the Interchange were completed as intended; and

WHEREAS, on January 3, 2011, the City and the Town entered into that certain Intergovernmental Agreement Pertaining To The Development Of The Interstate I25/State Highway 392 Interchange ("Agreement"); and

WHEREAS, on November 27, 2012, the City and the Town entered into the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange ("First Amended Agreement"); and

WHEREAS, on May 9, 2013, the parties entered into that certain Intergovernmental Agreement Amending the First Amended Agreement with respect to revenue sharing within the CAC; and

WHEREAS, through these various agreements and amendments, the parties have established a comprehensive development plan for land within the CAC, providing for increased coordination of planning and managing development within the CAC, cost sharing for construction of Interchange improvements, revenue sharing, operation and maintenance of the various improvements, providing needed services in the Interchange area, and resolving any conflicts arising with regard to these topics; and

WHEREAS, the City and the Town have both adopted the Northern Colorado Regional Communities I-25 Corridor Plan, which establishes a shared vision for development of property adjacent to Interstate 25; and

WHEREAS, during the years following approval of the Agreement and its various amendments, no development or redevelopment has occurred in the CAC; and

WHEREAS, the parties have undertaken a reevaluation of the Permitted Uses set forth in Exhibit B to the Agreement, and have determined that amendment and clarification of the Agreement is appropriate; and

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WHEREAS, the parties desire to amend and restate their understandings with respect to the Permitted Uses, applicable development standards and revenue-sharing within the CAC; and

WHEREAS, the Colorado Constitution, Section 29-20-101 *et seq*., of the Colorado Revised Statutes, and the 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.

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 Amended and Restated Agreement, unless a different meaning clearly appears from the context, the following definitions shall apply:

1.1. "Agreement" means the Intergovernmental Agreement Pertaining to the Development of The Interstate I25/State Highway 392 Interchange, and its identified Exhibits.

1.2. "Automobile Dealership" shall have the same meaning as defined in § 12-6-102 (13), C.R.S. "Automobile Dealership" shall not include the sale or leasing of:

1.2.1 Any vessel used or capable of being used as a means of transportation of persons and property on the water;

1.2.2 "Recreational vehicles" as defined in § 12-6-102 (16.5), C.R.S.

1.2.3 "Snowmobiles", as defined in § 33-14-101 (11), C.R.S

1.2.4 "Off-highway vehicles", as defined in § 33-14.5-101 (3), C.R.S.

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

1.4. "Corridor Activity Center" or "CAC" means that joint planning area referred to and more fully described on Exhibit "A" to the Agreement; and as such description may be amended by the Section 2 of the Agreement.

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 that will, when approved and constructed, result in an increase of traffic in the CAC.

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

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

1.9. "Party" refers to the City, the Town or in the plural, both the City and the Town.

1.10. "Property Owner" means and includes the fee owner of the property as well as any developer or other agent of the fee owner who, acting with the knowledge or consent of the fee owner, submits an application for approval of a Development Proposal or Redevelopment Proposal for such property.

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

1.12. "Redevelopment Proposal" means an application for the redevelopment of a parcel of land within the CAC that will, when approved and constructed, result in an increase in traffic in the CAC beyond that generated by the development currently in place.

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

1.14. "Single-family Residence" means a place of abode containing one (1) unified dwelling space not physically connected with another dwelling space or place of abode.

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

SECTION 2. PERMITTED USES/PREFERRED USES; LIMITATIONS

2.1. Permitted uses. Land uses within the CAC shall be limited to those uses shown on Exhibit A attached hereto and incorporated herein by this reference. Neither party shall accept, entertain or allow any application for land use within the CAC which is not expressly included in the uses described in Exhibit A. All zoning ordinances or other legislation needed to implement this limitation shall be adopted by the Windsor Town Board no later than August 1, 2016.

2.2 Limitations on Certain Uses. Notwithstanding the foregoing reference to permitted uses, and in addition to any applicable land use limitations provided in the Town's Municipal Code, the following specific limitations shall apply:

2.2.1 Limitations on Automobile Dealerships. The following limitations shall apply to all Automobile Dealerships, any portion of which is located in that portion of the CAC within the Town:

2.2.1.1 Automobile Dealerships shall be subject to the Enhanced CAC Design Standards referred to in Section 3.1 below. All zoning ordinances or other legislation

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needed to implement the Enhanced CAC Design Standards shall be adopted by the Windsor Town Board no later than August 1, 2016.

2.2.1.2 The total acreage allocated to Automobile Dealerships located in that portion of the CAC within the Town shall not exceed thirty-eight and twenty-seven one-hundredths (38.27) acres. All zoning ordinances or other legislation needed to implement this limitation shall be adopted by the Windsor Town Board no later than August 1, 2016.

2.2.2 Limitations on Single-family Residential. No Single-family Residential structure shall be located outside of the Single-family Residential Building Envelope depicted in the attached Exhibit [##], incorporated herein by this reference as if set forth fully. In addition, the total number of building lots devoted to Single-family Residential structures in the CAC shall not exceed [###]. All zoning ordinances or other legislation needed to implement this limitation shall be adopted by the Windsor Town Board no later than August 1, 2016.

SECTION 3. DEVELOPMENT AND DESIGN STANDARDS

3.1. Applicable Standards. The Parties have heretofore adopted standards and guidelines for development of the properties adjacent to Interstate 25, both individually and cooperatively, and have adopted various land use plans for that area, including the Northern Colorado Regional I-25 Corridor Plan (2001). In addition to these various land use plans, the parties specifically agree that all development and redevelopment within that portion of the CAC lying in the Town's corporate limits shall adhere to the Enhanced CAC Design Standards set forth in Exhibit [B] ("Enhanced CAC Design Standards"), incorporated herein by this reference as if set forth fully.

3.2. The parties intend that the Enhanced CAC Design Standards shall be applied to assure that land uses in the portion of the CAC lying within Windsor's corporate limits are undertaken in a manner that assures quality development, consistency and harmony within the CAC, and a cohesive atmosphere within a diverse spectrum of uses.

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 any use within the CAC which is not identified as permitted under Exhibit A.

b. The Town shall not approve any improvements within the CAC which are inconsistent with the Enhanced CAC Design Standards adopted by the Town in accordance with this Amended and Restated Agreement, except that the Enhanced CAC Design Standards may be modified by Town ordinance, adopted in accordance with the Town's Home Rule Charter, notice of which shall be

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presented to the City no less than thirty (30) days prior to ordinance introduction. Subject to this exception, the Parties reaffirm that the Enhanced CAC Design Standards shall apply to development within that portion of the CAC lying in Windsor's corporate limits. To the extent that the City has previously adopted design or development standards for application within the CAC, such standards shall apply unless modified by City ordinance, adopted in accordance with the City's Home Rule Charter, notice of which shall be presented to the Town no less than thirty (30) days prior to ordinance introduction.

c. 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.

d. 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.

e. The receiving Party shall review the materials and respond to the other Party with written comments within the aforementioned thirty (30) business days, or such additional time as the parties may agree. 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.

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

g. 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 Exhibit A, the Enhanced 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

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having jurisdiction over the Development or Redevelopment Proposal, unless the Parties agree to the contrary in a written amendment to this Agreement.

SECTION 4. REVENUE SHARING AND NEW DEVELOPMENT

4.1. 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.

4.1.1 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.

4.1.2 Except as set forth in sub-sections 4.1.3 and 4.1.4 below, 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-five percent (35%) of such revenues shall be transferred to the other Party by March 1 of the following calendar 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 by February 1 of each year. The Parties agree that these statements are being disclosed solely for tax-related purposes and are therefore to remain confidential.

4.1.3 **Automobile Dealerships in Windsor**. One-hundred percent (100%) of all Property and Sales Tax Increment generated within any property in which one or more Automobile Dealerships are located in the Town's corporate limits shall be retained by the Town.

4.1.4 **Single-family Residential in Windsor**. One-hundred percent (100%) of all Property and Sales Tax Increment generated within any property in which one or more Single-family Residences are located in the Town's corporate limits shall be retained by the Town.

4.1.5 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.

4.1.6 The share distribution shall begin on the Effective Date.

4.1.7 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.

4.1.8 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

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Increment revenue that is due to the other Party under this Section as if the exemption(s) had not been created.

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

4.2. 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.

4.3. Bonding. Nothing in this Agreement is intended to restrict either Party from being able to utilize its agreed 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 5. 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 dispute resolution provisions of Section 7 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 6. ANNEXATION

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6.1. 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.

6.2. 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.

6.3. Identification of Potential Future Transit Facility Site. The Parties acknowledge that the April 2, 2008, I-25/392 Interchange Improvement Plan ("2008 Improvement Plan") was adopted by the parties as a vision for the future of the Interchange. The 2008 Improvement Plan contemplated a potential future Bus Rapid Transit terminal serving both sides of the Interchange. In conjunction with the expansion of Permitted Uses to include Automobile Dealerships on the east side of the Interchange, the Town is requiring the identification of a potential future transit site on the east side of the Interchange. In order to provide for a parallel potential future transit site on the west side of the Interchange, the City agrees that, as a condition of annexation of property in its portion of the CAC, it will require the annexing property owner(s) to identify a potential future transit site which generally aligns with the potential future transit site identified on the east side. Nothing herein shall obligate the City to require dedication or reservation of a potential future transit site; this Section shall only require the identification of such a site or sites for future planning purposes. Nothing herein shall require either party to acquire, by negotiation or eminent domain, any future transit site, nor require the establishment of a transit site at any time.

6.4. 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.

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SECTION 7. MEDIATION/ARBITRATION

7.1. 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.

7.2. 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 be 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.

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

7.4. 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.

7.5. 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,

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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 an arbitrator 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 8. 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 and Property 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 or Property 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 or Property 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 9. FURTHER LEGISLATION

The Parties acknowledge the mutually-binding nature of this Amended and Restated Agreement. The Parties further agree that, in order to render the comprehensive development plan set forth herein enforceable as to third parties, the within terms shall be incorporated into the municipal codes of both the Town and the City. Therefore, the parties pledge to enact amendments their respective municipal codes in conformity to this Amendment on or before August 1, 2016. Failure of such measures shall not affect the mutually-binding character of this Amendment as between the parties.

SECTION 10. MISCELLANEOUS

10.1. Entire Agreement. This Amended and Restated Agreement is the entire and only agreement between the Parties regarding the delineation of permitted uses, development and design standards, and revenue disposition within the CAC boundaries. There are no promises, terms, conditions, or other obligations other than those contained in this Amended and Restated Agreement. This Amended and Restated Agreement may be further amended only in writing signed by the Parties.

10.2. Severability. Except as otherwise provided in this Amended and Restated Agreement, if any part, term, or provision of this Amended and Restated Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity

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of any other part, term, or provision of this Amended and Restated Agreement and the rights of the Parties will be construed as if that part, term, or provision was never part of this Amended and Restated Agreement.

10.3. Colorado Law. This Amended and Restated 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 Amended and Restated Agreement for actions arising out of or relating to it-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 Amended and Restated 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
Windsor Town Hall
301 Walnut Street
Windsor, CO 80550

10.6. Good Faith. In the performance of this Amended and Restated 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 Amended and Restated Agreement.

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

10.8. Assignment. Neither this Amended and Restated Agreement nor the City or Town's 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 Amended and Restated 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 Amended and Restated Agreement, and all rights of action relating to such enforcement, are strictly reserved to the Parties and nothing in this Amended and Restated Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Amended and Restated Agreement. It is the express intention of the Parties that no person or entity, other than the undersigned Parties, receiving services or benefits under this Amended and Restated Agreement shall be deemed any more than an incidental beneficiary only.

10.11. Recordation of Agreement. The City shall record a copy of this Amended and Restated 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 Amended and Restated Agreement.

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CITY OF FORT COLLINS

_____
Wade Troxel, Mayor

ATTEST:

[Seal]

_____
Wanda Winkelmann, City Clerk

TOWN OF WINDSOR,

_____
John S. Vazquez, Mayor

ATTEST:

[Seal]

_____

Patti Garcia, Town Clerk

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AGREEMENT IN ANTICIPATION OF DEVELOPMENT

THIS AGREEMENT IN ANTICIPATION OF DEVELOPMENT ("Agreement") is entered into this _____ day of April, 2016, between THE TOWN OF WINDSOR, a Colorado home rule municipal corporation ("Town"), and WINDSOR INVESTMENTS, LLC, and JBT ASSOCIATES, LLC, each being a Colorado limited liability company ("Owner"). The parties to this Agreement may be referred to individually in the singular, and collectively in the plural as "Party" or "Parties".

RECITALS

WHEREAS, Owner is the owner of certain real property as more particularly described and depicted on Exhibit A attached hereto and incorporated by this reference ("Property"); and

WHEREAS, Owner proposes to rezone a portion of the Property as more particularly described and depicted on Exhibit B attached hereto and incorporated by this reference to Residential Mixed Use ("Rezone Property"), which would allow Owner to develop a portion of the Rezone Property for single-family detached residences; and

WHEREAS, the Property is located in the Corridor Activity Center ("CAC") created by that certain Intergovernmental Agreement Pertaining to the Development of the Interstate I-25/State Highway 392 Interchange between the City of Fort Collins ("City") and the Town dated January 3, 2011, and as later amended by the First Amended Intergovernmental Agreement Pertaining to the Development of the I-25/State Highway 392 Interchange dated November 27, 2012 (as amended, the "IGA"); and

WHEREAS, the IGA incorporated a list of land uses permitted in the CAC ("Permitted Uses"), including mixed use residential and multi-family mixed use; and

WHEREAS, the IGA allows the amendment of the Permitted Uses only with the written consent or agreement of both the City and the Town; and

WHEREAS, the City and the Town have discussed a potential amendment of the Permitted Uses, and the Town is prepared to tender to the City a formal offer under which the IGA may be further amended to expressly allow single-family detached residential uses in the CAC; and

WHEREAS, in order for the Town to undertake further amendment of the IGA and various provisions of the *Windsor Municipal Code* necessary to implement the said further amendment, the Town requires certain assurances from Owner; and

WHEREAS, although the Owner disagrees that an amendment of the IGA and various provision of the *Windsor Municipal Code* are necessary to allow for single-family detached residential uses within the CAC, the Owner desires to give the Town certain assurances to facilitate the Owner's plans for the Property; and

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WHEREAS, by the terms set forth herein, the Parties wish to set forth their understandings with respect to certain aspects of development of the Property.

NOW, THEREFORE, and in recognition of the foregoing Recitals, the Parties agree as follows:

ARTICLE I

MAXIMUM AREA FOR SINGLE-FAMILY RESIDENTIAL USES

1. Owner agrees that no more than forty-five (45) acres of land within the Rezone Property may be developed for single-family detached residential uses (the "Single-Family Detached Acreage Cap").

2. [Identify SF Detached Building Envelope, per IGA]

3. The Single-Family Detached Acreage Cap shall include the entire square footage of all lots upon which single-family detached residential uses are constructed, rights-of-way, sidewalks, detention facilities, and open space.

4. The Single-Family Detached Acreage Cap set forth above will be referred to the Windsor Town Board for incorporation into the *Windsor Municipal Code*, final adoption of which shall occur on or before August 1, 2016.

ARTICLE II

MISCELLANEOUS

1. The terms of this Agreement shall be deemed a covenant running with the land constituting the Rezone Property. All current and future owners of the Property shall be bound by and entitled to rely upon these terms.

2. The terms of this Agreement, to the extent they apply to future activity within the Property, shall be incorporated into any Site Plan Development Agreement negotiated in association with site planning of the Property.

3. There are no third party beneficiaries intended under this Agreement. This Agreement shall be enforceable only by the signatories hereto.

4. This Agreement contains the entire understanding of the parties with respect to its subject matter. There are no enforceable terms, promises, representations or undertakings between the parties, except as set forth herein, with respect to its subject matter.

5. In the event that either party initiates litigation to enforce or interpret the terms of this Agreement, each party shall bear its own costs of suit, including attorney fees.

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6. This Agreement shall be construed in accordance with Colorado law. Venue for any disputes arising out of this Agreement shall exclusively lie in the state courts of Colorado, sitting in the County of Larimer.

7. The Agreement shall not be binding upon any Party, shall be of no force or effect, and shall not be recorded by either Party against the Property, unless and until the Town approves the Owner's application to rezone the Rezone Property to Residential Mixed Use and the Owner's application for a site development plan to develop the Rezone Property in part or in whole for single-family detached residential uses (the "Applications").

8. All notices required to be issued in writing herein shall be mailed by United States Postal Service certified mail, return receipt requested, postage pre-paid and addressed as follows:

   To the Town:
   Town Manager
   301 Walnut Street
   Windsor, CO 80550

   To the Owner:
   Windsor Investments Limited, LLC
   1901 West Kettleman Lane, Suite 102
   Lodi, CA 95242

   with copy to:
   Brownstein Hyatt Farber Schreck, LLP
   410 17th Street, Suite 2200
   Denver, CO 80202
   Attn: Wayne Forman, Esq.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

OWNER:

WINDSOR INVESTMENTS LIMITED, LLC,
a Colorado limited liability company

_____
Tom Muth, [TITLE]

JBT ASSOCIATES, LLC,
a Colorado limited liability company

_____
Tom Muth, [TITLE]

[TOWN SIGNATURE PAGE FOLLOWS]

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TOWN:

[SIGNATURE BLOCK]

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Exhibit A

Legal Description of Property

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Exhibit B

Legal Description of Rezone Property

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AGREEMENT IN ANTICIPATION OF DEVELOPMENT

THIS AGREEMENT IN ANTICIPATION OF DEVELOPMENT ("Agreement") is entered into this _____ day of April, 2016, between THE TOWN OF WINDSOR, a Colorado home rule municipal corporation ("Town"), and DOWNSMORE LLC, a Colorado limited liability company ("DownsMore"). The parties to this Agreement may be referred to individually in the singular, and collectively in the plural as "Party" or "Parties".

RECITALS

WHEREAS, DownsMore is the owner of certain 52.81-acre parcel of real property described on Exhibit A attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, DownsMore proposes to develop a portion of the Property, up to a maximum of 38.27 acres, for use as one or more automobile dealerships, primarily devoted to the sale and lease of new and used automobiles, automobile service, and the sale of related goods; and

WHEREAS, the Property is located in the Corridor Activity Center ("CAC") created by that certain Intergovernmental Agreement Pertaining to the Development of the Interstate I-25/State Highway 392 Interchange between the City of Fort Collins ("City") and the Town dated January 3, 2011, and as later amended by the First Amended Intergovernmental Agreement Pertaining to the Development of the I-25/State Highway 392 Interchange dated November 27, 2012 ("Amended IGA"); and

WHEREAS, the IGA incorporated a list of land uses permitted in the CAC ("Permitted Uses"), which did not expressly include the sale and lease of new and used automobiles, automobile service, and the sale of related goods; and

WHEREAS, both the IGA and the Amended IGA allowed the amendment of the Permitted Uses only with the written consent or agreement of both the City and the Town; and

WHEREAS, the City and the Town have discussed potential amendment of the Permitted Uses, and the Town is prepared to tender to the City a formal offer under which the IGA and Amended IGA may be further amended to allow the sale and lease of new and used automobiles, automobile service, and the sale of related goods; and

WHEREAS, in order for the Town to undertake further amendment of the IGA, Amended IGA and various provisions of the *Windsor Municipal Code* necessary to implement the said further amendments, the Town requires certain assurances from DownsMore; and

WHEREAS, in order to facilitate amendment of the IGA, the Amended IGA and the necessary provisions of the *Windsor Municipal Code*, DownsMore desires to give the Town certain assurances; and

WHEREAS, by the terms set forth herein, the Parties wish to set forth their understandings with respect to certain aspects of development of the Property.

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NOW, THEREFORE, and in recognition of the foregoing Recitals, the Parties agree as follows:

ARTICLE I

MAXIMUM AREA FOR AUTOMOBILE DEALERSHIPS AND RELATED ACTIVITIES

Unless otherwise approved by the Town, DownsMore agrees that the maximum aggregate acreage devoted to the sale and lease of new and used automobiles, automobile service, and the sale of related goods shall be fixed at a maximum of thirty-eight and twenty-seven one-hundredths (38.27) acres in the CAC and shall be located on the Property. The remainder of the Property (a minimum of 14.54 acres along the eastern boundary of the Property) shall be devoted to uses that are existing Permitted Uses, but not for automobile dealerships. The portions of the Property to be devoted to automobile dealerships and exiting Permitted Uses are generally depicted on Exhibit B attached hereto and incorporated by this reference. Nothing in this Article I shall be construed to require DownsMore to develop the Property as one or more automobile dealerships, and nothing herein shall be deemed to prohibit development of the property for any Permitted Uses.

ARTICLE II

STREET IMPROVEMENTS

1. Country Farms Drive. The Town and DownsMore agree that Country Farms Drive shall be used solely for emergency response and evacuation purposes. Notwithstanding this limitation, the Town reserves the sole authority to manage the use of Country Farms Drive in accordance with its Municipal police powers.

2. Interim Southern Access.

DownMore shall seek approval from the Colorado Department of Transportation ("CDOT") for permission to access that portion of the I-25 Frontage Road ("Frontage Road") that lies adjacent to the Property and which presently connects to Larimer County Road 30 ("LCR 30"). If such permission is denied, the parties will comply with the requirements below for a Permanent Southern Access to the Property. If CDOT grants permission for access to the Frontage Road from the Property ("Interim Southern Access"), the following requirements shall apply:

2.1 Subject to CDOT approval, the Interim Southern Access to the Property shall be established as generally shown on Exhibit C, attached hereto and incorporated herein by this reference. Nothing herein shall preclude the Town from requiring site-specific access improvements in accordance with its established site planning requirements for commercial development in the CAC. Upon establishment of the Interim Southern Access, the need for a southern access to the Property required in conjunction with site plan development and subdivision approval for Automobile Dealership use shall be deemed satisfied.

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2.2 The following shall be required in conjunction with the Interim Southern Acces:

2.2.1 Road right-of-way dedication. As a condition of site plan approval for commercial uses within the Property or DownsMore's real property abutting and immediately to the south of the Property ("Parcel No. 86220-00-004"), DownsMore shall dedicate right-of-way to a width of one-hundred ten feet (110') from its current terminus to the current alignment of LCR 30. The precise location of the required right-of-way shall be determined in accordance with the Town's street design standards.

2.2.2 Roadway improvements to Westgate Extension. As a condition of site plan approval for commercial uses within the Property, DownsMore shall construct that portion of the Westgate Extension from its current terminus to the southernmost boundary of the Property as generally depicted in red on Exhibit C. These roadway improvements shall be constructed in conformity with the Town's requirements for an Urban Minor Arterial roadway.

2.2.3 Roadway improvements to Westgate Extension/Frontage Road connection. As a condition of site plan approval for commercial uses within the Property, DownsMore shall construct the connecting roadway between the Westgate Extension and the I-25 Frontage Road as generally depicted in red on Exhibit C. These roadway improvements shall consist of two (2) paved travel lanes without curb, gutter or sidewalk.

2.2.4 Roadway improvements to Country Farms Drive Extension. As a condition of site plan approval for commercial uses within the Property, DownsMore shall construct the connecting roadway between the Westgate Extension and the current terminus of Country Farms Drive as generally depicted in red on Exhibit C. These roadway improvements shall consist of two (2) paved lanes without curb, gutter or sidewalk. These roadway improvements shall satisfy all Gross Vehicle Weight and turning radius requirements established by the Windsor-Severance Fire Rescue District.

2.2.5 LCR 30 Paving requirements. As a condition of site plan approval for commercial uses within the Property, DownsMore shall pave that portion of LCR 30 lying between its intersection with the Frontage Road and its intersection with Fairgrounds Avenue. Such paving shall extend to the existing width of LCR 30, and shall otherwise comply with the Town's standards for a rural roadway. No curb, gutter or sidewalk shall be required in association with the Interim Southern Access improvements to LCR 30.

2.3 The Interim Southern Access, if established, shall be extinguished upon the establishment of the Permanent Southern Access as described in Section 3 below.

3. Permanent Southern Access.

~~3.1~~ The Interim Southern Access shall be discontinued upon the establishment of a Permanent Southern Access in accordance with this Section 3.

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3.1 The Permanent Southern Access shall be established upon the earlier occurrence of any of the following:

3.1.1 Denial of the Interim Southern Access by CDOT; or

3.1.2 Termination of the Interim Southern Access by CDOT; or

3.1.3 Site plan development and subdivision approval for Parcel No. 86220-00-004.

3.2 In the event that establishment of the Permanent Southern Access is required under sub-section 3.1.1 above, DownsMore shall construct the entire Westgate Extension from its current terminus to its intended intersection with LCR 30 as generally depicted in red and green on Exhibit C. These roadway improvements shall be constructed in conformity with the Town's requirements for an Urban Minor Arterial roadway.

3.3 In the event that establishment of the Permanent Southern Access is required under sub-section 3.1.2 above, and as a condition of Site plan development and subdivision approval for Parcel No. 86220-00-004, DownsMore shall construct that portion of the Westgate Extension from its then-current terminus on the southernmost boundary of the Property to its intended intersection with LCR 30 as generally depicted in green on Exhibit C. These roadway improvements shall be constructed in conformity with the Town's requirements for an Urban Minor Arterial roadway.

3.4 In the event that establishment of the Permanent Southern Access is required under sub-section 3.1.3 above, and as a condition of Site plan development and subdivision approval for Parcel No. 86220-00-004, DownsMore shall construct that portion of the Westgate Extension from its then-current terminus, regardless of location, to its intended intersection with LCR 30 as generally depicted in red and green on Exhibit C. These roadway improvements shall be constructed in conformity with the Town's requirements for an Urban Minor Arterial roadway.

3.5 Roadway improvements to Country Farms Drive Extension. In conjunction with the establishment of the Permanent Southern Access under this Section 3, DownsMore shall construct the connecting roadway between the Westgate Extension and the current terminus of Country Farms Drive as generally depicted in red on Exhibit C. These roadway improvements shall consist of two (2) paved lanes without curb, gutter or sidewalk. These roadway improvements shall satisfy all Gross Vehicle Weight and turning radius requirements established by the Windsor-Severance Fire Rescue District.

3.6 The parties acknowledge that, pursuant to Chapter 17, Article 15 of the *Windsor Municipal Code* ("Road Impact Fee Ordinance"), the Westgate Extension is included in the Town's Major Road System. Therefore, and notwithstanding the foregoing allocation of initial costs to DownsMore, DownsMore shall have the right to obtain a competent traffic impact study ("Traffic Study"), which shall used to determine the extent, if any, of

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reimbursements available to DownsMore under the Road Impact Fee Ordinance for non-site-related road capital improvements. To the extent eligible, the parties will negotiate a reimbursement agreement for reimbursable expenses in accordance with the Road Impact Fee Ordinance.

3.7 Nothing herein shall prevent contribution or reimbursement by third parties who may derive a benefit from the Westgate Extension. It is understood, however, that DownsMore shall bear the entire initial cost of design and construction of the Westgate Extension.

ARTICLE III

FUTURE TRANSIT FACILITY

1. DownsMore has identified an area on the Property on which a potential, future transit facility ("Potential Future Transit Facility") could be located, as depicted on Exhibit D attached hereto and incorporated herein by this reference. Upon mutual agreement of the Parties, the Potential Future Transit Facility may be relocated on the Property.

2. Nothing in this Article shall be deemed a dedication or reservation of any land area for the Potential Future Transit Facility, nor shall it preclude DownsMore from use of the property identified on Exhibit D. The purpose for identification of the Potential Future Transit Facility location is to assure that vertical development of the Property does not prevent or impair the establishment of a facility available to the public in which mass transit services may occur at such time as funding and land acquisition takes place.

3. Nothing in this Article shall be construed as a waiver by DownsMore of its right to reasonable compensation as provided by law, should the Town or any governmental entity acquire any portion of the Property for any public purpose in the future.

4. Nothing in this Article prevents the Town from deciding in the future that there will not be a Potential Future Transit Facility within the CAC, or that it will be located outside of the Property. Upon any such determination, the provisions of the Article III shall be null and void and of no further force or effect.

5. The provisions of this Article III are contingent upon the City providing, no later than August 1, 2016, written assurance to the Town in form satisfactory to the Town, that the City, upon annexation of property on the west side of the Interchange, will require substantially the same amount of property to be identified for a potential, future transit facility, as described in this Article III, on the west side of the Interstate I-25/State Highway 392 Interchange. In the event such assurance is not received by the Town by such date, the provisions of this Article shall thereupon be null and void and of no further force or effect.

ARTICLE IV

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MISCELLANEOUS

1. This Agreement is contingent upon approval by the Town and City of an amendment of the IGA and Amended IGA to allow the sale and lease of new and used automobiles, automobile service, and the sale of related goods as uses by right in the CAC, subject to the restrictions set forth herein, and subject to the adoption by the Town of enhanced CAC design standards in substantially the form set forth on Exhibit E attached hereto and incorporated herein by this reference, with such approvals to be given no later than August 1, 2016.

2. The terms of this Agreement shall be deemed a covenant running with the land. All future owners of the Property shall be bound by these terms.

3. The terms of this Agreement, to the extent they apply to future activity within the Property, shall be incorporated into any Site Plan Development Agreement negotiated in association with site planning of the Property.

4. There are no third party beneficiaries intended under this Agreement. This Agreement shall be enforceable only by the signatories hereto.

5. This Agreement contains the entire understanding of the parties with respect to its subject matter. There are no enforceable terms, promises, representations or undertakings between the parties, except as set forth herein, with respect to its subject matter.

6. In the event that either party initiates litigation to enforce or interpret the terms of this Agreement, each party shall bear its own costs of suit, including attorney fees.

7. This Agreement shall be construed in accordance with Colorado law. Venue for any disputes arising out of this Agreement shall exclusively lie in the state courts of Colorado, sitting in the County of Larimer.

8. All notices required to be issued in writing herein shall be mailed by United States Postal Service certified mail, return receipt requested, postage pre-paid and addressed as follows:

To the Town:	To DownsMore:
Town Manager	William D. Moreland
301 Walnut Street	1655 E. Layton Drive
Windsor, CO 80550	Englewood, CO 80113

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

THE TOWN OF WINDSOR, a Colorado home rule
municipal corporation

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By: _____
Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

DOWNSMORE LLC, a Colorado
limited liability company

By: _____

Printed Name: _____

Title: _____

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Exhibit A

PARCEL 1:
Lot 2, Westgate Commercial Center Subdivision Third Filing,
Town of Windsor,
County of Larimer, State of Colorado

PARCEL 2:
All that portion of the West ½ of the NE ¼ of Section 22, Township 6 North, Range 68 West of the 6th P.M., lying South of the South lines of the properties described in Deeds recorded December 30, 1968 in Book 1400 at Page 250 and recorded March 18, 1970 in Book 1429 at Page 28, EXCEPT that portion conveyed to Department of Highways, State of Colorado in Deed recorded December 6, 1963 in Book 1229 at Page 589, County of Larimer, State of Colorado

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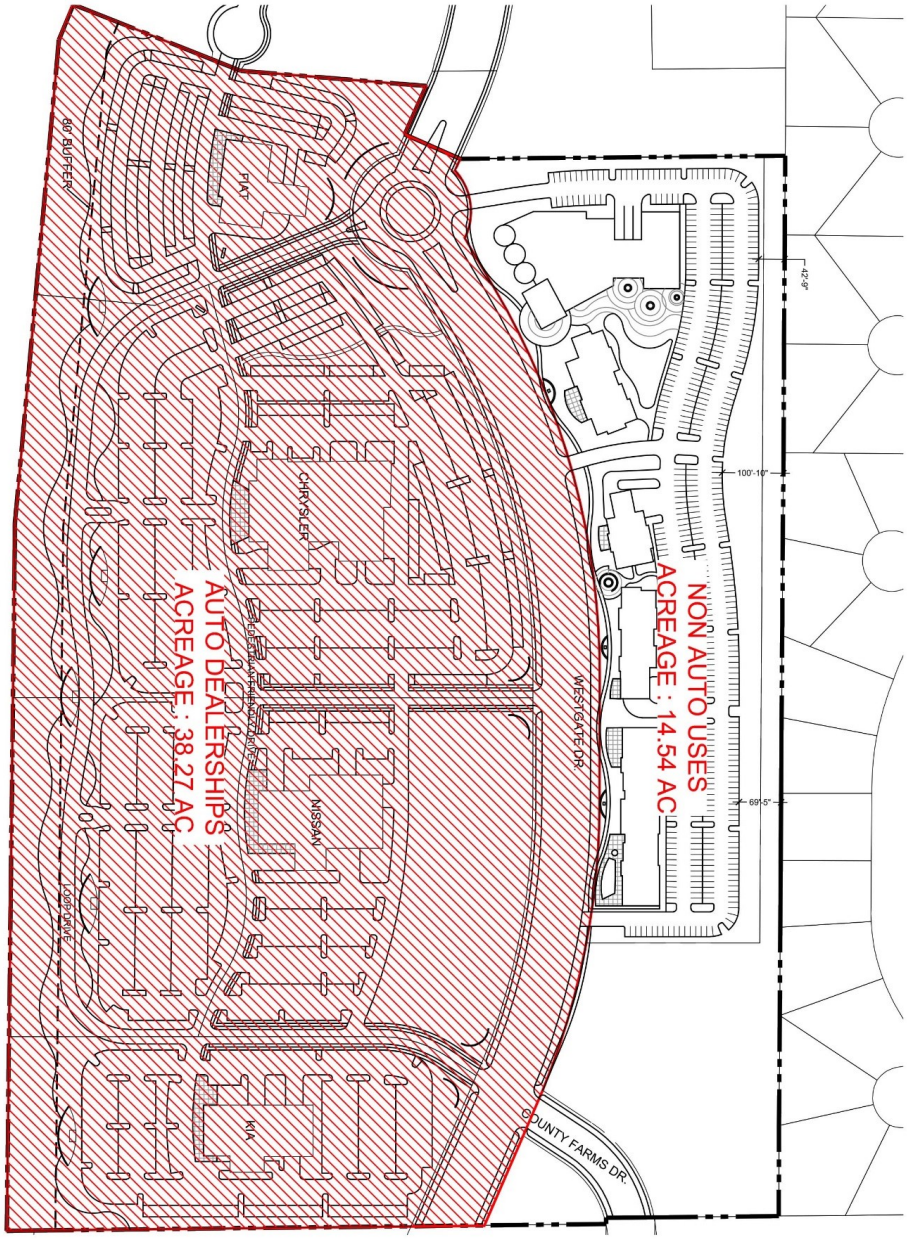
Exhibit B



I-25

Exhibit C

Hathaway Ln
Bayside Dr
Legate Dr
AmericInn Lodge & Suites Ft. Collins South
Pueblo Viejo
WESTGATE DR.
EMERGENCY ACCESS ONLY
SW Frontage Rd
I-25
FRONTAGE ROAD
SW Frontage Rd

Exhibit D

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Exhibit E

[insert copy of Enhanced CAC Design Standards]

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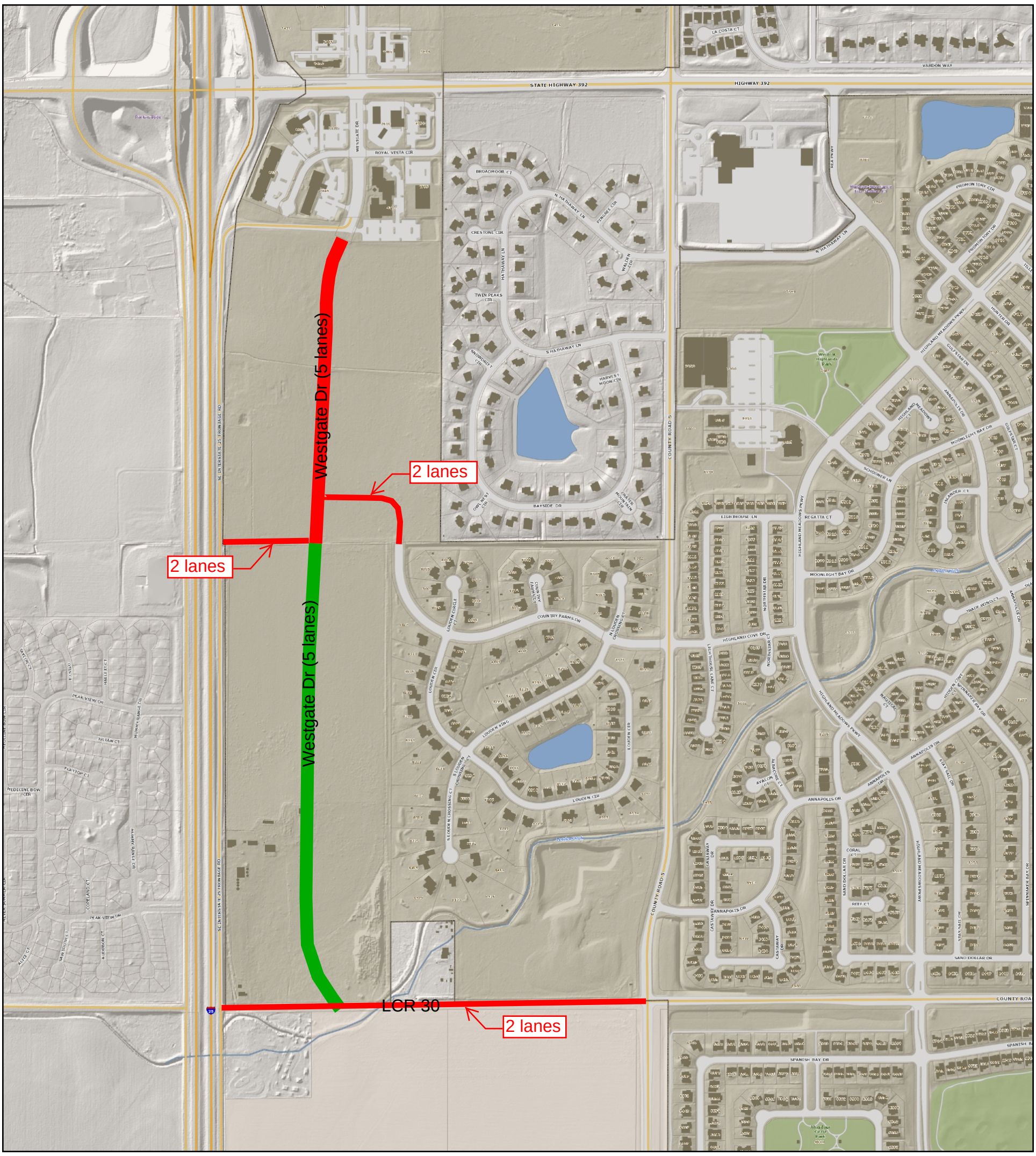
Windsor Map



Legend

Parcels

Notes

0.1 0 0.1 Miles

1: 7,199

NAD_1983_HARN_StatePlane_Colorado_North_FIPS_0501_Feet

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Date Prepared: 3/28/2016 9:58:36 AM

M E M O R A N D U M

Date: April 4, 2016
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Scott Ballstadt, AICP, Director of Planning
Subject: Review of I-25/SH 392 Corridor Activity Center (CAC) draft enhanced design standards

Item #: Work Session - 2

Background/Discussion:

Based on Town Board direction from the March 7 and March 28, 2016 Town Board work sessions, staff has continued to refine the enclosed draft CAC enhanced design standards, which will apply to all development within the CAC other than single-family residential development and parks or open space. The standards also include outdoor display standards that would apply to any automobile dealership uses if approved within the CAC.

Revised or new language is indicated in **bold font** in the enclosed standards. The three areas receiving the greatest attention include the width of buffer yards, building orientation/parking lot location, and height of landscape berms.

Buffer Yards. In order to mitigate negative impacts on residential neighbors, the draft standards include requirements for landscaped buffer yards. The current draft standards would require a minimum buffer yard width of forty (40) feet with options to increase that width to fifty (50) or sixty (60) feet. The table in the standards requires denser landscaping if the buffer is 40 feet and less dense landscaping is required if wider buffer yards are provided.

Several neighbors have indicated they would prefer an even wider buffer of 80 to 100 feet, however, if adopted, the buffer yard requirements as proposed would be more stringent than any other adopted setback requirements that the Town has in place. Where Limited Industrial districts adjoin residential zoning districts, Section 16-21-40 of the Municipal Code requires buildings to be setback thirty (30) feet. Staff has enclosed a copy of Section 16-21-40 and aerial photographs of examples in the packet materials for reference.

As part of the buffer yard discussion, questions have also been raised regarding the alignment of future Westgate Drive. It should be clarified that the configuration of Westgate Drive and the layout of any new commercial lots will require a formal major subdivision application, which would also prompt neighborhood meeting and public hearing requirements. If the IGA with Fort Collins is ultimately amended to allow automobile dealership uses, the dealerships would then need to submit major subdivision and site plan applications for review of street configuration, lot layout, utilities, drainage, landscaping, etc.

Building Orientation/Parking Lot Location. The enclosed standards have been revised to allow buildings to be oriented to public or private streets. Since some uses will front multiple streets, the standards also include language that requires high quality architecture on all four (4) building elevations regardless of building location. The intent is that all buildings be equally attractive from all vantage points.

The change to allow buildings to front on public or private streets also prompted changes to parking lot location language. Rather than requiring parking areas to be located "behind" buildings, parking is now encouraged to be located on sides of buildings that do not face a street. However, all parking is required to be screened with landscape and/or other materials.

Berm Height. The revised standards now refer to a range in berm height between three (3) and seven (7) feet, dependent on the proposed finished grade of the adjacent parking lot or service area in relation to the adjacent interstate grade. If I-25 is elevated in comparison to the grade at the edge of the proposed development, berms should be higher to achieve the same screening effect. The intent is that berm heights will primarily be designed to provide significant buffering of parking lots and service areas, allowing for some visibility of buildings, while providing visual interest along I-25.

Recommendation: If the Town Board agrees with the aforementioned recommendations, staff recommends that the draft enhanced design standards be referred to Fort Collins on April 11.

Attachments: Draft CAC enhanced design standards
Municipal Code Section 16-21-40 - Limited Industrial setbacks
Aerial photographs of examples
Letters and emails from neighboring property owners

Enhanced CAC Design Standards

General Purpose:

The intent of these standards is to provide the tools for creating an improved quality of appearance and more integrated mix of land uses for the Windsor Corridor Activity Center (CAC). These standards apply to all development applications within the CAC other than single-family residential development and public parks or open space. **These standards supplement all of the Town's adopted design standards and, to the extent that the Town's adopted standards address the following, the stricter of the two shall be applied.**

Site Design:

To the maximum extent feasible, larger sites containing multiple buildings and uses shall be composed of a series of urban-scale blocks of development defined and formed by public or private streets or drives that provide links to nearby streets along the perimeter of the site.

1. In addition to a network of streets and drives, blocks shall be connected by a system of parallel tree-lined sidewalks that adjoin the streets and drives combined with off-street connecting walkways so that there is a fully integrated and continuous pedestrian network.
2. To the maximum extent feasible, remote or independent pad sites, separated by their own parking lots and service drives, shall be minimized. Such buildings shall be directly connected to the pedestrian sidewalk network. All parking areas shall be oriented together to provide shared parking opportunities.

Landscaping:

Landscaping shall be incorporated around service areas, building entrances and throughout parking lots, vehicular and pedestrian circulation areas. All landscaping shall be in accordance with the Town of Windsor Tree and Landscape Standards, as amended or replaced. The intent of these standards is to supplement the Tree and Landscape Standards in the I-25 corridor and ensure a high quality appearance within the I-25 CAC gateway.

1. Site landscaping shall be twenty percent (20%) or greater, excluding the 80-foot landscape buffer adjacent to I-25 and any required Buffer Yards.
2. Landscape designs shall strive to incorporate xeric principles.
3. Landscaping shall be located between all adjacent roadways and property lines (streetscape).
4. Berms and walls may also be incorporated as an element for screening.
5. I-25 Landscape Buffer. Landscaping shall be provided adjacent to Interstate 25 in accordance with the following:
    A. An 80-foot wide landscape buffer shall be provided adjacent to the I-25 right-of-way. Landscaping shall be predominately planted with native unirrigated grasses with

occasional bands of shrubs and trees. Buffers shall provide a minimum of two (2) evergreen trees, two (2) shade trees, and four (4) shrubs per one-hundred (100) lineal feet of frontage.

B. Fences, screen walls, **parking or display** are not allowed within the 80-foot buffer. Retaining walls should be minimized to the greatest extent possible, and shall not exceed four feet (4') in height.

C. Parking lots and service areas shall be significantly buffered from I-25 primarily by the use of **naturalistic** berms **and landscaping**. **Berm heights shall primarily be designed to provide significant buffering of parking lots and service areas, allowing for some visibility of buildings, while providing visual interest along I-25. Berms shall comply with the following:**

1. **Berms shall range in height from three (3) to seven (7) feet in height, dependent on the proposed finished grade of the adjacent parking lot or service area in relation to the adjacent interstate grade. If I-25 is elevated in comparison to the grade at the edge of the proposed development, berms should be higher to achieve the same screening effect.**
2. **Berms shall create a naturalistic appearance raising, lowering, and/or overlapping, to provide adequate screening.**
3. **The slope of berms should generally be no steeper than a ratio of 4:1 to allow for a naturalistic, park-like appearance, and allow for mowing.**
4. **Berms shall be located along the easternmost portion of the 80-foot landscape buffer adjacent to I-25 while still allowing for a meandering appearance of the berms.**
5. **Berms shall be predominately planted with native unirrigated grasses with occasional bands of shrubs and trees.**
6. **When berms provide a significant amount of screening of parking and service areas, generally berms greater than five (5) feet in height, the berms and surrounding areas shall primarily be planted with unirrigated grasses with occasional bands of shrubs and a mix of shade, ornamental, evergreen trees. On average, such areas shall be planted with a minimum of four (4) trees and four (4) shrubs per one-hundred (100) lineal feet. A minimum of 50% evergreen trees shall be provided.**
7. **When berms which provide lower amounts of screening of parking and service areas, generally berms five (5) feet or less in height, the berms and surrounding areas shall be planted with a higher density mix of shade, evergreen and ornamental trees, in addition to unirrigated grasses and shrubs. On average, such areas shall be planted with a minimum of eight (8) trees and eight (8) shrubs per one-hundred (100) lineal feet. A minimum of 50% evergreen trees shall be provided.**
8. **Gaps between berms shall be planted, on average, with a minimum of eight (8) trees and eight (8) shrubs per one-hundred (100) lineal feet. A minimum of 50% evergreen trees shall be provided.**

9. **The Site Plan development review process shall require that screening and view opportunities are illustrated, including cross-sections and key views from adjacent streets.**

6. Parking Lot Screening
    A. The perimeter of all parking areas shall be screened from public **or private** street, public open space, and adjacent properties by at least one of the following methods for the entire perimeter length:
        1. A berm three (3) feet high with a maximum slope of 3:1 in combination with evergreen and deciduous trees and shrubs.
        2. A hedge at least three (3) feet high, consisting of a double row of shrubs planted 3-feet to 5-feet on center, depending on the species, in a triangular pattern.
        3. A decorative fence or wall made of masonry or other high quality material between three (3) and four (4) feet high in combination with landscaping.
    B. In addition to the above screening, the following landscaping is required:
        1. Trees shall be provided at a ratio of two (2) evergreen trees, two (2) shade trees, and four (4) shrubs per one-hundred (100) lineal feet along a public **or private** street.
        2. Trees may be spaced irregularly in informal groupings or be uniformly spaced, as consistent with larger overall planting patterns and organization. Perimeter landscaping along a street may be located in and should be integrated with the streetscape in the street right-of-way.
7. Parking Lot Landscaping:
        1. Parking areas shall be broken into modules not to exceed one hundred (100) spaces or 18,000 square feet. The perimeter of each module shall be landscaped with a ten foot (10') wide buffer landscaped with shrubs and trees, including one tree every forty feet (40'). In addition to landscape island requirements, large surface parking lots shall be visually and functionally segmented into smaller sections by landscape areas or islands. Each section shall contain a maximum of one hundred (100) parking spaces.
        2. Landscape medians and/or islands should strive to incorporate bio swales and/or raingardens throughout a site to manage runoff.
8. Buffer Yards
    A. Applicability. These standards apply to all development applications within the CAC other than single-family residential development and public parks or open space.
    B. Purpose. The purpose of this Section is to provide standards to separate proposed development from existing single-family residential uses, in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights and unsightly buildings or parking areas.
    C. Buffer standards. Buffer yards shall be located on the outer perimeter of a lot or parcel adjacent to single-family uses and may be required along all property lines for buffering purposes and shall meet the standards as provided in this Section.

D. Only those structures used for buffering and/or screening purposes shall be located within a buffer yard. The buffer yard shall not include any paved area, except for pedestrian sidewalks or paths or vehicular access drives which may intersect the buffer yard at a point which is perpendicular to the buffer yard and which shall be the minimum width necessary to provide vehicular or pedestrian access. Fencing and/or walls used for buffer yard purposes shall be solid, with at least seventy-five (75) percent opacity.

E. Buffer yard widths are established in the chart below and specify deciduous or coniferous plants required per one hundred (100) linear feet along the affected property line, on an average basis.

		Plants per 100 linear feet along affected property line			
Buffer Width	**Plant Multiplier**	**Shade Trees**	**Ornamental Trees**	**Evergreen Trees**	**Large Shrubs**
40	**1.00**	**4**	**4**	**3**	**25**
50	**.90**	**3.6**	**3.6**	**2.7**	**22.5**
60	**.80**	**3.2**	**3.2**	**2.4**	**20.0**

F. Credit for berm. The required plant units may be reduced by 50% if a landscaped berm is provided with a minimum height of 5 feet.

9. Other landscape areas. Landscape areas outside of the I-25 Landscape Buffer, Parking Lot Screening, Parking Lot Landscaping, and Buffer Yards shall consist of at least one (1) tree and five (5) shrubs for every 750 square feet of landscaped area.

Parking:

1. Applicability. These standards apply to all parking lots within the CAC associated with commercial, industrial, or multifamily development.

2. Purpose. The purpose of this Section is to provide standards to enhance the physical appearance of development within the CAC by ensuring parking lots are designed to maintain and enhance the quality of commercial development, manage storm water runoff, reduce heat island effects, and promote a pedestrian friendly and safe environment.

3. Standards. Parking lots shall be screened to the maximum extent feasible by having the majority of such parking located **away from the predominant entries of the buildings**. Parking lots located between the **primary** façades of the building and the adjacent public **or private** street shall be limited to no more than a single drive aisle with a single row of parking on each side. When this layout does not provide enough parking, additional parking should be distributed on sides of a building **that are not a primary façade**.

4. Large parking lots shall include walkways that are located in places that are logical and convenient for pedestrians.

Building Design and Orientation:

The purpose of this Section is to provide standards to enhance the physical appearance of development within the CAC. The intent is not to limit creativity or innovation in architectural design. Applicants that propose architecture that does not comply with the following standards are encouraged to seek alternative compliance.

Orientation:

1. Buildings shall be oriented with their primary entrances facing an adjacent public or private street.
2. **For buildings with more than one street frontage, facades visible from the street shall incorporate high quality architectural materials, architectural elements and building appearance equivalent to the primary façade.**
3. **If the back or sides of buildings are oriented toward public streets, public rights-of-way, or private streets building details, combined with landscaping or berming, shall be used to create a level of visual interest which is equal to that of the building's primary facade.**
4. **Service areas, loading docks, outdoor storage and mechanical equipment shall not be orientated towards public or private streets. These areas shall be screened from view of all adjacent roadways and properties.**
5. To the maximum extent feasible, buildings shall be oriented to maintain intermittent views to the west.

Form/Façade Treatment:

1. **All sides of buildings shall be of high quality architecture and building materials.**
2. **Building sides facing a public or private street shall be architecturally prominent.**
3. Entrances shall be clearly defined by architectural elements.
4. Facades shall incorporate **a minimum of three (3)** of the following architectural elements to emphasize building entries, **doorways, walkways and window openings.**
    - **(a) Canopies or awnings over at least thirty percent (30%) of the openings of the building; or**
    - **(b) Covered walkways, porticos and/or arcades covering at least thirty percent (30%) of the horizontal length of the front facade; or**
    - **(c) Projecting trim, ledges or similar architectural accent features between two (2) inches and six (6) inches in width around all windows and doorways; or**
    - **(d) Raised cornice parapets over entries; or**
    - **(e) Some other architectural feature or treatment which adds definition to the building openings, walkways or entrances.**

5. Ground floor facades that face streets or public walkways must be modulated with features such as windows, entrances, arcades, porches, pilasters, arbors, awnings, recessed or projecting display windows along no less than 75% of the **length of the** façade.

6. **Openings or architectural elements simulating fenestration-like features shall occupy at least twenty percent (20%) of the wall surface area of the first floor of the front facade and walls adjacent to public rights-of-way, or visible from adjacent properties.**
7. No single wall plane shall exceed 30 feet **horizontal length or vertical height.**
8. Wall planes shall include **varying** building articulation with a minimum of three feet in projection or depth **from an adjacent wall plane.**
9. Wall planes shall include a variety of building materials, not to exceed 75 percent of one material.
10. Facades greater than 100 feet in length shall provide a varying roofline.
11. **All roof-top equipment shall be fully screened from view of adjacent roadways and properties.**

Roof Form:

Buildings Less than 10,000 sq.ft.

Roofs on primary structures with a floor plate less than 10,000 sq.ft. shall be pitched with a minimum slope of at least 5:12 or provide the appearance of 5:12 pitch through the use of a modified mansard roof. At least one of the following elements shall be incorporated into the design for each 50 lineal feet of roof:

1. Projecting gables
2. Hips
3. Horizontal/vertical breaks

Three or more roof slope planes shall be incorporated into a design.

Buildings Larger than 10,000 sq.ft.

Roofs on structures with a floorplate of greater than 10,000 sq.ft. shall have no less than two of the following features:

1. Parapet walls featuring three-dimensional cornice treatment that at no point exceed one-third of the height of the supporting wall.
2. Overhanging eaves, extending no less than 3 feet past the supporting walls.
3. Sloping roofs not exceeding the average height of the supporting walls, with an average slope greater than or equal to 1 foot of vertical rise for every 1 foot of horizontal run.
4. Three or more roof slope planes.

Compatibility:

Compatibility shall mean the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting *compatibility* include height, scale, mass and bulk of structures. Other characteristics include pedestrian or vehicular traffic, circulation, access and parking impacts. Other important characteristics that affect *compatibility* are landscaping, lighting, noise, odor and architecture. *Compatibility* does not mean "the same as." Rather, *compatibility* refers to the sensitivity of development proposals in maintaining the character of existing development.

Conditions may be imposed upon approval of a development project in or adjacent to an existing developed neighborhood to achieve compatibility in connection with (i) a complementary or new standard of architectural character for the neighborhood; (ii) buildings proportional in mass and scale of other structures abutting or in the near vicinity through articulation and subdividing of massing; (iii) creating opportunities for privacy of abutting land uses; (iv) building materials and colors complementary to abutting uses; and (v) limitations on outdoor storage areas, mechanical equipment and deliveries.

Lighting:

In addition to compliance with Municipal Code §16-10-100, Site lighting, the following lighting standards shall apply:

A. In no event shall lighting negatively affect public roadways adjacent to or in proximity of the site.
B. Exterior building lighting and display lighting shall include fixtures with a dimming interface.
C. Light poles within 100 feet of a residential use or residentially-zoned property shall not exceed 20 feet in height.
D. Outdoor lighting shall be limited to a maximum of one thousand (1000) candela per square meter (nits).
E. Outdoor lighting shall be L.E.D. (light emitting diode) "Dark Sky" compliant, per the International Dark Sky Association requirements for reducing light pollution and minimizing glare, sky glow, spill light and obtrusive light.
F. Light bulbs shall be soft-white or warm-white hues.
G. A photometric plan illustrating compliance shall be submitted.

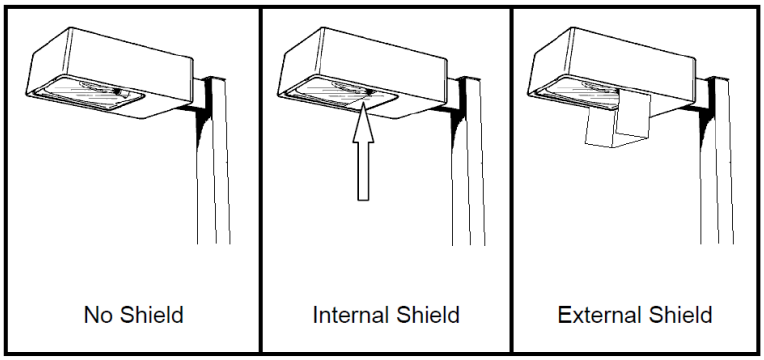
Lighting Time Limitations

Parking lot/outdoor display lot lighting shall include fixtures with a dimming interface. Lighting shall be reduced within one hour after closing so that the remaining illumination levels are sufficient for security purposes only. Any illumination used after 10:00 p.m. shall be reduced to levels sufficient for security purposes only.

Shielding

All light fixtures that are required to be fully shielded shall be installed in such a manner that the shielding satisfies the definition of a fully shielded fixture:

1. All light fixtures used in outdoor display lots shall be fully shielded and be aimed so that the direct illumination shall be confined to the property boundaries of the source.
2. All light fixtures used on open parking garages, including those mounted to the ceilings over the parking decks, shall be fully shielded.



Certification
Outdoor lighting shall be designed and certified by an engineer as conforming to all applicable restrictions of this Code before construction commences. Further, after installation is complete, the system shall be again certified by a registered engineer to verify that the installation is consistent with the certified design.

Noise:

The intent of the following standards is to promote measures that will minimize noise generated on the property and promote compatibility with surrounding land uses.

1. **Amplified** speakers prohibited. Phones, pagers and other silent methods of communication shall be utilized to communicate between employees, customers and others. **Amplified** speakers and similar methods of communications shall be prohibited.
2. Vehicle service shall take place within enclosed buildings with closed overhead doors to minimize noise from tools, equipment or other sources.
3. With regard to the operation of motor vehicles, unreasonable noise shall include, but not be limited to:
   a. The continuous or repetitious sound of any horn or signal device of a motor vehicle, except as a danger signal. For the purposes of these regulations, continuous shall mean continuing for an unnecessary or unreasonable period of time.
   b. The operation of any motor vehicle in a manner which causes excessive noise as a result of an unlawful, defective or modified exhaust system, or as a result of unnecessary rapid acceleration, deceleration, revving the engine or tire squeal.

Outdoor Display:

Outdoor display of merchandise for sale or lease is not allowed unless specifically depicted on an approved site plan. Additionally, the following outdoor display standards shall apply to Automobile Dealership uses.

1. In addition to compliance with Municipal Code Chapter 16, outdoor display shall be consistent with the following:
    a. Lighting, per the CAC design standards.
    b. Outdoor display areas shall be located on-site and shall not be located in any setback, buffer area, drive aisles, driveways, customer or employee parking, or interfere with any pedestrian walkways, or public right-of-way.
    c. Vehicle Display Areas shall occur only in areas approved on the Site Plan and shall adhere to the following:
        i. A maximum of five (5) Vehicle Display Areas shall be allowed in the CAC that font on I-25. A maximum of three (3) Vehicle Display areas that front Westgate Drive shall be allowed in the CAC.
        ii. No more than three (3) vehicles shall be displayed at any one Vehicle Display Area.
        iii. Vehicle Display Areas shall be no taller than four feet (4') in height measured from the adjacent grade and shall not be installed at the top of berm areas.
        iv. The facade of a Vehicle Display Area shall be masonry or other similar high quality material.
        v. Vehicles shall be displayed parallel to the ground.
        vi. Rotating displays are not allowed.
    d. Outdoor display areas, including Vehicle Display Areas, shall include landscaping between the display area and property line with shrubs and perennials. The display area landscaping is a separate requirement from the required parking lot landscaping requirements, landscape buffer area requirements and public right-of-way landscaping requirements.
    e. Use of balloons, inflatable devices, and any other similar attention getting devices is prohibited.

Alternative Compliance:

The **Planning Commission** may approve alternative compliance if it finds that the granting of the alternative compliance would not be detrimental to the public good, and that:

(1) the plan as submitted will promote the general purpose of the design standards for which the alternative compliance is requested equally well or better than would a plan which complies with the standard for which alternative compliance is requested; or

(2) the approval of alternative compliance would, without impairing the intent and purpose of the design standards, substantially alleviates an existing, defined and described problem of Town-wide concern or would result in a substantial benefit to the Town by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and

described in the Town's Comprehensive Plan or in an adopted policy, ordinance or resolution of the Town Board, and the strict application of such a standard would render the project practically infeasible; or

(3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, the strict application of the design standard for which alternative compliance is sought would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

(4) the plan as submitted will not diverge from the CAC design standards except in a nominal, inconsequential way when considered from the perspective of the entire development plan, and will continue to advance the purposes of the CAC design standards.

Definitions

Automobile Dealership	"Automobile Dealership" shall have the same meaning as defined in § 12-6-102 (13), C.R.S.
Parking Lots	All areas used for the parking of vehicles for customers, employees, and visitors, and fleet or business vehicles. In the case of Automobile Dealerships, all outdoor areas used for the staging, storing , or display of vehicle inventory for sale, lease, rental, service, or similar use shall be considered parking lots with the exception of Vehicle Display Areas as defined below
Primary Facade	Any side of building facing toward a public or private street.
Vehicle Display Areas	An outdoor pad site, typically raised above grade, with physical design characteristics meant to showcase a limited number of vehicles in an attention getting manner that stands out from vehicle inventory areas within parking lots.

Sec. 16-21-40. - Building location.

Except as otherwise specified in this Section, minimum setback shall be thirty (30) feet and minimum offset shall be twenty (20) feet. Should a Limited Industrial I-L Zoning District adjoin any residential zoning district or residential property, all of the following requirements shall be met for all such lots which adjoin any such residential zoning district or residential property:

(1) Any property line abutting a residential zoning district or residential property shall maintain a minimum setback and offset distance of thirty (30) feet, with said thirty-foot setback or offset distance being used for a substantial landscape buffer that adequately protects the adjoining residential properties from any negative impacts associated with the limited industrial use;

(2) The maximum height of any structure located within two hundred (200) feet of the respective residential zoning district boundary shall not exceed either the maximum height permitted for structures in the adjoining residential zoning district or, where applicable, the maximum height permitted for structures in any applicable Corridor Plan of the Town, whichever height is less;

(3) Gravel surfaces shall be allowed, subject to all of the following conditions being met: a) no such surface shall be permitted to be used in lieu of the paving requirements for parking and circulation areas on the site or within the subdivision which are currently required by this Code; b) no such surface shall be permitted to be any closer than two hundred (200) feet from the nearest residential zoning district boundary; c) in accordance with all county health department regulations and approvals, all such surfaces will be required to be treated on an ongoing basis for dust control and abatement; and d) decorative rocks and stones that are fully contained within landscaping islands and that are permitted by the Town's landscaping requirements will not be defined as gravel surfaces;

(4) With the exception of vehicles entering or exiting through open overhead doorways and the respective overhead doors being closed immediately following each such event of ingress and egress, all overhead doors which face the respective residential zoning district shall remain closed at all other times;

(5) To allow for landscape buffers and tree lawns, all paved areas for parking lots, interior drives which connect parking lots and any paved storage areas shall be set back a minimum distance of thirty-five (35) feet from any property lines which abut state highways, and shall be set back a minimum of thirty (30) feet from all other property lines;

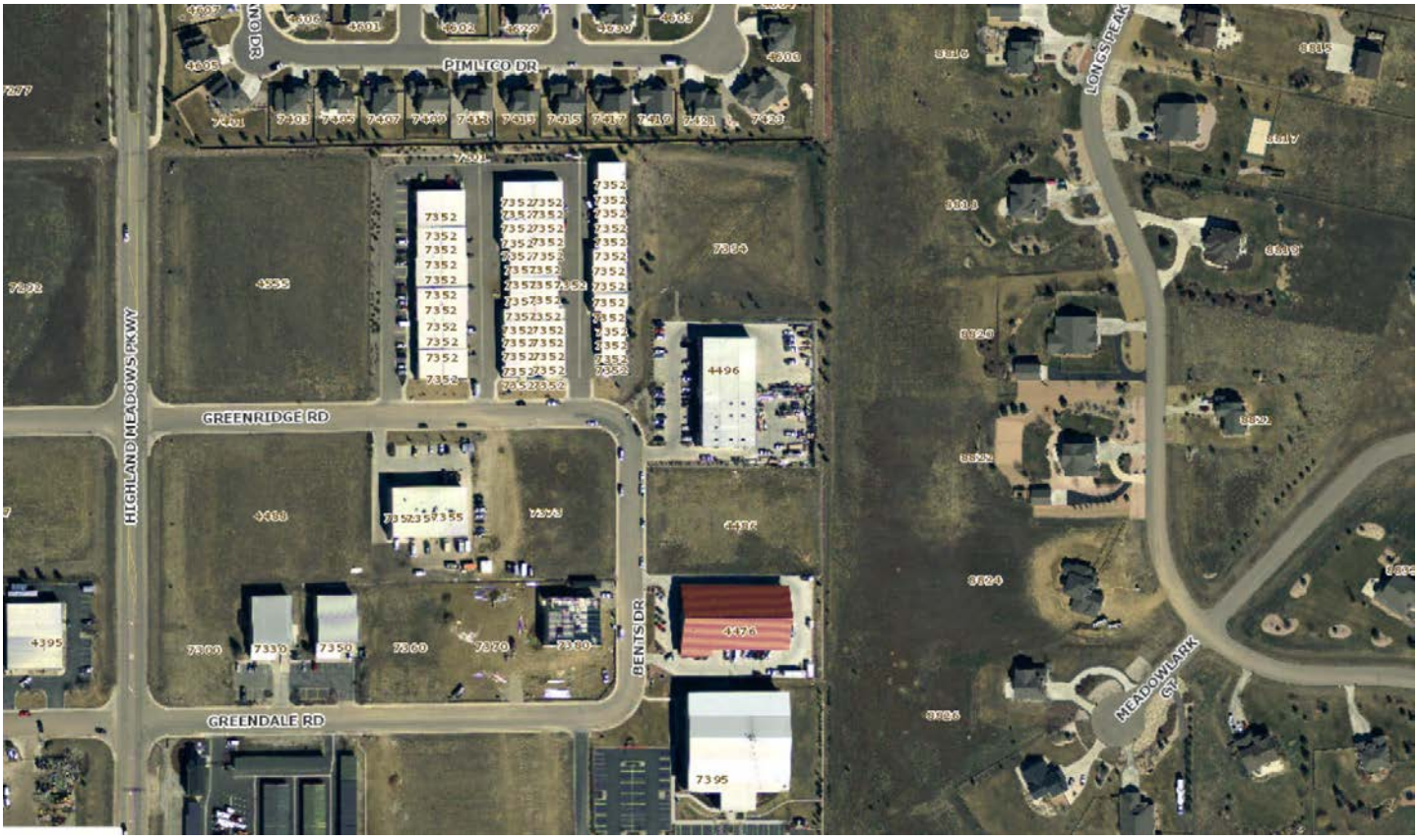
(6) As part of the landscaping requirements of Section 16-21-70 of this Article, the applicant shall provide a detailed drawing of a landscaping buffer strip, which shall include all associated specifications, that will be planted along the entire length of any property line which adjoins any residential zoning district. Said landscaping buffer strip shall be approved by the Town as part of the site plan review process and shall also: a) be planted entirely within the property lines of the limited industrial zoning district lot; b) be required to be planted regardless of any fencing that may be installed on the lot; and c) be supplemental to, and not in lieu of, all other landscaping requirements associated with the limited industrial zoning district lot; and

(7) Any such use located on any such limited industrial zoning district lot shall also be required to adhere to all of the industrial performance standards relative to glare and heat, vibration, light, smoke emissions, odor emissions and particle emissions as outlined in Section 16-10-60 of this Chapter.

(Prior code 16-344; Ord. 2006-1236 §1)

Examples of Setbacks/Buffers between Commercial/Industrial and Residential Uses

Westgate Commercial Center



Highlands Industrial Park

Windsor Manor

Shops at Westwood

As homeowners in Country Meadows who have attended every meeting, work session, and joint meeting regarding the I-25/392 IGA, we are disappointed with the direction the enhanced CAC standards seem to be heading. We are disheartened that residents' concerns are not truly being listened to or considered in decision-making.

Even back in November at the Joint Work Session, neighborhood meetings and public hearings were discussed as necessary and appropriate. Fort Collins council members commented on the expectation of community outreach and appropriate public dialogue. Even though 4 of us residents were prepared to speak during the "Public Invitation to be Heard" at the March 28 Town Board Work Session, Mayor Vazquez stated that he would prefer that we wait until the April 4 public comment period. When we asked if Windsor was mailing out letters as notice regarding the April 4 meeting to the 200 residences in Country Meadows and Country Farms, he replied that there would be a notice on the Windsor website and that the Director of Planning could email us (he generally has emailed 3 of us). We were told that a resolution does not require a public hearing, and this public meeting was graciously being offered to us residents. However, Windsor does not feel compelled to make an effort to comprehensively notify all residents. Since several of us continued to ask about communication of this meeting, Windsor has since posted a notice about the "Public Comment" on their webpage; however this is rather late public notification, being only 6 days away.

Town staff stated at the March 28th meeting that the dealerships will not generate enough tax revenue to pay for the investment that Windsor will have to make to create the improvements needed for the car dealerships. Why is the Town of Windsor willing to subsidize them? In the economic analysis done in March 2015, fees and licenses are actually reimbursements to Windsor, not income. There is a lack of revenue generation from auto sales due to unique laws governing auto sales; whatever community the auto buyer lives in gets the fees. The net revenue to Windsor from the car dealerships is a negative net revenue, according to Town staff.

The proposed retail (which Windsor really seems to want because they will not get any tax revenue from the auto dealers) will be pushed into what Windsor planners call a "narrow developable parcel". The development has now been divided into 38.27 acres for auto dealerships and 14.54 for retail. If tax revenue from retail is so important that our residential homes are being sacrificed, then why is Windsor entertaining allowing car dealerships in the first place since they do not generate any significant tax revenue for the town of Windsor?

The enhanced design standards are intended to provide a quality development that is also a gateway for Windsor and Fort Collins. Various documents from Windsor have talked about the need to be compatible with existing neighborhoods and to include concerns of residents. However, it appears to me that the car dealerships and their representatives are having a great deal more influence. A few examples:

- The car dealerships held an Open House prior to the Planning Department Open House; even Windsor planners concurred that was unusual. Why have an Open House at this point in time for design plans that are supposedly only conceptual?
- Car dealership representatives were present at the Planning Open House in a prime spot near the entrance, having another chance to convince the public what a great development they would provide.
- Neighbors were given the impression that work sessions are time for the staff to present recommendations to the board, and that the public was welcome to attend and to listen to the discussion, with no opportunity to speak. We were surprised on March 7 that Ms. Liley was given the floor numerous times; especially since as Mr. Ballstadt pointed out that no formal land use application has been made.

- Ripley conceptual designs are shown continually and repeatedly at meetings and referred to repeatedly during discussions of various standards, even though they say that it is just conceptual.
- It is obvious that car dealer representatives have a seat at the table as Windsor Planners mention discussing details with them frequently. Our perhaps naive impression was that Fort Collins and Windsor planners would work together on establishing enhanced design standards (which they did); these would then become established and approved by the Windsor Town Board. Then, the car dealers would decide if they could accept these standards. It seems that the car dealers are continually influencing the written standards; indeed, helping to create these enhanced standards. The dealerships are exercising too much behind the scenes negotiating. We believe this is a conflict of interest.

Some changes that have occurred in the Enhanced Standards:

- Apparently, Windsor is suggesting a change in the revenue sharing percentage with Fort Collins.
- As homeowners, we agreed with the Windsor Staff recommendation that "buildings are oriented with the primary entrances facing an adjacent public street only." We also liked the idea that orienting the rear sides of buildings to Westgate Drive would "present a less desirable side to the public street, existing residences, and possible future development to the east". The dealers have instead asked to have their primary entrance facing I-25; the dealership convinced the planners that the building could look acceptable from all directions.
- Windsor Planners originally proposed 100 spaces for parking modules; they have since agreed to a maximum of 200 spaces, which the dealers requested.
- Windsor Planners originally proposed 10-15 foot berms from I-25. Dealer representatives requested 3-5 feet berms; planners countered with 5-8 feet. Mr. Ballstadt stated that in further conversations with dealers since the 3/28 packets went out, dealers are now proposing 30% 2-3 feet, 50% 3-5 feet, and 20% 5-7 feet. The dealerships are trying to convince the planning department that 2 foot berms are adequate in many places. We doubt these tiny berms will do anything to improve the visual impact from I25.
- Requirements regarding signage appear to have been dropped; the "Design Standards for Activity Centers" from the Feb 1st meeting prohibited signs included "flashing" signs. A Town Board Member asked about signage on 3/28, and the reply was that because a revision to Windsor's sign code would take 1.5 years, they plan to apply today's sign code standards. Does this mean that any huge, monstrous, LED signs will be grandfathered in when the signage code is eventually revised? We believe that LED signs, which are excessively bright with constantly changing advertising, should be prohibited now.
- The Buffer yard width has been revised from 20-40 feet and is currently stated as between 40 to 60 feet.

One issue that is of utmost concern to us continues to be the amount of buffer. The proximity of the development at our back fence will directly affect our privacy and quality of life. When conceptual plans were first presented by the Ripley Design firm, they showed a 50 foot buffer between Country Meadows and development, which we thought was not enough. We have lost some ground (literally) going from 50 feet to possibly 40 feet. Several Town Board Members also indicated in discussion that 40 feet was too small. As neighboring homeowners, we would like to ask that you consider 80 feet as a minimum buffer yard. 80 feet is stated as the buffer from I-25, and we think that established residences that have been in existence for 20 years deserve equitable treatment with the same buffer of at least 80 feet.

That retail parcel that is being strongly promoted will be right up against our backyards, and buildings could be built that are 7 stories. If this type of development happens, neighbors along the fence line will lose any sense of privacy and quality of life. A brewery, bars, restaurants, and multi-story hotels would be

disruptive to existing residences, destroying our property values. They would generate minimal revenue compared to the economic devastation to our neighborhood.

Other ideas that we have brought forward, but have not been addressed, include:

- Moving commercial/retail further south. Since Mr. Moreland owns 114 acres, we would like to suggest that the retail plan be moved further south and further west (close to I-25 rather than existing family neighborhoods); this would give retail businesses higher visibility. This would allow for a larger retail area, also giving Windsor more tax revenue.
- Westgate Drive needs to be moved further west to allow larger buffer yards for residents. Where Westgate Drive is pictured in the conceptual plans pushes retail into a very small area and very close to residential backyards. We believe the conceptual plan illustration is not to scale and exaggerates the look of the buffer yardage that is actually proposed.
- Rather than squeezing retail into a "narrow developable parcel", why not mix retail such as restaurants or boutique businesses in between car dealerships and parking areas, giving a better overall visual feel and better compatibility with residential property owners.

The Town Board is pushing for a vote on April 11 because the Mayor and 3 Board Members seats will be changing. The revision of the standards has been fast-tracked. This is too important an issue for decisions, including voting, to be made in haste. We believe the enhanced CAC standards are not ready to be proposed to the City of Fort Collins.

Revising these standards is no doubt an arduous project, and we appreciate the detailed requirements regarding lighting and noise. However, we need more concensus, including the residential homeowners perspective, on buffer, building height, signage, and retail.

One of the stated purposes of Windsor's CCP Design Criteria is "to integrate new development so that the transition to surrounding residential neighborhoods is accomplished sensitively." Our homes are the single most important investment of our lives, and it's where we all go to relax and recuperate from the normal stresses of daily life. We ask the decision-makers and planners to remember our neighborhoods and the 200 families that will be significantly impacted and changed by development of this area. Please remember the existing homeowners of Country Meadows and Country Farms by including standards and building requirements that will make it tolerable to continue to live in our homes.

Donald and Elaine Burritt
Country Meadows homeowners

Scott Ballstadt

From: Donald Burritt <donburritt@gmail.com>
Sent: Monday, March 28, 2016 11:04 AM
To: Scott Ballstadt; Donald Burritt; Elaine Burritt
Subject: Concerns regarding Signage and Lighting (I-25/392)

Hello, Scott and Windsor Planners

Thanks for your hard work on the enhanced CAC standards. I have some questions regarding signage and lighting that hopefully will be addressed at the March 28th meeting.

I did not see any requirements regarding signage in the "Enhanced CAC Design Standards" included in the packet for tonight's March 28 work session. The "Design Standards for Activity Centers" from the Feb 1st meeting prohibited signs included "flashing" signs. It did not prohibit LED signs. LED signs are excessively bright and their advertising constantly changes and should be prohibited. For example, see the sign at the RV Dealership just East of the Candlelight Playhouse in Johnstown. Even the LED sign at the Bud Center is blinding to drivers on I25. Signs should not be visible from the neighborhoods, including signs along the freeway.

I hope to see an example of fully shielded light fixtures. Tthe "Enhanced CAC Design Standards" shows drawings of "no shield", "internal shield" and "external shield"; however, what does a "fully shielded" light fixture look like?

If LED lights are used, the most visually comfortable color for LED lights is amber, such as those used in some of the parking lot lighting at the Front Range Community College at Harmony and Shields. Here is an Excerpt from the International Dark Sky Association "http://darksky.org/lighting/lighting-basics/" ……

Color Matters

….it is crucial to have fully shielded lighting, but we now know that the color of light is also very important. Both LED and metal halide fixtures contain large amounts of blue light in their spectrum. Because blue light brightens the night sky more than any other color of light, it's important to minimize the amount emitted. Exposure to blue light at night has also been shown to harm human health and endanger wildlife. IDA recommends using lighting that has a color temperature of no more than 3000 Kelvins. Lighting with lower color temperatures has less blue in its spectrum and is referred to as being "warm." Higher color temperature sources of l ight are rich in blue light. IDA recommends that only warm light sources be used for outdoor lighting. This includes LPS, HPS and low-color-temperature LEDs. In some areas, the white light of even a low-color-temperature LED can be a threat to the local nighttime environment. In those cases, LPS or narrow-spectrum LEDs are preferred choices.

Thank you for continuing to remember the nearby proximity of our residential neighborhoods and the deletirious effects bright signage and lights would have on our family homes.

Sincerely,

Donald Burritt

Dave and Diane Howell email

On April 4, Windsor Town Board's Work Session Agenda is *I25/392 CAC Design Standards and IGA – Public Comment*. It is specifically designed for residents to come and speak about our concerns. It will be the last time to give input on this issue before the Town hopes to formally amend the IGA.

According to the Town of Windsor Municipal Code Sec. 16-31-10,…"the Town shall cause a notice to be published once in a newspaper of general circulation in the county in which the subject property lies not less than ten (10) calendar days prior to the date set for the meeting or hearing."

This is an important land use matter and the law says that all affected residents are entitled to be notified in a timely and proper manner. When asked at the 3/28 mtg, the Mayor agreed that it is a land use matter and said no formal notification will be done by the Town. He said that we neighbors are responsible for spreading the word of this meeting. I disagree that it is our responsibility as residents to do so. The Mayor said that it was not proper for us to speak during the 3/28 "public invited to be heard" portion of the Board meeting (we did not speak) because the 4/4 meeting is specifically set aside for public comment. If public comments are to be considered, it seems that there is not sufficient time between public comment consideration and formal adoption of the amended IGA on April 11, 2016, as proposed. It doesn't seem that the IGA can be amended until a proper neighborhood hearing is held.

The Town speaks of enhanced design and site standards to ensure quality within the CAC but to whose benefit? It appears that the car dealerships are calling the shots and are guiding the recommendations. The car dealers wanted 200 parking modules and they got it (instead of 100 the Town recommended). We residents are property owners, too, and we want to feel like the Town has our back – we feel like we are being treated as a nuisance.

The car dealerships get all the space they want, and because tax revenue is needed from this property, retail is a big component. Due to the area taken up with the car dealers and all the landscaping/streets/parking, the retail needs to be pushed up tight against our fences.

Some of us residents have lived in our homes for 20 years. We always knew that someday this area would be developed but did have some reasonable expectation of a win-win compromise when it came to what was to be built on the other side and to a quality buffer area.

There are still a few areas of great concern and confusion:

*Buffer yard – At the 3/7 mtg, the Town recommended a buffer yard between our property fences and retail parking lot of a 20 feet minimum (which they borrowed from the FtC Code). According to the **Windsor's Municipal Code Sec. 16-21-40 "any property line abutting a residential zoning district or residential property shall maintain a minimum setback and offset distance of thirty (30) feet".** Of course, we did not feel that 20 feet was reasonable (and expressed that concern), especially given all the talk about enhancing standards. At the 3/28 meeting, the Town recommended 40' minimum. At the Open House hosted by the car dealerships, they mentioned giving a 50' buffer. We residents have been asking for at least 100 feet minimum all along because of the impact on our quality of life given the density of retail proposed. This buffer will go the full length of both Westgate parcels. It seems that buffer yard for "existing" residential could be 100' and "new" residential could be 40' minimum in the CAC. It seems, too, like there could be some creative ways to give us a buffer closer to 100'.

Looking at Ex B of the Agreement in Anticipation of Development, there is a curved piece to the retail that allows for a brewery in the corner next to a day care. Past the brewery lot, there is a curve and a 100' buffer is shown. If there were no brewery and the curve straightened out, the 100' buffer area seems like it could be extended all the way down. Why can't that be a solution? A brewery should not be near a day care center or so close to residential property (given the noise ((there is no noise standard stated in the design)) late hours, music, and alcohol consumption). Many of us have small children/grandchildren.

We have even suggested that the retail be moved to the southern parcel that Moreland owns where it could be better showcased, have more room and closer to retail near the Bud Center. It seems like a better recipe for revenue given the other entertainment and retail nearby, especially if a hotel or brewery is proposed.

We asked the Town Planner about straightening Westgate Dr instead of having it arc toward the East, squeezing the retail toward our back fences. He said the road design is not yet finally planned. If you will specify a larger buffer yard for us residents, then Westgate Dr can be designed to accommodate it. At their Open House, the car dealerships seemed willing to do that. A quality-sized buffer is a key component to our back door quality of life.

*Building Height – at the 3/7 mtg, it was mentioned that retail buildings could be 75' high. That could mean that we could have a 75' high building 40' from our back fences! There would be no privacy for us homeowners whatsoever! The **Windsor Municipal Code Sec.16-21-40 states that "the maximum height of any structure located within two hundred (200) feet of the respective residential zoning district boundary shall not exceed either the maximum height permitted for structures in the adjoining residential zoning district or, where applicable, the maximum height permitted for structures in any applicable Corridor Plan of the Town, whichever height is less".** According to **Sec. 16-10-50 of Windsor's Code it states "In zones classified as Residential and Estate Residential, no building or structure shall exceed a maximum of thirty-five (35) feet".** How did they come up with 75' being acceptable to us homeowners?

We appreciate the efforts the Town has given to improving the lighting and noise issues as they will impact us residents. We feel the buffer, retail density and building height requirement still need work toward a better resolution.

With the retail density proposed on the conceptual drawings (hotel, brewery, strip of multistory buildings), quality doesn't seem to be the driving focus – it's tax revenue.

We Country Farms and Country Meadows residents are property owners, too, and we have lived here and invested in our homes for the better part of 20 years. We want to feel that we get some sort of a win-win on things we have expressed as priorities. We want to feel that the Town is advocating for us since they represent us. Right now we feel we are getting the leftovers. If quality is the driving standard for the CAC, it should make everyone (citizens, residents, developers) feel and see quality.

Thank you! We know you are working hard on this.

Dave and Diane Howell

Country Meadows property owners

Your name:	Debbie Dean
Message:	I disappointed that I am unable to attend this important meeting in person due to work travels. I have been to the other meetings and followed the process closely. As a resident of Country Farms, I am very appreciative for all that the Cities of Windsor, Fort Collins and the dealerships have done to gain input from the residents who will be affected from the growth on the I25/Windsor corridor. Please carefully evaluate the build of this area, considering noise, light, esthetics and larger barrier footage as you make final choices. The decisions you make now not only affect Country Meadows and Country Farms but other developments that will occur down this corridor. The residents of these subdivision must live with your choices, and the residents of Windsor must also live with these choice as this corridor is the gateway to our city. In addition, please ensure that Country Farms Road is not opened up to Westgate. This would create massive traffic from the east, the Ranch and those patronizing the retail/dealerships. Opening this road in a quiet neighborhood would change it into a major thoroughfare. We appreciate your consideration of connecting Westgate to CR30. Please remember our quality of life, the future of our city and ensure a win win for all.

Your name:	Chris
Message:	Typed on a tablet, so not formatted : It is unfortunate that I cannot attached your meetings on Monday nights, nevertheless I oppose putting in any car dealerships in the IGA areaat Westgate.West Gate, doesn't that tell you something? This area is to represent who we are to those traveling along the I25 corridor. Now considering that the agreement states no car dealerships, why would Dealin Doug buy this property in the first place? Then too, why are you even considering a change to allow such trash in? I am very concerned that there has been some palm greasing going on if you're willing to do this man's bidding. There seems to be no concern for the welfare of the homes in Country Meadows and Country Farms. Yes, we would prefer to keep it all as a parklike setting, but understand that it cannot stay that way without your help. It is a refuge to the dwindling red fox population. The town of Windsor is already expanding in every other direction, don't ruin the gateway with unattractive additions that can be found elsewhere. If you must be that unconcerned, then add a decent buffer between the fence and parking...100' would be a minimum, with berms to hide this unsightly mess. One story buildings, with shielded lights so we aren't subject to light polution. Keep only businesses that are able to protect us from noise and light polution, ie. Things that close early and don't bring the filth that always comes with alcohol and/or drug sales. We have kids in these neighborhoods and don't need "bad" crowds hanging around. The first time one of our kids is harmed in any way, you can be sure of lawful repurcussions. I'm not sure you've thought past the income part to that kind of loss. Considering the flack about not all of the homeowners showing up, why are you thinking we don't care when Dealin Doug never shows up? We care! I just have kids to raise, a house and yard to keep up with, church on Sun, Mon, Wed and sometimes Fridays,as well as running a business. It doesn't mean I'm not mad as heck that you would compromise our gateway for the sake of the almighy dollar. Very disappointing.

FUTURE TOWN BOARD MEETINGS

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

April 11, 2016 Board/Manager/Attorney Monthly Meeting
5:30 p.m./1st floor conference room

April 11, 2016 Town Board Meeting
7:00 p.m.

April 18, 2016 Town Board Special Meeting
7:00 p.m. Swearing in of Mayor and Town Board Members for Districts 1, 3 & 5

April 25, 2016 Town Board Work Session
6:00 p.m. Hazardous Mitigation discussion

April 25, 2016 Town Board Meeting
7:00 p.m.

May 2, 2016 Town Board Work Session
6:00 p.m.

May 9, 2016 Board/Manager/Attorney Monthly Meeting
5:30 p.m./1st floor conference room

May 9, 2016 Town Board Meeting
7:00 p.m. Kern Board Meeting

May 16, 2016 Town Board Work Session
6:00 p.m. Joint meeting with the Library, Fire and School Districts

May 23, 2016 Town Board Work Session
6:00 p.m.

May 23, 2016 Town Board Meeting
7:00 p.m.

May 30, 2016 Fifth Monday & Memorial Day

June 6, 2016 Town Board Work Session
6:00 p.m.

June 13, 2016 Board/Manager/Attorney Monthly Meeting
5:30 p.m./1st floor conference room

June 13, 2016 Town Board Meeting
7:00 p.m.

June 20, 2016 Town Board Work Session
6:00 p.m.

June 27, 2016 6:00 p.m.	Town Board Work Session
June 27, 2016 7:00 p.m.	Town Board Meeting

Additional Events

May 11, 2016	Northern Colorado Leadership Summit at The Ranch
May 12-13, 2016	Strategic Planning
June 21-24, 2016	Colorado Municipal League Annual Conference

Future Work Session Topics

Water Rights Dedication Policy
Broadband discussion – session at CML Annual Conference