

DATE: May 7, 2013
STAFF: Rick Richter
John Voss

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

11

SUBJECT

Second Reading of Ordinance No. 062, 2013, Approving an Intergovernmental Agreement Amending Certain Provisions of the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on April 16, 2013, approves an amendment to the Intergovernmental Agreement (IGA) between the City of Fort Collins and the Town of Windsor regarding the I-25/SH 392 Interchange.

The First Amended IGA became effective on November 27, 2012. The IGA provides that Windsor and Fort Collins will annually share property and sales tax revenue generated in the area surrounding the I-25/ SH 392 Interchange (the CAC). The amount to be shared is the amount of increased taxes in the CAC beyond the amount collected in the base year. The IGA provided that the base year would be the revenues collected in the year 2012, the year the IGA became effective.

In discussions with the Town of Windsor, it was concluded that it would be more equitable if the base year for the increment calculation was 2010 rather than 2012. The tax revenues were reduced by as much as 25% in 2011 and 2012, since construction of the interchange was ongoing during that year. 2010 was the last year of tax revenues before construction began, and as such, would be a more accurate reflection of tax revenues for the purpose of determining increased increments to be divided.

A similar Ordinance was adopted by the Windsor Town Board on Second Reading on March 25, 2013.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - April 16, 2013 (w/o attachments)

DATE: April 16, 2013
STAFF: Rick Richter
John Voss

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

14

SUBJECT

First Reading of Ordinance No. 062, 2013, Approving an Intergovernmental Agreement Amending Certain Provisions of the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange.

EXECUTIVE SUMMARY

This Ordinance approves an amendment to the Intergovernmental Agreement (IGA) between the City of Fort Collins and the Town of Windsor regarding the I-25/SH 392 Interchange.

The First Amended IGA became effective on November 27, 2012. The IGA provides that Windsor and Fort Collins will annually share property and sales tax revenue generated in the area surrounding the I-25/ SH 392 Interchange (the CAC). The amount to be shared is the amount of increased taxes in the CAC beyond the amount collected in the base year. The IGA provided that the base year would be the revenues collected in the year 2012, the year the IGA became effective.

In discussions with the Town of Windsor, it was concluded that it would be more equitable if the base year for the increment calculation was 2010 rather than 2012. The tax revenues were reduced by as much as 25% in 2011 and 2012, since construction of the interchange was ongoing during that year. 2010 was the last year of tax revenues before construction began, and as such, would be a more accurate reflection of tax revenues for the purpose of determining increased increments to be divided.

A similar Ordinance was adopted by the Windsor Town Board on Second Reading on March 25, 2013.

BACKGROUND / DISCUSSION

City Council and the Windsor Town Board held five joint work sessions to discuss the Interstate 25 and State Highway 392 Interchange Improvements, System Level Study (1601 Process), and design. The System Level Study for this interchange was approved by the Colorado Department of Transportation (CDOT) Transportation Commission on January 21, 2009. This approval, along with a signed IGA, allowed the Project to move into the final design phase. The accelerated design process for this Project was completed in January 2010. The accelerated design process made this Project "shovel ready," thereby enhancing the possibility of obtaining funding for construction.

The design followed the intent of the guiding principles adopted by the City Council and the Town Board in August 2008. Specifically, the community character guiding principle that states: "The I-25/392 Interchange is an important "gateway" feature for both Fort Collins and Windsor. It is viewed as Fort Collins' southern gateway and the main gateway into the Town of Windsor. The design of the Interchange, sensitivity to viewsheds and associated land development, shall enhance the gateway concept."

The total construction and right-of-way cost for the Project is estimated at \$27.5 million. On May 20, 2010, the Colorado Transportation Commission authorized the allocation of \$20 million for the construction of the Interchange. CDOT had previously identified \$2.5 million of state FASTER funds to be used for right of way acquisition. The funding gap of \$5 million was met by the local communities.

On December 21, 2010, Council adopted Resolution 2010-077, authorizing the Mayor to execute the IGA. The primary purposes of the IGA were to set forth the respective financial contributions of the City of Fort Collins and Windsor related to the reconstruction of the Interchange; to provide for orderly land use and development within the area immediately surrounding the Interchange; to ensure that the property owners most directly benefitted by the Interchange improvements proportionally share in the cost of the improvements; and to provide for a revenue sharing formula between the City of Fort Collins and Windsor.

The IGA establishes a Corridor Activity Center (CAC) around the Interchange, within which certain land uses have been agreed upon by the parties and two kinds of fees will be imposed to reimburse the City of Fort Collins and Windsor for their financial contributions to the construction of the Interchange and to help fund the construction and maintenance of improvements and services within the CAC.

In November 2012, the City and Town adopted the First Amended IGA. The IGA provides that Windsor and Fort Collins will annually share property and sales tax revenue generated in the area surrounding the I-25/SH 392 Interchange (the CAC). The amount to be shared is the amount of increased taxes in the CAC beyond the amount collected in the base year. The IGA provided that the base year would be the revenues collected in the year 2012, the year the IGA became effective.

In discussions with the Town of Windsor, it was concluded that it would be more equitable if the base year for the increment calculation was 2010 rather than 2012. The tax revenues were reduced by as much as 25% in 2011 and 2012, since construction of the interchange was on-going during that year. 2010 was the last year of tax revenues before construction began, and as such, would be a more accurate reflection of tax revenues for the purpose of determining increased increments to be divided.

The amended IGA revises sections 1.14, 1.16 and 5.1.4, and provides that the base year for the calculation of sales and property tax sharing shall be 2010.

FINANCIAL / ECONOMIC IMPACTS

Staff has determined it would be more equitable if the base year for the increment calculation was 2010 rather than 2012. The tax revenues were reduced by as much as 25% in 2011 and 2012, since construction of the interchange was on-going during that year. 2010 was the last year of tax revenues before construction began as and such, would be a more accurate reflection of tax revenues for the purpose of determining increased increments to be divided.

ENVIRONMENTAL IMPACTS

In 2008, the Fort Collins City Council and the Windsor Town Board adopted Joint Principles by resolution; the environmental sustainability language below was part of those Principles.

Environmental Sustainability/Resource Protection: *Ensure that interchange improvements occur in such a way that it minimizes environmental impacts to the greatest extent possible and protects the physical and natural environment in and around the interchange including but not limited to the Fossil Creek Reservoir Area.*

Subsequently, the City of Fort Collins and Town of Windsor have jointly agreed that the Project will mitigate wetland impacts at a 3:1 ratio, this meaning that the estimated 0.4 acres of impacts from the Project will be mitigated with the creation of 1.2 acres of new wetlands.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

PUBLIC OUTREACH

Staff of both municipalities held several stakeholder meetings, as well as numerous individual meeting with stakeholder representatives.

ATTACHMENTS

1. First Amended Intergovernmental Agreement
2. Vicinity Map

ORDINANCE NO. 062, 2013
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN INTERGOVERNMENTAL AGREEMENT AMENDING CERTAIN
PROVISIONS OF THE FIRST AMENDED INTERGOVERNMENTAL AGREEMENT
PERTAINING TO THE DEVELOPMENT OF THE
INTERSTATE 25/STATE HIGHWAY 392 INTERCHANGE

WHEREAS, on or about November 27, 2012, the City and the Town of Windsor (the "Town") entered into the First Amended Intergovernmental Agreement (the "First Amended IGA") setting forth certain understandings between the City and the Town with regard to the development of the Interstate 25/State Highway 392 Interchange; and

WHEREAS, pursuant to the provisions of the First Amended IGA, representatives of the City and the Town recently met to establish procedures for the implementation of the provisions of the First Amended IGA; and

WHEREAS as a result of the meeting between the representatives of the City and the Town it became apparent that further amendments to the First Amended IGA were required to fully implement the intention of the parties as set forth therein; and

WHEREAS, another intergovernmental agreement reciting those amendments and providing for the amendment of the First Amended IGA has been prepared and is attached hereto as Exhibit "A" and incorporated herein by this reference; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Mayor is hereby authorized to execute an Intergovernmental Agreement Amending Certain Provisions of the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange in substantially the form attached hereto as Exhibit "A," with such additions or modifications as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 16th day of April, A.D. 2013, and to be presented for final passage on the 7th day of May, A.D. 2013.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 7th day of May, A.D. 2013.

Mayor

ATTEST:

City Clerk

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

THIS AGREEMENT is entered into this _____ day of _____, 2013, 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, on or about January 3, 2011, the City and the Town entered into an Intergovernmental Agreement (“the Original Agreement”) setting forth certain understandings between the City and the Town with regard to the development of the Interstate 25/State Highway 392 Interchange; and

WHEREAS, on or about November 27, 2012 the City and the Town entered into a First Amended Intergovernmental Agreement (“the First Amended IGA”) thereby approving a number of changes to the Original Agreement; and

WHEREAS, pursuant to the provisions of the First Amended IGA, representatives of the City and the Town recently met to establish procedures for the implementation of the provisions of the First Amended IGA; and

WHEREAS, as a result of the meeting between the representatives of the City and the Town it became apparent that further amendments to the First Amended IGA were required to fully implement the intention of the parties as set forth therein; and

WHEREAS, this Intergovernmental Agreement reflects the amendments agreed to by the City and the Town; and

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

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

1. Amendment of Section 1 of the First Amended IGA. Section 1 of the First Amended IGA is hereby amended as follows:

SECTION 1. DEFINITIONS

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

- 1.1. “Agreement” means this First Amended Intergovernmental Agreement and attachments hereto.
- 1.2. “City” means the City of Fort Collins, Colorado.
- 1.3. “CDOT” means the Colorado Department of Transportation.
- 1.4. “Corridor Activity Center” or “CAC” means that joint planning area referred to above and more fully described on Exhibit “A,” attached hereto and incorporated herein by this reference.
- 1.5. “Developable Land” means that portion of each parcel of real property within the CAC upon which buildings, infrastructure or other improvements may lawfully be constructed, taking into consideration the physical characteristics of the property and all applicable state and local laws and regulations.
- 1.6. “Development Proposal” means an application for the development of a parcel of land within the CAC.
- 1.7. “Effective Date” means the date that the last party signs this Agreement, or ten days after the final approval by the last governing board of the City or Town.
- 1.8. “Enhanced Improvements” means any improvements within the vicinity of the Interchange that are deemed necessary or appropriate by the governing bodies of the City and the Town, which improvements shall be constructed and maintained by the City and the Town.
- 1.9. “Foster Study” means the report prepared by Foster Valuation Company, LLC, attached hereto as Exhibit “B”
- 1.10. “Interchange” means the Interstate 25 and State Highway 392 interchange.
- 1.11. “Original Agreement” means the Intergovernmental Agreement between the City and the Town dated January 3, 2011.
- 1.12. “Project” means the construction by CDOT of a new Interchange at Interstate Highway 25 and Colorado State Highway 392.

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

1.14. “Property Tax Increment” means the net new revenue generated by property taxes on real property located within the boundaries of the CAC, using as the baseline a base rate of 9.797 mils, as applied to the assessed valuation developed by Larimer County. For purposes of this First Amended IGA the baseline year for the purposes of calculating the Property Tax Increment shall be the calendar year 2010.

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

1.16. “Sales Tax Increment” means the net new sales tax revenues generated by sales within the boundaries of the CAC, using as the baseline a base rate of 2.25%. The sales tax revenue amount for the purposes of establishing the Sales Tax Increment shall be the amount of sales tax revenue for calendar year 2010.

1.17. “Town” means the Town of Windsor, Colorado.

2. Amendment of Section 5 of the First Amended IGA. Section 5 of the First Amended IGA is hereby amended as follows:

SECTION 5. REVENUE SHARING

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

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

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

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

- 5.1.4 For the purposes of establishing the baseline amount of property and sales tax revenue increments that shall be subject to the revenue sharing provisions of this First Amended IGA, the parties agree that the amount of such revenues for the calendar year 2010 shall control.
- 5.1.5 Any increase or decrease in the sales or property tax rates of either the City or the Town shall not affect the Property Tax Increment or the Sales Tax Increment due from the City or the Town for the revenue sharing purposes of this Section.
- 5.1.6 In the event either the City or the Town creates one or more exemptions from sales taxes or property taxes, and such exemption(s) results in a reduction in the amount of revenue collected by such Party in the CAC, the Party creating the exemption(s) shall include the exempted amount in its calculation of the amount of Property and Sales Tax Increment revenue that is due to the other Party under this Section as if the exemption(s) had not been created.
- 5.1.7 To the extent permitted by law, this sharing of revenues shall continue in perpetuity.

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

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

3. Limitation of Amendments. Except as specifically amended by the provisions of this Intergovernmental Agreement, all those provisions adopted by the City and the Town in the First Amended IGA shall remain in full force and effect

Approved as to Form:

CITY OF FORT COLLINS

City Attorney

Mayor

ATTEST:

City Clerk

TOWN OF WINDSOR

Mayor

ATTEST:

Town Clerk