



## **WATER AND SEWER BOARD REGULAR MEETING**

November 8, 2023 - 6:30 AM

1st Floor Conference Room, 301 Walnut Street, Windsor, CO 80550

### **AGENDA**

#### **A. CALL TO ORDER**

1. Roll Call
2. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration
3. Public Invited to be Heard

#### **B. BOARD ACTION**

1. Approve October 2023 Minutes
2. Approve Loveland and Windsor Water Lease

#### **C. COMMUNICATIONS**

1. Ad Hoc Committee Update
2. Northern Water Fall Symposium November 15, 2023
3. Questions on NISP Presentation that was presented to Town Board.

#### **D. ADJOURN**

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.



## Water and Sewer Board Regular Meeting

October 11, 2023 - 6:30 AM

1st Floor Conference Room, 301 Walnut Street, Windsor, CO  
80550

### MINUTES

#### A. CALL TO ORDER

BOARD VICE CHAIRMAN MEDINA CALLED THE MEETING TO ORDER AT 6:30 AM.

##### 1. Roll Call

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##### 1. Roll Call

Present:

Chairman  
Vice Chair  
Secretary

Greg Bielawski  
Carlos Medina  
Janene Willey  
Milt Tokunaga  
Gale McGaha Miller  
Milton Geiger  
Darell Zimbelman  
Alan Overton  
Alan MacGregor  
Ron Steinbach

Alternate  
Alternate  
Town Board Liaison

Also Present:

Community Development  
Director  
Administrative Services  
Director  
Director of Finance  
Water Resource  
Administrator  
Budget Analyst  
Administrative Analyst  
UB Administrative Specialist

John Thornhill  
Jessica Humphries  
Dean Moyer  
Leif Lesoing  
Karl Gannon  
Katrina Haley  
Erin Porter

##### 2. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration

There were no new agenda items considered.

##### 3. Public Invited to be Heard

No public was present.

#### B. BOARD ACTION

##### 1. Approval of 08.09.23 Water and Sewer Board Minutes

**Board Secretary Willey moved to approve the minutes from the 8.9.23 meeting, Board Member Geiger seconded the motion. Motion carried unanimously.**

##### 2. 2024 Rate Study Update

Cole Sullivan with Stantec presented the Utilities Rate Study for 2023. Mr. Sullivan presented information on current and upcoming projects and the Board discussed.

The water rate study calls for a 10.5% rate increase for 2024-2026, 10% for 2027-2028, and 9% for 2029-2030. The sewer rate study contains 2 different scenarios, 1 reflecting a 10% growth through 2028 and no increase in 2029, the other reflecting an 8% increase through 2029. The storm drainage study also has 2 scenarios. The first reflects a 20% increase for 2024-2025, 15% increase from 2026-2027 and a 7.5% increase from 2028-2032, and the other reflects a 15% increase for 2024-2025 and a 12% increase for 2026-2032.

The Board discussed the various scenarios.

**Board Member McGaha Miller moved to recommend the water rate increase as discussed, scenario 2 for the sewer rate, scenario 1 for the storm drainage, and the PIF update. Board Secretary Willey seconded the motion. Motion carried unanimously.**

#### C. COMMUNICATIONS

##### 1. 2024 Water and Sewer Board Budget

Karl Gannon presented information regarding the 2024 projected budget. The presentation included an in depth view of the costs and revenue of the water, sewer, and storm drainage funds. The Board discussed.

#### D. ADJOURN

**BOARD MEMBER MCGAHA MILLER MOVED TO ADJOURN THE MEETING AT 8:37 AM, BOARD MEMBER TOKUNAGA SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

SUBMITTED BY:



ERIN PORTER, UTILITY BILLING ADMINISTRATIVE SPECIALIST

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Name, Title



## MEMORANDUM

**Date:** November 8, 2023  
**To:** Water and Sewer Board Members  
**From:** Leif Lesoing, Water Resource Admin  
**Re:** Loveland and Windsor Water Lease  
**Item #:** B.2.

### **Background / Discussion:**

The City of Loveland agrees to lease the Town of Windsor 500 acre-feet of water, each year for 10 years. The Town will pay \$75,000 annually to Loveland, plus the then current non-agricultural rental rate for every acre-foot rented. The rate for 2023 was \$500 per acre-foot.

### **Financial Impact:**

### **Relationship to Strategic Plan:**

### **Recommendation:**

Approve Lease

### **CC:**

### **Attachments:**

1. Windsor Loveland Lease - signed

## WATER LEASE

THIS WATER LEASE (WATER LEASE) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between the CITY OF LOVELAND, COLORADO, a home rule municipality, whose address is 500 East Third Street, Loveland, Colorado 80537 (“Lessor”), and the TOWN OF WINDSOR, COLORADO, a home rule municipal corporation, whose address is 301 Walnut St., Windsor, Colorado 80550 (“Lessee”). Lessor and Lessee shall be referred to herein as “Party” and collectively as “Parties”.

### RECITALS

WHEREAS, Lessee desires to lease water yielded by Colorado-Big Thompson Project (“C-BT”) units or Windy Gap Project (“Windy Gap”) units for treatment and use by any of the following three listed service providers: North Weld County Water District (“North Weld”), the City of Greeley (“Greeley”), and Fort Collins - Loveland Water District (“FCLWD”), as a temporary bridge supply to serve municipal customers in the Town of Windsor (“Windsor”) in Weld County and Larimer County, Colorado; and

WHEREAS, Windsor is developing additional raw water supplies to serve its municipal residents, including participation in the Northern Integrated Supply Project (NISP) within the Northern Colorado Water Conservancy District (“Northern Water”), and Windsor recognizes that this bridge lease will not provide a long-term municipal supply beyond the term of this lease; and

WHEREAS, the Lessor is an allottee of C-BT units owned by Northern Water and the owner of Windy Gap units allocated by Northern Water which may be used for municipal purposes subject to the approval of Northern Water, and is willing to lease said water to Lessee on the terms and conditions set forth herein; and

WHEREAS, all parties acknowledge that this lease is temporary in nature and is not a permanent water supply for Lessee, and the Lessor has no obligations to Lessee that extend beyond the terms of this lease; and

WHEREAS, Windsor acknowledges that this Water Lease does not constitute a transfer in ownership of these water rights and the Lessor maintains complete and total ownership of the water rights.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Term. This Water Lease shall be effective for a term of ten years commencing January 1, 2024, and ending December 31, 2033, unless sooner terminated as provided herein. It is understood by Lessee that the leased water may not be available to Lessee in any future year and Lessee specifically waives any claim, legal or equitable, for the renewal of this Water Lease and specifically disclaims any expectation for such renewal.

2. Grant of Water Lease.

a. The Lessor shall supply Lessee with water from C-BT or Windy Gap units sufficient to yield up to 500 acre-feet ("AF") per year for municipal uses of Lessee.

b. Within fourteen days after the Board of Directors of Northern Water annually sets the Spring Quota for C-BT units, Lessee shall provide written notice to the Lessor of the amount of water, up to 500 AF, Lessee requests for that year. After such notice, the Lessor will provide an invoice to Lessee for the costs of the delivery. Lessee shall pay the invoice within thirty (30) days of receipt and the Lessor will promptly transfer such water to Lessee's Northern Water account upon receipt of payment.

c. The Lessor shall determine, in its sole discretion, whether the Lessor shall satisfy the Water Lease with water from the Lessor's C-BT or Windy Gap allotments. Lessee shall use the leased water only for municipal uses within Windsor's service area and delivered by one of the three service providers that serve Windsor's municipal customers: North Weld, Greeley, or FCLWD. Lessee shall undertake no action that could be construed as abandonment of the water rights.

d. In the event the Lessee requests less than 500 AF of water in its initial request, Lessee may request the remainder of the water for that year, for an annual total of no more than 500 AF, on or before August 1st of that year. In such event, the Lessor shall invoice Lessee for payment and transfer the water to Lessee's account upon receipt of Lessee's payment for delivery. Lessee shall pay an additional charge per AF of late request water delivered by the Lessor, as detailed below in paragraph 3.c.

### 3. Costs.

a. Annual Water Lease Fee. Lessee shall pay an annual Water Lease fee to the Lessor. The Lessor shall invoice Lessee in January of each year and the payment shall be due by March 1st of each year. The Water Lease fee shall be \$75,000 for 2024 and shall increase 3% each year, beginning in 2025.

b. Water Lease Fee. Lessee shall pay the Lessor's non-agricultural municipal lease rate per AF of water ordered under this Water Lease. Such rate is subject to change each year on January 1st, as published by the City of Loveland in its annual Department of Water and Power Rates, Charges, and Fees approved by the Loveland City Council.

c. Late Request Fee. In the event Lessee, pursuant to the procedures described in paragraph 2.d, orders an additional amount of water after its initial request, Lessee shall pay an additional 10% per additional AF of water ordered for delivery.

d. Lessee shall pay all invoiced amounts to the Lessor within thirty (30) days of receiving the 's invoice, except the Annual Water Lease Fee which shall be paid by March 1st of each year.

e. Lessee shall be responsible for paying any fees imposed by Northern Water for delivery of the leased water, including Rule 11 fees or annual assessment costs. Those

fees shall be billed by Northern Water directly to Lessee, and Lessee shall promptly pay such fees to Northern Water within thirty days of receipt of the bill from Northern Water.

4. Termination by Lessor. In the event the Lessor has an urgent need for water, as determined in the sole discretion of the Lessor, or if the Lessor desires to sell or transfer the C-BT units to a third party, the Lessor may unilaterally terminate this Water Lease without cause. The Lessor will endeavor to give Lessee thirty (30) days notice of such termination but shall not be required to do so.

5. Termination by Lessee. Lessee may terminate this Water Lease by providing written Notice of Termination, including a Notice of Termination for failure to appropriate sufficient funds for the payment of fees required under this Water Lease, to the Lessor prior to December 1st of the year before in which this Water Lease is intended to be terminated. So long as Lessee provides such advance notice, Lessee shall not be obligated to pay the Annual Water Lease payment for the year in which the Water Lease is terminated or any subsequent year.

6. Termination of Delivery for Nonpayment. In the event Lessee fails to pay for water when payment is due as set forth in paragraph 3, above, the Lessor, in addition to seeking recovery of sums due, may terminate delivery of water to Lessee.

7. Water Lease Contingent upon Northern Water Approval. The parties understand and agree that this Water Lease shall be contingent upon approval of the Board of Directors of Northern Water pursuant to the rules and regulations of Northern Water. Lessee shall be responsible for paying to Northern Water any fees due for review and approval of this Water Lease.

8. Subdistrict. Lessee agrees to coordinate with Northern Water to ensure that all areas of Lessee's service territory that will use water supplied by the Lessor under this Water Lease are included with the boundaries of the Municipal Subdistrict of the Northern Colorado Water Conservancy District.

9. Northern Water Requirements. All water leased by Lessee shall be used within the boundaries of Northern Water, for a beneficial use approved by Northern Water. If the water delivered to Lessee is C-BT water, return flows from such delivery shall not be reused for any purposes, and all return flows from Lessee's use shall be returned within the boundaries of Northern Water. Water delivered from the Lessor's Windy Gap Project allotment may be reused by Lessee consistent with Lessee's decrees of the Water Court for Water Division 1. Northern Water shall not arbitrate any disputes between the Lessor and Lessee, and this Water Lease creates no liability for Northern Water.

10. Limitations of Water Lease. The Lessor grants no interest in the leased water to the Lessee other than as explicitly set forth in this Water Lease. Lessee shall make no claims to any rights, title, or interest in the leased water other than as explicitly set forth in this Water Lease. This Water Lease does not create a partnership or joint venture of any kind between the parties, and the Lessee shall bear the entirety of any loss, cost, or expense incurred through its use of the leased water on the Property.

11. No Warranties. The Lessor represents that it is the owner or allottee of the C-BT units and Windy Gap units that will yield the water leased to Lessee but does not make any express or implied warranties or representations concerning the quality of the leased water or its suitability for use for municipal purposes by Lessee. Delivery of water by the Lessor under this Water Lease shall be on an “as is” basis only, and the Lessor neither expressly nor impliedly warrants or guarantees the quality that will be yielded from the units leased to Lessee. Lessee shall not hold the Lessor liable for any failure in delivery of the leased water, including, but not limited to, any failure in delivery due to force of nature or failure of water supply infrastructure. Lessee agrees to exercise its rights under this Water Lease at its own risk.

12. Temporary Bridge Supply Only. Lessee acknowledges and agrees that this Water Lease is intended to be a bridge supply for a predetermined and definite period of time, in anticipation of NISP or other supply source(s) being developed. The Lessor’s leased supply is necessary to serve future population growth and municipal demand of the Lessor. Lessee has provided sufficient assurances to the Lessor that it is pursuing municipal water supply projects that will provide municipal water sources to Lessee’s residents to replace in the future the supply provided by this lease. During the final three years of this lease, the Lessor shall send written notice to Lessee advising Lessee of the approaching end of the lease term and Lessee’s obligation to ensure its future water supply is not dependent on the supply leased from the Lessor.

13. Notices. Written notices required under this Water Lease and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the Lessor:           City of Loveland Water and Power Department  
Attention: Todd Hanlin, Water Resources Manager  
200 North Wilson Avenue  
Loveland, Colorado 80537

If to Lessee:                Attention: Leif Lesoing, Water Resource Administrator  
301 Walnut Street  
Windsor, CO 80550

14. Governmental Immunity. Nothing in this Water Lease is intended to constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*, as applicable now or hereafter amended.

15. Governing Law and Venue. This Water Lease shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado, or the Water Court for Water Division 1 in the State of Colorado.

16. Severability. In the event a court of competent jurisdiction holds any provision of this Water Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Water Lease.

17. Headings. Paragraph headings used in this Water Lease are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Water Lease.

18. Assignability. Neither of the Parties hereto may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other Party.

19. Appropriation. Notwithstanding any other term or condition of this Agreement, all obligations of either Party under this Agreement, including all or any part of any payment or reimbursement obligations, whether direct or contingent, shall only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through each Party's legally required budgeting, authorization, and appropriation process. Further, neither Party, by this Agreement, creates a multiple fiscal year obligation or debt either within or without this Agreement. It is anticipated that appropriations for the purpose of this Agreement, if made at all, will be made on an annual basis. Neither Party, however, by this Agreement binds future governing bodies to make such appropriations.

20. Binding Effect. This Water Lease shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective heirs, personal representatives, successors, and assigns.

21. Electronic Signatures. This Water Lease may be executed electronically and in counterparts, and such electronically executed document shall be considered the original.

22. Entire Agreement. This Water Lease contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.

(Signatures to follow on subsequent pages)  
(Remainder of this page left intentionally blank)

IN WITNESS WHEREOF, the parties have executed this Water Lease on the day and year first above written.

CITY OF LOVELAND, COLORADO, LESSOR

By: \_\_\_\_\_  
Stephen C. Adams, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

TOWN OF WINDSOR, COLORADO, LESSEE

By: Shane Hale  
[Shane Hale \(Oct 26, 2023 08:48 MDT\)](#)  
Shane Hale, Town Manager  
Date: 10/26/2023

ATTEST:

Kar 48   
Town Clerk

APPROVED AS TO FORM:

Daniel Money  
Town Attorney