



TOWN BOARD WORK SESSION

April 26, 2021 - 5:15 PM

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

Please click this URL to join. <https://windsorgov.zoom.us/j/97674979238>

OR join by telephone at (888) 788-0099 or (877) 853-5247

Webinar ID:976 7497 9238

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 virtually are asked to be recognized by the Mayor before participating in any discussions of the Town Board

AGENDA

1. Eastman Park Riverwalk Project Site Visit
Meet at 5:15 p.m.
Eastman Park
7025 Eastman Park Drive
Windsor, CO 80550
2. Second Amendment to Intergovernmental Agreement for Treated Water Service
Between the City of Greeley, Colorado and the Town of Windsor, Colorado - J. Thornhill,
Community Development Director, L. Lesoing, Water Resource Administrator
3. Discussion on the Revocation of the Emergency Declaration - I. McCargar, Town
Attorney
4. Future Meetings Agenda

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.



MEMORANDUM

Date: April 26, 2021
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Eric Lucas, Director of Public Services
Re: Eastman Park Riverwalk Project Site Visit
Item #: 1.

Background / Discussion:

With the scheduled ribbon cutting on May 14th, this meeting will be a preview of the nearly completed Phase 1 of the Riverwalk Project. Staff will also share draft plans for Phase 2 which is under design.

Note: Meeting is at Eastman Park. Please wear appropriate shoes to walk the site.

CC:

Tara Fotsch, Deputy Director of Parks, Recreation & Culture
Wade Willis, Open Space & Trails Manager



MEMORANDUM

Date: April 26, 2021
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: J. Thornhill, Director Community Development and L. Lesoing, Water Resource Administrator
Re: Second Amendment to Intergovernmental Agreement for Treated Water Service
Item #: 2.

Background / Discussion:

Northern Integrated Supply Project (NISP) is in the final stages of the permitting process and a Record of Decision (ROD) will be issued soon. The Town will need an interim water supply for drought protection and growth that occurs during the construction of the project. Windsor and Greeley have negotiated a ten year lease agreement for 1,000 acre-feet of raw water with an option to extend for an additional five years. The Town will receive a minimum of 100 acre-feet per year from Greeley and as much as 1,000 acre-feet during the lease. Windsor will pay to Greeley \$500 per acre foot for rented water with a 3% annual increase in cost thereafter.

In addition to the gap water rental, Windsor and Greeley have also renegotiated terms of the Intergovernmental Agreement (IGA) for Treated Water Service. New terms include reducing the system shrinkage from the contract amount of 30% to the actual calculated shrinkage Greeley incurred during the water year. This change in calculated shrinkage will save the Town at least 10% of raw water that is required to be transferred to Greeley. Most years the shrinkage will be less than 20%. Windsor will not be required to pay additional Greeley System Development Charges (SDC) for leased water in the event Greeley treats leased water for Windsor. Greeley is also proposing to change how the peaking factor for Windsor is calculated and will base it on a rolling five year average to reduce fluctuations in Greeley's water rate model.

Financial Impact:

\$500,000 per year for fifteen years, starting in 2022. The Town's water rate model has already factored this cost in.

Relationship to Strategic Plan:

Action Step 2.5.5 Sustainable Infrastructure: Secure NISP gap rental for drought protection.

ATTACHMENTS:

- ▢ Windsor and Greeley IGA
- ▢ First Amendment to the Winsor Greeley IGA
- ▢ Draft Second Amendment to IGA

**INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE
BETWEEN THE CITY OF GREELEY, COLORADO
AND THE TOWN OF WINDSOR, COLORADO**

THIS AGREEMENT is made this 4th day of January, 1996,
by and between **THE CITY OF GREELEY**, Colorado, a home rule municipality ("Greeley")
and **THE TOWN OF WINDSOR**, a Colorado statutory town acting as the governing board
of the Windsor Water Utilities Enterprise ("Windsor"), for the treatment and delivery of potable
water to the Town of Windsor by and through the treatment facilities and transmission lines
of the City of Greeley, Colorado.

WHEREAS, pursuant to § 29-1-203, C.R.S., governments may cooperate or contract
with one another to provide any function, service or facility lawfully authorized to each of the
cooperating or contracting units of government; and

WHEREAS, the Town of Windsor and the City of Greeley are neighboring
municipalities which have a common interest in obtaining high-quality water in sufficient
quantity to meet present and future needs; and

WHEREAS, the citizens of Windsor are desirous of long-term reliability in treated
water; and

WHEREAS, Windsor and Greeley can cost-effectively combine their demand for treated
water through one system of treatment, transmission and treated water storage thereby
achieving economies of scale; and

WHEREAS, in addition to its own needs and demand, Greeley has the capacity and the
facilities to meet the needs of Windsor for water treatment and transmission as are more fully
set forth herein; and

WHEREAS, Windsor and Greeley shall and will continue to own their water rights
individually and separately, each municipality relying upon the yield of its own water rights
to provide the raw water necessary for treatment proposed under this agreement; and

WHEREAS, Greeley and Windsor are agreeable to entering into a long-term contract
for the treatment and delivery of potable water to Windsor through an intergovernmental
agreement; and

WHEREAS, the parties are desirous of reducing the understandings, terms and
conditions of said agreement to writing.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants, undertakings,
terms and conditions contained herein, the parties agree as follows:

1. **DEFINITIONS.** The terms used herein are defined as follows:

1.1 "Greeley" shall refer to the City of Greeley and any authorized representative thereof.

1.2 "Greeley water system" or "Greeley water system enterprise" shall refer to Greeley's raw water and water rights, raw water storage and conveyance systems, water treatment plants, treated water conveyance and storage systems, pump stations and related appurtenances for the collection, distribution and measurement of water.

1.3 "Peak daily demand" means the greatest rate of treated water delivered by Greeley to Windsor over a twenty-four hour period, beginning at midnight, in a given calendar year.

1.4 "Peak hourly demand" means the greatest rate of treated water delivered by Greeley to Windsor over a one-hour period for any given day of the calendar year.

1.5 "Windsor" shall refer to the Town of Windsor as the governing board of the Windsor Water Utilities Enterprise and any authorized representative thereof.

1.6 "Windsor system" or "Windsor water system" shall refer to the pipes, pump stations, treated water storage reservoirs, and related appurtenances for the distribution of water (a) inside the Windsor town limits (b) downstream of master meters gauging Greeley's delivery to Windsor.

1.7 "Year" means a calendar year beginning on January 1.

2. **USE.** Pursuant to the terms of this intergovernmental agreement, Greeley agrees to treat water for Windsor in the manner and in such amounts as are more fully set forth herein.

It is understood and agreed that in reliance upon providing water to Windsor, the Town has appropriated certain funds for the construction of transmission lines capable of receiving and transporting such water. The parties acknowledge that the construction of these transmission lines is a condition precedent to delivery of water to Windsor. Water shall be made available to Windsor upon the completion of the transmission lines. Commencing with the first full year that this agreement is in effect and continuing annually for the term of this agreement Greeley shall make available not less than 600 acre feet of treated water. During each full year that this agreement is in effect Windsor shall take a minimum of 400 acre feet of treated water. If in any year treated water is available to Windsor and Windsor fails to take and use 400 acre feet of treated water Windsor shall nonetheless pay for this minimum allotment of treated water.

The parties further acknowledge that the initial year of this agreement will likely not be a full year. In this event, Windsor will be relieved of the 400 acre feet minimum requirement and will be required to pay only for the treated water actually delivered in this first year.

Nothing herein shall limit Windsor from taking treated water in excess of 600 acre feet subject to the availability thereof. All treated water in excess of 600 acre feet shall be expressly conditioned upon Greeley having the excess capacity to provide such water, and Windsor shall pay for the same.

3. POINT OF DELIVERY.

3.1 Treated water from Greeley's transmission and distribution system shall be delivered to Windsor through multiple master meters, the location of which will be mutually established and agreed upon by both municipalities.

3.2 Unless otherwise agreed upon between the parties, Greeley shall construct, own and maintain treated water meter vaults, meters, back-flow prevention devices and all associated facilities located at the delivery points. All of the costs of the metering facilities attributable to service to Windsor shall be paid by Windsor by and through inclusion in the Windsor rate base charged by Greeley and more fully described in paragraph eight of this agreement. Greeley agrees to design, construct and maintain all metering facilities in a prudent and cost effective manner. Each water meter shall be operated and maintained so as to record both cumulative flow and, as needed, maximum hourly and maximum daily flow within the accuracy prescribed by current American Water Works Standards. Each municipality will give the other seven calendar days notice prior to any routine or independent meter test. Windsor shall have the ability to valve the line downstream of a master meter for operation, maintenance and repair purposes.

4. ALTERNATE SOURCES. It is understood and agreed that as of the date of this agreement Windsor is receiving treated water from Greeley, the North Weld County Water District and the Fort Collins Loveland Water District. Nothing in this agreement shall be construed as limiting Windsor from continuing to receive treated water from sources other than Greeley during the term of this agreement, in whatever amounts Windsor deems appropriate.

5. POTABLE WATER PROJECTION REQUIREMENTS. No later than March 1 of each year, Windsor shall provide written notice to Greeley of its projected treated water requirements for the current calendar year and the five consecutive years following the year in which such notice is given. The projections in the notice shall include, at a minimum, both total annual consumption and maximum day and maximum hourly usage. Any actual usage in excess of projected peak demands which has a cost impact, excepting fire flow and other emergencies, shall result in supplemental demand charges as determined by the cost-of-service rate study and approved by the Greeley Water and Sewer Board.

6. WATER RIGHTS. Windsor shall acquire sufficient water rights which shall be usable in the Greeley water system and approved for municipal use in the Greeley water system under Colorado law in order to satisfy the treated water requirements of Windsor, expressly subject to the following conditions:

(a) On or before April 1 of each year, Windsor shall make raw water available to Greeley's water treatment plants equal to 130% of Windsor's projected potable water use for that calendar year.

(b) Windsor shall pay all assessment costs on any of the water provided for treatment by Greeley under this agreement.

(c) Windsor shall be responsible for meeting all return flow requirements of the raw water provided to Greeley for treatment, or other requirements of State or Federal law.

7. WATER SHORTAGE. In the event of a shortage of treated water, caused by the inability of a component of the Greeley water system to function, Windsor and Greeley shall share proportionally in water use reductions. Windsor and Greeley staff shall meet and mutually agree to a schedule and method of reducing water demand, with initial emphasis on reducing all nonessential uses such as lawn and parks irrigation. If a shortage persists, Windsor and Greeley agree to impose emergency rates which may be different for each customer category and which are intended to reduce discretionary consumption of treated water. The impact of the emergency rates shall be fairly and equally distributed among both Windsor and Greeley water customers. In a prolonged shortage, Windsor and Greeley agree to adopt a uniform set of enforcement tools and penalties to curtail usage. In any event, Greeley will make every effort feasible to continue to meet both Windsor's and Greeley's water demand, including obtaining treated water from other providers. In the event of a shortage, nothing shall prevent Windsor from independently using an alternate source of treated water in whatever amount Windsor deems necessary, until Greeley can again bring its facilities on line. In the event of a shortage caused by the inability of the Greeley water system to function, Windsor is relieved of the 400 acre-feet take-or-pay requirement specified in paragraph 2.

8. RATES. The initial rates for treated water delivered to Windsor shall be based upon the 1995 water rate cost-of-service model approved by the Greeley Water and Sewer Board. The Windsor rates shall be cost-of-service plus ten percent. The cost-of-service rates shall be reviewed annually and adjusted as needed by the Greeley Water and Sewer Board in accordance with section 17-4 of the Greeley City Charter.

9. BILLING. Bills shall be paid within thirty days of receipt, after which time interest penalties shall begin to accrue at the rate of one percent per month, or fraction thereof, during the period in which the bill remains unpaid.

10. NO ACQUIRED RIGHTS OR VESTING IN WATER RIGHTS OR IN WATER SYSTEM. As contained in section 17-1 of the Greeley City Charter, the Greeley water system is an Enterprise, as that term is defined pursuant to article X, section 20 of the Colorado Constitution. The Greeley water system Enterprise is owned by the citizens of Greeley.

Windsor Water Utilities Enterprise has been designated by Windsor as an Enterprise Fund as that term is defined pursuant to article X, section 20 of the Colorado Constitution.

Windsor specifically acknowledges and agrees that no rights or ownership of the Greeley water system shall become vested as a result of such service. Neither Greeley nor Windsor shall, by reason of any provision of this agreement or the use of water hereunder or otherwise, acquire any vested or adverse right, in law or in equity, in the water rights or water system owned by the other municipality. Neither the assignment, use, rental, or license of water or water rights nor the payment of system development charges shall be deemed to initiate, create, or vest any rights or ownership by either Greeley or Windsor in the other's water rights or water system. Further, Windsor shall not assert or claim any vested rights to continued service other than as established by the terms and conditions of this agreement.

11. POTABLE WATER. The treated water delivered by Greeley to the Windsor master meters shall be potable water which complies with applicable potable water law.

12. PEAK DEMAND MEASUREMENTS AND DETERMINATION. Each year either Windsor or Greeley or both may register and record peak daily and peak hourly demands. Windsor's peak daily and peak hourly demand factors will either be flow-weighted averages of the several master meters, or it shall be derived from simultaneous readings from the several master meters, whichever method generates the highest demand factor. To modulate variations in peaking factors year to year, and to thereby modulate fluctuations in the cost-of-service rates, peaking factors will be calculated based upon the average of the previous two years actual recorded peak flows. If the average of the peak hourly or the peak daily demand factors in the two immediately preceding years averages more than the factors used in the most current water rate study, then the next rate study will use the highest recorded peak daily or peak hourly factor from those two preceding years. If the average of the peak hourly or the peak daily demand factors in the two immediately preceding years averages less than the factors used in the most current water rate study, then the next rate study will use the highest recorded peak daily or peak hourly factor from those two preceding years. In no case will past year's or current year's water bills be adjusted for changes in current peak demand factors.

If peak daily or peak hourly demands are not registered in any given year, then the measurements used in the prior year's rate study will be assumed constant into the next rate study.

13. SYSTEM DEVELOPMENT CHARGES. This agreement allows Windsor's demand in any year to grow to an initial allowance of 600 acre-feet without payment of a system development charge. Water which is demanded by Windsor and delivered by Greeley to Windsor in any given calendar year which exceeds 600 acre-feet shall incur payment by Windsor to Greeley of a system development charge. This charge will be calculated as the current inside-Greeley plant 3/4-inch tap investment fee multiplied by every acre-foot of water consumed in excess of 600 acre-feet. Payments of this system development charge will occur in twelve monthly increments following the calendar year in which the excess occurs. The excess resulting in payment of a system development charge will create a new allowance. System development charges will not be refunded. No system development charges will be

paid in subsequent years for consumption equal to or less than the new allowance. Increased demand and delivery above the new maximum allowance in subsequent years will again cause payment of system development charges as calculated in this paragraph.

14. RELEASE, HOLD HARMLESS, INDEMNIFICATION. Both Windsor and Greeley are public entities, as that term is defined pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. The parties to this agreement have the benefits and responsibility enumerated in the Colorado Governmental Immunity Act. Each party shall defend any and all claims for injuries or damages pursuant to and in accordance with the requirements and limitations of the Colorado Governmental Immunity Act occurring as a result of negligent or intentional acts or omissions of the parties, their agents, employees and assigns.

In addition, Greeley shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of Greeley, its officers, employees and agents, performing functions or activities upon the property of Windsor. Greeley shall provide adequate workmen's compensation insurance for all of its employees, agents and assigns engaged in activities and functions upon the property of Windsor.

Windsor shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of Windsor, its officers, employees and agents, performing functions or activities upon the property of Greeley. Windsor shall provide adequate workmen's compensation insurance for all of its employees, agents and assigns engaged in activities and functions upon the property of Greeley.

Each party shall furnish the other party current certificates of insurance stating the coverages outlined above are in full force and effect.

15. NO PUBLIC UTILITIES COMMISSION CONTROL. The Town of Windsor, its employees and elected or appointed officials, agree neither to assert nor support any statement, policy, petition, rule making, or legislation attempting to place the Greeley water system under the rate making authority or jurisdiction of the Colorado Public Utilities Commission by virtue of this intergovernmental agreement or otherwise.

16. THIS AGREEMENT CONTROLS AND SUPERSEDES PREVIOUS AGREEMENTS. This agreement shall supersede any and all terms and conditions of water supply agreements previously existing between Greeley and Windsor.

17. TERM. In the interest of reliability and security, this agreement shall be for an initial term of twenty-five years from the date of its execution. After its initial term, this agreement shall be automatically renewed for successive ten-year terms, unless terminated as provided below.

18. DEFAULT AND TERMINATION. In the event either party fails to meet the terms and conditions of this agreement, such failure shall constitute a default of this agreement

and the non-defaulting party may immediately terminate this agreement, the effective day of termination being thirty days after the receipt of written notice of default by the defaulting party. Notice shall be either to the Windsor Town Administrator or the Greeley City Manager. Either party may cure any default during the aforesaid cure period. Upon cure of any default, this agreement shall remain in full force and effect. Nothing herein shall limit either party from collecting damages and amounts due from the other party upon termination of this agreement by default.

19. JURISDICTION AND VENUE. This agreement shall be interpreted pursuant to the laws of the State of Colorado. Venue to enforce this agreement shall be in Weld County.

20. AMENDMENT. This agreement shall be amended only in writing with the approval of the governing bodies of each municipality. No amendment or modification shall be effective unless in writing signed by the aforesaid persons. This agreement shall be governed by, construed and enforced in accordance with Colorado law.

21. DISPUTE RESOLUTION. Should disagreements arise regarding the interpretation of any portion of this agreement the parties agree to make efforts to resolve such disputes through negotiation; first, at the staff level; and second, with the respective Water Boards and/or City Councils. Procedures for such negotiations shall be established by mutual agreement at the time and may, with the concurrence of the parties, involve the use of qualified outside mediators. Any negotiations and resolution agreements reached therefrom must be within the legal authority granted to the parties by appropriate City Charters and/or State statutes, or shall be null and void. Notwithstanding anything to the contrary in this agreement, it is expressly agreed between the parties that this provision for dispute resolution does not apply to the authority granted the Greeley Water and Sewer Board pursuant to § 17-4 of the Greeley City Charter, including but not limited to, the establishment of minimum water rates.

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

ATTEST:

THE CITY OF GREELEY, COLORADO

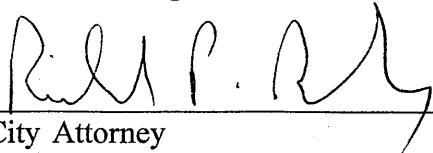
By: Betsy D. Elder
City Clerk

By: Robert Carlson
Mayor

Approved as to Substance:

By: 
City Manager

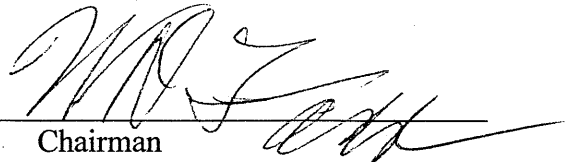
Approved as to Legal Form:

By: 
City Attorney

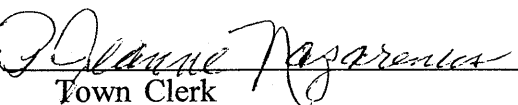
As to Availability of Funds:

By: 
Director of Finance

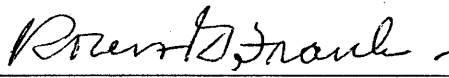
GREELEY WATER AND SEWER BOARD

By: 
Chairman

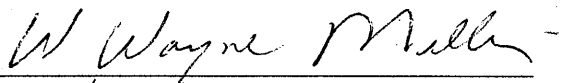
ATTEST:

By: 
Town Clerk

THE TOWN OF WINDSOR, COLORADO

By: 
Mayor, Pro-Tem

WINDSOR WATER BOARD

By: 
Chairman

njw:120695

FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE

BETWEEN THE CITY OF GREELEY, COLORADO
AND THE TOWN OF WINDSOR, COLORADO

This FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR TREATED WATER SERVICE ("First Amendment") is entered into this 13th day of November, 2017, by and between **THE CITY OF GREELEY**, Colorado, a home rule municipality ("Greeley") and **THE TOWN OF WINDSOR**, Colorado, a home rule municipality acting as the governing board of the Windsor Water Utilities Enterprise ("Windsor"), to set forth the terms and conditions by which Greeley will use its supply and treatment facilities to provide the treatment and delivery of potable water to Windsor.

WHEREAS, pursuant to C.R.S. §29-1-203, governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the following cooperating units of government; and

WHEREAS, Greeley and Windsor previously entered into that certain Intergovernmental Agreement for Treated Water Service on January 4, 1996 ("the 1996 IGA"); and

WHEREAS, authorized representatives of Greeley and Windsor have met on numerous occasions to review the 1996 IGA and discuss the possible modification of that agreement; and

WHEREAS, Greeley and Windsor have a continuing common interest in obtaining high-quality treated water in sufficient quantities to meet the present and future needs of their citizens and service areas; and

WHEREAS, Greeley and Windsor are agreeable to modifying the 1996 IGA under the terms and conditions of this First Amendment; and

WHEREAS, Greeley and Windsor desire to reduce their understandings, and the terms and conditions of this First Amendment, to writing;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in further consideration of the mutual covenants, undertakings, terms, and conditions contained herein, Greeley and Windsor agree as follows:

1. **OTHER TERMS IN FULL FORCE AND EFFECT.** Except as explicitly modified in this First Amendment, all terms and conditions of the 1996 IGA remain in full force and effect.
2. **AMENDMENTS.** The 1996 IGA is hereby amended as follows.
 - a. **Section 1.8 and 1.9 are incorporated as follows.**

Windsor, in their sole respective discretions, to be a one-time event that is not anticipated to occur again in the future.

1.9 “Peaking Error Fee” means a one-time fee assessed to Windsor by Greeley in the event that an agreed upon Peaking Error occurs, in lieu of utilizing the increased measured peaking factor attributable to a Peaking Error in the calculation of rates under this agreement.

b. Section 12 of the 1996 IGA is amended in its entirety as follows.

12. PEAK DEMAND MEASUREMENT AND DETERMINATION.

12.1 Each year either Windsor or Greeley or both may register and record peak daily demands. Windsor’s peak daily demand factor will either be a flow-weighted average of several master meters, or it shall be derived from simultaneous readings from the several master meters, whichever method generates the highest demand factor. Peak hourly demand factors will be determined by dividing the peak daily demand reading by 24 (hours in the day), and then dividing that result by the average hourly demand for that calendar year.

Peak Hourly Demand Factor Calculation: Peak Daily Demand / 24 / Average Annual Hourly Demand

To modulate variations in peaking factors from year to year, and to thereby modulate fluctuations in the cost-of-service rates, peaking factors will be calculated based upon the average of the previous two years actual recorded peak flows. Notwithstanding the provisions regarding Peaking Error below, in no case will past year’s or current year’s water bills be adjusted for changes in the current peak demand factors. If peak daily demands are not registered in any given year, then the measurements used in the prior year’s rate study will be assumed constant in the next rate study.

12.2 Unanticipated Operational Peaking. If Windsor experiences an operational incident that causes its measured peaking factor to increase, it may request from Greeley that such increased measured peaking factor be deemed an error, and that the increased factor not be included in the forthcoming rate calculation. If Greeley agrees that the incident was a one-time event that is not anticipated to occur again in the future, the increased peaking measurement may be termed a Peaking Error. Mutual agreement by Windsor and Greeley that the increased factor constitutes a Peaking Error shall result in the assessment to Windsor of a Peaking Error Fee, as described below, and the increased factor shall not be included in the forthcoming rate calculation. If a Peaking Error occurs, the peaking factor used in the rate calculation shall be from the last two years, as described above, without the Peaking Error.

12.3 Peaking Error Fee. Upon mutual agreement by Windsor and Greeley that a Peaking Error has occurred, Windsor shall remit to Greeley a Peaking Error Fee and Greeley shall not utilize the increased peaking factor in the calculation of Windsor’s rate. The Peaking Error Fee assessed to Windsor shall be in an amount equal to 20% of the total annual revenue

paid by Windsor to Greeley pursuant to this agreement during the calendar year in which the Peaking Error occurred.

12.4 Water usage pursuant to an agreed upon Peaking Error shall not result in an increase in System Development Charges, nor an increase to the base rate as calculated pursuant to Section 8 of this agreement.

c. Section 13 of the 1996 IGA is amended in its entirety as follows.

13. SYSTEM DEVELOPMENT CHARGES.

13.1 Windsor shall pay to Greeley a system development charge ("SDC") when the metered water delivered to Windsor in any year exceeds the acre-feet delivered in the base year. Payment of system development charges will create a new base year delivery. No system development charges will be due in subsequent years for metered delivery equal to or less than the new base year delivery. Payments of the system development charge will occur in twelve monthly increments following the calendar year in which the exceedance occurs. In no case shall system development charges be refunded. Windsor's current base year volume at the time this First Amendment is executed is 651.33 acre-feet.

13.2 The SDC due shall be a percentage of the then current Inside the City Greeley ¾-inch tap plant investment fee (expressed in \$/acre-foot), to be multiplied by Windsor's consumption in acre-feet of water metered in excess of the base year delivery. The SDC percentage is calculated as follows: The typical Windsor single-family customer benefits from 75% of Greeley Water System. To express Greeley's plant investment fee in terms of \$/acre-foot, the average annual inside-the-City residential demand, as used in the annual update of the Greeley rate model, is divided into the plant investment fee.

13.3 *THE FOLLOWING CALCULATION UTILIZES 2016 DATA TO DERIVE EXAMPLE FIGURES FOR THE SOLE PURPOSE OF DEMONSTRATING THE SDC METHODOLOGY. ANY ACTUAL SDC BORNE BY WINDSOR WILL VARY ANNUALLY, IN ACCORDANCE WITH THE METHODOLOGY DESCRIBED IN THIS SECTION 13.*

Example Conversion and Calculation of SDC Rate

Average Annual Demand:	135,000 gallons (0.414 acre-feet per ¾-inch tap)
Current Inside the City Greeley PIF:	\$10,800

Conversion of Greeley PIF: $(\$10,800) / (0.414 \text{ AF/year}) = \$26,087 \text{ per AF/year}$

Windsor SDC: $(75\%) * (\$26,087 \text{ per AF/year}) = \$19,565 \text{ per AF/year}$

Example Base Year and SDC Calculation

Windsor Base Year Volume: 651.33 acre-feet
Windsor Actual Metered Flow: 660 acre-feet (8.67 AF in excess of Base Year Volume)

Calculation of Total SDC Due: $(660-651.33) * (\$19,565) = \$169,628.55$

Windsor's Base Year Volume would then increase to become 660 AF.

d. Section 16 of the 1996 IGA is amended in its entirety as follows.

16. INTEGRATION, MERGER, AND SUPERSESSON. This First Amendment incorporates and renews the terms and conditions of the 1996 IGA not explicitly modified herein, and supersedes all terms and conditions of any other agreements regarding water supply previously existing between Greeley and Windsor. This First Amendment contains all agreements and understandings, whether written or oral, between Greeley and Windsor regarding the subject matter herein.

e. Section 17 of the 1996 IGA is amended in its entirety as follows.

17. TERM. In the interest of reliability and security, this First Amendment shall be for an initial term of twenty-five years from the date of execution set forth above. At the expiration of this initial term, this agreement shall automatically renew for successive ten-year terms, unless terminated in accordance with Section 18 below.

f. Section 18 of the 1996 IGA is amended in its entirety as follows.

18. DEFAULT AND TERMINATION. In the event either party fails to meet the terms and conditions of this agreement, such failure shall constitute a default of this agreement and the non-defaulting party may immediately terminate this agreement, the effective day of termination being thirty days after the receipt of written notice of default by the defaulting party. Notice shall be given either to the Windsor Town Manager or the Greeley City Manager. Either party may cure the default during the aforesaid 30-day cure period. Upon cure of any default, this agreement shall remain in full force and effect. Nothing herein shall limit either party from collecting damages and amounts due from the other party upon termination of this agreement by default. Notwithstanding the above, this agreement may otherwise be terminated at will by either Greeley or Windsor by giving an advance written notice to the other party of no less than ten (10) years. Nothing herein shall preclude the parties from negotiating modifications of this agreement during the ten-year notification of termination window, in which case an amended agreement may modify or supplant this agreement.

IN WITNESS WHEREOF, the City of Greeley and the Town of Windsor have authorized and executed this First Amendment to Intergovernmental Agreement for Treated Water Service on the date first written above.

TOWN OF WINDSOR, COLORADO

By: Kristie Melendez
Kristie Melendez, Mayor

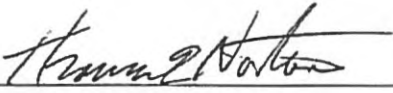
ATTEST:

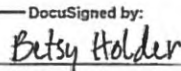
By: Patti Garcia
Patti Garcia, Town Clerk



THE CITY OF GREELEY, COLORADO

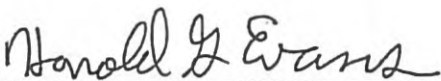
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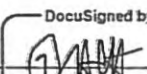
By: 
Mayor

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By: 
City Clerk

WATER AND SEWER BOARD:

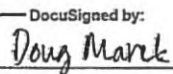
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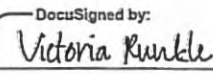
By: 
Chairman

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By: 
City Manager

AS TO LEGAL FORM:

AS TO AVAILABILITY OF FUNDS:

DocuSigned by:
By: 
City Attorney

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By: 
Director of Finance

DRAFT §SECOND AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE

BETWEEN THE CITY OF GREELEY, COLORADO
AND THE TOWN OF WINDSOR, COLORADO

This SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR TREATED WATER SERVICE (“Second Amendment”) is entered into this ____ day of _____ 2021, by and between THE CITY OF GREELEY, COLORADO, a home rule municipality (“Greeley”) and THE TOWN OF WINDSOR, COLORADO, a home rule municipality acting as the governing board of the Windsor Water Utilities Enterprise (“Windsor”), to set forth the terms and conditions by which Greeley will use its supply and treatment facilities to provide the treatment of potable water and provision of leased water to Windsor.

WHEREAS, pursuant to C.R.S. §29-1-203, governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the following cooperating units of government; and

WHEREAS, Greeley and Windsor previously entered into that certain Intergovernmental Agreement for Treated Water Service dated January 4, 1996 (“1996 IGA”), which was amended by that certain First Amendment to Intergovernmental Agreement for Treated Water Service, dated November 13, 2017 and attached hereto as Exhibit A (“First Amendment”); and

WHEREAS, Greeley and Windsor have a continuing common interest in obtaining high-quality treated water in sufficient quantities to meet the present and future needs of their citizens and service areas; and

WHEREAS, Greeley and Windsor are agreeable to further amending the 1996 IGA under the terms and conditions of this Second Amendment; and

WHEREAS, Greeley and Windsor desire to reduce their understandings, and the terms and conditions of this Second Amendment, to writing;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in further consideration of the mutual covenants, undertakings, terms, and conditions contained herein, Greeley and Windsor agree as follows:

1. OTHER TERMS IN FULL FORCE AND EFFECT. Except as explicitly modified in this Second Amendment, all terms and conditions of the 1996 IGA, as amended by the First Amendment, remain in full force and effect.

2. AMENDMENTS. The 1996 IGA, as amended, is hereby further amended as follows.

a. Section 6 of the 1996 IGA, as amended, is amended and replaced in its entirety as follows.

6. WATER RIGHTS. Windsor shall make available to Greeley for treatment water attributable to water rights that are decreed or otherwise approved for municipal use under Colorado

law and usable in the Greeley water system. Windsor shall remain responsible for all assessments due on the water rights made available to Greeley for treatment pursuant to this agreement. Windsor shall remain responsible for compliance with all requirements of local, State, or Federal law associated with the water rights made available to Greeley for treatment pursuant to this agreement, including, without limitation, for meeting the return flow obligations associated with changed water rights.

Windsor shall make such water available to Greeley in sufficient quantities to meet the potable water use projections described in Section 5 above, including sufficient quantities beyond its projections to cover the shrinkage associated with the delivery of such water. Greeley and Windsor will cooperate in the calculation and assessment of shrinkage based on agreed shrinkage factors for the sources of supply provided by Windsor and the treatment plant at which the water is treated.

b. Section 12.1 of the 1996 IGA, as amended, is amended and replaced in its entirety as follows.

12.1 Each year either Windsor or Greeley or both may register and record peak daily and peak hourly demands. Windsor's peak daily and peak hourly demand factors will either be flow-weighted averages of several master meters, or shall be derived from simultaneous readings from the several master meters, whichever method generates the highest demand factors.

To modulate variations in peaking factors from year to year, and to thereby modulate fluctuations in the cost-of-service rates, peaking factors will be calculated based upon the average of the previous five years' actual recorded peak flows. Notwithstanding the provisions regarding Peaking Error set forth in Sections 12.2, 12.3, and 12.4, in no case will past year's or current year's water bills be adjusted for changes in the current peak demand factors. If peak daily or peak hourly demands are not registered in any given year, then the measurements used in the prior year's rate study will be assumed constant in the next rate study.

c. Section 13.1 of the 1996 IGA, as amended, is amended and replaced in its entirety as follows.

13.1 Windsor shall pay to Greeley a system development charge ("SDC") when the metered water delivered to Windsor in any year, excluding Interim Water delivered pursuant to Section 22 below, exceeds the acre-feet delivered in the base year. Payment of system development charges will create a new base year delivery. No system development charges will be due in subsequent years for metered delivery equal to or less than the new base year delivery. Payments of the system development charge will occur in twelve monthly increments following the calendar year in which the exceedance occurs. In no case shall system development charges be refunded. Windsor's current base year volume at the time this Second Amendment is executed is 651.33 acre-feet.

d. The 1996 IGA, as amended, is amended by the addition of a new Section 22 as follows.

22. INTERIM WATER SUPPLY LEASE. In addition to the treated water service provided pursuant to the 1996 IGA, as amended, Greeley will also provide to Windsor an interim supplemental supply of raw water that Windsor may (but shall not be required to) itself treat and deliver to its customers (“Interim Water”), pursuant to the terms of this Section 22 (“Interim Water Supply Lease”). Though this Section 22 may expire or be terminated independent of the 1996 IGA, as amended, in its entirety, all other terms and conditions of the 1996 IGA, as amended, not explicitly superseded in this Section 22 remain applicable to the conduct of the parties under the Interim Water Supply Lease.

22.1 Term. The initial term of the Interim Water Supply Lease commences on November 1, 2021 and expires after a period of ten (10) years. Upon the mutual agreement in writing of Greeley and Windsor, the Interim Water Supply Lease may be extended for one (1) subsequent term of five (5) years.

22.2 Amount of Interim Water and Projection Schedule. Greeley agrees to provide up to one thousand (1,000) acre-feet of Interim Water per water year to Windsor during the term of this Interim Water Supply Lease. For purposes of this Interim Water Lease, a water year shall be construed to run from November 1 through October 31. Windsor shall provide to Greeley a projection schedule no later than March 1 of each water year, detailing the amount of Interim Water needed for the remainder of the water year (“Projection Schedule”). Windsor shall be required to project and pay for a minimum of one hundred (100) acre-feet of Interim Water each water year.

22.3 Payment for Interim Water. Windsor shall pay to Greeley five hundred dollars (\$500.00) per acre-foot for Interim Water provided during the first water year of this Interim Water Supply Lease (“Lease Payment”). Each year thereafter, the rate per acre-foot used to calculate the Lease Payment shall be increased by three percent (3%), and Windsor shall pay to Greeley that annually adjusted Lease Payment based on the Projection Schedule for that year. Windsor shall remit payment to Greeley within thirty (30) days of receiving an invoice. In no event shall Windsor be entitled to a refund of Lease Payments made for Interim Water included on its Projection Schedule but not utilized.

22.4 Sources of Interim Water Supply. Greeley may, in its sole discretion, allocate any of its sources of water supply that are available and decreed for municipal use to meet its obligations under this Interim Water Supply Lease. Windsor shall be solely responsible for all accounting and administration of the Interim Water applicable to its use in the Windsor water system, after such water is made available by Greeley. Windsor shall be solely responsible for any transit losses assessed on the Interim Water.

22.5 Limitations on Obligation to Provide Interim Water. Greeley may curtail deliveries of Interim Water to Windsor if Greeley imposes, in Greeley's sole discretion, mandatory city-wide water use restrictions to address drought conditions, infrastructure failure, or other catastrophic circumstance limiting the ability of Greeley to satisfy the indoor water usage needs of its citizens, so long as, and to the extent that, deliveries under this Agreement

are prevented or delayed by such cause. Greeley also may curtail deliveries of Interim Water to Windsor if an accident, act of war, natural catastrophe, fire, explosion, or other cause beyond the reasonable control of Greeley prevents or delays its ability to deliver Interim Water, so long as, and to the extent that, deliveries under this Interim Water Supply Lease are prevented or delayed by such cause.

22.6 Restriction on Assignment. Windsor shall not rent, sublet, or otherwise convey in any manner the right to use the Interim Water. Neither Greeley nor Windsor shall assign any of their rights or delegate any of their obligations under this Interim Water Supply Lease.

22.7 Default and Termination of Interim Water Supply Lease. This Interim Water Supply Lease may expire, or be terminated in accordance with the provisions of this Section, without terminating the 1996 IGA, as amended, in its entirety. If either Greeley or Windsor fails to comply with a term or condition of this Section 22, such failure constitutes a default of the Interim Water Supply Lease only. The non-defaulting party may declare the default by providing written notice to the Greeley Water Resources Operations Director or the Windsor Community Development Director. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by Greeley and Windsor, the non-defaulting party may declare the Interim Water Supply Lease terminated. The failure of either Greeley or Windsor to declare a default of this Section 22 does not establish a precedent nor constitute an implied waiver of any subsequent breach of the Interim Water Supply Lease. This Interim Water Supply Lease shall automatically terminate in the event either Greeley or Windsor terminates the 1996 IGA, as amended, in accordance with Section 18 above.

e. **The 1996 IGA, as amended, is hereby amended by the addition of a new Section 23 as follows.**

23. VESTED CONTRACTUAL RIGHTS. The contract rights created pursuant to the 1996 IGA, as amended, are intended by Greeley and Windsor to be presently vested and fully enforceable according to their terms. The provisions of the 1996 IGA, as amended, were negotiated as, and constitute, parts of an integrated whole, and the inability of either party to enforce any of such provisions or to consummate any of the transactions contemplated hereby due to changes in law, whether by amendment of the State or federal constitutions, the respective charters or municipal codes of either municipality, or of any other applicable statute or regulation, or by other regulatory or judicial action, would result in substantial and irreparable harm to both parties and constitute an impairment of their vested contractual rights.

IN WITNESS WHEREOF, the City of Greeley and the Town of Windsor have authorized and executed this Second Amendment to Intergovernmental Agreement for Treated Water Service on the date first written above.

THE TOWN OF WINDSOR, COLORADO

ATTEST:

By: _____
Paul Rennemeyer, Mayor

By: _____
Karen Frawley, Town Clerk

[Seal]

THE CITY OF GREELEY, COLORADO

ATTEST:

By: _____
John Gates, Mayor

By: _____
Anissa Hollingshead, City Clerk

AS TO SUBSTANCE:

AS TO AVAILABILITY OF FUNDS:

By: _____
Roy Otto, City Manager

By: _____
John Karner, Director of Finance

AS TO LEGAL FORM:

By: _____
Doug Marek, City Attorney



MEMORANDUM

Date: April 26, 2021
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Ian McCargar, Town Attorney
Re: Discussion on the Removal of the Emergency Declaration
Item #: 3.

Background / Discussion:

Attached for discussion (and later official action if accepted during the Work Session) are two items that will revoke the local COVID emergency declaration and carry forward protocols for the immediate post-COVID era. The Mayoral Proclamation satisfies the termination requirement set forth in Section 4 of the 2020 Ordinance. The Resolution is expressly conditioned on issuance of the Proclamation, and carries forward the remote meeting options for Town Board. Other Town boards and commissions are urged to adopt similar meeting options. The Resolution specifically instructs the Town Manager to terminate business assistance agreements with food delivery services. The Resolution allows COVID-related outdoor dining and beverage service approvals to continue according to their approved permits.

Recommendation:

Discuss, direct staff

ATTACHMENTS:

- ❑ Draft Resolution
- ❑ Draft Proclamation
- ❑ Approved Ordinance 2020-1605

TOWN OF WINDSOR

RESOLUTION NO. 2021-22

A RESOLUTION PROVIDING FOR THE EXTENSION OF CERTAIN ADMINISTRATIVE AND LEGISLATIVE ACTIONS TAKEN IN RESPONSE TO THE COVID-19 PANDEMIC IN LIGHT OF THE REVOCATION OF THE COVID-19 EMERGENCY DECLARATION

WHEREAS, on March 13, 2020, the United States President Donald J. Trump issued an emergency declaration in response to Coronavirus (COVID-19); and

WHEREAS, on March 10, 2020, Colorado Governor Jared Polis declared a statewide state of emergency in response to COVID-19; and

WHEREAS, by Ordinance No. 2020-1605 adopted on March 23, 2020 (“Emergency Ordinance”), the Windsor Town Board declared that a public health emergency relating to COVID-19 existed at that time within the Town; and

WHEREAS, Section 4 of the Emergency Ordinance provides:

The declaration of the public health emergency as provided in Section 3 of this Ordinance shall remain in effect until the Mayor declares in writing that the public health emergency has passed...

WHEREAS, Windsor Mayor Paul Rennemeyer has expressed his intention to declare the public health emergency has passed, thus revoking the legislative and administrative actions approved during the public health emergency; and

WHEREAS, the Town Board agrees that certain aspects of the Emergency Ordinance should be repealed, certain other provisions of the Emergency Ordinance and actions implemented under the Emergency Ordinance should be extended; and

WHEREAS, the Emergency Ordinance established protocols for the conduct of remote meetings in response to the COVID-19, which protocols have been observed by the Town Board as well as other Town boards and commissions; and

WHEREAS, since the adoption of the Emergency Ordinance, the Town Manager has exercised executive powers granted to him under the terms of the Emergency Ordinance, particularly in the area of measures undertaken in response to the needs of local businesses affected by State-level limitations on indoor public gatherings; and

WHEREAS, the Town Board desires to set forth herein its policies with respect to certain matters arising under the Emergency Ordinance; and

WHEREAS, the Town Board finds that the adoption of this Resolution promotes the public health, safety and welfare.

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

1. **Emergency Ordinance Repealed.** The Town Board hereby affirms that the Emergency Ordinance shall be repealed, but only upon pronouncement of the *Mayoral Proclamation Revoking the March 23, 2020, Town of Windsor COVID-19 Pandemic Emergency Declaration* dated April 26, 2021.
2. **Electronic Participation Voluntary.** Notwithstanding the repeal of the Emergency Ordinance, the Town Board hereby authorizes the conduct of remote meetings and participation therein as set forth in this Section below:

If a Town Board member reasonably determines that his or her in-person attendance at a regular or special meeting of the Town Board would not be prudent, such Town Board Member may participate by telephone, video conferencing, or other electronic means in any regular or special meeting ("Electronic Participation"). Any Town Board Member participating electronically shall be deemed present for purposes of determining a quorum. Any Town Board Member may through Electronic Participation participate in discussion, make inquiry, refer questions to the Mayor or Chair, and monitor the proceedings. A Town Board Member participating electronically under this Section may vote in any legislative or quasi-judicial matter, but any such vote shall not be officially counted unless affirmed in writing within 24 hours of the vote under such verification requirements and upon such forms as are established by the Town Clerk. Electronic Participation is also available to Town Board Members during any duly-convened executive session. The Mayor may direct discontinuance of Electronic Participation by one or more members during a meeting where the Electronic Participation results in delays or interference in the meeting process; e.g., where the telephone connection or connection by other electronic means is repeatedly lost or interrupted, the quality of the connection is unduly noisy or otherwise prevents the orderly conduct of the meeting, or the listening member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance. Whenever a Town Board Member participates electronically in a Town Board meeting by telephone or other electronic means pursuant to this sub-section, the following additional requirements shall be observed:

- (a) All Town Board participants in Town Board meetings must be able to hear one another or otherwise communicate with all other Town Board Members, and be able to hear all discussion and testimony in a manner providing maximum transparency and participation.
- (b) Members of the public present for in-person public meetings or observing remotely must be given an opportunity to hear all discussion, testimony, and votes.

- (c) All votes held at the meeting shall be conducted by roll call or other publicly-visible means.
 - (d) To the extent possible, full and timely notice shall be given to the public advising that one or more members of the Town Board may participate in the meeting electronically.
 - (e) Electronic Participation in any regular or special Town Board meeting in accordance with this Section shall not be considered to be an absence or failure to attend for determining whether a vacancy in has occurred.
- 3. **Public Participation.** The Town Manager shall open Town facilities for public participation in public meetings at such time as the Town Manager determines that doing so can be accomplished with safety to the public and Town attendees. The Town Manager shall continue to offer remote meeting participation to the public as Town facilities and technological resources allow.
 - 4. **Applicability.** The provisions of Section 2 above shall apply only to the Town Board Members and Town Board meetings. However, Town Board recommends that all Town boards and commissions adopt similar resolutions to address and enable remote participation by their members.
 - 5. **Outdoor Dining.** To the extent that the Town Manager has authorized outdoor dining and alcohol service measures prior to this date, all such measures shall remain in effect according to their approved terms.
 - 6. **Food Delivery Services.** The Town Manager is instructed to discontinue COVID-related business assistance to food delivery services upon adoption of this Resolution.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 26th day of April, 2021.

TOWN OF WINDSOR, COLORADO

By: _____
Paul Rennemeyer, Mayor

ATTEST:

Karen Frawley, Town Clerk

[Seal]

A MAYORAL PROCLAMATION
REVOKING THE MARCH 23, 2020
TOWN OF WINDSOR
COVID-19 PANDEMIC EMERGENCY DECLARATION

WHEREAS, on March 13, 2020, the United States President Donald J. Trump issued an emergency declaration in response to Coronavirus (COVID-19); and

WHEREAS, on March 10, 2020, Colorado Governor Jared Polis declared a statewide state of emergency in response to COVID-19; and

WHEREAS, by Ordinance No. 2020-1605 adopted on March 23, 2020 (“Emergency Ordinance”), the Windsor Town Board declared that a public health emergency relating to COVID-19 existed at that time within the Town; and

WHEREAS, Section 4 of the Emergency Ordinance provides:

The declaration of the public health emergency as provided in Section 3 of this Ordinance shall remain in effect until the Mayor declares in writing that the public health emergency has passed...

WHEREAS, effective April 16, 2021, Governor Polis has significantly reduced or altogether eliminated State-level limitations in response to COVID-19, largely deferring to county governments; and

WHEREAS, although the impacts of COVID-19 on public health have not been entirely eliminated, the incidence of vaccinations and the continued observance of public health awareness suggests that the Emergency Ordinance should in some respects be repealed; and

WHEREAS, the Town Board concurs in my desire to formally revoke the COVID-19 public health emergency.

NOW, THEREFORE, be it proclaimed that, effective immediately, the public health emergency declared in Town of Windsor Ordinance No. 2020-1605 has passed and is hereby REVOKED.

PRONOUNCED IN OPEN SESSION this 26th day of April, 2021.

TOWN OF WINDSOR, COLORADO

Paul Rennemeyer, Mayor

ATTEST:

Karen Frawley, Town Clerk

[Seal]

TOWN OF WINDSOR

ORDINANCE NO. 2020 - 1605

AN EMERGENCY ORDINANCE CONCERNING THE CORONAVIRUS (COVID -19) PUBLIC HEALTH EMERGENCY AND AUTHORIZING THE EXERCISE OF EMERGENCY POWERS IN ASSOCIATION THEREWITH

WHEREAS, the Town of Windsor (“Town”) is a Colorado home rule municipality with all powers vested in accordance with Colorado law; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration in response to Coronavirus (COVID-19); and

WHEREAS, on March 10, 2020 Jared Polis, the Governor of the State of Colorado, declared a statewide state of emergency in response to COVID-19; and

WHEREAS, the World Health Organization has declared COVID-19 to be a worldwide pandemic; and

WHEREAS, although no confirmed cases of COVID-19 have been identified in Windsor, COVID-19 has been confirmed to exist in Larimer and Weld Counties; and

WHEREAS, immediate measures are necessary to slow and prevent further spread of COVID-19; and

WHEREAS, the Windsor Town Board confirms that protecting the public health, safety and welfare is the Town Board’s top priority; and

WHEREAS, the Town of Windsor *Home Rule Charter* Section 1.13 defines Emergency as a matter which could not have been reasonably anticipated or foreseen, and on which immediate action is genuinely and urgently necessary for the preservation of the public health, safety and welfare; and

WHEREAS, the Town Board is empowered by Section 31-15-401(1)(b), C.R.S., to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; and

WHEREAS, the Town Board finds and determines that the adoption of this Ordinance is necessary for the promotion of health and the suppression of disease; and

WHEREAS, the Town Board further finds and determines that the adoption of this Ordinance is proper under Section 31-15-401(1)(b), C.R.S., and other applicable law.

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

Section 1. Short Title. This Ordinance shall be known and may be cited as the “Town of Windsor Coronavirus (COVID-19) Ordinance.”

Section 2. Intent. It is the intent of this Ordinance to provide the necessary organization, powers, and authority to enable the timely and effective use of all available Town resources to prepare for, respond to, and recover from the declared local public health emergency. This Ordinance is intended to grant as broad a power as is permitted within the letter and spirit of the Town *Home Rule Charter* and the Board-Manager form of government, and this Ordinance shall be interpreted in accordance with such intent. The Town Board retains the power to direct the Town Manager during the pendency of the current coronavirus (COVID-19) public health emergency.

Section 3. Public Health Emergency Declared. The Town Board hereby declares that a public health emergency relating to the coronavirus (COVID-19) exists within the Town. Such circumstance is referred to in this Ordinance as the “public health emergency.” The public shall be notified of this declaration through general dissemination to the news media, posting on the Town website, or other means of publicity intended to advise the general public.

Section 4. Duration of Declaration of Public Health Emergency. The declaration of the public health emergency as provided in Section 3 of this Ordinance shall remain in effect until the Mayor declares in writing that the public health emergency has passed.

Section 5. Continuity of Government. All ordinances adopted pursuant to the Town *Home Rule Charter* concerning continuity of government shall apply, if circumstances warrant, during the duration of the public health emergency declared herein.

Section 6. Powers. Until the Mayor declares in writing that the public health emergency has passed, after consultation with the Mayor, the Town Manager has full power and authority to take the following actions and issue the following orders for the purposes of preparing for, responding to and recovering from the declared local public health emergency:

(a) Any action necessary for the protection of life and property, including, but not limited to, establishing regulations governing conduct related to the cause of the public health emergency.

(b) An order of no more than 72 hours’ duration, unless extended by official action of the Town Board, establishing a curfew to prevent or quell riot, mayhem or widespread disorderly conduct during such hours of the days or nights and affecting such categories of persons as may be designated.

(c) An order to direct and compel the evacuation of all or a part of the population from any stricken or threatened areas within the Town if the Town Manager deems this action is necessary, and to prescribe routes, modes of transportation and destination in connection with an evacuation.

(d) An order of no more than 72 hours’ duration, unless extended by official action of the Town Board, requiring the closing of businesses deemed to represent a substantial and immediate threat of disease transmission by the Town Manager.

- (e) Suspend Town board and commission meetings to include, but not be limited to, meetings of the Municipal Court, Planning Commission, advisory boards, and Liquor Licensing Authority, or modify meeting rules to allow for telephone, teleconferencing or meeting by other electronic means.
- (f) Allocate and expend funds, execute contracts, authorize the obtaining and acquisition of property, equipment, services, supplies and materials without the strict compliance with procurement regulations or procedures.
- (g) Transfer the direction, personnel, or functions of Town departments and personnel for the purposes of performing or facilitating public health emergency services.
- (h) Utilize all available resources of the Town as may be reasonably necessary to cope with this public health emergency whether in preparation for, response to, or recovery from this public health emergency.
- (i) Suspend or modify the provisions of any ordinance if strict compliance with such ordinance would in any way prevent, hinder or delay necessary action in coping with this public health emergency.
- (j) Accept services, gifts, grants and loans, equipment, supplies, and materials whether from private, nonprofit or governmental sources.
- (k) Make application for local, state or federal assistance, and provide procedures for effective record-keeping to facilitate such assistance.
- (l) Terminate or suspend any process, operation, machine, device or event that is or may negatively impact the ability of the Town to prepare for, respond to, and recover from the declared local public health emergency.
- (m) Delegate authority to such Town officials as the Town Manager determines reasonably necessary or expedient.
- (n) Limit the use of any Town-owned building, facility, or property as to time, manner, and permitted activities, including, but not limited to, limiting the permissible number of people who may lawfully occupy such building, facility, or property at any one time.
- (o) Close, secure and prohibit the use of any Town-owned building, facility, or property.
- (p) Exercise such powers and functions in light of the exigencies of this public health emergency, including, but not limited to, the waiving of compliance with any time-consuming procedures and formalities, including notices, as may be prescribed by law pertaining thereto.
- (q) Issue any and all other order or undertake such other functions and activities as the Town Manager reasonably believes is required under the circumstances to prepare for, respond to, and

recover from the declared local public health emergency, or to otherwise preserve the public peace or abate, clean up, or mitigate the effects of the public health emergency.

Section 7. Enforcement of Orders.

(a) The Town's Police Department, code enforcement, and such other law enforcement and peace officers as may be authorized by the Town Manager are hereby authorized and directed to enforce the orders, rules, and regulations made or issued pursuant to this Ordinance. All members of the public shall be deemed to have been given notice of all orders, rules, and regulations made or issued pursuant to this Ordinance upon their dissemination to the news media or publication on the Town website or other means of publicity.

(b) Until the Mayor in writing declares that the public health emergency has passed, no person shall:

(1) Enter or remain upon the premises of any establishment not open for business to the general public, unless such person is the owner or authorized agent of the establishment.

(2) Violate the provisions of this Ordinance.

(3) Violate any of the orders duly issued by the Town Manager or designee pursuant to Section 6 of this Ordinance.

(4) Willfully obstruct, hinder, or delay any duly authorized Town officer, employee or duly-appointed volunteer in the enforcement or exercise of the provisions of this Ordinance, or of the undertaking of any activity pursuant to this Ordinance.

(c) It is unlawful and a misdemeanor offense for any person to violate any provision of this Section 7. Any person convicted of a violation of this section shall be subject to the penalties set forth in Section 1-4-20 of the *Windsor Municipal Code*.

Section 8. Authority to Enter Property. During the period of the public health emergency declared herein and upon display of appropriate Town credentials, a Town employee or authorized agent may enter onto or upon private property if the employee or authorized agent has reasonable grounds to believe that there is a true emergency and an immediate need for assistance for the protection of life or property, and that entering onto the private land will allow the person to take such steps to alleviate or minimize the emergency or disaster or to prevent or minimize danger to lives or property from the declared public health emergency.

Section 9. Town Board and Planning Commission Meetings and Departments.

(a) For the duration of the public health emergency, if a Town Board member or Planning Commission Member reasonably determines that his or her in-person attendance at a regular or special meeting would not be prudent, such Town Board Member or Planning Commission Member may participate by telephone, video conferencing, or other electronic means in any regular or special meeting ("Electronic Participation"). Any Town Board Member or Planning

Commission Member participating electronically shall be deemed present for purposes of determining a quorum. Any Town Board Member or Planning Commission Member may through Electronic Participation participate in discussion, make inquiry, refer questions to the Mayor or Chair, and monitor the hearing. A Town Board Member or Planning Commission Member participating electronically under this Section may vote in a quasi-judicial matter, but any such vote shall not be officially counted unless affirmed in writing within 24 hours of the vote. Town Board Member or Planning Commission Member participating electronically may participate and vote in legislative matters, but any such vote shall not be counted unless affirmed in writing within 24 hours of the vote under such verification requirements and upon such forms as are established by the Town Clerk. Electronic Participation is also available to Town Board Members and Planning Commission Members during any duly-convened executive session. The Mayor or Chair may direct discontinuance of Electronic Participation by one or more members during a meeting where the Electronic Participation results in delays or interference in the meeting process; *e.g.*, where the telephone connection or connection by other electronic means is repeatedly lost or interrupted, the quality of the connection is unduly noisy or otherwise prevents the orderly conduct of the meeting, or the listening member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance. Whenever a Town Board Member or Planning Commission Member participates electronically in a Town Board meeting by telephone or other electronic means pursuant to this sub-section, the following additional requirements shall be observed:

- (1) All participants in Town Board and Planning Commission meetings must be able to hear one another or otherwise communicate with all other Town Board Members and Planning Commission Members, and be able to hear all discussion and testimony in a manner providing maximum transparency and participation;
- (2) Members of the public present at the meeting location or observing remotely must be given an opportunity to hear all discussion, testimony, and votes;
- (3) All votes held at the meeting shall be conducted by roll call or other publicly-visible means.
- (4) To the extent possible, full and timely notice shall be given to the public advising that one or more members of the Town Board or Planning Commission may participate in the meeting electronically.
- (5) Electronic Participation in any regular or special Town Board or Planning Commission meeting in accordance with this Section shall not be considered to be an absence or failure to attend for determining whether a vacancy in has occurred.

(b) Whenever the public health emergency makes it imprudent or impossible for the Town Board, Planning Commission or any Town board, commission, or committee, to meet at a previously scheduled date and time, such meeting shall be deemed to be postponed until a quorum is able to meet prudently.

(c) Any official act or meeting required to be performed at any regular location of the Town Board, Planning Commission or any Town board, commission, or committee or any Town department is valid when performed at any temporary location under this section, so long as reasonable notice of the temporary location is provided.

(d) The provisions of this Section shall apply to all executive, legislative, and judicial branches, powers and functions conferred upon the Town and its officers, employees, and authorized agents by the *Colorado Constitution*, *Colorado Revised Statutes*, the *Windsor Municipal Code*, and the *Town Home Rule Charter*.

Section 10. Access to Tabor Emergency Funds. During the public health emergency declared herein, the Town Manager shall have access to the Town's emergency funds mandated by the Taxpayer's Bill of Rights (TABOR) as set forth in Article X, Section 20, Subsection (5) of the *Colorado Constitution*. Funds utilized pursuant to this Ordinance shall be replenished no later than the conclusion of the fiscal year following the end of the public health emergency.

Section 11. Conflict with Other Laws. If any provision of this Ordinance conflicts with the *Town Home Rule Charter*, the *Town Home Rule Charter* shall control. If any provision of this Ordinance conflicts with any provision of the *Windsor Municipal Code*, or any provision of the Town Board procedures and rules of order, this Ordinance shall control.

Section 12. Police Power Finding. The Town Board hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Windsor, the inhabitants thereof and its visitors.

Section 13. Authority. The Town Board hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the provisions of Section 31-15-401(1)(b) C.R.S., and the powers possessed by Colorado home rule municipalities, including, but not limited to, Section 4.11 of the *Town Home Rule Charter*.

Section 14. Emergency Declaration. Pursuant to Section 4.11 of the *Town Home Rule Charter*, the Town Board hereby finds, determines and declares that a public health emergency associated with COVID-19 exists and that this Ordinance is necessary for the immediate preservation of public property, health, welfare, peace or safety for the reasons enumerated in the Recitals above, which are incorporated into this Section by reference. The Town Board further determines that the adoption of this Ordinance as an emergency ordinance is necessary for the immediate preservation of public property, health, welfare, peace, or safety.

Section 15. Effective Date. Pursuant to Section 4.11 of the *Town Home Rule Charter* this Ordinance shall take effect and be in full force upon adoption by the affirmative votes of at least five (5) members of the Town Board.

Section 16. Publication. This Ordinance shall be published in full within ten (10) days after adoption, or as soon thereafter as possible, as required by the *Town Home Rule Charter*.

Introduced, passed by a vote of 7 in favor 0 opposed, adopted and ordered published this 23rd day of March, 2020.

TOWN OF WINDSOR, COLORADO

Kristie Melendez
Kristie Melendez, Mayor

ATTEST:

Krystal Eucker
Krystal Eucker, Town Clerk



[Seal]



MEMORANDUM

Date: April 26, 2021
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Karen Frawley, Town Clerk
Re: Future Meeting Agenda
Item #: 4.

ATTACHMENTS:

- ▢ Future Meetings Agenda



FUTURE TOWN BOARD MEETINGS

May 3, 2021 5:30 p.m.	Town Board Work Session Wastewater Treatment Plant Site Visit and Bio Solid Project Update
May 10, 2021 5:30 p.m.	Town Board Work Session Board-Manager-Attorney Monthly Meeting Park Fee Study Public Art Commission NISP IGA Eastman Park
May 10, 2021 7:00 p.m.	Town Board Regular Meeting
May 17, 2021 4:45 p.m.	Town Board Work Session Tree/Town Board Poster Contest Winners Recognition Urban3 Analysis Preview Presentation Comprehensive Plan Review
May 24, 2021 5:30 p.m.	Town Board Work Session 7 th Street Multimodal and Walnut Street Bikeway Check in Terry Ranch Greeley Update
May 24, 2021 7:00 p.m.	Town Board Regular Meeting
May 31, 2021	Cancelled – Memorial Day Holiday
June 7, 2021 6:00 p.m.	Town Board Work Session Katy Press – Retail Review: Development Opportunity Matches
June 14, 2021 6:00 p.m.	Town Board Work Session Presentation of COGCC Rulemaking Changes
June 14, 2021 7:00 p.m.	Town Board Regular Meeting
June 21, 2021 6:00 p.m.	Town Board Work Session Larimer County Ranch Master Plan Update
June 28, 2021 6:00 p.m.	Town Board Work Session Downtown Parking Study Update
June 28, 2021 7:00 p.m.	Town Board Regular Meeting
July 5, 2021	Cancelled – Independence Day Holiday

July 12, 2021 5:30 p.m.	Town Board Work Session Board-Manager-Attorney Monthly Meeting Feral Cat Ordinance Water Attorney Update
July 12, 2021 7:00 p.m.	Town Board Meeting
July 19, 2021 6:00 p.m.	Town Board Work Session
July 26, 2021 6:00 p.m.	Town Board Work Session Body Cam Recommendations
July 26, 2021	Town Board Meeting

Future Work Session Topics

- Joint Meeting with Town of Windsor, Town of Severance, Fire District and School District – Tentative for Spring of 2021
- Telecom Code (Pending FCC Rules)
- Regional Water Treatment Plant Site
- Proportional services and amenities for planned population
- Economic development/retail needs based on population levels (following retail assessment)
- Sidewalk Food/Beverage Permit
- Comprehensive Fee Update (October)