



TOWN BOARD WORK SESSION

May 10, 2021 - 5:30 PM

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

Please click this URL to join. <https://windsorgov.zoom.us/j/96260865686>

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

Webinar ID:962 6086 5686

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. Town Board/Manager/Attorney Monthly Meeting
2. Public Art Update - L. Browamy, Culture Supervisor
3. Eastman Park NISP IGA - W. Willis, Manager of Open Space & Trails
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: May 10, 2021
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Laura Browarny, Culture Supervisor
Re: Public Art Update
Item #: 2.

Background / Discussion:

Staff discussed the Public Art Policy with the Town Board in a work session earlier this year. Based upon feedback received at that meeting, staff edited the policy document to create more explicit guidelines for artwork selection to prohibit graphic or political imagery in public artworks.

Additionally, staff dug deeper into funding options and will present findings from a survey of 20 Colorado municipalities' public art funding structures. At the meeting staff will review the update to the attached policy and present funding strategy options for Windsor public art. The goal of the work session will be to seek board feedback and direction as we see to implement our public art program in Windsor.

Financial Impact:

No impact at this time.

Relationship to Strategic Plan:

This effort is a direct relationship to the Town Strategic Plan Focus Area of Sustainable Infrastructure and action step 2.9.6

Recommendation:

Staff is seeking board feedback with the goal of returning in the near future with adoption of the Public Art Policy.

CC:

Eric Lucas, Public Services Director
Tara Fotsch, Deputy Director of Parks, Recreation & Culture

ATTACHMENTS:

- ▢ Updated Public Art Policy

Town of Windsor Public Art Policy

Draft 2 – Submitted 5/10/2021

Prepared by

Laura Browarny, Culture Supervisor

Caitlin Heusser, Museum Curator

Lexie Spykstra, Recreation Coordinator-Events

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Town of Windsor Public Art Policy

Introduction

The Town of Windsor finalized its first Public Art Master Plan in 2010. This plan laid out initial guidelines, recommendations, and goals for the eventual creation of a public art program in Windsor. In 2020, a new Public Art Master Plan was created with the objective of identifying specific sites for public art, informing the creation of necessary policies and governing bodies, and formalizing guiding principles for the selection of artworks. This policy is a direct result of the recommendations made in the 2020 master plan and is the official reference document for the Town of Windsor's Public Art Program.

Purpose

The Town of Windsor's Public Art Policy creates the roadmap for Windsor to enhance the lived experience of the community, businesses, and visitors. As Windsor continues to grow, the Public Art Policy along with Public Art Master Plans will ensure that artworks, artists, and sites are selected equitably and in a way that supports Windsor's identity as a modern town with historic roots.

The governing body of Windsor's Public Art Program is the Windsor Public Art Commission (WinPAC). WinPAC will select artworks in accordance with three guiding principles:

Works will be engaging and inspirational to residents and visitors, and create opportunities to interact with the built environment.

Artworks, artists, and locations will be inclusive to the best of the WinPAC's ability. Artists will be selected through a variety of means and will feature artists who are both local and from beyond Colorado. WinPAC will do its best to select artist that are diverse in background and perspective.

Finally, all artworks will be relevant to Windsor as a modern town with historic roots.

By following these guiding principles, the Town of Windsor, through WinPAC, hopes to create a legacy of public art in Windsor that will continue into the foreseeable future.

<< Insert Ordinance adopting the Windsor Public Art Policy >>

Scope

This policy applies to all public art that is created or constructed within the Town of Windsor. For the purposes of this policy, public art is defined as follows.

1. A visual work of art. (See Appendix A: Definitions for further information)
2. Meant to be displayed permanently or semi-permanently, meaning for a period of at least 5 years.
3. Must be displayed in a public setting, meaning one of the following:
 - a. On town-owned property such as a park or open space or town-owned building exterior
 - b. Inside a town-owned building in a public area that is open to all visitors during regular hours
 - c. On privately-owned property that is visible to the public at all times such as a mural on the exterior of a business

- d. Must have either been funded entirely or in part by the Town of Windsor or formally accepted for donation according to the procedure set forth in this policy.
4. Art that is on exhibition in town-owned cultural facilities including, but not limited to, the Art & Heritage Center, Windsor History Museum, and the Community Recreation Center exhibit cases is exempt from this policy.

Special Districts

1. Special districts that have received Town Board approval prior to formal adoption of the Windsor Public Art Policy are not subject to the Windsor Public Art Policy without the express consent of the district.
 - a. If an existing special district wishes to create its own public art plan, the Windsor Public Art Commission is available for consultation.
2. Any new special district seeking approval of a new service plan or operational plan, or amendment of a prior-approved service or operational plan shall be required to include a public art plan as part of the submittal.

Art Acquisitions

The Town of Windsor can acquire funding for public art works in any of the following ways:

Town Board Allocations

1. At the discretion of the Town Board, funds may be deposited into the Public Art Program Account each year. Estimates for funding can be made using the yearly public art installation plans created by WinPAC. These funds, once appointed, are to be used exclusively for the purchase, commission, construction, installation, conservation and repair of public art.

Percent for the Arts

1. The Town of Windsor does not currently have a percent for the arts program in place, as of March 2021. This section is reserved for procedures associated with that program if it is created. A formal amendment to this policy must be approved by WinPAC and the Town Board to approve new funding structures.

Donations, Gifts, and Endowments

1. Anyone may donate funds to the Public Art account. These funds cannot be restricted or conditional and will be made available for all aspects of art acquisition, installation, and maintenance.
2. WinPAC may receive proposals for donations of artworks. Artworks that are proposed for donation must adhere to the Public Art Donation Procedure. Individuals or entities interested in donating an artwork must follow these steps:
 - a. Complete the Public Art Donation application and submit to WinPAC by either the spring deadline of March 31st or the fall deadline of August 31st.
 - b. Provide a maquette, images, or the actual work for review. Images can be provided electronically or by hard copy and should show all sides and provide the proper scale of the work.

- c. Submit a cover letter explaining why the artwork is being offered to the Town of Windsor as a gift and why the work should be added to the Town's collection. When possible, reference should be made to the guiding principles of the Public Art Master Plan.
- d. Provide a copy of the artist's resume or biography and images showing a sampling of the artist's work.
- e. Provide information about the artwork's provenance, exhibition history, and a letter of authenticity from the artist, if possible. All artworks must have a complete provenance in order to be considered.
- f. If desired, the potential donor may also propose a site for the artwork. There is no guarantee that, if accepted, the artwork will be displayed in the proposed site. The final decision will be made by WinPAC in consultation with the Technical Assistance Team (TAT).
- g. Provide a conservation assessment describing the artwork's condition and a maintenance plan, including projected costs for maintenance. The plan should include an explanation of the expected life span of the work while placed in a public environment, and the type of environment (interior/exterior) in which the artwork may be placed. The plan should also discuss whether the artwork may be prone to vandalism and how that may be mitigated; it should be authored by the artist or a qualified conservator. WinPAC is unlikely to consider donations that require immediate or extensive maintenance.
- h. Provide an appraisal value for insurance purposes. Appraisal value must be assigned by a professional fine arts appraiser.
- i. Review the Windsor Public Art Program Safety Policy and sign an acknowledgement that the artwork complies with all aspects of the safety policy.
- j. WinPAC reviews donation proposals twice per year; in March and August, however, exceptions can be made if deemed appropriate by the Town Manager. After review, WinPAC may choose to accept or decline a gift, or to table an offer until more information can be gathered. WinPAC may ask potential donors for more information at any time during the application process.
- k. The TAT will be invited to provide insight at recommendations for potential donations. Their input will be considered before making a final decision.
- l. All decisions regarding potential donations must consider the Selection Criteria outline below.
- m. Any artwork donation that is accepted becomes the permanent property of the Town of Windsor and will be maintained according to the guidelines in the Public Art Policy.

Windsor Public Art Commission (WinPAC)

WinPAC is the governing body of the Town of Windsor's Public Art Program and is responsible for adhering to all aspects of this policy. This commission is governed by to the WinPAC bylaws.

1. WinPAC was created by <<insert ordinance>>
2. WinPAC is responsible for creating yearly art installation plans that take into consideration all planned public art projects in the budget for each year.

- a. Yearly art installation plans are submitted to the Town Manager before the end of the first quarter for review.
- b. Art installation plans are presented to Town Board after approval by the Town Manager.

Technical Assistance Team (TAT)

To ensure that WinPAC is making the best-informed decisions regarding new artworks and sites, they will collaborate regularly with the Technical Assistance Team (TAT). This group is comprised of Town of Windsor staff members from various departments that can provide insights and expertise necessary for making decisions about artwork construction and placement. The TAT will be composed of one staff member from each of the following departments.

- Planning
- Engineering
- Public Works
- Parks
- Risk Management

These staff members are appointed to the TAT by department heads and may serve indefinitely. Staff members from other departments not listed above may volunteer to be part of the TAT for a term of one year.

The TAT is responsible for reviewing all proposed artworks and sites, taking into consideration things such as lines of sight for artworks near roadways and walking/bike paths, landscape management, safety of children and other residents who may come into contact with the artwork, and maintenance of artworks and sites. Members of the TAT are considered ad hoc, non-voting members of WinPAC and may be asked to attend meetings outside of work hours.

Artwork Selection Processes

When a site is designated for public art, it is the responsibility of WinPAC to select the artist and the artwork. Selection of artworks may happen in the following ways.

Direct purchase from the artist or current owner of a work

1. WinPAC may use its discretion to purchase an artwork that has already been created if the price presents an economic advantage and if the artwork is a good option for the designated site.
2. WinPAC may approach an artist about a known work, or an artist or current owner may submit the work for consideration by WinPAC.
3. WinPAC will receive submissions of artwork for potential purchase to be considered on a case-by-case basis. Artists or current owners must submit a complete submission packet including the following:
 - a. A proposal sheet with the artist's name, title of the artwork, dimensions, medium, date produced, price, location, number of reproductions, restrictions on reproduction, and other information the artist deems pertinent.
 - b. A resume and references.

- c. A maquette and/or images or the actual work for review. (Images can be provided electronically or by hard copy and should show all sides and provide the proper scale of the work.)
- d. A cover letter explaining why the work should be added to the Town's public art collection, referencing the guiding principles of the Public Art Master Plan when possible.
- e. A conservation assessment describing the artwork's condition, along with a maintenance plan. (The plan should include an explanation of the expected life span of the work while placed in a public environment, specifying the type of environment in which the artwork may be placed. It should also discuss whether the artwork may be prone to vandalism and how the effects of any vandalism may be mitigated; it should be authored by the artist or a qualified conservator.)
- f. The TAT will be invited to review all submissions to provide insight and make recommendations based on their expertise.
- g. Any current owner of an artwork who is not the artist must also submit full provenance for the work along with the artist's biography and contact info if possible.
- h. WinPAC may request additional information at any time.
- i. Once a submission is received, WinPAC will vote at the next meeting whether to reject the submission, accept it to purchase for a currently available site, or table the submission as a potential work for a future site. Decisions will be based on the Selection Criteria outlined below.

Open call for proposals

- 1. Open calls welcome submissions from artists within the geographic region and according to other limitations set by WinPAC.
- 2. Open calls will vary among local, regional, and national searches, depending on the scale of the project. WinPAC will strive to maintain a balance between local artists, and artists from outside of Colorado.
- 3. The procedure for open calls for submissions is as follows.
 - a. WinPAC will provide a description of the project site and parameters for the desired artwork including medium and scale if known. WinPAC will also provide a summary of the budget, timeline, and other duties and obligations of the artist.
 - b. Each artist shall submit a maquette and site drawing (if appropriate), design, concept statement, budget, maintenance plan, resume and references.
 - c. WinPAC will serve as the jury for open calls, however, may alternately select a jury to review submissions. In such cases, proposals shall be considered by the jury and a final choice or choices will be presented to WinPAC for acceptance.
 - d. The TAT must review all submissions to offer insights and provide recommendations based on their expertise. They will work closely with WinPAC as part of the jury during the initial review of submissions their recommendations will be taken into consideration for the selection of finalists.
 - e. Entry materials will be returned to the artist only if appropriate packaging, postage and insurance are included with the entry by the artist.

- f. WinPAC may elect to select a group of finalists to provide more complete models and plans. In this instance artists will be paid a design fee.
- g. WinPAC will make all decisions and artworks based on the Selection Criteria outlined below.

Artist Invitational

1. For the purposes of saving time, reducing the number of submissions, or other reasons given at WinPAC's discretion, a group of artists may be invited to submit proposals for artwork to be installed at a given site.
 - a. An invitational must include at least three (3) but no more than ten (10) artists that are selected by WinPAC.
 - b. WinPAC will provide a description of the project site and parameters for the desired artwork including medium and scale if known. WinPAC will also provide a summary of the budget, timeline, and other duties and obligations of the artist.
 - c. Each invited artist shall submit a maquette and site drawing, design concept statement, budget, and maintenance plan.
 - d. The selection procedure for an artist invitational will be the same as that of an open call (see items a-h under Open Call for Proposals above).

Selection Criteria

WinPAC is responsible for making decisions regarding which artists to work with, what artwork to accept or purchase, and which sites are suitable for public art. The following Selection Criteria are the guidelines that WinPAC will follow when making these decisions. These Selection Criteria are available to the public including all artists and potential donors, who should therefore take these into consideration when submitting proposals.

Artist Selection

When selecting an artist for a commissioned work, whether through an open call or invitational, WinPAC will utilize the following criteria.

1. Preference will be given to artists with prior experience creating public art and working with municipalities.
2. Artists must demonstrate the ability to complete the project in the required time frame.
3. Artists must have a knowledge of their materials and the maintenance required for the completed artwork.
4. WinPAC will endeavor to select artists from diverse racial, gender and cultural backgrounds.

Artwork Selection

When selecting or approving an artwork for a new site, whether through an open call, invitational, direct purchase or commission, or through donation WinPAC will utilize the following criteria.

1. *Guiding Principles:* WinPAC will consider the guiding principles for public art established in the Windsor Public Art Master Plan.

- a. Works will be engaging and inspirational to all residents and visitors and create opportunities to interact with the built environment.
 - b. Artworks, artists, and locations will be inclusive to the best of the WinPAC's ability.
 - c. Artworks will be relevant to Windsor as a modern town with historic roots.
2. *Inherent Artistic Quality*: Art is subjective in terms of its relative beauty, but WinPAC will consider the inherent artistic quality of an artwork as a qualification for selection. A majority of the selection committee must agree that the work is visually appealing and well-constructed.
3. *Maintenance Requirements*: Will the Town of Windsor be able to properly maintain the artwork within its maintenance budget?
 - a. The artist must provide detailed instructions on maintenance of the artwork including all of the materials used and how to clean, maintain, and repair them.
 - b. Artworks should require basic cleaning and maintenance no more than twice per year.
 - c. WinPAC will also consider an artwork's susceptibility to vandalism and how easily the work could be cleaned or repaired.
4. *Time Horizon of Artwork*: What is the anticipated lifespan of the artwork? Artworks considered to be permanent public art should be able to last at least five (5) years in an outdoor setting in normal public circumstances.
 - a. Outdoor artwork is exposed to the elements
 - b. Public art is always at risk of being touched, climbed on, or otherwise interacted with by the general public. Efforts will be made to keep the public away from art that is not meant to be touched, but the artist should consider the nature of public art.
5. *Appropriateness of Artwork for the Site*: If a site has already been selected, the artwork chosen for that site must fit well into that context.
 - a. The size of the artwork must not overwhelm or get lost in the site
 - b. The artwork should not interrupt any sightlines for vehicular traffic, pedestrians, or block views of naturally scenic vistas
 - c. The material and subject matter should be relevant to the site and work to enhance it. Consideration should be given to the architectural, historical, geographical, and social/cultural context of the site.
6. *Diversity*: One of the core values of the Town of Windsor Department of Parks, Recreation & Culture is an appreciation for diversity, equity and inclusion. This core value will be considered when selecting and artwork.
 - a. WinPAC will endeavor to select artworks by artists from diverse racial, gender and cultural backgrounds.
 - b. Diversity also refers to artistic mediums, styles, scale, and narrative. WinPAC will work to ensure that the collection of public art in Windsor is diverse in these aspects as well.
7. *Uniqueness*: To ensure that an artwork will not be duplicated, WinPAC will require the artist to warrant that the artwork is unique and, if applicable, limited to an edition of one (1) unless otherwise discussed.
8. *Public Safety*: The Technical Assistance Team (TAT) will aid in safety assessments for all artworks prior to acceptance. An artwork must be deemed safe according to the following criteria in order to be accepted into Windsor's public art collection.
 - a. No sharp points, corners or edges that could cut or puncture

- b. Absolutely no protrusions or projections that could entangle clothing, possibly causing strangulation
 - c. The absence of pinch, crush or shearing points that could entrap a body part or clothing
 - d. The artwork design shall not cause hazards that could trap a child's head
 - i. Completely bound openings greater than 3.5 inches and less than 9 inches fall into this hazard.
 - e. Tripping hazards that may cause a fall, or cause injury if fallen upon must be avoided
 - f. Suspended hazards that could injure if capable of entangling or striking a member of the public cannot be a part of the artwork
 - g. The art should be securely anchored to avoid toppling
9. *Appropriateness for the Community:* WinPAC will consider the wide visibility of public art to people of all ages, beliefs, and backgrounds and do their best to ensure that artworks are appropriate for this wide audience.
- a. No explicit nudity or other overtly sexual themes
 - b. No depictions of graphic violence
 - c. Artworks that deal with time-specific events and will not remain relevant throughout the required five-year lifespan of public art will not be considered for permanent installation.
 - d. No highly politically-themed artwork will be considered.

Site Selection

In order for a site to be considered as a location for public art, it must meet all of the following criteria. Potential public art sites can be identified by WinPAC, the Town Planning Department, the Town Board and Town Manager, or community members.

1. All public art must be placed on Town of Windsor property in a place that will be free and accessible to the public for a majority of the time.
2. Public art can be placed on private property with the approval of WinPAC and if the property owner agrees in writing to the following terms.
 - a. Artwork will be visible and accessible to the public for all or a majority of the time.
 - b. Property owner will take responsibility for maintenance of the artwork according to the Public Art Maintenance Plan.
 - c. Property owner will not move, refinish, remove, or otherwise alter the artwork without express permission from WinPAC or the Town Manager.
 - d. The property owner shall indemnify the City and provide adequate property insurance for the artwork.
 - e. The property owner should not aim to benefit financially in any way from the public art.
3. WinPAC will utilize the Windsor Public Art Master Plan to prioritize sites and districts. More widely utilized public spaces, such as the Downtown area, will be prioritized over local parks and neighborhoods.
4. During the planning phases of all CIP programs, the department in charge of the project should consult with WinPAC regarding the creation of sites for public art.
5. Community members may suggest potential public art sites to WinPAC through the following procedure.

- a. A community representative must be selected to complete all steps for the site recommendation
- b. The Public Art Site Proposal form must be completed and submitted to WinPAC.
- c. If the community is also proposing an artwork for the site, the representative must also complete the community artwork proposal procedures outlined above.
- d. WinPAC will deliberate on the site at the next meeting that occurs after the proposal is received. They will decide to either approve the site, reject the site, or table the decision until more information can be gathered.

Town Manager Review

1. WinPAC makes final decisions on artwork locations, artists, and designs. These decisions are reviewed by the Town Manager, who has the authority to call decisions in for review.
 - a. If the Town Manager identifies an artwork, artist, or location for review, WinPAC will prepare a presentation outlining how the proposed artwork meets the selection criteria and why they decided it was appropriate for the site.

Accession Process

Once an artwork has been selected, approved, and officially adopted into the Town of Windsor's Public Art Collection, the following steps will be taken.

1. The artwork will be assigned a unique accession number composed of the year the work is acquired followed by the artwork donation number for that year, which is determined chronologically e.g. 2021.001 is the unique number of the first artwork (.001) accepted in the 2021 calendar year.
2. All documentation, including contracts, final commission approval documents, photographs, and descriptions associated with the artwork will be compiled in a digital file associated with each artwork. Hard copies of documents must be retained for five (5) years.
3. Donated artworks will have an associated deed of gift document that must be retained in hard copy in perpetuity.
4. Documentary photographs will be taken of the artwork once it is installed to gain a baseline for condition.
5. A detailed condition report will be completed documenting the physical status of the artwork
6. WinPAC will input all information into the Town's Public Art database.

Database Content

It will be the responsibility of WinPAC to create and maintain an up-to-date database with all existing artwork within the Town's Public Art Collection. Information for each artwork will include, but is not limited to:

1. An accession number that is unique to each specific artwork
2. Type of artwork, i.e. painting, stained-glass, mural, sculpture, etc.
3. Artwork information including title, date of creation/year of commission, date of acquisition, place of origin, location of artist signature on piece and signed name, and previous owners and/or collector (if applicable)

4. Installation date, location, tools used for install, and method, preferably with photographs of installation process
5. Artist name, contact information, copyright information, legal status, and any restrictions associated with the artwork.
6. Dimensions of the artwork
7. Installation location
8. Artwork information including materials used and source of materials, fabrication methods, techniques used
9. Documentary photographs of artwork construction, installation, condition, and progression of photos through time.
10. Information associated with the commission including a copy of the final contract, commission amount, funding sources, contact information of additional organizations, departments, or persons involved with the commission.
11. Artist statement of the artwork and artist's biography
12. Credit statement

Artwork Deaccessioning Procedures

WinPAC may remove artwork for one or more of the following reasons:

1. The artwork endangers public safety as determined by TAT
2. The artwork has been damaged beyond reasonable repair
3. The artwork requires excessive maintenance to the point where the Town cannot properly care for the artwork
4. The artwork has been determined to be in unsatisfactory condition
5. The condition or security of the artwork cannot be reasonably guaranteed where located
6. The artwork is attached to a structure that is slated for destruction, remodeling, or repair
 - a. Artworks in this case can also be relocated to a new site at the discretion of WinPAC
7. The artwork is or has become incompatible with the current public art theme within the Town
8. The artwork is fraudulent or not authentic
9. The artwork was stolen from the location and cannot be retrieved
10. Any other significant reason articulated by WinPAC or the Town Manager, at their discretion

Determination

1. Determination of removal will occur during the biannual condition reporting conducted by WinPAC. In addition, WinPAC reserves the right to remove any artwork at any time deemed appropriate with approval of the Town Manager.
2. The removed artwork must be documented and preserved in the public art inventory in a removal file.

Physical Removal

WinPAC may consider the following options for removal:

1. Sale or trade
2. Destruction (which shall be reserved for artwork that is deteriorated or damaged beyond reasonably- priced repair)

3. Donation

Any option deemed appropriate by WinPAC

Public Artwork Maintenance and Conservation

The Town of Windsor is committed to maintaining, ensuring the value of, and guaranteeing the safety of its publicly owned artwork for the enjoyment of the Windsor community for years to come. The outlined maintenance and conservation guidelines will be applied to each artwork within the public art collection to ensure proper stewardship of the collection as a whole.

New Acquisitions

1. Artists or donors are required to provide artwork maintenance information at the time the work is acquired by the Town. Maintenance recommendations should include but are not limited to:
 - a. Materials and source of materials used to create the artwork
 - b. Fabrication methods
 - c. Names and contacts of any individuals, other than the artist, involved in the creation or fabrication of the artwork
 - d. Suggested method and frequency of required maintenance
 - e. Installation specifications
 - f. Required assembly equipment and tools
 - g. Additional pertinent information

Long Term Observation and Maintenance

1. It is the responsibility of Town staff, under the supervision of WinPAC, to perform general cleaning of the artwork when applicable. Cleaning tasks may include regular dusting and the use of appropriate cleaning agents. If the artwork is located on private property, the host locations will observe the general condition of the artwork and report any damage or other changes in condition to WinPAC.

Condition Reporting

1. The Commission will coordinate detailed condition reports for each artwork in the collection on a biannual basis. These condition reports should be conducted by qualified Town of Windsor staff who have been trained in the skills necessary to complete the task. The condition report should include:
 - a. Condition rating (Excellent, Good, Fair, Poor)
 - b. Date of condition report
 - c. Detailed condition notes including location of damage on artwork, type of damage and size of affected area. Note any changes in color or texture on the artwork.
 - d. Photographic record of damage or wear to artwork.

Conservation

1. Technical maintenance and conservation of artwork will only be performed by trained staff or through professional services with expertise in art conservation. WinPAC is responsible for contracting conservation services when necessary
2. A record of all conservation efforts will be maintained by WinPAC for each artwork and will include:
 - a. Type of conservation measures applied to the artwork, name and contact information of conservator, and date conservation took place.
 - b. A detailed photographic record of damaged area and repairs once complete.
 - c. A written description by the artist or designer that states the desired effects of time on the artwork or memorial.

Definitions

Accession/Accessioning: The steps taken to officially acquire and designate an artwork as part of an art collection.

Acquisition: The inclusion of an artwork in the permanent collection of the Town, whether by commission, purchase, donation or other means.

Conservation: Preservation, repair, and preservation of deterioration of public artwork and artifacts.

Deaccession/Deaccessioning: The act of removing artwork from the Town's public art collection through any method (i.e. Sale, return to the artist, donation, auction, demolition, loss). This includes the removal from its public site, removal from a maintenance cycle, and transferring of all associated records, both hard copy and electronic, into the Town's deaccessioned collection file.

Maquette: A small model or study of an artwork done to scale and in three dimensions.

Medium: The material or form used by an artist to create a work of art. This includes all materials as well as the means for attaching, connecting, or mounting different parts. Example: Cast copper alloy with turquoise inlay.

Provenance: A record of ownership of a work of art. Full provenance can be traced back to the artist who created the piece. Provenance includes the names of buyers, when the work was purchased and from where/whom, and how much was paid by each buyer for the work.

Public Setting: Any space that is owned by the Town of Windsor and is free and open to the public. For outdoor areas, this means the space is accessible twenty-four hours a day and adheres to guidelines set forth in the Americans with Disabilities Act (ADA) for accessibility. For indoor areas, a public setting is one that is open and free to the public during regular business hours. This means that no special access is necessary to see the artwork and that it is ADA accessible.

DRAFT



MEMORANDUM

Date: May 10, 2021
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Wade Willis, CPRE, Manager of Open Space & Trails
Re: Eastman Park NISP IGA
Item #: 3.

Background / Discussion:

In 2017 staff was approached by Northern Water looking for properties that could be utilized to meet their wetland mitigation requirements as part of the Northern Integrated Supply Project (NISP). Since adoption in 2015, the Eastman Park South plan called for creating wetlands along the river corridor. When approached by Northern Water, staff immediately identified this as a natural collaboration.

With the completion of Phase 1 of the Eastman River Experience Project and the design and permitting process underway for Phase 2, staff is presenting an IGA that we have developed with Northern Staff to dedicate approximately 9 acres on the south side of Eastman Park in exchange NISP will provide up to \$2,250,000 in funding for the design, wetlands and additional amenities within Phase 2. At the work session, staff will explain the attached agreement and exhibit.

Financial Impact:

If ultimately improved, the project will offset \$2.25 million in project costs.

Recommendation:

No recommendation is needed at this time. Staff will be seeking board feedback with the intent to bring the item, back in the very near future for board approval.

CC:

Tara Fotsch, Deputy Director Parks, Recreation & Culture
Eric Lucas, Public Services Director

ATTACHMENTS:

- ▢ Draft NISP IGA
- ▢ Exhibit A Wetlands

INTERGOVERNMENTAL AGREEMENT FOR THE MITIGATION AND ENHANCEMENT OF EASTMAN PARK

This intergovernmental agreement (“Agreement”) is entered into this ____ day of _____, 20____, by and between **the Northern Integrated Supply Project Water Activity Enterprise (“NISP Enterprise”)**, a government-owned business within the meaning of Article X, Section 20(2)(d) of the Colorado Constitution that is organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* and owned by the Northern Colorado Water Conservancy District, and the **Town of Windsor (“Town”)**, a home rule municipality. The NISP Enterprise and the Town are hereinafter referred to collectively as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, the Northern Integrated Supply Project (“NISP”) is a proposed water storage and distribution project owned and operated by the NISP Enterprise that will supply fifteen towns, municipalities, and rural domestic water providers on the Eastern Slope of the continental divide with 40,000 acre feet of new, reliable water supplies from the Cache La Poudre and South Platte Rivers; and

WHEREAS, as part of federal regulatory compliance for NISP, the NISP Enterprise applied for a Clean Water Act Section 404 Permit (“404 Permit”) from the United States Army Corps of Engineers (“Corps”). A Record of Decision (“ROD”) will be issued by the Corps regarding whether to approve the 404 Permit. If the Corps issues a favorable decision regarding the 404 Permit, the ROD will provide the Corps’ conditions of approval for the 404 Permit and is expected to refer to the mitigation process outlined in C.R.S. § 37-60-122.2; and

WHEREAS, in compliance with C.R.S. § 37-60-122.2, the NISP Enterprise developed mitigation measures to address impacts to fish and wildlife that may result from the construction and operation of NISP and documented those measures in a Fish and Wildlife Mitigation and Enhancement Plan (“FWMEP”); and

WHEREAS, the NISP Enterprise has voluntarily agreed to additional enhancement measures, not otherwise required as part of federal or state permitting approvals for NISP, to improve the existing aquatic habitat in the Cache la Poudre River, which enhancement measures are also included in the FWMEP; and

WHEREAS, the Colorado Parks and Wildlife Commission recommended that the FWMEP become the official state position regarding fish and wildlife mitigation for NISP on September 7, 2017; and the Colorado Water Conservation Board adopted the FWMEP on September 20, 2017, thereby making the FWMEP the official state position on mitigation of impacts to fish and wildlife resources pursuant to C.R.S. § 37-60-122.2; and

WHEREAS, the NISP Enterprise shall additionally comply with the standards set forth in the Corps' regulations providing for compensatory mitigation for losses of aquatic resources, 33 C.F.R. Parts 325 and 332 ("2008 Mitigation Rule"); and

WHEREAS, the NISP Enterprise is seeking appropriate sites for implementation of mitigation and enhancement measures consistent with its 404 Permit obligations, the FWMEP, and the 2008 Mitigation Rule; and

WHEREAS, the Town is planning, designing, and developing wetlands, landscaping, irrigation, playscaping, and trail improvements in the Town's Eastman Park South site, which is located to the south of the Cache la Poudre River as illustrated in the attached Exhibit A, and which, since 2013, has been damaged by flooding and has been of limited usability; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of coordinating the Town's park enhancement activities with the NISP Enterprise's mitigation activities to be undertaken on the Town's property at Eastman Park; which include the improvement of existing riparian vegetation by expanding cottonwood woodlands and establishing riparian wetlands along a reach of the Cache la Poudre River that is adjacent to Eastman Park; and

WHEREAS, the Parties are authorized pursuant to Article XIV, Section 18 of the Colorado Constitution and C.R.S. §§ 29-1-201, *et seq.*, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually.

NOW THEREFORE, in consideration of the promises and covenants herein and other consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. Scope of Mitigation Activities. The Parties agree to undertake the following mitigation and park enhancement activities (hereinafter, "Mitigation Project") on and within the Town's property at Eastman Park.
 - A. The Mitigation Project will be comprised of the following areas of enhancement, as illustrated in the concept plan developed by Pinyon Environmental, Inc., attached hereto and incorporated herein as **Exhibit A**:
 - i. The establishment of new riparian wetlands, the enhancement of existing wetlands, and the development of cottonwood regeneration areas, which shall be collectively referred to herein as the "Mitigation Sites"; and
 - ii. The creation of new trail systems, the completion of landscaping and associated grading, the installation of a native materials playscape, and the design and installation of an irrigation system that will utilize water rights owned by the Town of Windsor.

The trail systems, native materials playscape, irrigation system, and any landscaping that is installed outside of the Mitigation Sites shall be collectively referred to herein as the "Park Enhancement Sites."

2. Allocation of Costs. The Parties agree to share in the costs associated with the design, construction, and implementation of the Mitigation Project described in Paragraph 1 as follows.
 - a. Concept Designs. The NISP Enterprise shall be solely responsible for the costs associated with developing concept designs for the Mitigation Project that are compliant with the 2008 Mitigation Rule and the FWMEP (“Concept Designs”). These Concept Designs will consist of site-plan-level layouts of the Mitigation Sites and Park Enhancement Sites.
 - b. Preliminary and Final Designs. The costs associated with developing Preliminary and Final Designs for the Mitigation Project are to be shared equally between the NISP Enterprise and the Town; provided, however, that in the event the total costs associated with completing the Preliminary and Final Designs exceed \$500,000.00, the NISP Enterprise’s share of the contribution costs for the Preliminary and Final Design development for the Mitigation Project shall be limited to a maximum of \$250,000.00, with any remainder to be borne by the Town, subject to approval of any such additional expense by official action of the Windsor Town Board.
 - c. Mitigation Project Construction. The construction costs for the Mitigation Project are to be paid for by the NISP Enterprise and the Town with the NISP Enterprise paying \$2,000,000.00 and the Town paying the remainder. The \$2,000,000.00 provided by the NISP Enterprise will first cover costs for wetlands mitigation as described in Section 1.A.i and shown on Exhibit A, including the boardwalk trail within the wetland mitigation area, with the remainder to be used for other park improvements at the Town’s discretion.

The Parties may seek alternative sources of funding for the design, construction, and implementation of the Mitigation Project, which funds shall be allocated equally to each Party.

3. Project Implementation Schedule. Implementation of the Mitigation Project shall adhere as closely as reasonably practicable to the schedule set forth herein. The Parties acknowledge that the commencement of certain phases of the Mitigation Project, as detailed in this Paragraph 3, are dependent upon the issuance of the federal approvals described herein and, accordingly, may be delayed beyond the anticipated dates noted below, which delays are beyond the control of the NISP Enterprise.
 - a. Concept Designs. As of the date of this Agreement, the NISP Enterprise is developing the Concept Designs required for the Mitigation Project consistent with the 2008 Mitigation Rule and the FWMEP. The NISP Enterprise anticipates that these designs will be finalized by or before June 1, 2021 and will provide the Town with a copy of the Concept Designs within thirty (30) days of completion.

- b. Preliminary and Final Designs. The Parties shall begin the development of the Preliminary and Final Designs of the Mitigation Project as soon as reasonably practicable after the Corps approves the NISP Enterprise's Wetlands Mitigation Plan, which approval is anticipated to occur in 2021. The NISP Enterprise will provide the Town with a copy of the approved Wetlands Mitigation Plan within thirty (30) days of the Corps' approval. The Final Designs of the Mitigation Project shall be consistent with the NISP Enterprise's obligations under its 404 Permit, the FWMEP, and the 2008 Mitigation Rule.
 - c. Construction. Construction of the Mitigation Project will begin following the Corps' issuance of the ROD authorizing NISP to proceed. The NISP Enterprise anticipates that the Corps will release the ROD in 2021. Within thirty (30) days of the issuance of the ROD, the NISP Enterprise will provide the Town with notice that construction of the Mitigation Project may proceed. In the event of a lawsuit brought against NISP, the Parties will confer to determine if the construction schedule should be adjusted. In every event, mitigation site construction will be completed before impacts to NISP wetlands occur.
- 4. Construction of the Mitigation Project. Following the NISP Enterprise's issuance of the notice to proceed, as provided to the Town pursuant to Paragraph 3(c), the Parties shall jointly select the contractor responsible for construction of all aspects of the Mitigation Project. Construction shall begin within twelve (12) months from the date of NISP Enterprise's notice to proceed, unless the Parties have agreed to postpone construction, pursuant to paragraph 3(c) above. During construction, the Parties agree:
 - a. The Town shall manage and oversee construction of the Mitigation Project and shall ensure that the construction proceeds in accordance with the Final Designs developed and agreed upon by the Parties.
 - b. The NISP Enterprise shall have the right to monitor and inspect the construction progress on the Mitigation Sites to ensure that construction satisfies all requirements imposed under its 404 Permit obligations, the FWMEP, and the 2008 Mitigation Rule. The NISP Enterprise representative shall provide notice to the Town and the contractor of any nonconforming construction within forty-eight (48) hours of the representative's inspection, and work conducted that does not conform to such requirements shall be promptly corrected by the contractor at no cost to the NISP Enterprise.
- 5. Post-Construction Operation, Maintenance, and Repair of the Mitigation Project. Following the completion of the construction of all portions of the Mitigation Project described in Paragraph 1, the Parties agree to share the obligations for the operation, maintenance, and repair of the Project as follows:
 - a. Mitigation Sites.

- i. Obligations of the NISP Enterprise. Beginning on the date that the construction warranty period for the Mitigation Sites is completed, the NISP Enterprise shall be solely responsible for the maintenance and repair of the Mitigation Sites during the period of time, to be determined by the Corps, necessary for the monitoring and establishment of the Mitigation Sites (“Monitoring and Establishment Period”). The NISP Enterprise’s obligations for the maintenance and repair of the Mitigation Sites will cease on the last day of the Monitoring and Establishment Period. The NISP Enterprise shall provide timely notice to the Town of the conclusion of the Monitoring and Establishment Period.
- ii. Obligations of the Town. The Town shall assume responsibility for maintenance and repair of the Mitigation Sites beginning on the date immediately following the conclusion of the Monitoring and Enhancement Period and shall remain responsible for all maintenance and repair of the Mitigation Sites that may be necessary thereafter, such that the Mitigation Sites remain in substantially the same condition as maintained by the NISP Enterprise during the Monitoring and Establishment Period. The Town shall not remove, redevelop, or materially alter the Mitigation Sites at any time or for any reason.

b. Park Enhancement Sites.

- i. Obligations of the Town. Following the completion of the construction of the Park Enhancement Sites, the Town shall be solely responsible for the maintenance, operation, and repair of all Park Enhancement Sites, including the irrigation system, the native-materials playscape, all trail systems, and any landscaping located outside of the Mitigation Sites.
- ii. Water Rights. The Town shall be responsible for securing the water rights necessary to supply the irrigation system constructed and installed as part of this Mitigation Project. The Town shall identify the water rights that will be used for irrigation use in this Mitigation Project and shall provide a copy of the decree(s) to the NISP Enterprise. If the Town later uses different water rights than those identified, it shall provide a copy of those decree(s) to the NISP Enterprise. Irrigation water will be made available as needed for the establishment of the Mitigation Sites. Notwithstanding the forgoing, under no circumstances may the Town cease or reduce irrigation in the Mitigation Project.

6. Mitigation Sites Land Use Restrictions. Upon completion of construction of the Mitigation Project, the Parties agree to abide by the following restrictions within the designated Mitigation Sites.

- a. There shall be no construction or placement of structures or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent, in the designated Mitigation Sites.
 - b. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals, or other materials.
 - c. There shall be no building of roads or paths for vehicular or pedestrian travel or any change in the topography of the land.
 - d. There shall be no removal, destruction, or cutting of trees or plants; spraying with biocides, insecticides, or pesticides; grazing of animals, farming, tilling of soil, or any other agricultural activity. Management activities are acceptable upon approval from the Corps.
 - e. There shall be no operation of all-terrain vehicles or any other type of motorized vehicle on the designated Mitigation Sites.
7. Ownership and Management Status. The Town shall provide a minimum of 90-day advance notification to the NISP Enterprise of any changes in ownership and management status including transfer of title to or establishment of legal claims over the designated Mitigation Sites.
 8. Access. The Town shall retain complete ownership of Eastman Park. The Town agrees to grant the NISP Enterprise, its employees, consultants, contractors, agents, or assigns, at no cost, reasonable access to the areas shown in the attached Exhibit A as needed to implement all phases of the Mitigation Project, which may include a license, temporary easements, or rights-of-way allowing for the NISP Enterprise to conduct ongoing maintenance and monitoring of the Mitigation Sites described in Paragraph 5.
 9. Term. The commitments and obligations of the NISP Enterprise under this Agreement shall terminate when the NISP Enterprise has (a) performed each of its requirements for design, construction, and cost-sharing under this Agreement, and (b) met the applicable permit requirements under its 404 permit (i.e. when Mitigation Project success criteria have been met). The Town commits to put in place appropriate long-term management and maintenance measures consistent with Corps requirements at the Mitigation Sites. In the event that the NISP Enterprise is unable to secure the necessary permits or approvals for NISP, this Agreement shall be terminated by the Parties, and neither Party shall bear any further obligations under this Agreement.
 10. Financial Obligations of the Parties. Any and all obligations of the NISP Enterprise under this Agreement, whether financial or otherwise, shall be payable solely from the revenues, income, rents, and receipts earned by the NISP Enterprise. Nothing herein shall be deemed to prevent the NISP Enterprise from making any payments from any other legally available source. In no event shall the NISP Enterprise be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance

of its obligations under this Agreement or which would cause the NISP Enterprise to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, the NISP Enterprise shall not be required to expend any funds or impair any assets of Northern Colorado Water Conservancy District in the performance of its obligations under this IGA. The obligations of the NISP Enterprise do not constitute a debt or indebtedness of Northern Colorado Water Conservancy District within the meaning of any constitutional, charter, or statutory provision or limitation, and shall not be considered or held to be a general obligation of Northern Colorado Water Conservancy District. The Town's financial obligations are subject to legal availability of funds.

11. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Constitution including TABOR, Colorado Constitution, Article X, § 20; the Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as applicable now and as may be amended hereafter.
12. Governing Law. This Agreement shall be interpreted in accordance with, and be governed by, the law of the State of Colorado.
13. Entire Agreement. This Agreement constitutes the entire agreement among the Parties regarding the Mitigation Project described herein and may be modified only by a written instrument executed by all Parties hereto.
14. Assignment. Neither this Agreement nor any Party's rights, obligations, duties or authority hereunder may be assigned in whole or in part without the prior written consent of the other Parties.
15. Binding Effect. All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors, and assigns.
16. Severability. If any provision of this Agreement is invalidated by any court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
17. Notices. All notices required to be given hereunder shall be sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to hardcopy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt. The individuals listed below are the principal representatives of the respective Parties. For the purposes of this Agreement, the official representative(s) and addresses of the Parties are:

For NISP Enterprise:

Northern Integrated Supply Project Water Activity Enterprise,
Northern Colorado Water Conservancy District
Attention: Christie Coleman
220 Water Ave.
Berthoud, CO 80513
E-Mail: ccoleman@northernwater.org

For Town:

Town of Windsor
Open Space and Trails Division
Attention: Wade Willis
250 North 11th Street
Windsor, CO 80550
E-Mail: wwillis@windsorgov.com

18. Headings for Convenience. The captions and headings in this Agreement are for convenience and reference only and shall not be used to interpret, define, or limit the provisions of this Agreement.
19. Counterparts. This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one fully executed Agreement.
20. Authority. The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

**NORTHERN INTEGRATED SUPPLY PROJECT
WATER ACTIVITY ENTERPRISE, NORTHERN
COLORADO WATER CONSERVANCY DISTRICT**

By: _____

Title: _____

Date: _____

TOWN OF WINDSOR

By: _____
Shane Hale, Town Manager

Date: _____

Exhibit A
Eastman Park Mitigation Project

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LEGEND 2016 Master Plan Limits Proposed Trees PC/PSS (0.3 Acres) PSS Wetlands (5.5 Acres) Proposed Nature Play Area PEM Wetlands (3.2 Acres)		Notes: The acreages in parentheses represent the intended mitigation areas, and acreages exclude trails, outdoor classroom, nature play areas, and other recreation features. Scale: 1" = 200'	 EASTMAN PARK SITE WETLAND MITIGATION PLAN <i>Northern Integrated Supply Project Northern Colorado Water Conservancy District Windsor, Colorado</i>
Site Location: Weld County, Colorado		Drawn By: SJA	Figure: 3a
Pinyon Project Number: 1/18-814-02.BIO007.2		Reviewed By: BDM	Date: 9/28/2020



MEMORANDUM

Date: May 10, 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 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 Park Fee Study
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 5:15 p.m.	Town Board Work Session (Windsor High School) Weld Re4 School District All Boards Annual Meeting

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
- Budget: Capital Improvement Plan – September 13th
- Budget: Capital Improvement Plant Follow-up Questions – September 27th
- Budget: Operating Budget Presentation – October 16th (Saturday)
- Budget: Follow-up Budget Items – October 25th
- Comprehensive Fee Update (October)