



TOWN OF MILLIKEN  
TOWN BOARD  
AGENDA MEMORANDUM

To: Mayor Tokunaga and Board of Trustees	Meeting Date:
From: Kent Brown, Town Administrator	Wednesday, April 13, 2016

Agenda Item #	Action:	Discussion:	Information:
	X		
Agenda Title: To Consider for Approval an Intergovernmental Agreement between Little Thompson Water District and the Town of Milliken			
Attachments: Intergovernmental Agreement (IGA)			

**PURPOSE**

To approve an IGA between Little Thompson Water District and the Town of Milliken.

**BACKGROUND**

After reviewing the Town's records, it has been determined that an IGA is currently not in place between the two (2) entities.

The Town and the District have determined that it is in the best interests of the current and future residents of the Town and the District for the Parties to cooperate with each other in providing potable water services.

Note: There may be one (1) or two (2) minor adjustments to the agreement to address how the property transfers when annexation(s) occur.

**BUDGET IMPLICATIONS**

There could be a minimal expense from the Town, or at times the Town may receive revenue from Little Thompson.

**STAFF RECOMMENDATION**

Staff recommends that the Board of Trustees approve the Intergovernmental Agreement with Little Thompson Water District.

**SUGGESTED ACTION**

"I move to approve the Intergovernmental Agreement between the Little Thompson Water District and the Town of Milliken."

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN LITTLE THOMPSON WATER DISTRICT**  
**AND TOWN OF MILLIKEN, COLORADO**

This Intergovernmental Agreement ("Agreement") is made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between Little Thompson Water District, a Colorado special district, hereinafter referred to as " District" and the Town of Milliken, Colorado, a Colorado municipality, hereinafter referred to as " Town." The District and the Town may herein be collectively called the "Parties" or each individually a "Party."

**RECITALS**

- A. The District owns, maintains and operates a system for the treatment, storage, and distribution of potable water within Larimer County, Boulder County and Weld County, Colorado.
- B. The Town owns, maintains and operates a system for the treatment, storage and distribution of potable water to inhabitants of the Town, located in Weld County, State of Colorado.
- C. The Town and the District have determined that it is in the best interests of the current and future residents of the Town and the District for the Parties to cooperate with each other in providing potable water services.
- D. Section 29-1-203, C.R.S. provides that the District and the Town may enter into agreements with one another to provide governmental services.
- E. By enacting Titles 31 and 32 and specifically §31-35-402 (1) (b) and §32-1-502 (2) (c) of the Colorado Revised Statutes and pursuant to Article XIV, Section 18 of the Colorado Constitution, the Legislature of the State of Colorado has: (a) determined that the State of Colorado has a valid interest in providing water for its citizens; (b) clearly articulated and affirmatively expressed the State of Colorado's policy to allow municipalities and special service districts to provide water by utilizing cooperative agreements and to eliminate competition in areas where each party is capable of providing service; (c) developed a structure to actively supervise municipalities and special service districts if the District and Town choose to utilize such agreements; and (d) specifically provided that there shall be no overlapping service territories for municipal corporations and special service districts providing water service.
- F. The Parties desire that the Town will deliver potable water to the District as defined herein below via a master meter(s) so the District may continue to provide potable water to its existing customers.
- G. The Parties desire that the District will deliver potable water to the Town as defined herein below via a master meter(s) so the Town may continue to provide potable water to its existing customers.

H. The Parties desire to authorize a water system interconnection, and to define the terms and conditions of construction and use of said interconnection by the Parties.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants, agreements, and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged by both Parties, the Parties agree as follows:

### ARTICLE 1 RECITALS

The foregoing Recitals constitute substantive terms of this Agreement and are incorporated into this Agreement by this reference.

### ARTICLE 2 EXISTING AND FUTURE SERVICE TAPS

2.01 In order to facilitate the construction of a 16-inch water line by the Town, the District intends to and shall abandon certain water lines on Weld County Road 46 and Weld County Road 25 that currently provide potable water service to certain District customers. There are hereby established by the Town four master meter taps off of the Town's 16-inch water line, as set forth on Schedule A attached hereto and incorporated herein by reference, to be used by the District to provide water service to five existing customers of the District ("District Customers") currently receiving potable water from the District by the water lines to be abandoned. The District Customers shall remain customers of the District and the District shall continue to bill said District Customers unless the Town annexes property(ies) of the District Customers. Any future taps to be connected to the Town's 16-inch water line shall be the Town customers. Additional water service taps off the 16-inch water line and connections thereto or any extensions of service by the District being served by the Town's 16-inch water line shall be approved in writing by the Town.

2.02 The Parties acknowledge that certain District water customers own water taps previously issued by the District and such customers shall remain District customers and shall continue to be billed by the District. Such District customers are generally located on Weld County Road 46 and Weld County Road 25. The raw water rights for these existing taps shall continue to be owned by the District.

2.03 The Parties acknowledge that certain Town water customers own water taps previously issued by the Town and such customers shall remain Town customers and shall continue to be billed by the Town. Such Town customers are generally located on North Ethel Avenue, also known as Weld County Road 21<sup>3/4</sup>. There is currently already in place one master meter tap off of the District's 6-inch water line used by the Town to provide water service to existing customers ("Town

Customers”) of the Town as set forth on Schedule B attached hereto and incorporated herein by reference. The raw water rights for these existing taps shall continue to be owned by the Town.

ARTICLE 3  
PROVISION OF POTABLE WATER

3.01 The Town shall deliver the treated water to the existing District taps of the District Customers identified on Schedule A. The District shall deliver the treated water to the existing Town taps of the Town Customers identified on Schedule B.

3.02 The delivering Party shall bill the receiving Party hereto in accordance with such delivering Party’s normal billing cycle and practices at the wholesale rate of \$1.03 per 1,000 gallons. Payments by the receiving Party shall be due by the 10<sup>th</sup> day of the following month. The wholesale rate of \$1.03 per 1,000 gallons may be adjusted at any time by mutual written consent of the Parties hereto.

3.03 For each year that this Agreement remains in effect, the Party using the larger quantity of water shall transfer to the other Party a quantity of raw water equal to the difference in the water used by both Parties for each one-water year period ending October 31. The raw water to be transferred shall consist of Colorado-Big Thompson Units (“C-BT Units”) equal to the net quantity of water used, plus ten percent (10%) to account for treatment and system delivery losses. The C-BT Units shall be transferred before December 31st. Such transfers shall not be and are not considered a permanent transfer of C-BT allotments.

3.04 Each Party is responsible for maintaining reasonable pressures within such Party’s system and shall provide adequate pressure to serve the other Party’s customers. Each Party shall not be responsible for any damages or costs and expenses resulting from any over/under pressure when supplying water to the other Party’s customers.

3.05 Each Party shall use reasonable diligence to provide a constant and uninterrupted supply of water except for interruptions or reductions due to: (1) force majeure as defined in Section 3.04 below; (2) operations of devices installed for water system protection; and (3) maintenance, repair, replacement, installation of equipment, or investigation and inspection of the water system, which interruption or reductions are temporary, and in the opinion of such Party, necessary. Excepting cases of emergency, each Party will be given reasonable advance notice of such interruptions or reductions by the other Party. Each Party shall remove the cause thereof, from such Party’s water system, with reasonable diligence.

3.06 Neither Party shall be considered in default under this Agreement if prevented from fulfilling any obligations by reason of force majeure. The term “force majeure” shall mean any cause beyond the control of the obligated Party, including, but not limited to, failure of valves and/or any other facilities, flood, earthquake, storm, acts of God, lightning, fire, epidemic, riot, terrorism, civil disturbance, labor disturbance, sabotage, breach of construction contract by a third party or restraint by court or public authority or any other cause whatsoever beyond the control of the obligated party. Force majeure does not include causes, which by due diligence and foresight, such Party could

reasonably be expected to avoid. A Party rendered unable to fulfill its obligation by reason of force majeure shall exercise due diligence to remove such inability with all reasonable dispatch.

ARTICLE 4  
WATER SYSTEM INTERCONNECTION

4.01 The Parties hereby acknowledge an existing water system interconnection between the District and the Town located on North Grace Street near Broad Avenue [insert address, Milliken, Colorado 80543] known as the "North Grace Street Interconnect" (hereinafter "Interconnect" or "Interconnection"). The Interconnect is intended to provide the Parties with a source of water for emergency purposes and shall be subject to the following terms and conditions:

- a. The Parties shall cooperate and share equally in all costs associated with the design, operation, repair, and maintenance of any new or existing pipes, valves, metering devices, related equipment, and other facilities necessary to keep the Interconnection functional.
- b. Responsibility for supervision of operation, repair, and maintenance work on an ongoing basis will be assigned by the Parties upon mutual agreement at the time any such work is required.
- c. The Parties shall deliver water to each other at the Interconnection upon reasonable request; provided, however, that the delivering Party may refuse to deliver water to the requesting Party if, in the sole discretion of the delivering Party, the water is needed by the delivering Party for its own use.
- d. The receiving Party shall pay the delivering Party for all water delivered at the wholesale rate of \$1.03 per 1,000 gallons. The wholesale rate of \$1.03 per 1,000 gallons may be adjusted at any time by mutual written consent of the Parties hereto.
- e. For each year that this Agreement remains in effect, the Party using the larger quantity of water shall transfer to the other Party a quantity of raw water equal to the difference in the water delivered by both Parties through the Interconnection for each one-water year period ending October 31. The raw water to be transferred shall consist of Colorado-Big Thompson Units ("C-BT Units") equal to the net quantity of water delivered, plus ten percent (10%) to account for treatment and system delivery losses. The C-BT Units shall be transferred before December 31st. Such transfers shall not be and are not considered a permanent transfer of C-BT allotments.
- f. In the event that either Party fails to pay for water delivered within ninety (90) days of billing or fails to transfer to the other raw water as required herein, then the Party to whom payment or transfer is owed, in addition to seeking recovery of sums due and the value of the raw water, may terminate delivery of water through the interconnection to the other.

ARTICLE 5  
OWNERSHIP AND MAINTENANCE OF FACILITIES

5.01 Each Party will own and be responsible for the construction, operation, and maintenance of its respective water distribution lines and other water system facilities to a point 2 feet beyond the meter pit associated with each delivery point as indicated on Schedule A and Schedule B. All water quality standards and regulations shall apply to both the District's and the Town's water distribution systems.

ARTICLE 6  
MASTER METERS

6.01 The Town shall pay for, construct, own, operate, repair, reconstruct and maintain the District's connections, master meters and meter pits for those connections set forth on Schedule A. The District shall pay for, construct, own, operate, repair, reconstruct and maintain the Town's connections, mater meters and meter pits for those connections set forth on Schedule B. Each Party shall read its own meters at monthly intervals, under its own meter reading schedule. Either Party may request to have a representative present during a reading of the other Party's meters. If desired by either Party, such Party shall read the meters to confirm the reporting of the other Party. If discrepancies occur in the meter reading, the Party responsible for payment shall pay the higher water reading. The Parties shall endeavor to keep accurate records of water meter readings.

6.02 The Party owning the meters, at such Party's sole cost and expense, will test and calibrate the master meters at periodic intervals as established by such Party. Either Party, at such Party's sole cost and expense, may make a written request to the Party owning the meter for a special meter test. Such requesting Party shall notify the Party owning the meter in advance of any master meter test and allow a representative of the Party owning the meter to be present.

6.03 The readings of any master meter which shall have been disclosed by tests, conducted pursuant to American Water Works Association (AWWA) standards, to be inaccurate shall be corrected from the beginning of the monthly billing period immediately preceding the billing period during which the tests are made, in accordance with the percentage of inaccuracy found by such tests, provided that no correction shall be made for a longer period than such inaccuracy has actually existed.

6.04 If any meter shall fail to register for any period, the Town and the District shall attempt in good faith to reach an agreement as to the amount of water furnished during such period based upon all reasonable criteria and indicia of use for the period at issue. If no agreement can be reached, the Party owning the meter shall issue a billing to the other Party which shall be based upon historical average annual usage data, and such other Party shall promptly pay such bill issued by the Party owning the meter.

ARTICLE 7  
WATER QUALITY

Subject to the terms of this Agreement, the each Party hereby agrees to deliver water that meets all applicable water quality standards for drinking water hereunder. The Town and the District, at their respective sole cost and expense, shall be responsible for compliance with all water quality standards and regulations internal to their respective water systems including, but not limited to, water quality testing as may be required by the State of Colorado or any other governmental entity. The District and the Town agree to share water quality information as necessary and work together in good faith in order to meet all regulatory requirements.

#### ARTICLE 8 TERM

Subject to the terms of the Taxpayer's Bill of Rights (TABOR), the term of this Agreement shall be for a period of five (5) years from the date of execution and automatically renewed for five subsequent five (5) year periods unless either Party gives a minimum of six (6) months advance written notice of termination. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation, it shall be subject to annual appropriation pursuant to Article X, Section 20 of the Colorado Constitution.

#### ARTICLE 9 MISCELLANEOUS PROVISIONS

9.01 The Town, from time to time as it sees fit, has promulgated and may promulgate such new or amended codes and ordinances, and the District agrees to abide by such existing and amended codes and ordinances of the Town related to the delivery and use of potable water. The District, from time to time as it sees fit, has promulgated and may promulgate such new or amended rules, regulations, tariffs and bylaws, and the Town agrees to abide by such existing and amended rules, regulations, tariffs and bylaws of the District related to the delivery and use of potable water.

9.02 The Parties shall assist each other in acquiring any easements and other permits or approvals necessary to accomplish and place into effect this Agreement, and for the construction of any necessary facilities.

9.03 The Parties agree to continue the cooperative exchange of information, operational assistance and emergency aid. If, in the maintenance of their respective water systems it becomes necessary by reason of any emergency or extraordinary condition for either Party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the Party so requested shall cooperate with the other and render such assistance as the Party so requested may determine to be available. The Party making such requests, upon receipt of properly itemized bills from the other Party, shall reimburse the Party rendering such assistance for all costs properly and reasonably incurred by it in such performance, including but not to exceed ten percent thereof for administrative and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering the assistance.

9.05 The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision unless material to the performance of either Party.

9.06 The Parties agree that, in addition to any other remedies allowed by law, the provisions of this Agreement may be specifically enforced in a Court of competent jurisdiction and, in any judicial action, the unsuccessful Party agrees to pay all costs of such action as actually incurred by the successful Party, including reasonable attorney's fees as assessed by such Court.

9.07 Except as otherwise provided herein, if either Party shall be in default or breach in performance of any term, covenant, or condition of this Agreement, the Party not in default or breach shall give the defaulting or breaching Party prompt written notice of such default or breach. If the default or breach is not cured within thirty days following notice, the Party that is not in default or breach may seek remedies provided for herein.

9.08 The waiver by either Party of any default or breach of any term, covenant or condition of this Agreement shall not operate as a waiver of any default or breach of any other term, covenant or condition, or subsequent default or breach of the same.

9.09 Neither Party may assign or transfer all or any part of this Agreement without the prior written consent of the non-assigning Party.

9.10 This Agreement sets forth the entire understanding of the Parties; there are no oral representations relied upon by any Party hereto, which are not specifically set forth herein. This Agreement may be modified only in writing, mutually executed by the Parties hereto.

9.11 Any notice, demand, or request delivered by mail in accordance with this section shall be deemed given seventy-two hours after the same is deposited, certified mail, in any post office or postal box regularly maintained by the United States Postal Service addressed to the District at 835 E. Highway 56, Berthoud, Colorado 80513 and to the Town at Town of Milliken, 1101 Broad St., Milliken, Colorado 80543. The Addresses may be changed at any time by similar notice.

9.12 Neither Party shall, by reason of any provision of this Agreement, or the use of water thereunder, or otherwise, acquire vested or adverse right or future right, in law or equity, in the water rights owned by the other Party.

9.13 To the extent legally possible and except as otherwise set forth herein, each Party shall indemnify and hold the other Party harmless from and against any and all liability, loss, damages, costs and expenses, including reasonable attorney fees, arising from the indemnifying Party's negligence, including but not limited to negligent delivery of water at rates or pressures. By such agreement to indemnify and hold each other harmless, neither Party waives any defenses and immunities to third Parties which it would otherwise be entitled under the Colorado Governmental Immunity Act.

9.14 The covenants and agreements herein contained are for the benefit of the Parties only and do not create any rights, obligations or duties to persons not parties hereto.

9.15 Nothing herein shall be construed or determined to waive the Town's lawful exercise of its police powers to enact and enforce ordinances, rules, regulations and laws in its legislative discretion.

IN WITNESS WHEREOF, the District and the Town have hereunto executed this Agreement the day and year first above written.

*[Remainder of page intentionally left blank -- signature page to follow]*

LITTLE THOMPSON WATER DISTRICT

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

TOWN OF MILLIKEN

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

SCHEDULE A  
DISTRICT SERVICE DELIVERY POINTS

SCHEDULE B  
TOWN SERVICE DELIVERY POINTS