



**TOWN OF MILLIKEN
TOWN BOARD
AGENDA MEMORANDUM**

To: Mayor Tokunaga and Board of Trustees	Meeting Date:
From: Forrest Leaf, Water Resource Engineer	Wednesday, January 28, 2015
Via: Kent Brown, Town Administrator	

Consent: X	Action:	Discussion:	Information:
Agenda Title: Water Lease Agreement with Bigfoot Turf of Excess Water Credits			
Attachments: Water Lease Agreement			

PURPOSE

To review and consider for approval an agreement with Bigfoot Turf for the lease of the Town's excess water credits.

BACKGROUND

The Town currently operates under a state-approved water augmentation plan that allows the Town to pump well water that is both treated for potable use and used for irrigation purposes. When the Town returns additional water to the river over and above the Plan's requirement, the Town generates excess water credits that can be leased to other water uses which allows that entity to pump well water or divert water from a ditch or river for resale. The referral of Bigfoot to the Town was generated by Kim Lawrence, the Town's Water Attorney.

The Town has leased some of these credits on a limited scale in the past, (in addition to selling treated potable water). The Town received a proposal from Bigfoot Turf of Kersey to purchase excess credits, when available, for \$175 per acre foot. The Town agrees to lease up to 90 acre feet annually if available.

The lease allows flexibility for the Town's Water Resource Engineer to adjust the excess credits available monthly for lease as he deems appropriate and in the best interests of the Town. J&E Investments LLC holds a right of first refusal to the credits.

BUDGET IMPLICATIONS

The Town will receive \$175 per acre foot of excess, and Bigfoot will make an initial payment of \$5000, based on the use of 28.57 acre feet at \$175/per acre foot. The Town will refund or receive additional revenue based on actual use. Total potential revenue is \$15,750 if Lessee uses the maximum available credits.

POSSIBLE MOTION

"I move that the Town approve the Water Lease Agreement with Bigfoot Turf and authorize the Town Administrator to execute the lease on behalf of the Town."

WATER LEASE AGREEMENT

THIS AGREEMENT is entered into this ___ day of _____, 2015, between the Town of Milliken, Colorado, a statutory municipality, whose address is 1101 Broad Street, Milliken, Colorado 80543, (Lessor) and Big Foot Turf Farms, Inc., (Lessee) whose address is, 22455 W.C.R. 49, LaSalle, Colorado 80645.

RECITALS

WHEREAS, Lessor owns certain water rights which includes effluent water from the Town of Milliken's Sewer Treatment Plant; and

WHEREAS, Lessee desires to lease "excess credits" from the Lessor's Plan for Augmentation 02CW339 in accordance with the terms defined below in order to augment an alluvial well located near Beebe Draw and tributary to the South Platte River, generally to the east of Greeley, Colorado; and

WHEREAS, Both Lessor and Lessee represent to each other that each have the authority, power and right to enter into this Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the above premises, and the covenants as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. LEASE TERM.

The term of the lease shall be for one year beginning April 1, 2015 and ending March 31, 2016. The lease term may be extended but only upon written agreement by both parties. Lessee shall apply for a Substitute Water Supply Plan (SWSP) with the full cooperation of Lessor. Lessee shall provide a copy of the approved SWSP to Lessor.

2. WATER TO BE LEASED. Lessee may lease up to 90 acre-feet annually of the Lessor's excess credits pursuant to 02CW339. Lessor anticipates that it will have excesses but does not guarantee excess credits from month to month. Lessee shall provide reasonable advance notice to Lessor of its intent to use Lessor's water for any upcoming month, in order to provide Lessor the opportunity to lease such water to a third party in the event Lessee elects not to use Lessor's water. Lessee shall not be required to pay Lessor for water unless the Lessee elects to use Lessors water in any given month. During the term of this lease and in the event of a "Free River" Lessee shall not be obligated to pay Lessor for any excess credits. Lessee shall have the first right of refusal to lease any additional effluent water under the same terms and conditions described in this agreement, subject to the first right of refusal granted by Lessor to J & E Investments LLC by Agreement dated September 11, 2013. Said excess credits are made

available in the Big Thompson River at or below the Lessors' Waste Water Treatment Plant. Lessee shall be responsible for any transit losses between the point of delivery and Lessee's point of use.

3. LEASE PRICE. Lessee agrees to pay Lessor the amount of \$175.00 per acre foot of excess credit during the Lease Term. \$5000 shall be paid by Lessee on the execution of this lease and the balance shall be due at the end of the lease term. In the event Lessor is unable to deliver more than 28.57 acre feet of excess credit ($28.57 \times \$175 = \5000) then Lessor shall refund to Lessee the difference between the acre-feet of excess credit actually delivered times \$175 per acre foot and \$5000. In the event either party fails to pay any balance due the other within 30 days after receipt of a written final bill the amount due shall accrue interest at the rate of 12% per annum.

4. EXECUTION/ACCEPTANCE DEADLINE. This Agreement shall be in full force and effect, upon the Parties' mutual execution of this Agreement.

5. BROKERS. Both parties represent there are no brokers involved in this transaction.

6. NOTICES. Any notices, demands or other communications required or desired to be given under provision of this Agreement shall be given in writing, delivered personally, or sent by e-mail, certified or registered mail, return receipt requested, postage prepaid, address as follows:

To Lessor: Town of Milliken 1101 Broad Street, PO Box 290 Milliken, CO 80543.
k.brown@town.milliken.co.us

To Lessee: Big Foot Turf Farms, Inc., 22455 W.C.R. 49, LaSalle, Colorado 80645.
greg@bigfootturf.com

7. AMENDMENT AND ASSIGNMENT. Except where otherwise provided, this Agreement cannot be modified, amended, changed, assigned or terminated by the Parties except by written agreement duly authorized and executed by the Parties with the same formality as this Agreement.

8. WAIVER. The waiver of any breach or any of the provisions of this Agreement by any Party shall not constitute a continuing waiver of any subsequent breach by said Party, by either of the same or any other provision of this Agreement.

9. HEADINGS FOR CONVENIENCE ONLY. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define or limit the scope or intent of any provision of this Agreement.

10. NON-SEVERABILITY. Each paragraph of this Agreement is intertwined with the other and is not severable unless by mutual consent of the Parties hereto.

11. BINDING EFFECT. This Agreement and rights and obligations created hereby shall be

binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

12. GOVERNING LAW. This Agreement and its application shall be construed in accordance with the laws of the State of Colorado and venue shall be in Weld County.

13. MULTIPLE ORIGINALS. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same agreement. Signatures may be evidenced by facsimile. Documents with original signature shall be provided to the other Party at Closing, or earlier, upon request of any Party.

14. FORCE MAJUERE. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, labor unrest, equipment or utility failures or shortages, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence.

15. DISPUTE RESOLUTION. Lessor and Lessee shall endeavor to resolve claims, disputes and other matters in question between them by mediation. Request for mediation shall be filed in writing with the other party to this Contract. Mediation shall proceed in advance of litigation which shall be stayed pending mediation. All mediated settlement conferences shall take place in Milliken, Colorado. The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If any judicial proceeding is thereafter brought to enforce any of the provision hereof, including an action for specific performance and/or damages, the prevailing Party shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees. THE PARTIES HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY OF ANY SUCH DISPUTE.

16. NO JOINT VENTURE. The relationship created by this Agreement shall be strictly as Lessor and Lessee and not as partners or joint venturers in any respect whatsoever.

17. INDEMNIFICATION. Lessee shall exercise its privileges under this Agreement at its own risk, and Lessee shall indemnify and hold Lessor harmless from and against all liability for damages, costs, losses and expenses resulting from, arising out of or in any way connected with the use of the Leased Water by Lessee, including by way of example and not by way of limitation, any governmental fines or penalties.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties relating to the subject hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

Lessor: Town of Milliken

By _____

Kent Brown, Town Administrator

Lessee: Big Foot Turf Farms, Inc.

By _____

Greg Johnson, President