



**TOWN OF MILLIKEN  
TOWN BOARD  
AGENDA MEMORANDUM**

<b>To:</b> Mayor Tokunaga and Board of Trustees  <b>From:</b> Patrick Murphy, Treasurer, Director of Finance & Accounting  <b>Via:</b> Kent Brown, Town Administrator	<b>Meeting Date:</b>  Wednesday, July 8, 2015
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Agenda Item #	Action: X	Discussion:	Information:
<b>Agenda Title:</b> Approval of an Amendment to the Intergovernmental Agreement with TRPR for funding the Construction of the Milliken Athletic Complex			
<b>Attachments:</b> First Amendment to IGA			

**PURPOSE**

To Approve the First Amendment to the Intergovernmental Agreement (IGA) between the Town of Milliken and the Thompson Rivers Parks and Recreation District (TRPR) outlining the annual funding contribution to be made by the Town in support of the construction of the Milliken Athletic Complex.

**BACKGROUND**

The Town entered into an IGA with TRPR in July, 2014, committing the Town to assist in funding the construction of a field house in Milliken, now known as the Milliken Athletic Complex (MAC). The original agreement obligated the Town to fund up to \$200,000 per year for 20 years, depending on the final construction costs and financing requirements. As the construction budget has been completed, financing is in place, and the costs of the project are in excess of the original estimates, TRPR is proposing for the Town to contribute the maximum amount allowable under the original IGA and has drafted an Amendment to the IGA specifying this amount (\$200,000) and requesting that payments begin in 2015.

**BUDGET IMPLICATIONS**

Approval of this Amendment will require the appropriation of \$200,000 from the General Fund to make this initial payment. A separate Budget Resolution has been prepared for this purpose.

## **RECOMMENDATION**

As the Board has already demonstrated its support and commitment to this project, and the amount requested is consistent with the spirit and terms of the original IGA, Staff recommends approval of this Amendment.

## **POSSIBLE MOTION**

“I move to approve the First Amendment to the Intergovernmental Agreement between the Town and TRPR for the funding of the Milliken Athletic Complex and authorize the Mayor to sign the Amendment on behalf of the Town.”

**FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
TOWN OF MILLIKEN, COLORADO AND THE THOMPSON RIVERS PARKS AND  
RECREATION DISTRICT**

THIS FIRST AMENDMENT to the intergovernmental agreement between the town of Milliken, Colorado, a statutory town (hereinafter referred to as "Town") and the Thompson Rivers Parks and Recreation District, a special district pursuant to Colorado statutes, (hereinafter referred to as "District") is made and entered on this 8 day of July, 2015.

WHEREAS, the Town and the District entered into an Intergovernmental Agreement dated July 23, 2014 for the construction of a recreation facility (hereinafter referred to as the "Agreement"), which is referenced herein and attached hereto as Exhibit A; and

WHEREAS, on July 23, 2014, the Town of Milliken Board of Trustees voted to enter into the Intergovernmental Agreement with the District; and

WHEREAS, the parties desire to make certain amendments to the intergovernmental agreement as set forth below:

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

1. Paragraph 2 of the Agreement is revised to read as follows:

Town's Obligation vis-a-vis the Project. Funding for the project has been secured and the total annual debt payment on the project will be \$342,000 for twenty years. No later than July 1st of each year, beginning in 2015, and continuing each year thereafter until July 1, 2034, the Town agrees to pay the District or its assigns, the amount of \$200,000 as the Town's portion of the cost of the Project (the "Town Project Payment"). The Town's obligation to make the Town Project Payment is subject to annual appropriation by the Town's Board of Trustees. The Town covenants to include the Town Project Payment in its annual budget.

2. Paragraph 3 of the Agreement is revised to read as follows:

Ownership of the Project. The parties agree that upon completion of the project and upon the debt associated with the project being paid in full, the Project shall be jointly owned by the Town and the District. The proportion of ownership shall be based on the proportion of the dollar amount contributed by each Party towards the Project. Until such time as the debt for the project is paid in full, the District shall maintain ownership of the project.

3. The third paragraph of Attachment A to the original Agreement, shall be revised to read as follows:

**Maximum term and amount of payment:**

The Town of Milliken agrees to pay the Thompson Rivers Parks and Recreation District \$200,000 per year beginning in 2015, for a period of no more than 20 years, to support the debt

service payments associated with the construction and financing of the project. This payment may be adjusted downward upon the completion of construction, based upon the actual debt incurred (and the associated payment schedule) for financing the project. Grants or other capital contributions received prior to the completion of the project will be applied to project construction costs and reduce the debt incurred, thereby potentially lowering the Town's annual requirement. Extraordinary principal payments will also shorten the length of the Town's commitment.

4. Except as expressly amended or modified herein, all of the terms and provisions of the original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Town and the District have executed this First Amendment as of the date first written above.

**TOWN OF MILLIKEN, COLORADO**

\_\_\_\_\_  
Milt Tokunaga, Mayor

ATTEST:

\_\_\_\_\_  
Cheryl Powell, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
R. Bruce Fickel, Town Attorney

**THOMPSON RIVERS PARKS AND RECREATION DISTRICT**, a quasi municipal corporation and political subdivision of the State of Colorado

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

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

**INTERGOVERNMENTAL AGREEMENT BETWEEN**

**THE TOWN OF MILLIKEN, COLORADO**

**AND THE**

**THOMPSON RIVERS PARKS AND RECREATION DISTRICT**

THIS AGREEMENT is made and entered into as of this 23rd day of July, 2014, by and between the TOWN OF MILLIKEN, a Statutory municipal corporation of the State of Colorado (the "Town"), and the THOMPSON RIVERS PARKS AND RECREATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"). The Town and the District are collectively referred to as the Parties.

**WITNESSETH:**

WHEREAS, Section 29-1-203, C.R.S. authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, the District is a duly and regularly created, organized and existing political subdivision existing as such under and by virtue of the constitution and the laws of the State of Colorado; and

WHEREAS, pursuant to Section 32-1-1001(f), C.R.S., the District has the power to acquire, dispose of and encumber real and personal property, including, without limitation, rights and interests in property, leases, and easements necessary for the functions or the operations of the District; and

WHEREAS, the Town and the District are desirous of the construction, equipping and financing of a field house (the "Project") to be located within the Town's boundaries pursuant to a lease-purchase financing (the "Lease Purchase Financing") which shall be subject to annual appropriations; and

WHEREAS, the Parties have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Intergovernmental Agreement (the "Agreement") for the purposes of memorializing various obligations of the Parties set forth herein.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. General Agreement. The Parties agree to work together to construct the Project as outlined in the Milliken Recreation Facility Agreement, attached hereto and incorporated herein as Exhibit A.

2. Town's Obligation vis-à-vis the Project. No later than [July 1] of each year, and continuing each year thereafter until July 1, 2035 (subject to annual appropriation) the Town

agrees to pay to the District or its assigns, the amount of \$\_\_\_\_\_ as the Town's portion of the cost of the Project (the "Town Project Payment"). The Town's obligation to make the Town Project Payment is subject to annual appropriation by the Town's Board of Trustees. The Town covenants to include the Town Project Payment in its annual budget.

3. Ownership of the Project. The Parties agree that the Project shall be jointly owned by the Town and the District. The proportion of ownership shall be based on the proportion of the dollar amount contributed by each Party towards the Project.

4. Operations and Maintenance of the Project. The District shall be responsible for the operation and maintenance of the Project.

5. Use of Project. The District and the Town shall have the right to use the Project.

6. Construction Standards. The District will ensure that the Project is designed and constructed in accordance with the standards and specifications of the Town and of other governmental entities having proper jurisdiction. The District will obtain the Town's approval and the Town shall have final approval authority over construction of the Project including without limitation, civil engineering plans, landscaping and design plans. The District will obtain applicable permits for construction and installation of public improvements prior to performing such work.

7. Responsibility to Build the Project. The District shall be responsible for the construction of the Project.

8. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Thompson Rivers Parks and Recreation District  
110 S. Centennial Dr, Suite A.  
Milliken, Colorado 80543  
Attn: \_\_\_\_\_, President  
Phone:  
Fax:

To the Town: Town of Milliken  
1101 Broad Street  
Milliken, Colorado 80543  
Attn: [\_\_\_\_\_] ]  
Phone: 970-587-4331  
Fax: 970-587-2678

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the

United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

9. Miscellaneous.

A. Effective Date. This Agreement shall be in full force and effect and be legally binding upon final approval of the governing bodies of the Parties. The District shall not enter into the Lease Purchase Financing until after the effective date of this Agreement.

B. Nonassignability. No party to this Agreement may assign any interest therein to any person without the consent of the other party hereto at that time, and the terms of this Agreement shall inure to the benefit of and be binding upon the respective representatives and successors of each party hereto

C. Amendments. This Agreement may be amended from time to time by written amendment, duly authorized and signed by representatives of the parties hereto.

D. Severability. If any section, subsection, paragraph, clause, phrase, or other provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, phase, or other provision shall not affect any of the remaining provisions of this Agreement.

E. Execution of Documents. This Agreement shall be executed in two (2) counterparts, either of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents, and resolutions or ordinances necessary to give effect to the terms of this Agreement.

F. Waiver. No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

G. Dispute Resolution. The Parties agree that if a dispute arises regarding the terms of this Agreement, before either Party may undertake litigation to enforce this Agreement, the Parties must first submit this issue to mediation, the cost of which shall be shared equally by the Parties. Should the mediation be unsuccessful and either Party thereafter pursues a claim under this Agreement through litigation, the prevailing party in such litigation shall be entitled to recover reasonable attorney fees incurred in such litigation.

H. Default/Remedies. In the event of a breach or default of this Agreement by any party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

I. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for all actions brought hereunder shall be in the District Court in and for Weld County.

J. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

K. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

L. No Third Party Beneficiaries. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

M. Entirety. This Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire Agreement between the Parties concerning the subject matter hereof.

IN WITNESS WHEREOF, this Agreement is executed by the Town and the District as of the date first above written.

TOWN OF MILLIKEN, COLORADO

  
Milt Tokunaga, Mayor

ATTEST:

  
Cheryl Powell, Interim Town Administrator

APPROVED AS TO FORM:

  
R. B. Fick, Town Attorney

THOMPSON RIVERS PARKS AND RECREATION DISTRICT, a quasi municipal corporation and political subdivision of the State of Colorado

By:   
Steve El, President

ATTEST:

  
Ashley Cumis, Secretary

## **Milliken Recreation Facility Agreement Outline**

### **Description of Project:**

The Thompson Rivers Parks and Recreation District agrees to construct and operate an athletics field house facility containing gymnasium space, community space, and office space, as well as exterior multiuse turf areas. The interior space is estimated to between 16,000sqft and 22,000sqft depending on design and budget. The exterior multipurpose turf area is estimated to be between five and seven acres depending on design and budget. The project will include a 120 stall parking area with additional space dedicated for overflow parking. Construction management services will be provided by Hall Irwin Construction. The facility will be located to the south of Centennial Cooperative Park. The District desires to partner with the Milliken Boys and Girls Club to provide a dedicated facility for their office and programming, however, the success of the project is not dependent on this partnership.

### **Limitations on competing facility clause:**

The District agrees not to complete construction of a similar field-house-style facility within 36 months of the completion and operation of the Milliken facility. The district also agrees to program the Milliken facility prior to other similar facilities for the first twenty years of operation, or until the debt associated with construction of the project is paid in full.

### **Maximum term and amount of payment:**

The Town of Milliken agrees to pay the Thompson Rivers Parks and Recreation District a maximum of \$200,000 per year, for a period of no more than 20 years, to support the debt service payments associated with the construction and financing of the project. This payment will be adjusted downward upon the completion of construction, based upon the actual debt incurred (and the associated payment schedule) for financing the project. Grants or other capital contributions received prior to the completion of the project will be applied to project construction costs and reduce the debt incurred, thereby lowering the Town's annual requirement. Extraordinary principal payments will also shorten the length of Milliken's commitment.

### **Access to agreements and contracts:**

Thompson Rivers Parks and Recreation District agrees to provide all contracts, design documents and construction plans to the Town of Milliken staff for their review and approval prior to construction.

### **Waiver of permit fees:**

The Town of Milliken agrees to waive or cover all building permit fees.