



**TOWN OF MILLIKEN  
TOWN BOARD  
AGENDA MEMORANDUM**

<b>To:</b> Mayor Woodcock and Board of Trustees  <b>From:</b> Marcus McAskin, Deputy Town Attorney  <b>Via:</b> Kent Brown, Town Administrator	<b>Meeting Date:</b>  Wednesday, August 24, 2016
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Agenda Item #	Action: X	Discussion:	Information:
<b>Agenda Title:</b> Approval of an Agreement with FEI Engineers, Inc. for a surface water supply feasibility study (specifically, the Focused Joint-Use Infrastructure Feasibility Evaluation)			
<b>Attachments:</b> Resolution # 16-18 Proposed Agreement (Proposal Acceptance – Terms and Conditions) FEI Proposal dated July 27, 2016 FEI 2016 Rate Schedule			

**PURPOSE**

Resolution # 16-18 approves a services agreement with FEI Engineers, Inc. (“FEI”), which agreement authorizes FEI to undertake a surface water supply feasibility study on behalf of the Town – specifically the Focused Joint-Use Infrastructure Feasibility Evaluation.

**BACKGROUND**

The benefits of FEI’s evaluation and the scope of work associated with the same are more fully set forth in the FEI’s July 8, 2016 scope of services and fee estimate as supplemented by the FEI’s alternate proposal dated July 27, 2016 (collectively, the “Proposal”). The Proposal is focused on the Town and Johnstown working together and FEI’s evaluation will be focused on determining whether a joint-use cost-sharing arrangement with Johnstown is viable.

A copy of the Proposal is attached to this Town Board Agenda Memorandum as an attachment to the proposed services agreement by and between the Town and FEI (the “Agreement”).

### **BUDGET IMPLICATIONS**

The Agreement establishes a not to exceed fee of \$46,110.00.

### **RECOMMENDATION**

The consensus of the Board (although not unanimous) was to have the Agreement and Resolution # 16-18 prepared for Board consideration and approval at a future regular meeting of the Town Board. Town Staff is recommending approval of the Agreement.

### **SUMMARY AND ALTERNATIVES**

The Town Board may approve the Resolution, deny the Resolution, or table the item for further discussion and consideration.

### **PROPOSED MOTION:**

“I MOVE TO APPROVE RESOLUTION NO. 16-18, APPROVING A SERVICES AGREEMENT WITH FEI ENGINEERS, INC. TO CONDUCT A FOCUSED JOINT-USE INFRASTRUCTURE FEASIBILITY EVALUATION, AND DELEGATING AUTHORITY TO THE TOWN ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN.”

**TOWN OF MILLIKEN  
RESOLUTION NO. 16-18**

**A RESOLUTION APPROVING A SERVICES AGREEMENT WITH  
FEI ENGINEERS, INC. TO CONDUCT A FOCUSED JOINT-USE  
INFRASTRUCTURE FEASIBILITY EVALUATION, AND DELEGATING  
AUTHORITY TO THE TOWN ADMINISTRATOR TO EXECUTE THE  
AGREEMENT ON BEHALF OF THE TOWN**

**WHEREAS**, the Town of Milliken is a statutory town organized under the laws of the State of Colorado; and

**WHEREAS**, the Town desires to have FEI Engineers, Inc., a Colorado corporation (the "Engineer") undertake a Focused Joint-Use Infrastructure Feasibility Evaluation on behalf of the Town; and

**WHEREAS**, the benefits of the evaluation and the scope of work associated with the same are more fully set forth in the Engineer's July 8, 2016 scope of services and fee estimate as supplemented by the Engineer's alternate proposal dated July 27, 2016 (collectively, the "Proposal"); and

**WHEREAS**, the Engineer represents that the Engineer has the skill, ability, and expertise to perform the services described in the Proposal; and

**WHEREAS**, the Engineer has incorporated the Proposal by reference into a proposed services agreement by and between the Town and the Engineer, a copy of which is attached to this Resolution as **Exhibit 1** (the "Agreement"); and

**WHEREAS**, the Agreement establishes a not-to-exceed fee of Forty-Six Thousand One Hundred Ten Dollars (\$46,110.00); and

**WHEREAS**, the Board of Trustees desires to approve the Agreement and delegate authority to the Town Administrator to execute the Agreement on behalf of the Town of Milliken.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF MILLIKEN, COLORADO, that:**

**Section 1.** The Board of Trustees of the Town of Milliken: (a) approves the Agreement in substantially the form attached hereto as **Exhibit 1**; (b) authorizes the Town Administrator and the Town Attorney to negotiate non-material changes to the Agreement in order to finalize same prior to execution by the Town Administrator provided that such changes do not increase the not-to-exceed compensation set forth above; and (c) authorizes the Town Administrator to execute the Agreement on behalf on the Town when in final form.

**Section 2.** This Resolution shall take effect immediately.

**ADOPTED AND APPROVED** this 24<sup>th</sup> day of August, 2016.

\_\_\_\_\_  
Beau Woodcock, Mayor

**ATTEST:**

\_\_\_\_\_  
Cheryl L. Powell, Town Clerk

**Exhibit 1**  
**Services Agreement**  
**(FEI Engineers, Inc.)**

(attached)



## PROPOSAL ACCEPTANCE - TERMS AND CONDITIONS

**Project:** Milliken Surface Water Supply Feasibility Study – Focused Joint Use Infrastructure Feasibility Evaluation

The attached Proposal and the following *Terms and Conditions* comprise the entire Agreement between Town of Milliken (Owner) and FEI Engineers, Inc. (Engineer). This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Engineer is authorized to begin services as of the Accepted Date.

Accepted this 24th day of August, 2016.

### REPRESENTATIVE FOR ENGINEER

### REPRESENTATIVE FOR OWNER

\_\_\_\_\_  
Signature Date 8/15/2016

\_\_\_\_\_  
Signature Date

Patrick O'Brien  
Printed Name

Kent Brown  
Printed Name

Principal  
Title

Town Administrator, Town of Milliken, Colorado  
Title

970-247-0724  
Phone

970-660-5047  
Phone

Patrick.Obrien@FEIEngineers.com  
Email

KBrown@millikenco.gov  
Email

## PROPOSAL ACCEPTANCE - TERMS AND CONDITIONS

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### 1.01 Basic Agreement and Period of Service

- A. Engineer shall provide, or cause to be provided, the services set forth in the attached proposal dated July 27, 2016 and titled "Addendum: Focused Joint-Use Cost-Sharing Infrastructure Feasibility Evaluation Proposal" ("Proposal"). If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth in the named Proposal. Owner shall pay Engineer for its services as set forth in Paragraph 2.01.
- B. Engineer shall complete its services within a reasonable time, or within the specific time period identified in the Proposal.
- C. ~~If the Project includes construction related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding \_\_\_\_\_ months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.~~
- D. Attachments:
  - 1. Engineer's Proposal including Engineer's Estimate of Professional Fees.
  - 2. Engineer's Schedule of Standard Hourly Rates and Reimbursable Expenses.

### 2.01 Fees and Payment Procedures

- A. Time & Materials Method: Owner shall pay Engineer for services on a time & materials basis. Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees multiplied by Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses, if any, and subconsultant's charges, if any.
- B. Not to Exceed Fee: The Engineer's not-to-exceed fee for the services set forth in the Proposal shall be Forty Six Thousand One Hundred Ten Dollars (\$46,110.00).
- C. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Engineer shall submit progress invoices based on actual labor hours expended and reimbursable expenses. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.
- D. Reimbursable Expenses: Meaning the actual expenses incurred by Engineer or Engineer's consultants directly in connection with the Assignment, and if authorized in advance by Owner, overtime Work requiring higher than regular rates.
- E. Standard Hourly Rates: The Standard Hourly Rates Schedule shall be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

- F. *Additional Services*: For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer on a Time & Materials Basis an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees, plus Reimbursable Expenses, if any, and subconsultant's charges, if any.

### 3.01 Termination

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.
      - 3) Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.
    - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

### 4.01 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

**5.01 Standard of Care**

- A. The Standard of Care: All professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

**6.01 Use of and Ownerships of Documents**

- A. Use of and Ownership of Documents: All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall, to the extent allowed by law, indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

**7.01 Design Without Construction Phase Services**

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in proposal. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract

Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in proposal.

**8.01 Opinions of Probable Construction Cost**

- A. Engineer’s opinions of probable Construction Cost are to be made on the basis of Engineer’s experience and qualifications and represent Engineer’s best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors’ methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator.

**9.01 Insurance**

- A. Engineer shall procure and maintain insurance as set forth below. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
  - a. Workers’ Compensation Employer’s Liability: Bodily Injury
    - 1) By Accident: Each Accident:..... \$1,000,000
    - 2) By Disease: Each Employee..... \$1,000,000
    - 3) By Disease: Policy Limit ..... \$1,000,000
  - b. General Liability
    - 1) Each Occurrence (Bodily Injury and Property Damage):..... \$1,000,000
    - 2) General Aggregate: ..... \$2,000,000
  - c. Automobile Liability
    - 1) Bodily Injury:
      - (i) Per Person.....\$1,000,000
      - (ii) Per Occurrence/Accident.....\$2,000,000
      - (iii) Property Damage – Per Accident.....\$1,000,000
  - d. Professional Liability
    - 1) Each Claim Made..... \$1,000,000
    - 2) Annual Aggregate ..... \$2,000,000

**10.01 Limitation of Liability**

- A. Limitation of Liability, Mutual Waiver, and Consequential Damages: To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other’s employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that the Engineer and Engineer’s officers, directors, partners, employees, shareholders, owners and sub-consultants total liability to Owner under this Agreement shall be

5 of 10  
 Proposal Acceptance, Terms and Conditions, Amendment

Owner \_\_\_\_\_  
 Engineer \_\_\_\_\_

*Note: This document was developed based on EJCDC Standard Form Design and Construction Related Documents, and has been modified as necessary by FEI Engineers, Inc. EJCDC retains all proprietary rights to these documents. EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services. Copyright ©2009 National Society of Professional Engineers for EJCDC. All rights reserved.*

limited to the total amount of compensation received by Engineer or \$50,000, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

**11.01 Dispute Resolution - Mediation**

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures below.
- B. Prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party of this Agreement. This Article shall survive completion or termination of the Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such a claim or dispute under the applicable law.

**12.01 Indemnification and Mutual Waiver**

- A. Indemnification by Engineer: To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, and employees from reasonable liabilities, costs, losses, and damages arising out of or relating to the Project, provided that any such liabilities, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, employees, or consultants.
- B. Indemnification by Owner: To the extent allowed by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants.
- C. Mutual Waiver: To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

**13.01 Third Party Beneficiaries**

- A. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Engineer. The Engineer's services under this Agreement are being performed solely for the Owner's benefit, and no other party or entity shall have any claim against the Engineer because of this Agreement or the performance or nonperformance of services hereunder.

**14.01 Corporate Protection**

- A. It is intended by the parties to this Agreement that the Engineer's services in connection with the Project shall not subject the Engineer's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Engineer, a Colorado corporation, and not against any of the Engineer's individual employees, officers or directors.

**15.01 General Considerations**

- A. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state of Colorado.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2013 Edition) unless the parties agree otherwise.
- G. The parties acknowledge that Engineer's proposal does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable laws and regulations.
- H. **TABOR.** The Parties understand and acknowledge that the Owner is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Owner are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town of Milliken's current fiscal period ending upon the next succeeding December 31.
- I. **Counterparts.** The Agreement may be executed in counterparts, each of which will be deemed an original. Delivery of an executed signature page by email transmission will constitute effective and binding execution and delivery of this Agreement.

- J. Immunities Preserved. It is the intention of the Parties that nothing in this Agreement shall be construed as a contractual waiver of any immunities or defenses available to the Town under the applicable provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*

## AMENDMENT TO OWNER-ENGINEER TERMS AND CONDITIONS

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**1.01 Background Data:**

***This Agreement may be amended only by written amendment signed by Owner and Engineer. If any other documents are attached to, referred to, incorporated in or otherwise made part of this Agreement which govern or purport to govern any matter in connection with the Work, such other documents shall constitute a part of this Agreement except to the extent the context thereof indicates an intent by the parties that such documents not be included.***

- A. Effective Date of Owner-Engineer Contract: \_\_\_\_\_
- B. Owner: \_\_\_\_\_
- C. Engineer: \_\_\_\_\_
- D. Project: \_\_\_\_\_

**2.01 Description of Modifications:**

- A. Scope of Services: Engineer shall perform or furnish the following Additional Services as described:

a.

- B. Owner Responsibilities: Modified as follows:

a.

- C. Payment: For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

- a. Original Contract amount: ..... \$
- b. Net change for prior amendments: ..... \$
- c. This amendment amount: ..... \$
- d. Adjusted Contract amount: ..... \$

\*\*The foregoing Summary is for reference only and does not alter the terms of the Contract.

- D. Schedule: Rendering of services is modified as follows:

a.

- E. Other portions of the Contract (including previous amendments, if any): Modified as follows:

a.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is \_\_\_\_\_.

## AMENDMENT AUTHORIZATION

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**Project:** \_\_\_\_\_

REPRESENTATIVE FOR ENGINEER

REPRESENTATIVE FOR OWNER

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

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Town of Milliken  
Attn: Mr. Kent Brown  
1101 Broad Street  
Milliken, Colorado 80543

July 27, 2016

*TRANSMITTED VIA EMAIL (NO HARD COPY WILL FOLLOW):  
Kent Brown ([kbrown@millikenco.gov](mailto:kbrown@millikenco.gov))*

**RE: Town of Milliken – ADDENDUM: FOCUSED JOINT-USE COST-SHARING  
INFRASTRUCTURE FEASIBILITY EVALUATION PROPOSAL**

Dear Mr. Brown & Town Council Members:

Thank you for the opportunity to provide an Alternate Proposal in the form of an Addendum to our July 8, 2016 Town of Milliken (Town) Surface Water Supply Feasibility Study scope of services and fee estimate. This Alternate Proposal is a Focused Joint-Use Infrastructure Feasibility Evaluation that will require the Town and Johnstown to work together. We look forward to the continued opportunity to work with you in developing a viable path forward.

Below is a narrative of our understanding of the benefits provided by evaluating a potential joint-use cost-sharing infrastructure framework with the Town of Johnstown, followed by the proposed scope of work and fee estimate.

### **BENEFITS OF JOINT-USE INFRASTRUCTURE FOCUSED FEASIBILITY EVALUATION**

By limiting the evaluation to a joint-use facilities infrastructure framework with Johnstown, the following water supply potential benefits are available to the Town.

The benefits of a focused joint-use feasibility evaluation include:

- It is believed that cost-sharing certain infrastructure components that exist in Johnstown's system that are strategically well-placed for use in a Town surface water supply scenario is the lowest cost approach available for Milliken – resulting in capital savings over competing surface water options.
- Utilizes the Town's existing water rights transferred to divert high quality surface water shares at the Consolidated Home Supply Ditch dam.
- Information obtained and documented as part of the Focused Joint-Use Feasibility Evaluation can be used to develop a joint-use strategy and approach.
- Once a joint-use strategy (or strategies) is/are developed, talking points can be developed and a proposal (or mini-proposals) for cost-sharing and joint-use of key infrastructure can be advanced and preliminary discussions can be scheduled.
- Ascertain whether this anticipated lowest-cost path of the surface water supply options available to the Town is either viable or can be made viable through the completion of subsequent tasks/milestones.

- If found to be feasible, the cost-sharing of infrastructure components has significant potential to bring the early-year NPV cost of the surface water option significantly closer to the High Recovery RO option under consideration. (If this were to be verified and supported, it would further shift the mid-years (15- 25 year) and the 25 -50 years and beyond NPV cost comparison more heavily in favor of the surface water option).
- Early recognition of the potential viability of the cost-sharing infrastructure surface water supply option, and devotion of resources towards implementing this option, has the beneficial effect of reducing the number of years required under the 100 percent consecutive water system water supply purchase scenario.
- Early dedication of resources towards implementing this option can have a beneficial effect on the political aspects of negotiating a joint-use partnership agreement framework, since the discussions can be undertaken under a more-reasonable timeframe.
- Similarly, the Water Court work associated with the transfer of water rights higher up on the Big Thompson River, may also benefit from the early dedication of resources, and a less-compressed timeframe.

## SCOPE OF WORK

The Focused Joint-Use Feasibility Evaluation work scope will include a similar task list to that proposed for the original proposal – but focused on the joint-use cost sharing of infrastructure components.

- Information to be obtained through completion of the proposed Focused Joint-Use Feasibility Evaluation includes:
  - Development of detailed water rights transfer work scope and projected schedule for:
    - ✓ Consolidated Home Supply Ditch outstanding shares
    - ✓ Consolidated Home Supply Ditch outstanding price/share
    - ✓ Typical ditch carriage fee structure
    - ✓ Lone Tree Reservoir storage fee structure
    - ✓ Capacity of ditch conveying to Johnstown raw water storage reservoir / carriage fee structure
    - ✓ Johnstown raw water storage reservoir capacity / storage fee structure
  - Raw water transmission pipeline/pump station capacity from Lone Tree Reservoir to Johnstown raw water reservoir
  - Fee structure for pump station/pipeline conveyance
  - Seasonal taste and odor information
  - Johnstown current water supply demand and projected demand
  - Existing Johnstown plant capacity; treatment processes; land parcel holding;
  - Capacity expansion planning options under consideration
  - Proposed new finished water transmission pipeline alignment from Johnstown to Milliken
  - Raw water storage siting options (if required)

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## **TASK 1. FOCUSED JOINT-USE FEASIBILITY EVALUATION**

The scope remains the same as the original proposal.

### **1.1. DEVELOPMENT OF DETAILED WATER RIGHTS TRANSFER WORK ITEMIZATION AND PROPOSED SCHEDULE**

The scope remains the same as the original proposal.

### **1.2. DOCUMENTATION OF EXISTING WATER USE / DEMAND PROJECTIONS**

The scope remains the same as the original proposal.

### **1.3. FOCUSED JOINT-USE FEASIBILITY EVALUATION**

The proposed Feasibility Study will present a conceptual level analysis for constructing a surface source water transmission, storage, and treatment infrastructure improvements to the existing Johnstown system, utilizing the transferred Consolidated Hillsborough Ditch water rights to the Consolidated Home Supply Ditch dam diversion. The feasibility study will include:

- Water rights transfer work itemization (see Section 1.1).
- Documentation of water usage and demand (see Section 1.2).
- Development of the joint-use cost-sharing infrastructure option based on existing Johnstown water supply infrastructure components.
- Development of the Engineer's conceptual level opinion of probable cost.
- Development of a draft report for the Town's review and comment.
- One meeting to review and discuss the Town's comments.
- Development and delivery of a Final Report.
- Presentation of the Final Report and the recommended alternate to the Town Board.

## **INFORMATION TO BE PROVIDED BY THE TOWN OF MILLIKEN**

The information requirements remain the same as the original proposal.

## **INFORMATION PROVIDED BY OTHERS AND PAID FOR BY THE TOWN OF MILLIKEN**

The information requirements remain the same as the original proposal.

## **SPECIFICALLY EXCLUDED FROM THE CURRENT PROPOSAL**

The exclusions remain the same as the original proposal.

## **SCHEDULE**

FEI is ready and available to begin work immediately upon receiving Notice to Proceed, and estimates that the majority of services (through submittal of a Draft review report) will be completed within 60 days after Notice to Proceed.

## **COMPENSATION**

The estimated compensation for performing the Scope of Services as identified herein is on a time and material basis (T&M) not-to-exceed fee of \$46,110. Additional services can be provided upon request and mutual agreement. FEI will submit progress invoices based on actual labor hours expended and reimbursable expenses.

A copy of our Billing Rate Schedule is attached along with our standard Terms and Conditions. If this Professional Services Agreement is acceptable to you, please sign on the first page of the Terms and Conditions, keep one original copy for your records and return one complete original copy to FEI.

If you have any questions, please contact Mark Dahm or myself at (970) 247-0724.

Sincerely,  
**FEI ENGINEERS**



Patrick O'Brien, P.E.  
Principal

**FEI ENGINEERS**



Mark Dahm, P.E.  
Senior Project Manager

Encl.: FEI Fee Estimate  
2016 Rate Schedule



**Town of Milliken - Water Treatment  
Focused Joint-Use Feasibility Evaluation**

July 27, 2016

TASKS AND SUBTASKS		Scope Of Services Task Number	LEVEL OF EFFORT (hours)					Total FEI Hours	Total FEI Labor \$	Subconsultants (Leonard Rice Engineers)	FEI Expenses	FEI Expenses and Subs Markup 10%	Total FEI Fee
			PIC / PM P. O'Brien	Sr PM /Tech Lead M. Dahm	Sr Eng K. Fearney	Senior Designer K. Rindt	Admin H. Harris						
			\$180/hr	\$165/hr	\$145/hr	\$110/hr	\$85/hr						
1	Focused Joint-Use Feasibility Evaluation	1	5	56	152	32	6	251	\$36,210	\$8,000	\$1,000	\$900	\$46,110
			\$900	\$9,240	\$22,040	\$3,520	\$510						
1.1	Development of Detailed Water Rights Transfer Work Itemization		1	8	4		2	15	\$2,250	\$8,000		\$800	\$11,050
1.2	Documentation of Existing Water Use / Demand Projections			8	24			32	\$4,800				\$4,800
1.3	Focused Joint-Use Feasibility Evaluation		4	40	124	32	4	204	\$29,160		\$1,000	\$100	\$30,260
<b>Project Summary</b>			Task Hours					251	36,210	8,000	1,000	900	\$46,110.00
			5	56	152	32	6						
			Task Fees										
			\$900	\$9,240	\$22,040	\$3,520	\$510						



## 2016 RATE SCHEDULE

Personnel	Rate per Hour, \$
Principal Engineer	180
Senior Project Manager	165
Discipline Lead	165
Project Manager	155
Senior Engineer	145
Project Engineer II	135
Project Engineer I	125
Engineer III	118
Engineer II	115
Engineer I	110
Senior Resident Project Representative	120
Resident Project Representative	110
Senior Designer	110
CAD Designer	85
CAD Technician	75
Funding/Planning Specialist	90
Administrative	85

*\*2016 FEI billing rates effective 1/1/2016.*

### Reimbursable Expenses Schedule

Direct expenses will be charged at actual cost plus 10% for handling and insurance. Incidental expenses such as miscellaneous copying, telephone service and computer equipment are included in the FEI Engineers fee. Reimbursable (direct) expenses may include, but are not limited to:

- Additional outside professional services provided beyond those stipulated in the scope of work;
- Additional copies of reports, drawings, etc. beyond those stipulated in the scope of work;
- Postage, courier fees, and shipping;
- Project vehicle mileage (which will be charged at the current IRS rate);
- Owner-approved, project-related purchases;
- Project business meals and lodging;
- Resident project engineer equipment and rental; and
- Printed Photos.

These direct expenses will be invoiced along with monthly labor Costs.



Town of Milliken  
Attn: Mr. Kent Brown  
1101 Broad Street  
Milliken, Colorado 80543

July 8, 2016

*TRANSMITTED VIA EMAIL (NO HARD COPY WILL FOLLOW):*

*Kent Brown ([kbrown@millikenco.gov](mailto:kbrown@millikenco.gov))*

**RE: Town of Milliken – Surface Water Supply Feasibility Study  
Professional Engineering Services Proposal**

Dear Mr. Brown & Town Council Members:

Thank you for the opportunity to provide a scope of services and fee estimate for the Town of Milliken (Town) Surface Water Supply Feasibility Study. We look forward to the continued opportunity to work with you.

Below is a narrative of our project understanding followed by the proposed scope of work and fee estimate.

### **PROJECT UNDERSTANDING**

The existing reverse osmosis (RO) water treatment plant is currently shut-down due to high selenium concentrations in the treatment byproduct (brine stream). The RO plant treated alluvial source water to produce a portion of the Town's total drinking water demand. The alluvial source water has high concentrations of total dissolved solids (TDS), removed by the RO, which produces a concentrated byproduct wastewater stream called brine. The reject was previously discharged to surface water; however, the discharge did not meet the permit water quality standards primarily due to selenium concentrations. Since the RO plant has been shut-down, the Town of Milliken has been purchasing 100% of the Town's drinking water demand as a consecutive system from Central Weld County Water District (Central Weld) and the City of Greeley. While purchased water is able to meet the demands of the Town, the annual cost is high and is expected to increase.

The Town is interested in the development of a conceptual level analysis to evaluate the feasibility of exchanging the existing alluvial source water rights for high quality surface water source rights that will utilize a conventional treatment process (i.e. coagulation, flocculation, sedimentation, and media filtration). The water rights exchange would include the Town's current ownership of 14 shares, corresponding to 711 acre-feet average consumptive use (per the existing decree - 02CW339) of Consolidated Hillsborough Ditch water; these water rights would be transferred upstream (surface water source) to the diversion dam of the Consolidated Home Supply Ditch at the mouth of the Big Thompson Canyon. Note that the surface water sources in the vicinity of the Town including: the Little Thomson River, Big Thompson River, Hillsborough Ditch, and other nearby ditches have poor water quality (high TDS) similar to the alluvial water quality, and thus, require treatment with RO.

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## **SCOPE OF WORK**

### **TASK 1. SURFACE WATER SUPPLY FEASIBILITY STUDY**

The Feasibility Study Task work scope will include development of the following subtask items: Detailed Water Rights Transfer Work Itemization and Proposed Schedule; Documentation of Existing Water Use/Demand Projections (utilizing the existing June 2014 Milliken Water and Sanitary Sewer Master Plan Update); and Development of up to three (3) surface source water transmission, storage, and treatment alternates.

Specific task-related components and deliverables include:

- One (1) project kick-off meeting / work session (conference call)
- Draft Feasibility Study
- One meeting to review the draft feasibility study
- Final Feasibility Study
- Town Board presentation of the Feasibility Study and the recommended alternate

#### **1.1. DEVELOPMENT OF DETAILED WATER RIGHTS TRANSFER WORK ITEMIZATION AND PROPOSED SCHEDULE**

The analysis of the Town's water rights portfolio will be verified and a set of tasks will be developed to propose a framework for transferring the exchange of the Town's current ownership of 14 shares, corresponding to 711 acre-feet average consumptive use of Consolidated Hillsborough Ditch water, upstream to the diversion dam of the Consolidated Home Supply Ditch at the mouth of the Big Thompson Canyon. The Water Rights subtask will include:

- Review of existing information and development of any new concepts
- Development of a collaborative information exchange framework for a Forrest Leaf and Leonard Rice Engineers (LRE) water rights professional's joint effort

#### **1.2. DOCUMENTATION OF EXISTING WATER USE / DEMAND PROJECTIONS**

The proposed Feasibility Study scope will rely on the historical compilation and projections of existing water use and demand presented in the June 2014 Milliken Water and Sanitary Sewer Master Plan Update. The documentation of water use and demand will not include the confirmation and/or re-assessment of the existing June 2014 Milliken Master Plan projections of historical / future water use and demand.

This information will be assembled in a structure projecting purchased water capacity (for years prior to the surface water infrastructure being in-place) added to surface water treatment capacity to meet demand requirements in a 20 to 50 year projected timeframe.

#### **1.3. FEASIBILITY REPORT**

The proposed Feasibility Study will present a conceptual level analysis for constructing a surface source water transmission, storage, and treatment infrastructure, utilizing the transferred

Consolidated Hillsborough Ditch water rights to the Consolidated Home Supply Ditch dam diversion. The feasibility study will include:

- Water rights transfer work itemization (see Section 1.1).
- Documentation of water usage and demand (see Section 1.2).
- Development of up to three (3) surface source water transmission, storage, and treatment alternates.
- Development of the Engineer’s opinion of probable cost for the alternates.
- Alternate recommendation.
- Development of a draft report for the Town’s review and comment.
- One meeting to review and discuss the Town’s comments.
- Development and delivery of a Final Report.
- Presentation of the Final Report and the recommended alternate to the Town Board.

### **INFORMATION TO BE PROVIDED BY THE TOWN OF MILLIKEN**

1. System mapping of existing drinking water distribution system in either GIS (.shp) for AutoCAD (.dwg) formats.
2. Treatment plant as-built drawings including details of existing piping, model numbers of existing pumps and equipment, and details of the existing finished water storage tank.
3. Existing hydraulic profile.
4. Any available GIS data related to the location of the surface source water diversion, transmission, storage and treatment.

### **INFORMATION PROVIDED BY OTHERS AND PAID FOR BY THE TOWN OF MILLIKEN**

1. Services provided by Forrest Leaf to develop and assemble a detailed list and description of work products required and proposed scheduling necessary to effect the proposed water rights transfer. Note that Leonard Rice Engineers (LRE) will provide a limited level of effort (please see fee estimate for LRE level of effort) in a collaborative information exchange joint-effort mode to develop the water rights portfolio summary and Consolidated Hillsborough shares transfer work product description with Forrest Leaf.

### **SPECIFICALLY EXCLUDED FROM THE CURRENT PROPOSAL**

1. Information to be provided by Milliken or Others.
2. Development of historical usage or future demand projections from usage, production, or metering raw data for other potential municipal partners. It is assumed that this data will be available in the form of existing planning documents or summarized monthly/yearly data in EXCEL format.

3. Confirmation and/or re-assessment of the existing June 2014 Milliken Master Plan projections of historical / future water use and demand.
4. Site investigations (survey and geotechnical).
5. Any design-phase services beyond conceptual-level feasibility design investigation.
6. Evaluation of improvements to the existing potable water distribution system.
7. Evaluation of the existing RO drinking water treatment facility.
8. Financial, managerial, or technical capacity demonstration.

### SCHEDULE

FEI is ready and available to begin work immediately upon receiving Notice to Proceed, and estimates that the majority of services (through submittal of a Draft review report) will be completed within 60 days after Notice to Proceed.

### COMPENSATION

The estimated compensation for performing the Scope of Services as identified herein is on a time and material basis (T&M) not-to-exceed fee of \$49,970. Additional services can be provided upon request and mutual agreement. FEI will submit progress invoices based on actual labor hours expended and reimbursable expenses.

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If you have any questions, please contact Mark Dahm or myself at (970) 247-0724.

Thank you.

Sincerely,  
**FEI ENGINEERS**



Patrick O'Brien, P.E.  
Principal

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Mark Dahm, P.E.  
Senior Project Manager

Encl.: FEI Fee Estimate  
2016 Rate Schedule