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TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 15, 2024

SUBJECT: Memorandum of Understanding of the Town of Johnstown and the Town of Milliken – Application to Change the Use of Shares of the Consolidated Hillsborough Ditch Company

ACTION PROPOSED: Consider the Memorandum of Understanding Between the Town of Johnstown and Milliken

ATTACHMENTS:

1. Memorandum of Understanding
2. Exhibit A – Preliminary

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Presented for your review and consideration is a Memorandum of Understanding (MOU) between the Town of Johnstown and Town of Milliken. Johnstown and Milliken have been working collaboratively for a year now, towards filing a joint water court change case application. The water proposed to be changed in this application will be the Consolidated Hillsborough Ditch Company (CHDC) and the change of use will be for municipal use. Both Johnstown and Milliken are influenced and have the Hillsborough Ditch in their community. Given the existence of the ditch in our communities and the need for this water in the future to provide adequate supply to our respective areas, Johnstown approached Milliken about the idea of a joint change case. This agreement is a result of those efforts.

To provide some greater context, irrigation water for agricultural purposes exists throughout the Town of Johnstown through various ditch companies. In order for this water to be consumptive (municipal use) an applicant needs to file a water court change case and ultimately a decree is adjudicated for the use of the specific water shares that are within the change case.

The Community that Cares

Johnstown and Milliken as a team engaged with existing shareholders and offered to carry their shares through the court change process. Inclusion of shareholders water into this change case was completely at the choice and discretion of the shareholder. In total, there are 118 shares in the CHDC system and only 14 shares have been changed for municipal use (owned by Milliken). It is estimated that about 62 total shares, including the 7 shares owned by the Town of Johnstown will be included in the case. Each shareholder had the right to choose which side of the change case they wanted to be affiliated – Johnstown or Milliken. Johnstown’s water engineer – Helton & Williamsen will act as the lead water engineer. The water engineering and consulting costs for the change case will be based on the distribution of the total number of shares and who the shareholder chooses to affiliate their share(s) with. Each party will pay for their own legal fees incurred as part of the change case and Milliken will pay for its own costs associated with oversight by its contracted water engineer. Staff is requesting that Exhibit A referenced in the MOU and shown in this agenda item as the preliminary distribution, is completed administratively based on the final number of shares in the change case and their distributed affiliation.

For informational purposes, the benefit to carrying others through the change case is that the other shares that move through the change case will also be available for municipal use if a shareholder dedicates their share(s) to either Johnstown or Milliken in the future. Furthermore, those shares that are not included will not be eligible for municipal use. In the future, if Johnstown does provide potable water credit for an unchanged share, it would likely be at a lesser yield compared to a changed share.

STRATEGIC PLAN ALIGNMENT:

- Healthy & Resilient Economy
 - *Cultivate local and regional partnerships that ensure the long-term success and growth of Northern Colorado*
- Quality Infrastructure & Facilities
 - *Ensure future viability of infrastructure and facilities*

LEGAL ADVICE:

The Town’s Water Attorney assisted with drafting and negotiation of the document.

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Approve the MOU as presented with authorization of the Town Manager to finalize the affiliation of shares for equitable cost distribution.

SUGGESTED MOTIONS:

For Approval: I Move to Approve the MOU as Presented and Authorize the Town Manager to Finalize the Affiliation of Shares for Equitable Cost Distribution in Exhibit A.

For Denial: I Move to Deny the MOU as Presented.

Reviewed and Approved for Presentation,



Town Manager