

SECOND AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE

BETWEEN THE CITY OF GREELEY, COLORADO
AND THE TOWN OF MILLIKEN, COLORADO

This SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR TREATED WATER SERVICE (“Agreement”) is entered into this ____ day of _____ 2021, by and between THE CITY OF GREELEY, COLORADO, a home rule municipality acting by and through its Water Enterprise (“Greeley”) and THE TOWN OF MILLIKEN, COLORADO, a home rule municipality (“Milliken”), to set forth the terms and conditions by which Greeley will use its supply and treatment facilities to provide the treatment and delivery of potable water to Milliken.

WHEREAS, pursuant to C.R.S. § 29-1-203, governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the following cooperating units of government; and

WHEREAS, Greeley and Milliken previously entered into that certain Intergovernmental Agreement for Treated Water Service on July 20, 1999 (“1999 IGA”), and into that First Amendment to the Intergovernmental Agreement for Treated Water Service on May 16, 2017 (“First Amendment”); and

WHEREAS, Greeley and Milliken have a continuing common interest in obtaining high-quality treated water in sufficient quantities to meet the present and future needs of their citizens and service areas; and

WHEREAS, Greeley and Milliken desire to further amend the 1999 IGA, as previously amended by the First Amendment, to modify the methodology by which Milliken’s peak daily and peak hourly demand factors are to be calculated; and

WHEREAS, Greeley and Milliken desire to reduce their understandings, and the terms and conditions of this Agreement, to writing;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged, and in further consideration of the mutual covenants, undertakings, terms, and conditions contained herein, Greeley and Milliken agree as follows:

1. **DEFINITIONS.** The terms used herein are defined as follows:
 - 1.1 “Greeley” shall refer to the City of Greeley and any authorized representative thereof.
 - 1.2 “Greeley Water System” or “Greeley Water System Enterprise” shall refer to Greeley’s water treatment plants, treated water conveyance and storage systems, pump stations and related appurtenances for the collection, distribution, and measurement of water.
 - 1.3 “Milliken” shall refer to the Town of Milliken and any authorized representative thereof.

1.4 “Milliken System” or “Milliken Water System Enterprise” shall refer to Milliken’s treated water conveyance and storage systems, pump stations, and related appurtenances for the distribution of water downstream of master meters gauging Greeley’s delivery to Milliken.

2. USE. Pursuant to the terms of this Agreement, Greeley agrees to treat water, usable in the Greeley Water System and approved for municipal use in the Milliken System under Colorado law, for Milliken in the manner and in such amounts as are more fully set forth herein.

2.1 During each full year that this Agreement is in effect, Milliken shall take a minimum of 20 million gallons of treated water. If in any year treated water is available to Milliken and Milliken fails to take and use 20 million gallons of treated water, Milliken shall nonetheless pay for this minimum allotment of treated water.

2.2 Nothing herein shall limit Milliken from taking treated water in excess of 20 million gallons subject to the availability thereof. All treated water in excess of 20 million gallons shall be expressly conditioned upon Greeley having the excess capacity to provide such water, and Milliken shall pay for the same.

3. POINT OF DELIVERY.

3.1 Treated water from the Greeley Water System shall be delivered to Milliken through multiple master meters, the location of which will be mutually established and agreed upon in writing by both municipalities. Unless specifically authorized by Greeley, no water from the Milliken System shall flow into the Greeley Water System.

3.2 Unless otherwise agreed upon between the parties, Greeley shall construct, own and maintain treated water meter vaults, meters, back-flow prevention devices and all associated facilities located at and upstream of the delivery points. All of the costs of the metering facilities attributable to service to Milliken shall be paid by Milliken by and through inclusion in the Milliken rate base charged by Greeley and more fully described in paragraph 7. Greeley agrees to design, construct and maintain all metering facilities in a prudent and cost effective manner. Milliken agrees to secure and provide such easements as may be required by Greeley for metering facilities, and to guarantee access to metering facilities for Greeley. Each water meter shall be operated and maintained so as to record both cumulative flow and, as needed, maximum hourly and maximum daily flow within the accuracy prescribed by the then-current American Water Works Standards, or such other industry-recognized standard if American Water Works Standards are no longer available. Each party will give the other seven calendar days notice prior to conducting any routine or independent meter test. Milliken shall have access to all metering facilities herein contemplated to read meters as Milliken may deem necessary. Milliken shall own, operate, maintain, and have the ability to valve the line(s) downstream of the master meter(s) for operation, maintenance, and repair purposes.

3.3 The existing master meter is located at or near the intersection of Weld County Road 54 and State Highway 257. The transmission pipeline north (upstream) of this location was constructed by Milliken and dedicated to the City of Greeley. To the extent that Greeley uses any infrastructure installed by Milliken, such usage shall be subject to reimbursement for oversizing in accordance with Greeley’s then-current ordinance.

4. POTABLE WATER PROJECTIONS AND SYSTEM CAPACITY.

4.1 No later than April 1 of each year, Milliken shall provide written notice to Greeley of its projected treated water requirements for the current calendar year and the five consecutive years following the year in which such notice is given. The projections in the notice shall include, at a minimum: estimated total annual consumption, estimated maximum day, and estimated maximum hourly usage. Concurrent with submission of the projections, Milliken shall also provide any planned system facility changes and any additional points of delivery to Milliken from Greeley. Any actual usage in excess of projected peak or total demands which has a cost impact, excepting fire flow or other emergencies, shall result in supplemental demand charges as determined by the cost-of-service rate study and approved by the Greeley Water and Sewer Board.

4.2 If Greeley determines the Greeley Water System will be unable to meet Milliken's projected demands, Greeley will give Milliken notice two years prior to the projected capacity limitation. Milliken has authority to obtain water beyond the capacity limitation from other sources. Greeley will use its best efforts to avoid a capacity limitation.

4.3 It is understood and agreed by Greeley that, as of the date of this Agreement, Milliken is also receiving treated water from Central Weld County Water District. Nothing in this Agreement limits Milliken from continuing to receive treated water from sources other than Greeley during the term of this Agreement, in whatever amounts Milliken deems appropriate.

5. RAW WATER REQUIREMENTS. Milliken shall acquire sufficient water rights which are usable in the Greeley Water System and approved for municipal use in the Milliken System under Colorado law in order to satisfy the treated water requirements of Milliken, expressly subject to the following conditions:

5.1 Greeley currently operates two water treatment plants, the Bellvue Plant and the Boyd Lake Plant, which are both capable of supplying treated water to Milliken. Milliken's raw water requirements under this Agreement are based on which plant treats the raw water used to supply the treated water to Milliken. At the time this Agreement is executed, Greeley anticipates that the Bellvue Plant will treat and supply water to Milliken during the months of January, February, March, April, October, November, and December, and that the Boyd Lake Plant will treat and supply water during the months of May through September. However, Greeley may in its sole discretion determine which plant will be used to treat any water provided by Milliken under this Agreement.

5.2 On or before April 15 of each year, Milliken shall transfer to Greeley sufficient Colorado-Big Thompson ("CBT") water to satisfy the projected Milliken demand for the full year, including a 5% shrink attributable to the Greeley Water System and any shrink due to the Northern Colorado Water Conservancy District ("Northern Water"). Subject to prior written approval from Greeley and the Water Court for Water Division No. 1 by decree or administratively by the State Engineer's Office ("SEO"), Milliken may also transfer to Greeley water rights from the Greeley-Loveland Irrigation Company ("GLIC") to satisfy a portion of the projected Milliken demand. Upon such approval by Greeley and the Water Court or SEO, the transfer of such rights shall be subject to the shrink and carryover described in paragraph 5.4 below. Greeley may immediately curtail deliveries of treated water to Milliken in any event that the transferred Milliken water rights fail to yield sufficient volumes of raw water to meet projected demands or actual metered usage.

5.3 Milliken shall pay all assessment costs from Northern Water for Milliken's CBT water and from GLIC for Milliken's GLIC water, and running charges assessed by Northern Water or GLIC, if applicable, on any of the water provided by Milliken to Greeley for treatment under this Agreement.

5.4 Water transferred by Milliken to be treated at Greeley's Boyd Lake Plant shall be of a sufficient amount to account for the 5% shrink attributable to the Greeley Water System and any shrink applied by Northern Water as described above. Transferred GLIC water shall be of a sufficient amount to additionally account for shrink and carryover factors, which will vary and be determined on an annual basis. At the time this Agreement is executed, those factors are 28% (for shrink) and 11% (for carryover). Greeley shall inform Milliken in writing as soon as Greeley knows that those loss factors have changed.

5.5 Milliken shall be solely responsible for meeting any return flow requirements associated with any GLIC raw water it provides to Greeley for treatment, as well as the submission to the Colorado Department of Water Resources ("DWR") of any decree accounting related thereto, and compliance with any other State or Federal requirements. Milliken shall provide to Greeley a copy of any such accounting submitted to DWR. While Milliken retains dominion and control over its transferred water, Greeley shall maintain complete and unilateral control over Greeley's Water System operations. Greeley may use the Greeley Water System to move Milliken transferred water to the appropriate location for treatment. Any loss in the optimal yield of Milliken water rights due to this necessary flexibility of operations will be assessed in proportion to the loss in yield to Greeley's water.

5.6 Greeley shall be obligated to treat for Milliken only that water delivered for treatment under this Agreement. If actual metered usage by Milliken exceeds the amount delivered by Milliken less losses, Greeley shall immediately notify Milliken of such shortage, and may immediately curtail deliveries of treated water to Milliken. Upon such written notification, Milliken will have twenty (20) days to transfer additional raw water to Greeley for treatment. During this period, Greeley may, at its sole discretion regarding availability, agree to lease additional raw water to Milliken at the then current rate established by the Greeley Water and Sewer Board and adopted in accordance with Section 17-4 of the Greeley City Charter, and also in accordance with the then current City of Greeley Non-Agricultural Water Rental Policy. If Greeley has additional raw water available to lease, Milliken shall be given the priority to lease it on an equal basis with the other municipalities to whom Greeley leases raw water.

5.7 Unless otherwise approved in advance by Greeley in writing, Milliken shall be limited under this Agreement to a maximum volume of treated water from the Boyd Lake Plant of 800,000 gallons per day, and a maximum volume of 70 acre-feet per calendar month. Consistent with the discretion maintained by Greeley and described in paragraph 5.1 above, Greeley may further limit these maximum volumes if it determines that additional capacity at the Boyd Lake Plant is necessary to treat and supply water to its own citizens.

6. **EMERGENCY OPERATIONS.** In the event of a shortage of treated water, caused by the inability of a component of the Greeley Water System to function, Milliken and Greeley shall share proportionally in water use reductions. Greeley shall develop a schedule and method of reducing water demand, with initial emphasis on reducing all nonessential uses such as lawn and parks irrigation. If a shortage persists, Milliken and Greeley agree to impose emergency rates, developed by Greeley, which may be different for each customer category and which are intended to reduce discretionary consumption of treated water. The impact of the emergency rates shall be fairly and equally distributed among both Milliken and Greeley water customers. In a prolonged shortage, Milliken and Greeley agree to adopt a uniform set of enforcement tools and penalties to curtail usage. In any such event, Greeley will make every effort feasible to continue to meet both Milliken's and Greeley's water demand, including obtaining treated water from other providers. In the event of a shortage, nothing shall prevent Milliken from independently using

an alternate source of treated water in whatever amount Milliken deems necessary, until Greeley can again bring its facilities on line.

7. RATES FOR TREATED WATER SERVICE. The rates for treated water delivered by Greeley to Milliken shall be based upon the City of Greeley water rate cost-of-service model, which includes costs for the use of those Greeley Water System assets involved in the treatment and delivery of water to Milliken under this Agreement. Milliken agrees to pay the rate of cost-of-service plus ten percent. The cost-of-service rates shall be reviewed annually by the City of Greeley and may be adjusted in accordance with Section 17-4 of the Greeley City Charter. Greeley shall give to Milliken an advance notice of ninety (90) days if the then current rate will change. Cost-of-service rates include a cost to provide peak demands, as described below.

8. BILLING. Bills shall be paid within thirty (30) days of the date due, after which time interest penalties shall begin to accrue at the rate of one percent per month, or fraction thereof, during the period in which the bill remains unpaid.

9. NO REQUIRED RIGHTS OR VESTING IN WATER RIGHTS OR IN WATER SYSTEM.

9.1 As contained in section 17-1 of the Greeley City Charter, the Greeley Water System is an Enterprise, as that term is defined pursuant to article X, section 20 of the Colorado Constitution. The Greeley Water System Enterprise is owned by the citizens of Greeley. Similarly, the Milliken System is an Enterprise, owned by the citizens of Milliken.

9.2 Milliken specifically acknowledges and agrees that no rights or ownership of the Greeley Water System shall become vested as a result of such service. Neither Greeley nor Milliken shall, by reason of any provision of this Agreement or use of water hereunder or otherwise, acquire any vested or adverse right, in law or in equity, in the water rights or water system owned by the other municipality. Neither the assignment, use, rental, or license, of water or water rights nor the payment of system development charges shall be deemed to initiate, create, or vest any rights or ownership by either Greeley or Milliken in the other's water rights or water system. Further, Milliken shall not assert or claim any vested rights to continued service, other than as established by the terms of this Agreement, as it may be amended or extended in the future.

10. POTABLE WATER. The treated water delivered by Greeley to the Milliken master meters shall be potable water which complies with applicable Federal and State potable water laws.

11. PEAK DEMAND MEASUREMENTS AND DETERMINATION. The peak daily and peak hourly demand factors to be used in the calculation of Milliken's rate for treated water service shall be equal to the peak daily and peak hourly demand factors assumed for and applicable to Greeley's own inside-the-City residential customers, as calculated in accordance with Greeley's cost-of-service rate model. In no case will past or current water bills be adjusted for changes in the peak demand factor.

12. SYSTEM DEVELOPMENT CHARGES.

12.1 Milliken shall pay to Greeley an annual system development charge ("SDC") when the metered water delivered to Milliken in any year exceeds the acre-feet delivered in the base year. Payment of the SDC will create a new base year delivery volume. No SDCs will be due in subsequent years for metered delivery equal to or less than the new base year delivery volume. Payments of the SDC will occur in twelve monthly increments following the calendar year in which

the exceedance occurs. In no case shall SDCs be refunded. Milliken's current base year volume at the time this Agreement is executed (September 2021) is 442.1 acre-feet.

12.2 The SDC due shall be a percentage of the then-current Inside the City Greeley ¾-inch tap plant investment fee (expressed in \$/acre-foot), to be multiplied by Milliken's consumption in acre-feet of water metered in excess of the base year delivery. The SDC percentage is calculated as follows: the typical Milliken single-family customer benefits from 75% of Greeley Water System. To express Greeley's plant investment fee in terms of \$/acre-foot, the average annual inside-the-City residential demand, as used in the annual update of the Greeley rate model, is divided into the plant investment fee.

12.3 THE FOLLOWING CALCULATION UTILIZES 2016 DATA TO DERIVE EXAMPLE FIGURES FOR THE SOLE PURPOSE OF DEMONSTRATING THE SDC METHODOLOGY. ANY ACTUAL SDC BORNE BY MILLIKEN WILL VARY ANNUALLY, IN ACCORDANCE WITH THE METHODOLOGY DESCRIBED IN THIS PARAGRAPH 12.

Example Conversion and Calculation of SDC Rate

Average Annual Demand: 135,000 gallons (0.414 acre-feet per ¾-inch tap)
Current Inside the City Greeley PIF: \$10,800

Conversion of Greeley PIF: $(\$10,800) / (0.414 \text{ AF/year}) = \$26,087 \text{ per AF/year}$

Milliken SDC: $(75\%) * (\$26,087 \text{ per AF/year}) = \$19,565 \text{ per AF/year}$

Example Base Year and SDC Calculation

Milliken Base Year Volume: 442.1 acre-feet
Milliken Actual Metered Flow: 450 acre-feet (7.9 AF in excess of Base Year Volume)

Calculation of Total SDC Due: $(450-442.1) * (\$19,565) = \$154,563.50$

Milliken's Base Year Volume would then increase to become 450 AF.

13. RELEASE, HOLD HARMLESS, INDEMNIFICATION.

13.1 Both Milliken and Greeley are public entities, as that term is defined pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. The parties to this Agreement have the benefits and responsibility enumerated in the Colorado Governmental Immunity Act. Each party shall defend any and all claims for injuries or damages pursuant to and in accordance with the requirements and limitations of the Colorado Governmental Immunity Act occurring as a result of negligent or intentional acts or omissions of the parties, their agents, employees and assigns.

13.2 In addition, Greeley shall be responsible for any and all liability for injuries or damages caused by negligent acts or omissions of Greeley, its officers, employees, and agents performing functions or activities upon the property of Milliken. Greeley shall provide adequate workmen's compensation insurance for all of its employees, agents, and assigns engaged in activities and functions upon the property of Milliken.

13.3 Milliken shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of Milliken, its officers, employees, and agents, performing functions or activities upon the property of Greeley. Milliken shall provide adequate workmen's compensation insurance for all of its employees, agents, and assigns engaged in activities and functions upon the property of Greeley.

13.4 Each party shall furnish the other party upon request certificates of insurance stating that coverages adequate for the purposes outlined above are in full force and effect.

14. NO PUBLIC UTILITIES COMMISSION CONTROL. Milliken, its employees and elected or appointed officials, agree neither to assert nor support any statement, policy, petition, rule making, or legislation attempting to place the Greeley Water System under the rate-making authority or jurisdiction of the Colorado Public Utilities Commission by virtue of this Agreement or otherwise.

15. INTEGRATION, MERGER, AND SUPERSESSION. This Agreement incorporates and renews the terms and conditions of the 1999 IGA and the First Amendment not explicitly modified herein, and supersedes and replaces the previously existing agreements between Greeley and Milliken in their entirety. This Agreement contains all agreements and understandings, whether written or oral, between Greeley and Milliken regarding the subject matter herein.

16. TERM OF AGREEMENT. In the interest of reliability and security, this Agreement shall be for an initial term of twenty years from the date of execution set forth above. This Agreement expires at the end of such twenty-year term, but may be renewed for subsequent terms of ten years each by a duly authorized and executed mutual written agreement. Greeley and Milliken agree to meet at least two years before the end of the initial twenty-year term, and before the end of any subsequent terms, to review this Agreement for possible modification or renewal.

17. DEFAULT AND TERMINATION.

17.1 In the event either party fails to meet the terms and conditions of this Agreement, such failure shall constitute a default of this Agreement and the non-defaulting party may give notice of the perceived default. Notice shall be either to the Milliken Town Administrator or the Greeley City Manager. Either party may cure any default during the ninety (90) days following the notice. Upon cure of any default, this Agreement shall remain in full force and effect. Upon receipt of notice of perceived default, the defaulting party may invoke dispute resolution as provided in paragraph 20.

17.2 If after the cure period above or after mutually agreed extensions, the non-defaulting party determines the default has not been cured, they may give two years notice of termination of this Agreement. Nothing herein shall limit either party from collecting damages and amounts due from the other party upon termination of this Agreement by default.

17.3 This Agreement may be terminated by either party by giving written notice to the other party at least two years before the end of the initial twenty-year term, or at least two years before the end of any subsequent terms. This Agreement may otherwise be terminated at will by Greeley by giving an advance written notice to Milliken of no less than four years.

17.4 Milliken agrees that annexation by Milliken of land north of Weld County Road 54 shall be approved by Greeley in writing prior to the annexation. Violation of this provision may be grounds for termination of this Agreement.

17.5 Milliken agrees not to oppose any annexation by Greeley of property north of Weld County Road 54 and Greeley agrees not to oppose any annexation by Milliken of property south of Weld County Road 54. Both governmental entities acknowledge the value of annexation in conformance with natural, man-made, or political boundaries.

18. JURISDICTION AND VENUE. This Agreement shall be interpreted pursuant to the laws of the State of Colorado. Venue to enforce this Agreement shall be in Weld County.

19. AMENDMENT. This Agreement shall be amended only in writing with the approval of the governing bodies of each municipality. No amendment or modification shall be effective unless in writing signed by the aforesaid persons. This Agreement shall be governed by, construed and enforced in accordance with Colorado law.

20. DISPUTE RESOLUTION. Should disagreements arise regarding the interpretation of any portion of this Agreement the parties agree to resolve such disputes through negotiation; first, all the staff level; and second, with the respective Water Boards and/or City Councils. Procedures for such negotiations shall be established by mutual agreement at the time and may, with the concurrence of the parties, involve the use of qualified outside mediators. Any negotiations and resolution reached therefrom must be within the legal authority granted to the parties by appropriate City Charters and/or State statutes, or shall be null and void. Notwithstanding anything to the contrary in this Agreement, it is expressly agreed between the parties that this provision for dispute resolution does not apply to the authority granted to the Greeley Water and Sewer pursuant to Section 17-4 of the Greeley City Charter, including but not limited to, the establishment of minimum water rates.

IN WITNESS WHEREOF, the City of Greeley and the Town of Milliken have authorized and executed this Second Amendment to Intergovernmental Agreement for Treated Water Service on the date first written above.

THE TOWN OF MILLIKEN, COLORADO
a Colorado home rule municipality

ATTEST:

By: _____
Mayor

By: _____
Town Clerk

THE CITY OF GREELEY, COLORADO
a Colorado home rule municipality
acting by and through its Water Enterprise

ATTEST:

By: _____
Mayor

By: _____
City Clerk

AS TO SUBSTANCE:

AS TO AVAILABILITY OF FUNDS:

By: _____
City Manager

By: _____
Director of Finance

AS TO LEGAL FORM:

By: _____
City Attorney