



TOWN OF MILLIKEN
TOWN BOARD OF TRUSTEES
AGENDA MEMORANDUM

To: Mayor Tokunaga and Town Board of Trustees	Meeting Date:
From: Kent Brown, Town Administrator	Wednesday, May 27, 2015

Agenda Item #	Action:	Discussion:	Information:
	X		
Agenda Title: Contract Extension Proposal to Water Service Agreement with City of Greeley			
Attachments: City of Greeley Water Agreement 1999			

PURPOSE

To authorize the Town Administrator develop and submit a proposal to the City of Greeley for amending the current Intergovernmental Agreement (IGA) for Treated Water Service as follows:

1. To extend the Agreement at current treatment capacity levels to at least the year 2039,
2. To include a commitment by the Town of Milliken to install sufficient storage capacity to alleviate future peak demand rate increases, and possibly eliminate peak demand charges as a component of the rate paid by the Town,
3. To include the treatment of other water supplies in addition to the Town's units of C-BT water, and
4. Incorporate any additional provisions as may be required to reach a mutually beneficial agreement for the foreseeable future.

And to present this proposal to the Greeley Water and Sewer Board in time for it to be considered at the regularly-scheduled meeting in June.

BACKGROUND

The current 20-year IGA with the City of Greeley expires in 2019. The Water and Sewer Master Plan specifically includes this water supply agreement as a key component in the Town's long-term growth strategy and recent Board discussions have raised the priority of reaching an agreement extension as soon as possible.

To initiate this effort, Mayor Tokunaga, Interim Town Administrator Powell, Mike Ketterling, of KBN Engineering, and the Town's Water Supply Engineer, Forrest Leaf met with the Mayor and City Manager of Greeley, and the executive staff of its Water and Sewer Department in the August of 2014 to discuss the Town's desire to begin negotiations on a modified/new agreement. This meeting was followed up with a direct discussion with the Greeley Water and Sewer Board in November, where direction was given to Greeley senior staff to address and work to resolve the issues raised. On May 18th, Staff and I met with the Greeley Water and Sewer Director and key Budget Analyst to discuss the specific nature, form, and timing of an amended Agreement.

It was suggested that the Water and Sewer Board would look favorably on a Milliken proposal to extend the Agreement for an additional 20 years, until 2039, (although the Town would prefer a longer period of time, up to and including perpetuity). It was also discussed that there might be an opportunity for addressing the rate calculation as it relates to peak flows, which we were advised, has played a significant role in the rate increases Milliken has experienced over the past several years. The Town could effectively address this issue with the addition of water storage capacity to better manage this northern water supply to the Town. It was acknowledged that this addition could further stabilize, and might even reduce, the rate charged to the Town for future water treatment.

We also discussed the possibility of adding additional water supplies to the Agreement, as Greeley is currently allowing only C-BT water to be provided for treatment, which has restricted the Town's flexibility in managing its raw water rights. There seemed to be some openness to including this in the Town's proposed amendment.

The most significant component of the meeting was the clear commitment on both sides to address and resolve these issues as soon as possible. Greeley acknowledged the mismatch between the current Agreement - which expires in 2019, and the debt schedule the Town has related to the infrastructure Milliken installed to receive this water, which will not be retired until 2037 - in addition to the need for long-term planning on both sides. It was suggested that a proposal could be brought before the Greeley Water and Sewer Board as soon as their next meeting on June 17th, and that we should have a proposal to Greeley Staff the first week of June.

Accordingly, Staff would like Board direction on how to proceed and authorization to prepare and submit a proposal for consideration by the Greeley Water and Sewer Commission and, ultimately, the Greeley City Council.

COLLABORATION WITH REGIONAL PARTNERS

The goal of partnerships with local and regional agencies will be accomplished, as this would be a continuation of a regional agreement related to the use of water.

BUDGET IMPLICATIONS

There are no immediate budget implications at this stage of the process. Future capital and operational budgets will be impacted based on the agreement reached.

RECOMMENDATION

Staff recommends the Board of Trustees direct Staff to prepare a contract extension proposal for consideration by the City of Greeley and authorize the Town Administrator to sign such a proposal.

SUGGESTED MOTION

"I move to authorize the Town Administrator to prepare, present, and negotiate a contract amendment with the City of Greeley for the extension and expansion of the Intergovernmental Agreement for Treated Water Services based on the terms and conditions outlined."

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BY

**INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE
BETWEEN THE CITY OF GREELEY, COLORADO
AND THE TOWN OF MILLIKEN, COLORADO**

THIS AGREEMENT is made this 20th day of September, 1999, by and between **THE CITY OF GREELEY, Colorado, a home rule municipality ("Greeley")** and **THE TOWN OF MILLIKEN, Colorado, a home rule municipality ("Milliken")**, for the treatment and delivery of potable water to the Town of Milliken by and through the supply, treatment facilities, and transmission lines of the City of Greeley, Colorado.

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

WHEREAS, the Town of Milliken and the City of Greeley are neighboring municipalities which have a common interest in obtaining high-quality water in sufficient quantity to meet present and future needs; and

WHEREAS, the citizens of Milliken desire long-term reliability in treated water; and

WHEREAS, Milliken and Greeley can cost-effectively combine their demand for treated water through one system of supply, treatment, transmission, and treated water storage thereby achieving economies of scale; and

WHEREAS, in addition to its own needs and demand, Greeley has the capacity and the facilities to meet the needs of Milliken for water treatment and transmission as are more fully set forth herein; and

WHEREAS, Milliken will receive treated water from additional wholesale providers; and

WHEREAS, Greeley intends to develop the Highway 34 corridor and is not willing to provide water to Milliken to support competing growth by Milliken adjacent to Highway 34; and

WHEREAS, Milliken and Greeley shall and will continue to own their water rights individually and separately, each municipality relying upon the yield of its own water rights to provide the raw water necessary for treatment proposed under this agreement; and

WHEREAS, Greeley and Milliken are agreeable to entering into a long-term contract for the treatment and delivery of potable water to Milliken through an intergovernmental agreement; and

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WHEREAS, the parties are desirous of reducing the understandings, terms, and conditions of said agreement to writing.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants, undertakings, terms and conditions contained herein, the parties 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 "Peak daily demand" means the greatest rate of treated water delivered by Greeley to Milliken over a twenty-four hour period, beginning at midnight, in a given day.

1.4 "Peak hourly demand" means the greatest rate of treated water delivered by Greeley to Milliken over sixty consecutive minutes for any given day of the calendar year.

1.5 "Milliken" shall refer to the Town of Milliken and any authorized representative thereof.

1.6 "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.

1.7 "Year" means a calendar water year beginning on January 1 unless otherwise noted.

1.8 "Milliken Bellvue Demand" is Milliken's total water use in December, January, and February multiplied by four and represents the portion of Milliken's annual demand satisfied by the Bellvue treatment plant.

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

2.1 It is understood and agreed that in anticipation upon providing water to Milliken, the Town has appropriated certain funds for the construction of a transmission line capable of receiving and transporting such water from Greeley. The parties acknowledge that the construction of this transmission line is a condition precedent to delivery of water to Milliken. Water shall be made available to Milliken upon the completion of the transmission line. Commencing with the first full year that this agreement is in effect and continuing annually for the term of this agreement Greeley shall make available not less than 30 million gallons of treated water. During each full year that this

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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. 61 57

2.2 The parties further acknowledge that the initial year of this agreement will likely not be a full year. In this event, Milliken will be relieved of the 20 million gallons minimum requirement and will be required to pay only for the treated water actually delivered in this first year.

2.3 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 Milliken's system shall flow into Greeley's 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 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 seven of this agreement. 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 current American Water Works Standards. Each municipality will give the other seven calendar days notice prior to 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 downstream of the master meter for operation, maintenance, and repair purposes.

3.3 The master meter shall be located at or near the intersection of Weld County Road 54 and State Highway 257. Transmission pipeline north of this point will be constructed by Milliken and dedicated to the City of Greeley. To the extent that Greeley uses the infrastructure installed by Milliken, such usage shall be subject to reimbursement for oversizing in accordance with Greeley's current ordinance.

4. POTABLE WATER PROJECTIONS AND SYSTEM CAPACITY

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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, estimated maximum hourly usage, planned system facility changes, and 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 shall have 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 that as of the date of this agreement Milliken is receiving treated water from Central Weld County Water District. Nothing in this agreement shall be construed as limiting 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 shall be 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 On or before April 15 of each year, Milliken shall transfer to Greeley sufficient Colorado-Big Thompson (CBT) water to satisfy Milliken demand for the full year including a 5% shrink. Failure of Milliken water rights to yield sufficient raw water during a drought could result in curtailed delivery of potable water to Milliken.

5.2 Milliken shall pay all assessment costs and running charges on any of the water provided for treatment by Greeley under this agreement. Water other than Milliken's Bellvue demand will be treated by the Boyd Lake plant and will be subject to Greeley and Loveland Irrigation Company shrink and carryover water. Presently those losses are 28% and 11% respectively.

5.3 Milliken shall be responsible for meeting any monthly return flow requirements of the raw water provided to Greeley for treatment, state decree accounting, and other requirements of State or Federal law. While Milliken retains dominion and control over its water, Greeley shall maintain complete and unilateral control over Greeley's system operations. Greeley's raw water supply system may be used by Greeley to move Milliken's water rights to the appropriate location for treatment. This necessary flexibility of operations may result in less than optimal yield of Milliken water rights, but will be in proportion to Greeley's own operations..

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5.4 Greeley shall be obligated to treat for Milliken only that water delivered for treatment under this Section 5. If metered usage by Milliken exceeds the amount delivered less losses, Greeley shall notify Milliken of the shortage. Upon written notification, Milliken will have 20 days to transfer additional raw water to Greeley for treatment. Greeley may, at its sole discretion, agree to lease additional raw water to Milliken at the then raw water surcharge rate established by the Greeley Water and Sewer Board and adopted in accordance with section 17-4 of the Greeley City Charter. If Greeley has additional raw water available to lease, Milliken shall be given first priority to lease it on an equal basis with the other municipalities to whom Greeley leases raw water.

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. The rates for treated water delivered to Milliken shall be based upon the water rate cost-of-service model developed by Greeley's water rate consultant, Black and Veatch, and or modified from time to time and accepted by the Greeley Water and Sewer Board. Milliken agrees to pay the rate of cost-of-service plus ten percent. The cost-of-service rates shall be reviewed annually and adjusted in accordance with section 17-4 of the Greeley City Charter. Milliken shall be given 90-days notice of rate changes. Cost-of-service includes a cost to provide peak demands.

8. BILLING. Bills shall be paid within thirty 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 ACQUIRED 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.

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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 the 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 and conditions of this agreement.

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

11. PEAK DEMAND MEASUREMENTS AND DETERMINATION. Each year either Milliken or Greeley or both may register and record peak daily and peak hourly demands. Milliken's peak daily and peak hourly demand factors will either be flow-weighted averages of the several master meters, or it shall be derived from simultaneous readings from the several master meters, whichever method generates the highest demand factor. Peaking factors will be calculated based upon the average of the previous two years actual recorded peak flows. If the average of the peak hourly or the peak daily demand factors for the two immediately preceding years differs from the factors used in the most current water rate study, then the next rate study will use the highest recorded peak daily or peak hourly factor from those two preceding years. If peak daily or peak hourly demands are not registered in any given year, then the measurements used in the prior year's rate study will be used for the next rate study. In no case will past year's or current year's water bills be adjusted for changes in peak demand factors. Until such time as actual peaking factors are determined, Milliken peaking factors shall be assumed to be equal to Greeley's factors which are estimated by Black & Veatch for use in their rate model.

12. SYSTEM DEVELOPMENT CHARGE.

12.1 A system development charge (SDC) shall be due to Greeley when the metered water delivered to Milliken in any year exceeds the acre-feet delivered in the base year. Payment of system development charges will create a new base year delivery. No system development charges will be due in subsequent years for metered delivery equal to or less than the new base year delivery. Payments of the system development charge will occur in twelve monthly increments following the calendar year in which the exceedance occurs. In no case shall system development charges be refunded. The initial base year allowance is zero acre-feet.

12.2 The SDC due is a percentage of the then current inside-Greeley 3/4-inch tap plant investment fee (expressed in \$/acre-foot) and 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, as determined by the rate model. To express Greeley's plant investment fee in terms of \$/acre-foot, the average

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annual residential demand (190,000 gallons or 0.583 AF per 3/4-inch tap) is divided into the plant investment fee; for example:

Greeley's current PIF is	(\$2,920) / (0.583 AF/year) = \$5,009 per AF/year
Milliken 1998 SDC is	(75%)*(\$5,009/AF/yr) = \$3,756 per AF/yr

Example: if Milliken's year 2001 metered flow were 102 AF, exceeding a base of 92 AF, a SDC of \$37,560 would be due:

$(102 - 92) * (\$3,756) = \$37,560$. The new base year would become 102 AF.

12.3 Milliken's initial SDC for the first full year shall be for a base of 61 acre feet (20 million gallons) at \$3,756/AF equaling \$229,116. The initial SDC shall be paid before service begins.

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 any 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 current certificates of insurance stating the coverages 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 intergovernmental agreement or otherwise.

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15. THIS AGREEMENT CONTROLS AND SUPERSEDES PREVIOUS AGREEMENTS. This agreement shall supersede any and all terms and conditions of water supply agreements previously existing between Greeley and Milliken.

16. TERM. In the interest of reliability and security, this agreement shall be for a term of twenty years from the date of its execution, and shall terminate at the end of the term unless renewed by mutual written agreement. Both parties hereby agree to meet at least two years before the end of the term to review their agreement for possible renewal and /or modification.

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 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 The agreement may be terminated by either party by giving written notice to the other party at least two years before the end of the agreement term or renewals thereof.

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 shall 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 cities 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.

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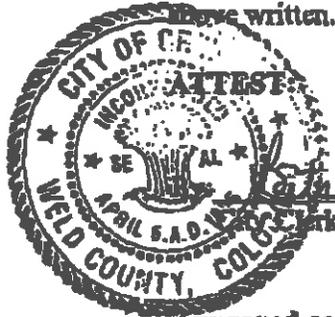
20. DISPUTE RESOLUTION. Should disagreements arise regarding the interpretation of any portion of this agreement the parties agree to make efforts to resolve such disputes through negotiation; first, at the staff level; and second, with the respective Water Boards and/or City Councils. Procedures for 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 agreements 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 the Greeley Water and Sewer Board pursuant to § 17-4 of the Greeley City Charter, including but not limited to, the establishment of minimum water rates.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.



THE CITY OF GREELEY, COLORADO

By: [Signature]
Mayor

Approved as to Substance:

By: [Signature]
City Manager

Approved as to Legal Form:

By: [Signature]
City Attorney

As to Availability of Funds:

By: [Signature]
Director of Finance

GREELEY WATER AND SEWER BOARD

By: [Signature]
Vice Chairman

ATTEST:

By: [Signature]
Town City Clerk

THE TOWN OF MILLIKEN, COLORADO

By: [Signature]
Mayor