

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“Agreement” or “IGA”), effective as of November ____, 2022, is entered into by and between the Board of Water Works of Pueblo, Colorado (“Pueblo Water”) an independent board established pursuant to Article 15 of the Charter for the City of Pueblo, Colorado (“Pueblo Charter”) and the City of Colorado Springs, a Colorado municipal corporation and home rule city, acting on behalf of its enterprise Colorado Springs Utilities (“Utilities”). Collectively, the entities that execute this IGA are referred to as the “Parties,” and individually by name or as “Party.”

Introductory Statement

- A. Utilities is a four-service, municipal utility that provides, among other things, water service to the City of Colorado Springs, Colorado (“City”) and others water users within the vicinity of the City.
- B. Pueblo Water is a public municipal utility that provides water service to the City of Pueblo, Colorado, and other water users within the vicinity of the City of Pueblo, Colorado.
- C. Pursuant to the Pueblo Charter: (a) title to water works property is in the name of the City of Pueblo, Colorado; (b) Pueblo Water exercises the entire control, management, and operation of water works property; and (c) Pueblo Water has the power to exercise all powers which are granted to cities of the first class by the Constitution and Laws of the State of Colorado, and is further authorized to make and execute contracts in the name of the City of Pueblo, Colorado;
- D. Pueblo Water operates and controls Clear Creek Reservoir (“Clear Creek”) located in the Upper Arkansas Basin, Chaffee County, Colorado, and its decreed water storage rights of 11,439 acre-feet of absolute storage and 18,561 acre-feet of conditional storage.
- E. Pueblo Water is investigating the feasibility of constructing an enlargement to Clear Creek to improve the water supply for Pueblo Water.
- F. Utilities desires to participate with Pueblo Water in the investigation of the feasibility of an enlargement of Clear Creek to allow Utilities to, among other things, meet the water supply demands of a growing population, mitigate against droughts, and diversify its water storage portfolio, all consistent with Utilities’ Integrated Water Resources Plan. If it is feasible for the Parties to enlarge Clear Creek to a size that exceeds Pueblo Water’s current needs and provide storage space for Utilities’ needs, the Parties will seek to negotiate a further agreement for Utilities to participate in the enlargement of Clear Creek and to acquire a right to store water therein to meet Utilities water supply demands; and
- G. Both Utilities and Pueblo Water recognize that it is in their mutual interests to work collaboratively to investigate the feasibility of enlarging Clear Creek.

NOW THEREFORE, in consideration of the mutual benefits, covenants and agreements set forth herein, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. The scope of work for the “Feasibility Study” to be performed under this Agreement is attached hereto as Exhibit 1.
2. The term of this IGA will be for the duration of the Feasibility Study, the delivery and acceptance of the reports contemplated by the Feasibility Study, and, if requested by Utilities, for the duration of negotiations of the “Phase II IGA” described below.
3. The Parties anticipate the Feasibility Study will be completed by the spring of 2023. The Parties will share equally the cost of the Feasibility Study and the costs for any additional work that may be mutually requested by the Parties that is not included within the scope of work in Exhibit 1.
4. To determine the largest feasible capacity for the Clear Creek site, the Parties agree that the maximum potential enlargement will be a high-water line of which does not inundate within 100 feet of Chaffee County Parcel ID # 300715100006.
5. The anticipated total cost for the Feasibility Study is \$304,056, which does not include the costs for any additional work that may be mutually agreed upon and requested by the Parties that is not included within the scope of work in Exhibit 1. Utilities agrees to reimburse Pueblo for one-half of all costs that are incurred by Pueblo Water in obtaining the Feasibility Study pursuant to this IGA, including expenses related to the Feasibility Study prior to the effective date of this IGA and incurred on or after May 17, 2022. Pueblo Water will provide Utilities with an invoice setting forth the specific items being billed with a breakdown of individual cost items. Utilities will pay all invoices within 63 days of receipt.
6. Upon the completion of the Feasibility Study, if the study concludes that it is physically feasible to enlarge Clear Creek by an amount of not less than 15,000 acre-feet of additional storage, and the Parties agree there that there is a reasonable likelihood that the necessary permits and other authorizations for the enlargement can be obtained, and the total cost of the enlargement is reasonable, then the Parties will enter into further negotiations for one or more subsequent intergovernmental agreements for the design, permitting, construction, operation, and/or maintenance of the enlargement of Clear Creek Reservoir and the allocation of storage therein. The subsequent intergovernmental agreement negotiations will be based on the general terms stated in Exhibit 2 hereto.
7. In consideration for its payment of one-half of the cost of the feasibility study, Pueblo Water grants Utilities the first right to negotiate subsequent intergovernmental agreements pursuant to which the Parties will pursue the design, permitting, construction, operation, and maintenance of an enlargement of Clear Creek, and the allocation of enlarged storage therein as between Pueblo Water and Utilities. If Utilities wishes to exercise its first right to negotiate

subsequent intergovernmental agreements, it must give written notice to Pueblo Water within 63 days after completion and delivery of the Feasibility Study to Utilities. The Parties will thereafter diligently negotiate in good faith and seek to reach agreement on the Phase II IGA for the joint enlargement of Clear Creek.

8. If, after not less than 182 days after Utilities' provision of notice in paragraph 7, the Parties are unable to reach agreement on one or more subsequent intergovernmental agreements for permitting, design, construction, operation, and/or maintenance of the enlargement of Clear Creek Reservoir and the allocation of storage therein as between Pueblo Water and Utilities, then on 14 days advance written notice either Party may terminate the negotiations. The time for good faith negotiations may be modified by written agreement of the Parties.

9. If the negotiations of a subsequent intergovernmental agreement between Utilities and Pueblo Water are terminated, Pueblo Water may negotiate with one or more other interested parties for the design, permitting, construction, operation, and maintenance of the enlargement of Clear Creek and the allocation of storage therein as between Pueblo Water and such third parties.

10. Breach and Enforcement. It is specifically understood that, by executing this IGA, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of any Party to fulfill any obligation set forth herein shall constitute a breach of this IGA. The Parties agree that after compliance with the mediation requirements of paragraph 10 below, this IGA may be enforced for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado.

11. Mediation. Before a Party commences any action for enforcement of this IGA or to terminate this IGA, the Parties will try to resolve their differences in the manner outlined herein.

11.1. The aggrieved Party shall provide written notice to the other Party of the Party's intent to invoke the dispute resolution procedures set forth in this paragraph.

11.2. The Parties shall first attempt to resolve any dispute by direct negotiations for thirty-five (35) days from the date of notice.

11.3. If the Parties are unable to resolve the dispute within thirty-five (35) days, the dispute shall be addressed through non-binding mediation prior to litigation. The Parties shall meet and agree on the appointment of a mediator to address the disputed matter(s). If the Parties are unable to agree on a mediator within fourteen (14) days, both Parties shall nominate a mediatory and the two mediators will select a third mediator, and the three mediators will mediate the dispute. The costs associated with appointing and paying the fees of the mediator(s) shall be divided equally between the Parties. The Parties will commence mediation within thirty-five days after selection of the mediator(s), and within twenty-one days completion of the mediation, the mediator(s) will submit a non-binding report to the Parties. If the dispute is not resolved within fourteen days after the report of

the mediator is received by the Parties, either Party may initiate proceedings to judicially resolve the dispute.

11.4. To the extent that any Party's claim or claims associated with the dispute could be barred or limited by an affirmative defense based on the statute of limitations, laches or statute of repose, such defense will be tolled beginning on the day the notice of dispute was provided and ending twenty-one days after the submittal of the non-binding report of the mediator.

12. Force Majeure. A Party will be excused from performing its obligations under this IGA during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the Government (except the Parties); war or civil disorder; violence or threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government (except the Parties); or national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provide further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

13. Controlling Law and Venue. This IGA is made and performed in Colorado. The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this IGA (without reference to conflicts of laws). The Parties agree that the exclusive venue for any trial of any action arising out of any dispute hereunder shall be in the state District Court located in the County of Pueblo, Colorado and, if necessary, for exclusive federal questions, the United States District Court for the District of Colorado.

14. No Attorney's Fees or Costs. In the event of any litigation, arbitration, or other dispute resolution proceeding arising out of or related to this IGA, each Party agrees to be responsible for its own attorney's fees and other professional fees, costs, and expenses associated with such proceedings.

15. Political Subdivisions. This IGA is entered into pursuant to sections 29-1-201 through 203, C.R.S. Each of the Parties hereto is a political subdivision of the State of Colorado within the meaning of section 29-1-202(2), C.R.S., and therefore each is a government within the meaning of section 29-1-202(1).

16. Obligations of Utilities. Notwithstanding anything herein to the contrary, all financial obligations of the City of Colorado Springs pursuant to this IGA are the sole obligations of Utilities acting through the City of Colorado Springs' utility enterprise, Colorado Springs Utilities, and not the financial obligations or other indebtedness of the City of Colorado Springs. Nothing herein constitutes, nor will be deemed to constitute, the creation of a debt or multi-year fiscal obligation of the City of Colorado Springs, or an obligation of future appropriations by the City Council, contrary to Article X, § 20 of the Colorado Constitution or any other constitutional or statutory debt limitation.

17. Appropriations. This Agreement is expressly made subject to the limitations of the Charter of the City of Colorado Springs. Nothing herein shall constitute, or be deemed to

constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligations of Colorado Springs which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit hereto, by Colorado Springs. Colorado Springs shall notify Pueblo Water as soon as reasonably practicable in the event of non-appropriation or in the event a spending limitation becomes applicable. Notwithstanding the foregoing, if Colorado Springs does not appropriate sufficient funds for the performance of its obligations under this Agreement and thereby cannot meet its obligations, Colorado Springs shall not be entitled to participate in the enlargement of Clear Creek.

18. Notice. Any notice required or permitted to be given hereunder will be in writing and will be deemed given when delivered personally or three days after the date of mailing when given by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Colorado Springs:

Chief System Planning and Projects Officer
Courier Service Address:
Colorado Springs Utilities
ATTN: Chief System Planning and Projects Officer
121 S. Tejon St., 5th Floor
Colorado Springs, CO 80903

United States Postal Service Address:
Colorado Springs Utilities
P.O. Box 1103, Mail Code 950
Colorado Springs, CO 80947-0950

Manager of Water Resources
Colorado Springs Utilities
ATTN: Manager of Water Resources
United States Postal Service Address:
1521 Hancock Expressway, Mail Code 1825
Colorado Springs, CO 80903

City Attorney's Office-Utilities Division
Courier Service Address:
City of Colorado Springs

30 South Nevada, Suite 501
Colorado Springs, Colorado 80903

United States Postal Service Address:
P.O. Box 1575, Mail Code 510
Colorado Springs, Colorado 80901-1575

If to Pueblo Water:

Executive Director
Board of Water Works of Pueblo
P.O. Box 400
Pueblo, Colorado 81002-0400

William A. Paddock
Karl D. Ohlsen
Carlson Hammond & Paddock, LLC
1900 North Grant Street, Suite 1200
Denver, CO 80203

or at such other address as any Party may designate by giving written notice thereof to the other Parties hereto in accordance with this paragraph.

19. Governmental Immunity. Nothing in this IGA shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to any of the Parties, their respective officials, employees, contractors or agents, or any other person acting on behalf of the Parties, and in particular, governmental immunity afforded or available to the Parties pursuant to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-10, *et seq.*

20. Entire Agreement. This IGA (including the attachment) represents the entire agreement of the Parties relating to the IGA, and it supersedes any other prior agreements and understandings of any type, both written and oral, between the Parties with respect to the subject matter hereof.

21. Headings. Paragraph headings and titles contained herein are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this IGA.

22. Waiver. No waiver or breach of any of the provisions of this IGA by any Party will constitute a continuing waiver of any subsequent breach by said Party, or any other Party whether of the same or any other provision of this IGA. By entering this IGA, neither Party intends to waive any argument, claim, defense, or otherwise, at law or in equity, concerning any future project not covered, approved, or contemplated by this IGA.

23. Pronouns. Except as otherwise provided herein, nouns, pronouns and variations thereof are intended to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a law, regulation, rule, or document includes law, regulation, rule, or document as it may be amended from time to time.

24. Severability. Each paragraph of this IGA is interdependent with the others and is not severable unless by mutual written consent of the Parties hereto. If a court of competent jurisdiction holds that any term(s) of this IGA is invalid or unenforceable, for any reason, as to any Party, the Parties will immediately negotiate valid alternative term(s) that as nearly as possible give effect to any invalid or unenforceable terms(s).

25. Counterparts. This IGA may be executed in counterparts by each Party, each of which will be deemed original, and all of which constitute one IGA.

26. Attorney Representation. The Parties agree they drafted this IGA jointly with each having the advice of legal counsel and an opportunity to contribute to its content. Therefore, this IGA will not be construed based on authorship.

27. Successors and Assigns. This agreement is binding on the successors and assigns of the Parties who succeed to the operation of their respective municipal water supply systems.

28. No Third-Party Beneficiaries. This IGA is intended to describe the rights and responsibilities of and between the Parties hereto and is not intended to, and will not be deemed to, confer rights upon or to benefit any persons or entities not signatories hereto, nor to limit, impair, or enlarge in any way the powers, regulatory authority, or responsibilities of any Party or any other governmental entity not a Party hereto.

IN WITNESS WHEREOF, the Parties have duly executed this IGA effective as of the date stated in first paragraph of this IGA.

City of Colorado Springs
on behalf of its enterprise
Colorado Springs Utilities

Aram Benyamin,
Chief Executive Officer

Date

Approved as to form:

Colorado Springs City Attorney

Date

Board of Water Works of Pueblo, Colorado

Seth J. Clayton, Executive Director

Date

Exhibit 1

DRAFT

EXHIBIT 2

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