

RESOLUTION NO. 51 - 26

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO, ON BEHALF OF ITS ENTERPRISE COLORADO SPRINGS UTILITIES, AND THE SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT

WHEREAS, the City of Colorado Springs (the "City"), on behalf of its enterprise Colorado Springs Utilities ("Springs Utilities"), is authorized to enter into intergovernmental agreements with other Colorado governmental entities with the approval of City Council; and

WHEREAS, the Southeastern Colorado Water Conservancy District ("SECWCD") is authorized to enter into intergovernmental agreements with other Colorado governmental entities with the approval of its Board of Directors; and

WHEREAS, Pueblo Reservoir is a key feature of the Fryingpan-Arkansas Project which is managed by SECWCD; and

WHEREAS, Springs Utilities is a participant in the Southern Delivery System ("SDS"), a non-federal regional water delivery project that consists of infrastructure at Pueblo Reservoir; and

WHEREAS, Contract Nos. 11XX6C0002 and 11XX6C0005 between Springs Utilities' and the United States Bureau of Reclamation ("BOR") govern Springs Utilities' storage of water in Pueblo Reservoir and the delivery of water from Pueblo Reservoir through infrastructure associated with the SDS; and

WHEREAS, Springs Utilities has developed a regional water service program under which it has and may in the future enter into agreements by which Springs Utilities provides water treatment and conveyance service to entities whose service areas are located outside SECWCD's boundaries and with other entities which serve areas located within SECWCD's boundaries (collectively "Regional Entities") that contemplate Springs Utilities' use of SDS infrastructure to facilitate water deliveries to the Regional Entities' respective service areas; and

WHEREAS, Springs Utilities and SECWCD have negotiated and now desire to enter into the attached intergovernmental agreement that memorializes Springs Utilities' and SECWCD's agreements related to the applicability of certain provisions of Contract No. 11XX6C0005 to Springs Utilities' Regional Service Agreements ("Regional IGA"); and

WHEREAS, the BOR is not a party to the Regional IGA but has indicated that it concurs with the terms of the Regional IGA; and

WHEREAS, Springs Utilities requests that City Council approve and authorize the Chief Executive Officer of Springs Utilities to enter into the Regional IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council hereby finds that the Regional IGA is in the best interests of the citizens of the City and the ratepayers of Springs Utilities and hereby approves the Regional IGA.

Section 2. The Chief Executive Officer of Springs Utilities is authorized and directed to enter into the Regional IGA in a form substantially similar to that attached hereto.

Section 3. This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado this 26th day of May 2026.


Lynette Crow-Iverson, Council President

ATTEST:


Sarah B. Johnson, City Clerk



**AGREEMENT BETWEEN
THE SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT
AND THE CITY OF COLORADO SPRINGS, COLORADO**

This Agreement is entered into this ____ day of _____, 2026 (“Effective Date”), by and between the Southeastern Colorado Water Conservancy District (“SECWCD” or “District”) and the City of Colorado Springs, Colorado, acting by and through its enterprise, Colorado Springs Utilities (“Springs Utilities”). Each party may be referred to individually herein as a “Party” or, collectively, as the “Parties.”

RECITALS

A. Springs Utilities is a participant in the Southern Delivery System (“SDS”), a non-federal regional water delivery project that consists of infrastructure at Pueblo Reservoir, as more specifically described in Springs Utilities’ contracts with the Bureau of Reclamation (“BOR”) described below. Springs Utilities and BOR have entered into two contracts concerning Springs Utilities’ storage of water in Pueblo Reservoir and the delivery of water from Pueblo Reservoir through infrastructure associated with the SDS:

- i. Contract No. 11XX6C0002, dated May 4, 2011, which provides for Springs Utilities’ use of excess capacity in Pueblo Reservoir, a facility of the Fryingpan-Arkansas Project (“Project”), a multi-purpose project authorized under the Fryingpan-Arkansas Project Act (August 16, 1952; 76 Stat. 389); and
- ii. Contract No. 11XX6C0005, dated May 4, 2011, which permits Springs Utilities and the other SDS Participants to convey water through the North Outlet Works (“NOW”) and the Single Purpose SDS Works to their respective service areas.¹

B. Section 7(d) of Contract No. 11XX6C0005 provides that:

The SDS Participants [including Springs Utilities] may use SDS Water conveyed under this Contract only in those areas that are within both the SDS Participants’ service areas and the boundaries of SECWCD for all lawfully decreed purposes that are consistent with Reclamation Laws and the laws of the State of Colorado and that are within the scope of the ROD and all other environmental documents, permits approvals, licenses and agreements required for the construction and OM&R of the SDS. Any sale, transfer, or assignment by any SDS Participant of the conveyance rights under this Contract or any portion thereof, to convey SDS Water is prohibited unless approved in advance and in writing by the Contracting

¹ Capitalized terms used but not specifically defined herein shall have the same meaning as in Contract No. 11XX6C0005.

Officer. Any such approval will require an appropriate level of environmental compliance prior to the Contracting Officer's determination.

- C. Springs Utilities has developed a regional water service program under which it has and may in the future enter into agreements by which Springs Utilities provides water treatment and conveyance service to municipal water providers, quasi-municipal water providers, and private entities whose service areas are located outside of the city limits of Colorado Springs ("Regional Entities"), utilizing its water system, including the SDS and NOW infrastructure.
- D. The service areas of some, but not all, of these Regional Entities are or may be located within SECWCD's boundaries.
- E. As part of its regional water service program, Springs Utilities has entered into Regional Service Agreements with Triview Metropolitan District ("Triview")² and Donala Water and Sanitation District ("Donala")³ (each a "Regional Entity"), which serve areas located within El Paso County and the Arkansas River Basin but outside of the SECWCD's boundaries. Springs Utilities' Regional Service Agreements with Triview and Donala contemplate that Springs Utilities will use the SDS and NOW infrastructure to facilitate water deliveries to their respective service areas.
- F. As part of its regional water service program, Springs Utilities has entered into Regional Service Agreements with Security Water District ("Security") and Stratmoor Hills Water District ("Stratmoor") (each a "Regional Entity"), which serve areas located within El Paso County, the Arkansas River Basin, and the SECWCD's boundaries.
- G. SECWCD acknowledges that Springs Utilities anticipates entering into additional Regional Service Agreements with other Regional Entities that have not yet been identified or confirmed.
- H. The Parties desire to 1) confirm SECWCD's agreement that Springs Utilities' Regional Service Agreements with Regional Entities that serve areas within SECWCD's boundaries comply with Section 7(d) of Contract No. 11XX6C005; (2) confirm the terms and conditions under which SECWCD agrees to waive the applicability of Section 7(d) of Contract No. 11XX6C0005, such that Utilities may enter into Regional Service Agreements under which it delivers water to Regional Entities that serve areas outside of SECWCD's boundaries; and 3)

² Agreement between Colorado Springs Utilities and Triview Metropolitan District for Convey, Treat, and Deliver Regional Water Service, dated April 12, 2023, as amended by an Addendum dated March 4, 2024.

³ Agreement between Colorado Springs Utilities and Donala Water and Sanitation District for Convey, Treat, and Deliver Regional Water Service, dated April 14, 2023.

confirm that Utilities' existing Regional Service Agreements with Triview and Donala satisfy the applicable terms and conditions.

In consideration of the mutual promises and benefits contained in this Agreement, SECWCD and Springs Utilities hereby agree as follows:

1. **Service Within SECWCD's Boundaries.** The Parties hereby acknowledge and agree that Section 7(d) of Contract No. 11XX6C005 permits the use of SDS Water conveyed through the SDS within SECWCD's boundaries, as those boundaries may be revised from time to time. SECWCD agrees that Springs Utilities' Regional Service Agreements with Regional Entities that exclusively serve areas within SECWCD's boundaries, including those Regional Service Agreements with Security and Stratmoor, comply with Section 7(d) of Contract No. 11XX6C005. Springs Utilities agrees to provide SECWCD with copies of the Regional Service Agreements identified in Recital F within thirty (30) days of the Effective Date of this Agreement, and within thirty (30) days of execution of any future Regional Service Agreements with entities that exclusively serve areas within SECWCD's boundaries, for SECWCD's record-keeping purposes. The requirements of this Paragraph 1 shall not apply to an agreement between Springs Utilities and a Regional Entity that allows for deliveries of water by Springs Utilities to the Regional Entity for use within SECWCD's boundaries for a period(s) of thirty (30) days or less.
2. **Service Outside of SECWCD's Boundaries.** The Parties agree that upon the satisfaction of the following terms and conditions, Springs Utilities may contract with Regional Entities serving areas outside of SECWCD's boundaries for water treatment and conveyance service using the NOW and SDS infrastructure, and SECWCD agrees to waive any claims concerning the applicability of Section 7(d) of Contract No. 11XX6C0005 with regard to such Regional Service Agreements.

2.1 Terms and Conditions for Utilities' Regional Service Agreements.

- A. Prior to entering into a Regional Service Agreement with a Regional Entity that serves areas outside of SECWCD's boundaries, Utilities shall require the Regional Entity to request and receive all applicable approvals from BOR, as follows:
 - i. Regional Entities Seeking Long-Term Storage in Pueblo Reservoir. If the Regional Entity is seeking a Long-Term Excess Capacity ("LTEC") contract in Pueblo Reservoir for the storage of water that will be conveyed by Utilities, the Regional Entity must:
 1. Apply for and enter into an LTEC with BOR that:

- i. Does not require the inclusion of the Regional Entity's service area in SECWCD's boundaries to use capacity in the SDS infrastructure;
 - ii. Requires payment of all applicable out-of-District rates and fees to the SECWCD, as such rates may be adopted and amended at any time and at the sole discretion of SECWCD's board; and
 - iii. Requires payment of a pro-rata share of maintenance and operation costs of the NOW infrastructure.
 2. Comply with all applicable environmental laws and regulations (including, but not limited to, any analysis required under the National Environmental Policy Act ("NEPA")) for any non-Project water to be delivered through the SDS.
 3. Provide SECWCD with a copy of (i) its LTEC application at the time of submittal to BOR, (ii) a copy of any Record of Decision for its NEPA compliance (or any other final agency decision resulting from environmental compliance required by the BOR), and (iii) a copy of the final, fully executed LTEC when issued by BOR.
- ii. Regional Entities without Long-Term Storage in Pueblo Reservoir. If the Regional Entity is not seeking an LTEC contract in Pueblo Reservoir, the Regional Entity must:
1. Request and receive written approval from BOR to enter into a Regional Service Agreement with Springs Utilities, which approval:
 - i. Does not require the inclusion of the Regional Entity's service area in SECWCD's boundaries;
 - ii. Requires annual reporting by the Regional Entity to SECWCD of the amount of non-Project water delivered to the Regional Entity through the SDS;
 - iii. Requires compliance with all applicable environmental laws and regulations (including, but not limited to, any analysis required under NEPA) for any non-Project water to be delivered through the SDS and NOW infrastructure; and
 - iv. Requires payment of all applicable out-of-District rates and fees to the SECWCD, as such rates may be adopted and amended at any time and at the sole discretion of SECWCD's board.
 2. Springs Utilities shall require the Regional Entity to provide SECWCD with a copy of (i) its request for approval from the BOR at the time of submittal to BOR, (ii) a copy of any Record of Decision for its NEPA compliance (or any other final agency decision resulting from environmental compliance required by the BOR), and (iii) a copy of the final, fully executed approval when issued by BOR.

- B. The Parties acknowledge and agree that, prior to BOR's issuance of any approval described in Paragraphs 2.1(A)(i) or (ii) above, SECWCD shall have the opportunity to review and provide comments to BOR regarding such approval. Within sixty (60) days of the date that the Regional Entity submits its request for approval to BOR, SECWCD will provide written comments on such approval to BOR. SECWCD shall copy Utilities and the Regional Entity on any comments SECWCD provides to BOR pursuant to this Paragraph 2.1(B), and Utilities and the Regional Entity shall be afforded the right to provide written responses to those comments to both SECWCD and the BOR within sixty (60) days of receipt.
 - C. The requirements of this Paragraph 2.1 shall not apply to an agreement between Springs Utilities and a Regional Entity that allows for deliveries of water by Utilities to the Regional Entity for use outside of SECWCD's boundaries for a period(s) of thirty (30) days or less.
- 2.2 Prior to entering into a Regional Service Agreement with a Regional Entity, Springs Utilities shall require the Regional Entity to apply for and obtain a 1041 Permit from Pueblo County that permits the SDS and NOW infrastructure to be used to convey water to the Regional Entity's service area. The Regional Entity must provide SECWCD with a copy of its request for a 1041 Permit from Pueblo County at the time of submittal and a copy of the final 1041 Permit when issued by Pueblo County.
- 2.3 Springs Utilities agrees that any such Regional Service Agreement entered into between Springs Utilities and a Regional Entity under Paragraph 2 of this Agreement shall be in compliance with the Regional Entity's LTEC or other approval from the BOR, Springs Utilities' Pueblo County 1041 Permit, and the Regional Entity's Pueblo County 1041 Permit, and that the Regional Service Agreement shall include the following:
- A. Unless excepted under Paragraph 2.1(C), acknowledgment that the Regional Entity has satisfied one of the following requirements:
 - a. The Regional Entity has entered into an LTEC contract with BOR for the storage of water in Pueblo Reservoir; or
 - b. If the Regional Entity has not entered into an LTEC contract with BOR, the Regional Entity has received written approval from BOR to enter into a Regional Service Agreement with Springs Utilities.
 - B. Acknowledgement that the Regional Entity has received a 1041 Permit from Pueblo County, dated prior to the date of the Regional Service Agreement.

- C. Requirement that the Regional Entity commit not to furnish, use, deliver, or serve water provided under the Regional Service Agreement, directly or indirectly, outside of the natural drainage of the Arkansas River Basin or to market, transfer, wheel, deliver, serve, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River Basin, for any purpose.
- 2.4 Upon the Regional Entity's and Springs Utilities' satisfaction of the terms and conditions set forth in Paragraphs 2.1 and 2.2 above, Springs Utilities shall provide a draft of the Regional Service Agreement to SECWCD, with terms and conditions consistent with Paragraph 2.3, so that SECWCD can confirm that such agreement is in substantial compliance with the terms of this Agreement.
- A. At least forty-five (45) days prior to the date on which Springs Utilities plans to seek approval the Regional Service Agreement from its Utilities Board, Springs Utilities shall provide an electronic copy of the draft Regional Services Agreement to SECWCD.
 - B. If SECWCD agrees that the draft Regional Service Agreement is in substantial compliance with the terms and conditions of this Agreement, SECWCD shall confirm such agreement in writing within thirty (30) days of SECWCD's receipt of the draft agreement.
 - C. If, after review, SECWCD does not agree that the Regional Services Agreement is in substantial compliance with this Agreement, SECWCD shall provide specific concerns to Springs Utilities in writing within thirty (30) days of SECWCD's receipt of the draft agreement. Within fifteen (15) days of Springs Utilities receipt of notice from SECWCD that the Regional Services Agreement does not comply with this Agreement, the parties shall hold a meeting attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the parties thereunder or be deemed a waiver by a party hereto of any remedies to which such party would otherwise be entitled thereunder unless otherwise agreed to by the parties in writing. If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation. The parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall, as the sole mediator, conduct mediation for the parties. The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days. The substantive and procedural law of the State of Colorado shall apply to the mediation proceedings. If the parties are not successful in resolving the dispute through mediation, then the parties shall be free to litigate the matter.

- 2.5 Upon the satisfaction of the terms and conditions set forth in Paragraphs 2.1-2.4, Springs Utilities may enter into a Regional Service Agreement with a Regional Entity that serves areas outside of SECWCD's boundaries.
- 2.6 The Regional Entity and/or Springs Utilities shall provide SECWCD with a copy of the Regional Service Agreement upon its execution by both parties.
- 2.7 Springs Utilities agrees to notify SECWCD promptly in the event that the Regional Entity takes any action which constitutes a breach of its Regional Service Agreement, which breach has not been cured within the timeframe provided in the subject Regional Service Agreement; provided, however, that Springs Utilities shall notify SECWCD of any breach that remains uncured after thirty (30) days.

3. Springs Utilities' Existing Regional Service Agreements with Donala and Triview.

- 3.1 The Parties agree that Donala's and Triview's Regional Service Agreements with Springs Utilities are substantially in compliance with the terms and conditions set forth in Paragraph 2. For that reason, and for so long as Triview and Donala remain in compliance with their respective Regional Service Agreements with Springs Utilities, SECWCD will not require Donala or Triview to be included in SECWCD's boundaries to receive regional water service from Springs Utilities.
- 3.2 SECWCD agrees to waive the applicability of Section 7(d) of Contract No. 11XX6C0005 with regard to Springs Utilities' Regional Service Agreements with Triview and Donala.
- 3.3 Springs Utilities agrees to notify SECWCD and BOR promptly in the event that Donala or Triview take any action which constitutes a breach of their Regional Service Agreements, which breach has not been cured within the timeframe provided in the subject Regional Service Agreement.
- 3.4 Pursuant to the terms and conditions of this Agreement, the SECWCD agrees that Springs Utilities may provide regional water service to Donala and Triview by using the NOW and SDS infrastructure to convey water to Donala's and Triview's service areas.

4. Miscellaneous.

- 4.1 All notices, submittals of documents and other communication required or permitted to be given by this Agreement, including those mentioned above, must be made in writing. The original or a copy of any such communication must be either personally delivered, sent by first class mail, or provided via email, directed to the Party intended at the address set forth below (or at such other address as

may be designated by notice given to the other Party). Notices delivered under this Paragraph 4.1 shall be effective upon receipt.

IF TO SPRINGS UTILITIES:

Personal Delivery:
Colorado Springs Utilities
ATTN: Manager, Water Resources
1525S. Hancock Expressway
Colorado Springs, CO 80906

WITH A COPY TO:

City Attorney's Office
Attn: Utilities Division
30 South Nevada Ave.
P.O. Box 1575, Mail Code 501
Colorado Springs, CO 80901
michael.gustafson@coloradosprings.gov

United States Postal Service Address:

Colorado Springs Utilities
ATTN: Manager, Water Resources
P.O. Box 1103, MC 1825
Colorado Springs, CO 80947-1825
Kgortz@CSU.org

IF TO SECWCD:

SECWCD
31717 United Avenue
Pueblo, CO 81001
peter@secwcd.com; and
leann@secwcd.com

WITH A COPY TO:

April Hendricks, Esq.
Jewell Jimmerson Natural Resources
Law LLC
333 Perry Street, Suite 310
Castle Rock, CO 80104
ahendricks@jjnrlaw.com

- 4.2 Each Party to this Agreement has engaged legal counsel to negotiate, draft, and review this Agreement. Therefore, in construction and interpretation of this Agreement, the Parties acknowledge and agree that it is not to be construed against any Party on the basis of authorship.
- 4.3 In accord with the Colorado Springs City Charter, performance of Springs Utilities' obligations under this Agreement is expressly subject to appropriation of funds by City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Springs Utilities' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement will thereafter become null and void by operation of law, and Springs Utilities' will thereafter have no liability for compensation or damages to SECWCD for future performance and obligations thereafter in excess of Springs Utilities' authorized appropriation for this Agreement or applicable spending limit, whichever is less. Springs Utilities will notify SECWCD as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.
- 4.4 This Agreement represents the entire agreement of the Parties, and neither Party has relied on any fact or representation not expressly set forth herein. This Agreement supersedes all prior agreements and understandings of any type, both written and oral, among the Parties with respect to the subject matter hereof.

- 4.5 The failure of any Party to insist in one or more cases upon the strict performance or observance of any of the terms or conditions of this Agreement will not be and is not to be construed as a waiver or relinquishment in any future case of such term or condition. This Agreement cannot be modified orally, but only by agreement in writing signed by both Parties.
- 4.6 No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties in the same manner as the execution of this Agreement.
- 4.7 The Parties to this Agreement represent that they have the full power and authority to enter into and perform this Agreement.
- 4.8 The Parties agree to cooperate with each other in good faith in the performance of their other obligations and requirements under this Agreement and to fulfill the intent and purposes of this Agreement.
- 4.9 This Agreement may be signed in counterparts, each of which is to be deemed an original but all of which constitute one and the same contract.
- 4.10 This Agreement is subject to, and shall be interpreted and performed under, the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs in all respects.
- 4.11 In the event of litigation, the exclusive venue and place of jurisdiction shall be El Paso County, Colorado.
- 4.12 Nothing herein is to be construed to give any rights or benefits hereunder to anyone other than Springs Utilities and SECWCD.
- 4.13 Unenforceability of any provision contained in this Agreement shall not affect or impair the validity of any other provision of this Agreement, so long as the primary purpose(s) of this Agreement represents the entire agreement of the Parties with respect to the subject matter of the Agreement. All previous negotiations, considerations, representations, and understandings between the Parties are incorporated and merged into this Agreement.
- 4.14 The Parties' rights and obligations under this agreement will benefit and bind the Parties' successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed, and the Agreement is effective as of the Effective Date stated above.

Southeastern Colorado

City of Colorado Springs, Colorado, acting

Water Conservancy District

by and through its Utility Enterprise

By: _____

Leann Noga, Executive Director

By: _____

Travas Deal, Chief Executive Officer

Approved as to Form:

By: _____

April D. Hendricks

Approved as to Form:

By: _____

Michael J. Gustafson

Concurrence of the United States of America

Concurrence of the United States of America

The United States' Bureau of Reclamation ("BOR") has reviewed the _____, 2026 agreement by and between the Southeastern Colorado Water Conservancy District ("SECWCD") and the City of Colorado Springs, Colorado, acting by and through its enterprise, Colorado Springs Utilities ("Springs Utilities") related to Section 7(d) of Contract No. 11XX6C005, between the United States of America and the City of Colorado Springs for Conveyance and for the Operation, Maintenance and Replacement Costs Associated with the North Outlet Works a Facility of the Fryingpan-Arkansas Project ("SECWCD/Springs Utilities Agreement"). The BOR Agrees that so long as SECWCD provides notice to Springs Utilities and the BOR that SECWCD agrees that a proposed Regional Services Agreement between Springs Utilities and a Regional Entity serving areas outside the boundaries of SECWCD satisfies the terms and conditions of the SECWCD/Springs Utilities Agreement, the BOR will waive applicability of Section 7(d) of Contract No. 11XX6C005 for such Regional Service Agreement. The BOR further agrees to waive applicability of Section 7(d) of Contract No. 11XX6C0005 for Springs Utilities' existing Regional Service Agreements with Triview Metropolitan District and Donala Water and Sanitation District.

United States of America

By: _____

Name: _____

Title: _____