

Intergovernmental Agreement Between
City of Colorado Springs, Colorado,
Acting by and through its enterprise, Colorado Springs Utilities,
And
Arkansas River Power Authority
for Material and Supply Purchasing and Emergency Sales
Effective July 1, 2025

This Intergovernmental Agreement (“Agreement”) for Material and Supply Purchasing and Emergency Sales is effective upon signing by all parties (“Effective Date”), and is between the City of Colorado Springs, Colorado, a Colorado home rule city and municipal corporation, acting by and through its enterprise, Colorado Springs Utilities (“Utilities”), and the Arkansas River Power Authority, a nonprofit public power utility of the State of Colorado (“ARPA”). Utilities and ARPA may be referred to individually as a “Party” and collectively as the “Parties.”

Purpose

The purpose of this Agreement is to establish a regional partnership through which Utilities and ARPA, on behalf of its Members, will jointly purchase materials and supplies to increase their bargaining power and obtain better pricing on such materials and supplies.

Recitals

- A. Utilities is a four-service municipally owned utility with a mission to provide safe, reliable, competitively priced electric, natural gas, water, and wastewater services to its citizen owners and customers.
- B. ARPA is a nonprofit public power utility and political subdivision of the State of Colorado that supplies wholesale electric power to, and is owned by, its member communities of Holly, La Junta, Lamar, Las Animas, Springfield, and Trinidad, Colorado (“Members”).
- C. Utilities and ARPA Members both require, and regularly purchase, similar materials and supplies to operate, maintain, and repair their utility facilities.
- D. By forming a regional partnership to jointly purchase such materials and supplies, the Parties can increase their bargaining power and obtain better pricing on such goods and supplies.
- E. Through such a regional partnership, the Parties may also cooperate in the event of an Emergency by allowing ARPA or its Members to purchase necessary Goods from Utilities’ then-current inventory.
- F. This Agreement provides for the joint exercise of powers lawfully authorized to each of the Parties, specifically for the sharing of costs associated with purchasing goods and materials the Parties need to provide utility services and maintain and repair their facilities, as authorized by the provisions of Sections 18(2)(a) and (2)(b) of Article XIV of the Colorado Constitution and Sections 29-1-201 *et seq.*, C.R.S., regarding intergovernmental relationships.

G. Each Party's governing body has authorized the execution and delivery of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual undertakings herein contained and the mutual benefits to the Parties, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

Section 1. Definitions

For the purposes of this Agreement, these terms shall mean as follows:

- (a) Administrative Fee means the fee ARPA pays Utilities for Utilities' services related to the Goods, including ordering, calculating and collecting tax on, receiving delivery of, sorting, and storing the Goods until ARPA takes control of, and title to, the Goods.
- (b) Goods means those materials and supplies necessary for the operation, maintenance, and repair of utility services and facilities. For the purpose of this Agreement, Goods shall not include any hazardous materials, defined as any substances or materials identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substances or materials which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling disposal, and/or cleanup.
- (c) Emergency means an unforeseeable event beyond ARPA or its Member's reasonable control, and without ARPA or its Member's fault or negligence, that prevents ARPA from purchasing and receiving Goods necessary to repair its or its Members facilities within a reasonable timeframe. Emergencies include, but are not limited to, strikes, riots, wars, floods, fires, explosions, acts of nature, or supply chain breakdowns.
- (d) Vendor means a supplier of Goods with whom Utilities has a contract for the purchase of Goods.

Section 2. Term

This Agreement will be in effect from the Effective Date until December 31, 2026 ("Term"), with four (4) one-year renewal options exercisable at the sole discretion of Utilities.

Section 3. Procurement and Sale of Goods

- (a) ARPA will have no right to participate in, provide any input into, or influence Utilities' procurement process for Goods or Utilities' contractual relationships with Vendors.
- (b) ARPA agrees not resell or trade any Goods received pursuant to this Agreement.

Section 4. Joint Purchasing of Goods

- (a) On or before December 31 each year, ARPA will send Utilities, via email to the Utilities Representative set forth in Section 26, a list of Goods ARPA wants to purchase over the following one-year period. Such list must include a description of the Goods, the quantity of each type of Good ARPA requires, any applicable manufacturer names and part numbers for the Goods, and any other required specifications regarding the Goods.
- (b) Upon receipt of ARPA's list of Goods, Utilities will:
 - i. Review Vendor contracts for the Goods to ensure such contracts do not prohibit joint purchases of Goods by Utilities and ARPA;
 - ii. Calculate the total quantity of each type of Good required by Utilities and ARPA for the year;

- iii. Obtain quotes from each applicable Vendor for the total purchase price for each type of Good;
 - iv. Send ARPA an invoice, via email to the ARPA Representative set forth in Section 26 below, for its proportion of the total purchase price for each type of Good, plus an administrative fee of 10%, and plus any applicable state and local taxes due on ARPA's purchase; and
 - v. Submit orders for the joint purchases of Goods to applicable Vendors.
- (c) ARPA will pre-pay Utilities for the Goods, with ARPA's payment of the invoice due and payable Net thirty (30) Days from the date of Utilities' invoice. ARPA's payment must include the state and local taxes specified in subpart (b)(iv). ARPA's payment is to be remitted to Utilities as follows:

Colorado Springs Utilities
Attention:
121 S. Tejon Street, 5th Floor
Colorado Springs, CO 80903

- (d) To the extent taxes are not collected by the Vendor on the purchase, each Party is responsible for the calculation and remittance of any tax due on its purchases under this Agreement.

Section 5. Delivery of Goods and Risk of Loss

- (a) Utilities will notify ARPA, by email to ARPA's Representative, within 5 days of Utilities' receipt of Goods jointly purchased with ARPA.
- (b) Utilities will hold ARPA's portion of the Goods at one of its warehouses for a period of 15 days. During this 15-day period, Utilities will provide insurance to warehouse ARPA's portion of the Goods to the extent it already does so. However, Utilities will not provide any additional insurance for ARPA's portion of the Goods.
- (c) ARPA must email Utilities' Representative and arrange a date and time for ARPA to pick up its portion of the Goods at Utilities' warehouse, and must pick up the Goods, before the expiration of this 15-day period. ARPA may take control over, and title to, its portion of the Goods only after paying Utilities' invoice in full, as set forth in Section 4(c).
- (d) Risk of loss for the Goods will pass to ARPA when ARPA takes control over, and title to, the Goods at Utilities' warehouse.
- (e) If ARPA fails to arrange a date and time for pickup of its portion of the Goods within the 15-day period, Utilities will consider the Goods abandoned and take ownership of, and title to, the Goods, unless the Parties agree otherwise.

Section 6. Emergency Purchasing by ARPA

- (a) In the event of an Emergency, ARPA may ask to purchase Goods from Utilities' then-current inventory. ARPA will send such a request to Utilities' Representative via email. The request must include a description of the Goods, the nature of the Emergency, the quantity of each type of Good ARPA requires, any applicable manufacturer names and part numbers for the Goods, and any other required specifications regarding the Goods.
- (b) Utilities may sell the Goods to ARPA if, and only if:

1. Utilities' then-current inventory includes the Goods specified in ARPA's request, or similar goods that would meet ARPA's needs;
 2. Utilities has no immediate need for the Goods; and
 3. Utilities may resell the Goods under the applicable Vendor contracts.
- (c) Utilities will send ARPA an invoice for the Goods via email to ARPA's Representative. ARPA's cost for any Goods from Utilities' then-current inventory will equal the then-current replacement cost of the Goods, plus an administrative fee of 10%, and plus any applicable state and local taxes due on ARPA's purchase.
- (d) ARPA will pre-pay Utilities for the Goods, with ARPA's payment of the invoice due and payable thirty (30) days from the date of Utilities' invoice, as set forth in Section 4(c) above.
- (e) ARPA must email Utilities' Representative and arrange a date and time for ARPA to pick up the Goods from Utilities' warehouse. ARPA may take control over, and title to, the Goods only after payment of Utilities' invoice.
- (f) Risk of loss for the Goods will pass to ARPA when ARPA takes control over, and title to, the Goods at Utilities' warehouse.
- (g) If ARPA fails to pay Utilities' invoice within thirty (30) days of the date of the invoice, and fails to arrange a date and time for its pickup of its Goods within fifteen (15) days of the date of the invoice, Utilities will consider ARPA's request void.

Section 7. Warranties

To the extent permitted under applicable contracts, Utilities agrees to assign to ARPA any manufacturer warranties that Utilities receives for the Goods ARPA purchases with or from Utilities. However, Utilities will not provide any other warranties for the Goods to ARPA.

ARPA ACKNOWLEDGES AND AGREES THAT, OTHER THAN ANY MANUFACTURER WARRANTIES FOR THE GOODS THAT UTILITIES ASSIGNS TO ARPA, THE GOODS ARE SOLD TO THEM AS IS, WHERE IS, WITH ALL FAULTS. UTILITIES HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, CONDITION, CAPACITY, PERFORMANCE OR ANY OTHER ASPECT OF SAID GOODS. ARPA SHALL HAVE NO RECOURSE AGAINST COLORADO SPRINGS UTILITIES, THE CITY OF COLORADO SPRINGS, ANY OF THEIR ENTERPRISES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, OR AGENTS.

Section 8. No Indemnification

Each Party is prohibited from indemnifying the other Party pursuant to Article XI, §§ 1 and 2 of the Colorado Constitution. Thus, each Party agrees to be responsible for its own negligent acts and omissions and those of its directors, officers, employees and representatives.

Section 9. Confidential Information

- (a) Both Parties are public entities subject to the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201, et seq. Any confidential and/or proprietary information that either Party discloses to the other Party with respect to this Agreement shall be designated as

confidential and proprietary by the disclosing Party at the time of disclosure and shall herein be referenced as “Confidential Information.”

- (b) The recipient of Confidential Information shall not use or disclose Confidential Information unless expressly authorized in this Agreement or by the disclosing Party in writing except for the purpose of (a) evaluating the information disclosed by the disclosing Party or (b) performing duties or exercising rights pursuant to this Agreement. Notwithstanding anything provided herein to the contrary, disclosure to the officers, appointees, employees, agents, or attorneys of Utilities who need to know the Confidential Information will not be deemed to be a disclosure of Confidential Information in violation of this Section. In the event either Party receives a request for such Confidential Information from a third party, notice thereof shall promptly be given to the other Party. The recipient shall take all reasonable steps to prevent any unauthorized possession, use, transfer or disclosure of such Confidential Information. Should the recipient learn of any such unauthorized possession, use, transfer or disclosure, it shall promptly notify the other Party. If requested, the recipient shall deliver to the other Party, all Confidential Information (including all copies) disclosed to it with respect to this Agreement.
- (c) The disclosure provisions of this Section shall not apply to information that a) the Parties had in their possession prior to disclosure by the other Party; b) becomes public knowledge through no fault of the recipient; c) the recipient lawfully acquires from a third party not under an obligation of confidentiality to the disclosing party; or d) is required to be disclosed by law or court order.

Section 10. Appropriation of Funds

The Parties acknowledge that, in accordance with the Colorado Constitution, Article X, Section 20, and Section 7-60 of the Charter of the City of Colorado Springs, performance of the Parties’ obligations under this Agreement is expressly subject to annual appropriation and availability of funds for that purpose. Nothing herein shall constitute, nor 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, Utilities, or ARPA, or any other constitutional, statutory, or charter debt limitation.

Section 11. Expenditures and Fees of Each Party Deemed Expenditures of that Party

The Parties to this Agreement agree that the purpose of this Agreement is to jointly accomplish pursuant to C.R.S. Section 29-1-203 activities which could be performed separately by each Party. Accordingly, it is agreed and understood for purposes of Article X, Section 20 of the Colorado Constitution, and for the Charter of the City of Colorado Springs, that any fees contributed or paid, or otherwise provided by ARPA to Utilities are and remain an expenditure of ARPA and are not revenue or expenditures of the Utilities.

Section 12. Utilities’ Limitation of Liability

In no event shall Utilities be liable to ARPA or any third party for any incidental, indirect, special, or consequential damages arising out of, in connection with, or resulting from this Agreement, whether or not Utilities was advised of the possibility of such damage. Utilities’ liability on any claim of any kind for any loss or damage arising out of, in connection with, or resulting from this Agreement or from the performance or breach thereof shall in no case exceed the price allocable to the Goods which give rise to the claim. Utilities shall not be liable

for penalties of any kind. Any action resulting from any breach on the part of Utilities as to Goods hereunder must be commenced within one (1) year after the cause of action has accrued.

Section 13. Immunity

Nothing in this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protections provided to the City and Utilities under governmental immunity laws applicable to the City and Utilities, including, the Colorado Governmental Immunity Act (CRS § 24-10-101, et seq.).

Section 14. Minimum Insurance Requirements

ARPA will provide to UTILITIES a certificate of insurance (COI) to ensure that the insurance coverages meet UTILITIES's insurance requirements. The COI is required for when ARPA will be responsible for the pick-up and transportation of any goods from a UTILITIES facility.

Section 15. Records and Accounts.

Both Parties shall maintain an accurate and complete file of all records, documents, communications, and other written materials which pertain to the performance of the Agreement, including requests for and deliveries of Goods, and shall maintain such records for a period of three years after the date of payment of the last invoice related to this Agreement. Each Party shall have the right to audit records at reasonable times and upon reasonable notice.

Section 16. Force Majeure

Neither Party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbances.

Section 17. Dispute Resolution

(a) If a dispute arises between the Parties relating to this Agreement, the following procedure shall be followed:

1. The Parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, 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 or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled unless otherwise agreed to by the Parties in writing.
2. If, within thirty (30) calendar 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.
3. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar 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.
4. The Parties agree to participate in good faith in the mediation and negotiations for a period of thirty (30) calendar days. The substantive and procedural law of the

State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to litigate the matter.

Section 18. Termination

Either Party may terminate this Agreement or any part hereof for its sole convenience. In the event of such termination, ARPA shall have no rights to any Goods for which it has not pre-paid Utilities. If ARPA has pre-paid for any Goods, and Utilities has not ordered the Goods at the time of Termination, ARPA shall have a right to a refund of its payment(s) for the Goods. If ARPA has pre-paid for any Goods, and Utilities has ordered the Goods at the time of Termination, ARPA shall have the right to obtain such Goods on receipt by Utilities in accordance with Section 5 above.

Section 19. Governing Law; Jurisdiction and Venue.

This Agreement will be 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. Each Party hereby expressly and irrevocably agrees and consents that any suit, action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby shall be instituted by any Party exclusively in any State court sitting in El Paso County, Colorado or, if federal jurisdiction exists, exclusively in the Federal court sitting in the City and County of Denver, State of Colorado and, by the execution and delivery of this Agreement, expressly waives any objection which it may have now or hereafter to the laying of the venue of any such suit, action, or proceedings.

Section 20. Severability

If a court of competent jurisdiction holds any provision of this Agreement invalid under the laws of the State of Colorado or of the United States, such invalidity will not invalidate the whole Agreement. Instead, the Agreement will be construed as though not containing that particular provision, and the rights and obligations of the Parties will be construed and in force accordingly, provided that the purposes of this Agreement are accomplished as originally intended by the Parties.

Section 21. Assignment

Neither Party may assign or transfer any part of this Agreement without the prior written consent of the other Party.

Section 22. No Third-Party Beneficiary.

It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any claims or right of action by any other party. It is the express intention of the Parties that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

Section 23. Non-Exclusive Agreement

This is not an exclusive Agreement. Utilities is free to enter into other partnership agreements with other entities for the joint purchase of Goods.

Section 24. No Publicity

ARPA shall not advertise or promote using the name or description of Utilities, without prior written consent of Utilities.

Section 25. Waiver

Utilities' failure to insist on performance of any of the terms or conditions or to exercise any right or privilege, or Utilities' waiver of any breach hereunder, shall not waive any other terms, conditions, or privileges, whether of the same or similar type.

Section 26. Representatives and Notice

The Parties appoint the following Representatives to act as liaisons with each other to coordinate Utilities' provisions of Goods under this Agreement. Either Party may change its designated Representative with written notice via email to the other Party.

All notices necessary or required under this Agreement shall be in writing and shall be sent via email to the Representatives listed below.

Utilities
Rich Norton
General Manager of Supply Chain
rnorton@scu.org
719-985-1651

ARPA
Rick Rigel
General Manager
rrigel@arpapower.org
719-336-3496

Section 27. Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject of this Agreement, and supersedes all previous written or oral communications, understandings, and agreements between the Parties unless specifically stated herein. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgement or other document submitted by either Party.

Section 28. Amendments

This Agreement may be amended only by a written amendment authorized by the governing bodies of both Parties.

Section 29. Counterpart; Copies of Signatures

This Agreement may be executed in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been duly authorized and executed by the officers authorized thereunto, on the dates shown below for each Participant.

Colorado Springs Utilities,
an enterprise of the City of Colorado Springs, a
Colorado home rule city and municipal corporation

By: _____
Travas Deal
Chief Executive Officer

Date: _____

Approved as to form:

Arkansas River Power Authority

By: _____
Richard Rigel
General Manager

Date: _____

Attest:
