

**AMENDED AND RESTATED
AGREEMENT BETWEEN
THE PIKES PEAK REGIONAL WATER AUTHORITY AND
COLORADO SPRINGS UTILITIES**

This Amended and Restated Agreement (“Agreement”) is made by and between the Pikes Peak Regional Water Authority (“Authority”) and the City of Colorado Springs, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities (“Utilities”). The Authority and Utilities may be referred to herein each individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the Authority is a water authority, a body corporate and politic, a separate governmental entity, a political subdivision and public corporation of the State of Colorado, pursuant to Section 18(2)(a) and 2(b) of Article XIV, Constitution of the State of Colorado and to § 29-1-204.2, Colorado Revised Statutes, formed pursuant to the Second Amended Establishing Contract for El Paso County Water Authority and Name Change to Pikes Peak Regional Water Authority (“Establishing Contract”); and

WHEREAS, Utilities is an enterprise of the City of Colorado Springs, a home rule city and Colorado municipal corporation, that provides water and wastewater services to the City of Colorado Springs and the surrounding area; and

WHEREAS, the Parties are authorized under §29-1-203, C.R.S. to cooperate and contract with one another to provide functions, services, and facilities; and

WHEREAS, the Authority, through its members and associates, conducts various projects related to the development and protection of water resources some of which have the potential to benefit Utilities; and

WHEREAS, only members of the Authority and its associates may participate in the Authority’s projects; and

WHEREAS, in 2013 the Authority and Utilities entered into an agreement whereby Utilities became an associate of the Authority (“Original Agreement”), which agreement and associate status was confirmed by Authority Resolution 13-4; and

WHEREAS, Utilities has requested that the Parties amend and restate the Original Agreement and enter into this Agreement to address Utilities’ concern that the Original Agreement may not have been properly approved and/or executed; and

WHEREAS, the Authority is willing to accommodate Utilities’ request and has adopted Authority Resolution 21- _ that approves the amendment and restatement of the Original Agreement, recognizes Utilities’ status as an associate of the Authority, and authorizes this

Agreement that defines the relationship between Utilities, as an associate of the Authority, and the Authority.

TERMS

NOW THEREFORE, in consideration of the mutual benefits described herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The above Recitals are incorporated herein as if fully set forth.
2. Original Agreement Superseded. The Original Agreement is hereby completely amended, restated, and superseded by this Agreement, and the terms hereof shall control the relationship between the Authority and Utilities from the date of the last signature to this Agreement forward.
3. Associate Status. The Authority hereby acknowledges that Utilities is an associate of the Authority for the purpose of participating in Authority projects pursuant to the terms and conditions of this Agreement.
4. Term of Agreement. This Agreement shall be in full force and effect starting on the date it is last executed by the Parties, and shall continue in full force and effect until Utilities withdraws its associate status or until Utilities' associate status is revoked by the Authority's Board of Directors.
5. Director. Utilities shall have the right to appoint a non-voting member to the Board of Directors of the Authority. Utilities may select one or more alternates who may act as a Director in the absence or unavailability of the person selected by Utilities as its Director. Utilities' Director shall serve until replaced by Utilities. Utilities' Director shall not receive compensation from the Authority for his/her service. The Authority's Board of Directors may provide for reimbursement of Utilities' Director for reasonable and necessary expenses incurred on behalf of, and authorized by, the Authority to the extent permitted by law.
6. Participation in Authority Projects. Utilities shall have the right to participate in all projects of the Authority subject to the terms of this Agreement, the Establishing Contract, and any relevant project participation agreement ("Project Participation Agreement").
7. Annual Administrative Fee. The Authority may charge Utilities an annual administrative fee for Utilities' participation in the Authority as an associate. The purpose of the annual administrative fee is to cover the administrative costs of including Utilities as an associate of the Authority. Pursuant to Authority Resolution No. , the annual administrative fee for 2021 is \$1,158.72. In subsequent years the annual administrative fee shall be determined by resolution of the Authority's Board of Directors. Utilities shall pay the annual administrative fee within thirty (30) days of receipt of an invoice from the Authority. Non-payment of the annual administrative fee within the year it is due shall constitute a *de facto* withdrawal of Utilities from the Authority.

8. Withdrawal. Utilities may withdraw its status as an associate of the Authority at any time by giving the Authority written notice thereof at least ten (10) days in advance. Utilities shall pay any unpaid annual administrative fee and any obligations incurred by Utilities under a Project Participation Agreement not already satisfied that have been assessed as of the effective date of its withdrawal from the Authority.

9. Revocation of Associate Status. The Authority may revoke Utilities' associate status for any reason deemed appropriate by the Authority's Board of Directors, upon an affirmative majority vote of the voting Directors of the Authority; provided however, that if Utilities is participating in a project and is current on any obligations it may have under a Project Participation Agreement, Utilities will have the right to continue in that project until the project is complete, unless Utilities fails to comply with its further obligations under the Project Participation Agreement. Upon revocation, Utilities shall be responsible for paying any unpaid annual administrative fee and any obligations incurred by Utilities under a Project Participation Agreement not already satisfied that are assessed prior to the effective date of the revocation of Utilities' associate status.

10. Default and Cure. Utilities shall continue to be eligible to maintain its associate status only if it regularly pays its annual administrative fees and other obligations incurred under a Project Participation Agreement when such annual administrative fees and other obligations become due. In the event any such annual administrative fee or other obligation is not paid when due, then Utilities shall be in default and shall not be entitled to maintain its associate status, provided however, that Utilities shall have thirty (30) days after written notice from the Authority's Board of Directors in which to cure such default, but in no event shall it be relieved of its obligation to make any payments for which it shall be legally responsible and which shall remain due and payable. The Authority's Board of Directors shall have the right to compel payment of any amounts due and owing by appropriate legal process. Continuation of Utilities' associate status, after default, shall only be upon such terms and conditions as the Authority's Board of Directors then deems appropriate.

11. Legal Notice. Notices required under this Agreement shall be given in writing, signed by an authorized representative of the Party giving notice. Telephonic or email notice is not acceptable. Notices shall be delivered by courier service delivery (such as Federal Express), or by first-class mail, return-receipt requested, to the people specified below at the following addresses and telephone numbers:

IF TO UTILITIES:

Colorado Springs Utilities
c/o Abby Ortega, Water Resources Manager
1521 South Hancock Expressway
MC 1825
Colorado Springs, CO 80947

IF TO THE AUTHORITY:

Pikes Peak Regional Water Authority
c/o Ann Nichols, Secretary
2 North Cascade Avenue, Suite 1280
Colorado Springs, CO 80903

12. Assignment. There shall be no assignment of the rights or obligations contained in this Agreement by any Party without the prior written consent of the other Party, and any assignment without such consent shall be null and void. Notwithstanding anything herein to the contrary, upon written notice to the Authority, Utilities may assign this Agreement without the Authority's consent to the City of Colorado Springs, Colorado.

13. No Precedent; Severability. The Parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future agreement, nor vest any rights in either Party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be binding upon the Parties who agree that this Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.

14. Appropriation of Funds. In accordance with the Colorado Springs City Charter, performance of Utilities' obligations under this Agreement is expressly subject to appropriation of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of 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 Utilities will thereafter have no liability for compensation or damages to the Authority in excess of Utilities' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Utilities will notify the Authority as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

15. Entire Agreement. This Agreement contains the entire understanding between the Parties; no modification, amendment, notation, or other alteration to this Agreement shall be valid or of any force or effect unless mutually agreed to by the Parties in writing as an addendum to this Agreement. At the time of the execution of this Agreement, there are no other terms, conditions, requirements, or obligations affecting this Agreement that are not specifically set forth herein.

16. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Colorado, except for its conflict of law provisions, and the Colorado Springs City Charter and City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado. In the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado, specifically in District Court for El Paso

County, Colorado, and if necessary for exclusive federal questions, the United States District Court for the District of Colorado, and for water matters as defined in Colo. Rev. Stat. § 37-92-201, *et seq.*, the Colorado District Court in and for Water Division 2.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. Electronic copies of signatures shall be permitted for purposes of the binding nature of this Agreement.

18. Authority. Each Party warrants that it has the authority to enter into this Agreement and that the person signing this Agreement on its behalf has the authority to bind it to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

PIKES PEAK REGIONAL WATER AUTHORITY

By: _____
Amy Lathen, President

Date:

Attest: _____
Ann Nichols, Secretary

COLORADO SPRINGS UTILITIES

By: _____
Aram Benyamin, Chief Executive Officer

Date:

Approved as to Form: _____
Attorney
City Attorney's Office-Utilities Division