

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Purchase IGA"), effective October 15, 2021, is entered into by and among the Board of Water Works of Pueblo, Colorado ("Pueblo Water"), the City of Aurora, Colorado, acting by and through its Utility Enterprise ("Aurora"), the Southeastern Colorado Water Activity Enterprise ("Southeastern"), the City of Fountain, acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise ("Fountain"), the City of Colorado Springs, on behalf of its enterprise Colorado Springs Utilities ("Colorado Springs"), and Pueblo West Metropolitan District ("Pueblo West"). Collectively, all of the entities that execute this Purchase IGA are referred to as the "Parties," and individually by name or as "Party".

RECITALS

WHEREAS, the Parties (excluding Pueblo West) entered into an Intergovernmental Agreement with the City of Pueblo, Colorado ("City of Pueblo"), fully executed on May 27, 2004 ("Pueblo IGA"), providing *inter alia* for the parties to the Pueblo IGA to forego diversion of certain water rights under certain flow conditions on the Arkansas River to help sustain flows through certain recreational structures on the Arkansas River in the City of Pueblo, and to recapture the foregone diversions downstream for subsequent storage and the exchange of that water back upstream on the Arkansas River under different stream flow conditions; and

WHEREAS, the program to recapture the foregone diversions is known as Restoration of Yield ("ROY"); and

WHEREAS, Pueblo Water entered into a certain Lease with Option to Purchase dated January 1, 2017, with Steven L. Fossel to lease and potentially purchase certain real property located in Pueblo County, Colorado (the "Fossel LOP"), which property is more fully described in Exhibit 1 attached hereto and incorporated ("Subject Property"); and

WHEREAS, based on technical investigations of the Subject Property, the Parties have determined that the Subject Property is suitable for a reservoir facility for ROY purposes; and

WHEREAS, the Parties want Pueblo Water to exercise its option to purchase the Subject Property and wish to acquire an interest therein for ROY purposes; and

WHEREAS, the purpose of this IGA is to effectuate the purchase of the Subject Property and to set forth the respective rights and obligations of the Parties in the purchase of the Subject Property.

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 Parties agree and request that Pueblo Water exercise its option to purchase the Subject Property and assign an interest in the purchase contract to the remaining Parties in accordance with the further terms of this Purchase IGA.
2. Participation Percentage. If all Parties execute this Purchase IGA, then each Party's Participation Percentage/Pro-rata Share of the cost to purchase the Subject Property and ownership of the Subject Property as a tenant in common is as follows:

| Party | Participation Percentage/Pro-rata Share |
|------------------|--|
| Pueblo Water | 28.58% |
| Aurora | 28.57% |
| Southeastern | 4.76% |
| Fountain | 4.76% |
| Colorado Springs | 28.57% |
| Pueblo West | 4.76% |

If any named Party fails to approve and execute this Purchase IGA on or before November 1, 2021 that Party will have no rights under the Purchase IGA and its Participation Percentage will be reallocated pro-rata among the remaining Parties who have executed this Purchase IGA.

3. Pueblo Water will exercise its option to purchase the Subject Property after the execution of this Purchase IGA by Parties holding a combined 85 percent of the Participation Percentages, and on or before October 20, 2021. Pueblo Water hereby agrees to assign to each Party that has executed this Purchase IGA, not less than 30 days prior to closing, an undivided interest in the contract to purchase the Subject Property, equal to its Participation Percentage. Each of the Parties agrees to assume Pueblo Water's rights and obligations under the purchase contract to the extent of its respective Participation Percentage.

4. Payment of Purchase Price

- a. The Purchase price for the Subject Property is \$2,850,000.00. The terms of the contract for purchase ("Contract") are set forth in the amended Exhibit C to the Fossil LOP, an accurate, and complete copy of which exhibit is attached hereto. Each Party agrees to be bound by the Contract. The Parties further agree that they will each pay a portion of the purchase price and costs of closing equal to their Participation Percentage and will own, as tenants in common, an undivided interest in the Subject Property equal to their Participation Percentage. After Closing the Parties may adjust their Participation Percentages and ownership interest in accordance with the Implementation Agreement described in paragraph 8 below.
- b. If any Party desires to have the Subject Property appraised, it may do so at its expense.
- c. Not less than thirty (30) days prior to closing, any Party that is unwilling or unable to close by paying its share of the purchase price must notify the other Parties in writing of its intent not to participate.
- d. If one or more Parties whose combined Participation Percentage is 14.28 percent or less are unable or unwilling to close, then the remaining Parties may elect to close on the purchase of the Subject Property and shall each pay a pro rata share of the purchase price that would have been paid for the Subject Property by the Parties that are unable or unwilling to close.
- e. If one or more Parties whose combined Participation Percentage in the Subject Property is greater than 14.28 percent are unable or unwilling to close, then the remaining Parties may elect not to close on the purchase of the Subject Property. If the remaining Parties decide to close on the purchase of the Subject Property, then they shall pay the Purchase Price in such individual amounts as they may mutually agree before closing, and their Participation Percentage will be determined by their percentage of the purchase price.
- f. Upon closing, all rights of a Party that fails to pay its portion of the purchase price are extinguished, including any assignment of an interest in the purchase contract.

5. Transfer, Assignment, and Right of First Refusal.

- a. Subsequent to Closing, if the Parties agree to form a joint water authority, mutual reservoir company, or other entity to own, operate, and maintain the Subject Property and water storage or diversion structure located on the Subject Property,

then each Party shall convey its respective interest in the Subject Property to such entity as a capital contribution to such entity.

- b. Right of First Refusal. After Closing, if a Party determines to sell, transfer, or otherwise convey to another entity all or any part of its interest in the Property, except as provided in Section (a) above, the non-selling Parties shall have first and prior right to purchase such interest upon payment of the fair market value of the interest being sold as determined by an appraisal conducted by an independent appraiser acceptable to all interested non-selling Parties and conducted at the cost of the selling Party. The selling Party shall give 180 days written notice of its intention to sell to the other Parties. Such notice shall include the identity of the third-party purchaser (which must be a political subdivision of the State of Colorado as defined in Section 29-1-202(2), C.R.S), the purchase price and a copy of the appraisal report setting the value. Each of the non-selling Parties shall have a period of ninety (90) days from receipt of such written notice in which to notify the selling Party of its intent to exercise its right to purchase the interest of the selling Party. If one or more non-selling Parties provides notice of intent to exercise the right to purchase the selling Party's interest, the purchasing Party(ies) shall have one (1) calendar year from the date it provided notice of its intent to exercise its right to purchase in which to complete such purchase and the selling Party will reasonably cooperate with the non-selling Party(ies) in good faith to accomplish such sale and purchase within the time allowed. The purchase and sale between the selling Party and the non-selling Party(ies) shall be subject to terms and conditions customary for the sale and purchase of like property between governmental entities in Colorado at the time of such transaction. The terms and conditions of this Section shall be included in all deeds, leases, licenses, and other documents documenting the title or interest in real property acquired by each Party pursuant to this Agreement. If none of the non-selling Parties exercises the right to purchase pursuant to this Section, the selling Party may sell or transfer its interest to another political subdivision of the State of Colorado as defined in Section 29-1-202(2), C.R.S upon such terms as are no more favorable than those offered to the non-selling Parties; provided however, that the sale or transfer of the interest shall not adversely affect the operation of the Subject Property with respect to the interests of the remaining Parties. This right of first refusal will remain in effect and enforceable among the Parties unless and until abrogated by a subsequent agreement of all the Parties or their successors and assigns owning an interest in the Subject Property. Except as provided in Section (a) above, it shall

apply to every sale of an interest in the Subject Property by a Party, its successors or assigns.

6. Post-Closing Agreements.

- a. If a reservoir is built on the Subject Property, then absent further agreement of the Parties, no Party may independently seek to adjudicate any water right or appropriate right of substitution or exchange that involves the use of the Subject Property or any structures thereon absent the consent of all ROY Participants. The Parties acknowledge and agree that the decree entered by the Water Court, Water Division 2 in Case No. 06CW120 does not violate this paragraph. Nothing in this Purchase IGA restricts or limits any Party's exercise of that Party's decreed or contract exchanges existing on or before the effective date of this agreement.

7. Unless amended, replaced, or terminated by action of the Parties, this Purchase IGA will remain in effect until the closing of the purchase of the Subject Property, or the expiration of the Fossil LOP. The provisions of paragraphs 5 and 6 survive the closing of this Purchase IGA and remains enforceable by the Parties, collectively or individually.

8. Implementation Agreement. The Parties acknowledge that a further agreement among them is needed (a) to govern the management of the Subject Property; (b) to govern the acquisition of or to quiet title to any additional interest in the Subject Property need for construction of water diversion and storage facilities thereon; (c) to govern voluntary reallocation of ownership in the Subject Property among the Parties; (d) for design, construction, operation, management, and financing of any structures that may be constructed and operated on the Subject Property; (e) to allocate ownership and capacity in any reservoir and related structures to be constructed on the Subject Property; (f) the operation of any reservoir and related structures constructed on the Subject Property; (g) the acquisition of such other rights and property as may be necessary for the Parties' joint use of the Subject Property; and (h) the sale of the Subject Property should the Parties decide it is in their best interest to sell or otherwise dispose of the Subject Property. The Parties agree to meet regularly to work on such an agreement and to utilize their best efforts to have such an agreement completed and approved by the Parties within six (6) months after the closing of the purchase of the Subject Property.

9. Parties Are Governmental Entities. This Purchase 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). The Cities of Aurora, Colorado Springs and Fountain are home rule cities pursuant to Article XX of the Colorado Constitution.

The Southeastern Colorado Water Activity Enterprise is a Colorado Water Activity Enterprise established under section 37-45.1-103, C.R.S. The Board of Water Works of Pueblo, Colorado is an independent board established by the Charter of the City of Pueblo, which was adopted pursuant to Article XX of the Colorado Constitution. Pueblo West Metropolitan District is a Metropolitan District established in 1969 and operating pursuant to the Colorado Special District Act, C.R.S. § 32-1-101, *et seq.*

10. Constitutional and City Charter Limitations of Parties:

a. Sole Obligation of Aurora's Utility Enterprise. This Purchase IGA will never constitute a general obligation or other indebtedness of the City of Aurora, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Aurora within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City of Aurora.

In the event of a default by Aurora's Utility Enterprise of any of its obligations under this Purchase IGA, no one will have any recourse for any amounts owed to it against any funds or revenues of the City of Aurora except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of, the Water System and deposited in the Water Enterprise Fund, as the terms "Water System" and "Water Enterprise Fund" are defined in City Ordinance No. 2003-18, and then only after the payment of all operation and maintenance expenses of the Water System and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Utility Enterprise secured by a pledge of the net revenues of the Water Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this Purchase IGA will be construed as creating a lien upon any revenues of the Utility Enterprise or the City of Aurora.

Aurora represents that this Purchase IGA has been duly authorized, executed and delivered by Aurora and constitutes a valid and legally binding obligation of Aurora, enforceable against Aurora in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

b. Appropriation of Funds by the City of Colorado Springs. In accord with The Charter of the City of Colorado Springs, performance of Colorado Springs' obligations under this Purchase IGA 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 Colorado Springs' obligations under this Purchase IGA, or appropriated funds may not be expended due to City Charter spending limitations,

then all rights and obligations of Colorado Springs under this Purchase IGA will terminate, and Colorado Springs will thereafter have no liability for compensation or damages to the other Parties in excess of Colorado Springs' authorized appropriation for this Purchase IGA or the applicable spending limit, whichever is less. Colorado Springs will notify the Parties as soon as reasonably practicable in the event of non-appropriation or in the event a spending limitation becomes applicable. The funds appropriated for this Purchase IGA are equal to or exceed the contract amount for the year in which this Purchase IGA was executed. For any Purchase IGA payments to be made in subsequent fiscal years, if any, Colorado Springs will notify Parties of the appropriation of funds for such payment after the adoption of Colorado Springs' annual appropriation ordinance for those years.

c. Sole Obligation of City of Fountain Electric, Water and Wastewater Utility Enterprise. Any and all financial obligations of the City of Fountain hereunder will be solely the obligations of the City of Fountain acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise (the "Enterprise"), and not the financial obligations or other indebtedness of the City of Fountain, Colorado or a multiple fiscal year direct or indirect debt or an obligation of future appropriations by the City Council of the City of Fountain, Colorado contrary to Article X, Section 20 of the Colorado Constitution or contrary to any other constitutional, charter, or statutory limitation. The City of Fountain's obligation to perform any financial obligation hereunder will be fulfilled solely from the net revenues of the Enterprise. "Net revenues" will mean the gross revenues of the Enterprise, less all operation and maintenance expense related thereto as determined by the Enterprise, and less periodic payments on bonds, loans, and other financial obligations of the Enterprise. No other funds or property interests of the City of Fountain, nor any property taxes or any other form of taxation, will be used directly or indirectly, to perform any financial obligation of the City of Fountain pursuant to this Purchase IGA, and the full faith and credit of the City of Fountain is not pledged for the payment of the obligations of the City of Fountain pursuant to this Purchase IGA.

d. Sole Obligation of Pueblo West Metropolitan District's Water and Wastewater Enterprise. Notwithstanding anything herein to the contrary, all financial obligations of the Pueblo West Metropolitan District pursuant to this Purchase IGA shall be the sole obligations of the Pueblo West Metropolitan District acting through the Pueblo West Metropolitan District's Water and Wastewater Utility Enterprise, and not the financial obligations or other indebtedness of the Pueblo West Metropolitan District. Nothing herein constitutes, nor will be deemed to constitute, the creation of a debt or multi-year fiscal obligation of the District, or an obligation of future appropriations

by the Board of Directors of the District, contrary to Article X, § 20 of the Colorado Constitution or any other constitutional or statutory debt limitation.

11. Notices. 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 Aurora:

Director of Utilities, City of Aurora
15151 East Alameda Parkway, Suite 3600
Aurora, CO 80012

City Attorney, City of Aurora
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012

John M. Dingess
Hamre, Rodriguez, Ostrander & Dingess, P.C.
3600 S. Yosemite Street, Suite 500
Denver, Colorado 80237-1829

If to Colorado Springs:

Chief Water, Compliance, and Innovation Officer
Courier Service Address:
Colorado Springs Utilities
ATTN: Chief Water, Compliance, and Innovation Officer
121 S. Tejon St., 5th Floor
Colorado Springs, CO 80903

United States Postal Service Address:
Colorado Springs Utilities
ATTN: Chief Water, Compliance, and Innovation Officer
P.O. Box 1103,
Colorado Springs, CO 80947-0950

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 City of Fountain:

Utilities Director
City of Fountain
116 South Main Street
Fountain, CO 80817

Cynthia F. Covell
Alperstein & Covell, P.C.
1391 Speer Blvd. Suite 730
Denver, CO 80204

If to Board of Water Works of Pueblo:

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 Grant Street, Suite 1200
Denver, CO 80203

If to Southeastern Colorado Water Activity Enterprise:

James Broderick
Southeastern Colorado Water Activity Enterprise
31717 United Avenue
Pueblo, CO 81001

Lee E. Miller
PO Box 261008
Lakewood, CO 80226-1088

If to Pueblo West:

Nina Vetter, Manager
Pueblo West Metropolitan District
63 E. Spaulding Ave.
Pueblo West, CO 81007

Robert F.T. Krassa
Krassa & Miller, LLC
2300 Canyon Blvd. Suite 2
Boulder, CO 80302

or at such other address as any Party may designate by giving written notice thereof to the other Parties hereto in the aforesaid manner.

12. Governmental Immunity. Nothing in this Purchase 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.*

13. No Modifications. Nothing in this Purchase IGA amends, changes, alters, or supersedes any contract, agreement, deed, or other instrument or arrangement that exists between any of the Parties or any Party or Parties with any non-Party, including but not limited to any contract, agreement, deed, or other instrument or agreement concerning Pueblo IGA.

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

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

16. Waiver of Breach. No waiver or breach of any of the provisions of this Purchase 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 Purchase IGA.
17. Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof will be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule, or document will mean such policy, procedure, law, regulation, rule, or document as it may be amended from time to time.
18. Non-Severability and Effect of Invalidity. Each paragraph of this Purchase 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 Purchase 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).
19. Multiple Originals. This Purchase IGA may be executed in any number of counterparts, each of which will be deemed original, and all of which constitute one and the same Purchase IGA.
20. No Attorney's Fees or Costs. In the event of any litigation, mediation, or other dispute resolution process arising out of this Purchase IGA, the Parties agree that each is responsible for their own costs and fees associated with any such action.
21. Joint Draft. The Parties agree they drafted this Purchase IGA jointly with each having the advice of legal counsel and an opportunity to contribute to its content. Therefore, this Purchase IGA will not be construed for or against any Party on the basis of authorship.
22. Intent of Purchase IGA. This Purchase 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.
23. No Assignment Without Consent. Except as provided in Sections 4 and 5 above none of the Parties may assign their rights or delegate their duties hereunder without the prior written consent of all of the other Parties, unless the assignment is to an enterprise or other governmental entity controlled by the Party, or to a Party's successor political subdivision of the State of Colorado within the meaning of section 29-1-202(2), C.R.S.

IN WITNESS WHEREOF, the Parties have duly executed this Purchase IGA effective as of the date first above written.

(Signature Pages Follow)

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

STATE OF COLORADO)
) ss
COUNTY OF EL PASO__)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Aram Benyamin, Chief Executive Officer, acting on behalf of the City of Colorado Springs, Colorado.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

Board of Water Works of Pueblo, Colorado

Tom Autobee, President

Date

Attest:

Secretary-Treasurer (Print Name)

Date

STATE OF COLORADO)
) ss
COUNTY OF PUEBLO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Tom Autobee, President, acting on behalf of the Board of Water Works of Pueblo, Colorado.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

Southeastern Colorado Water Activity Enterprise

Bill Long, President

Date

Attest:

James W. Broderick
Assistant Secretary

Date

Approved as to form:

Lee E. Miller, General Counsel

Date

STATE OF COLORADO)
) ss
COUNTY OF PUEBLO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Bill Long, President, acting on behalf of the Southeastern Colorado Water Activity Enterprise.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

City of Fountain

Richard Applegate, Mayor

Date

Attest:

Sharon Mosley
City Clerk

Date

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this ____ day of _____,
2021, by Richard Applegate, Mayor, acting on behalf of the City of Fountain.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

**CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS UTILITY ENTERPRISE**

Michael Coffman, Mayor

Date

ATTEST:

Kadee Rodriguez, City Clerk

Date

APPROVED AS TO FORM FOR AURORA:

Christine McKenney, Assistant City Attorney

Date

ACS #

John Dingess, Special Counsel

Date

STATE OF COLORADO)

) ss

COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Michael Coffman, Mayor, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. _____

Notary Public

My commission expires: _____

(SEAL)

PUEBLO WEST METROPOLITAN DISTRICT

Doug Proal, President

Date

ATTEST:

Date

APPROVED AS TO FORM FOR PUEBLO WEST:

, Attorney

Date

STATE OF COLORADO)

) ss

COUNTY OF PUEBLO)

The foregoing instrument was acknowledged before me this _____ day of _____,
2021, by Doug Proal, President, Pueblo West Metropolitan District

Witness my hand and official seal. _____

Notary Public

My commission expires: _____

(SEAL)

EXHIBIT LIST

1. Legal Description
2. Amended Exhibit C to Fossel LOP