



Legislation Text

File #: 21-171, **Version:** 1

A Resolution Approving an Amended and Restated Agreement Between The Pikes Peak Regional Water Authority And Colorado Springs Utilities Regarding Associate Member Status

Presenter:

Renee Congdon, Senior Attorney, City Attorney's Office-Utilities' Division
Aram Benyamin, Chief Executive Officer, Colorado Springs Utilities

Summary:

The City Attorney's Office requests that City Council approve a resolution approving an amended and restated agreement between Colorado Springs Utilities ("Utilities") and the Pikes Peak Regional Water Authority ("Authority") regarding Utilities' associate membership in the Authority.

Background:

State law provides that governmental entities may cooperate and contract with one another to provide the functions, services, and facilities lawfully authorized to each of the cooperating or contracting units in the form of an intergovernmental agreement, provided that the agreement is approved by the entities' legislative bodies. C.R.S. § 29-1-203; see also Colo. Const. art. XIV, § 18(2)(a),

Whether an agreement between governmental entities is an intergovernmental agreement, or IGA, is somewhat subjective. There is not definition of intergovernmental agreement in state law. There are and have been varying opinions over time as to which agreements should be characterized as intergovernmental agreements and which should not. One test is whether the transaction memorialized in the agreement could be characterized as a business transaction. If so, then the agreement is not likely to be an intergovernmental agreement.

The Authority is a water authority created pursuant to Article XIV, Sections 18(2)(a) and 2(b) of the Colorado Constitution and § 29-1-204.2 of the Colorado Revised Statutes. The Authority is a separate governmental entity, political subdivision and public corporation of the State of Colorado, which is separate from the entities that formed the Authority. 29-1-204.2(4), C.R.S.

The Authority was formed by a Second Amended Establishing Contract for El Paso County Water Authority and Name Change to Pikes Peak Regional Water Authority.

In 2013, Utilities became an associate member of the Authority pursuant to an agreement between Utilities and the Authority ("Original Agreement"). The Original Agreement was not considered an intergovernmental agreement and was not approved by City Council.

The opinion of the City Attorney's Office is that the associate membership agreement between Utilities and the Authority is an intergovernmental agreement that requires City Council approval. As such, the City Attorney's Office has advised Utilities that the agreement should be amended and restated and presented to City Council for approval. City Council is being asked to approve the proposed amended and restated agreement regarding the associate membership status of Utilities ("Amended and Restated Agreement") as an intergovernmental agreement. The Authority has reviewed and is in agreement with the Amended and Restated Agreement.

Associate membership in the Authority allows Utilities the opportunity to participate in regional collaboration efforts related to the development of water resources. The Authority's regional projects directly benefit the City. An example of such regional collaboration is the AF CURE Project, which is an Authority project to address concerns related to water quality matters.

City Council's approval of the proposed Amended and Restated Agreement will ensure that the agreement regarding Utilities' associate membership status in the Authority will not be void for lack of proper authorization.

Because there have been participation agreements that have arisen under the Original Agreement, it is advisable for City Council to ratify those participation agreements to ensure their continued validity. The proposed resolution approves the Amended and Restated Agreement and ratifies all project participation agreements that Utilities entered into under the authority of the Original Agreement.

Previous Council Action:

Enter previous City Council action relating to this item. Enter N/A if not applicable.

Financial Implications:

N/A

City Council Appointed Board/Commission/Committee Recommendation:

This Resolution was presented to Utilities Board of Directors at its March 17, 2021 meeting.

Stakeholder Process:

N/A

Alternatives:

Approve the resolution. Deny the resolution.

Proposed Motion:

Motion to approve the proposed Resolution approving an Amended and Restated Agreement between Pikes Peak Regional Water Authority and Colorado Springs Utilities regarding Associate Member Status.

N/A