

## **ADDENDUM TO INTERGOVERNMENTAL AGREEMENT**

This Addendum to Intergovernmental Agreement (“Addendum”) is entered into as of the date of the last signature below, by and between the Board of Water Works of Pueblo, Colorado (“Pueblo Water”), an independent board established pursuant to article 15 of the Charter for the City of Pueblo, Colorado, and the City of Colorado Springs, a Colorado municipal corporation and home rule city, acting on behalf of its enterprise Colorado Springs Utilities (“Utilities”). Pueblo Water and Utilities are referred to herein collectively as the “Parties” and each individually by name or as “Party.”

### **RECITALS**

- A. Pueblo Water and Utilities entered into an Intergovernmental Agreement (“IGA”) to determine the feasibility of constructing a Clear Creek Reservoir Enlargement (“Clear Creek Project” or “Project”) on November 30, 2022.
- B. The information gathered as part of the Feasibility Study as defined in the IGA indicates there is a reasonable likelihood that the necessary permits and other authorizations required for the Clear Creek Project can be obtained.
- C. Much of the scope of work for the Feasibility Study has been completed; however, the Parties have determined it is in the best interest of the Project to amend the scope of work for the purpose of setting forth the respective rights and obligations of the Parties in the purchase of property and capital investments needed for the Clear Creek Project to proceed.
- D. Pueblo Water has initiated negotiations on potential land acquisition(s) in support of the Clear Creek Project.
- E. There was a typographical error in the IGA which the Parties desire to correct.
- F. Exhibit 2 of the IGA had some inconsistencies regarding the current size of Clear Creek Reservoir and how the dam safety storage restriction should be accounted for in the amount of each enlargement scenario. Pueblo Water has decided to independently address the dam safety concerns. Consequently, this will reduce the amount of storage resulting from the enlargement and Pueblo Water will have use of the full unrestricted storage capacity of the existing reservoir prior to any enlargement. The Parties desire to amend Exhibit 2 to reflect the actual volume of the enlargement after removal of the current storage restriction.
- G. Pursuant to the revised Exhibit 2, paragraph 4 of the IGA, Utilities intends to provide 53% of the funding for the purchase of the property needed for the Clear Creek Project.
- H. The Parties desire to memorialize their agreements described herein with respect to the Clear Creek Project by this Addendum.

## TERMS

Now, therefore, for good and valuable consideration, including the foregoing recitals, the Parties agree as follows:

### 1. Term

The provisions of paragraphs 4 and 5 of this Addendum shall remain in effect upon completion of the wetland mitigation project described therein. The remaining provisions of this Addendum will be in effect until the earlier of (1) Utilities determination not to participate in the proposed Clear Creek Project, or (2) the Parties enter into one or more subsequent agreements for the permitting, design, construction, operation, and maintenance of the enlargement of Clear Creek Reservoir and the allocation of storage therein as described in the revised Exhibit 2 to the IGA. The subsequent agreement(s) will incorporate the applicable provisions for the ongoing activities described herein.

### 2. Correction to IGA

**The Parties agree that paragraph 10 of the IGA is amended and restated as follows:**

*Breach and Enforcement. It is specifically understood that, by executing this IGA, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of any Party to fulfill any obligation set forth herein shall constitute a breach of this IGA. The Parties agree that after compliance with the mediation requirements of paragraph 11 below, this IGA may be enforced for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado.*

### 3. Revision of Exhibit 2 to the IGA

**The Parties agree that the revised Exhibit 2 attached to this Addendum replaces the Exhibit 2 attached to the IGA.**

### 4. Wetland Mitigation Project

The Parties will jointly develop either an Advanced Permittee Responsible Mitigation (APRM) Project or an entrepreneurial wetland mitigation bank of approximately 33 acres of wetlands on Pueblo Water's Tennessee Creek Ranch property in Lake County identified as parcel numbers 2749-334-00-001 and 2479-334-00-002 to offset expected aquatic resource impacts from the Clear Creek Project.

4.1. The Parties have selected Johnson Environmental Consultants as their contract consultant to design, permit, and seek approval from the U.S. Army Corps of Engineers for the wetland mitigation project. Pueblo Water entered into the contract with Johnson Environmental Consultants and Utilities will reimburse Pueblo Water for 53% of the expenses of that contract. As the expenses are incurred, Pueblo Water will provide Utilities with an invoice setting forth the specific items being billed with a breakdown of individual cost items. Utilities will pay Pueblo Water all invoices within 63 days of receipt.

4.2. The Parties will collaborate to select a contractor(s) to construct the wetland mitigation project. Pueblo Water will follow its procurement process to select the contractor(s) and will hold the contract with the chosen contractor(s). Utilities will reimburse Pueblo Water for 53% of the expenses for the wetland mitigation project construction. As the expenses are incurred, Pueblo Water will provide Utilities with an invoice setting forth the specific items being billed with a breakdown of individual cost items. Utilities will pay Pueblo Water all invoices within 63 days of receipt.

## **5. Wetland Credits**

- 5.1. Pueblo Water shall be responsible for seeking all permits or approvals needed to establish wetland mitigation credits (“credits”) through the APRM Project or entrepreneurial wetland mitigation bank with the United States Army Corps of Engineers (“USACOE”).
- 5.2. Upon the successful completion of the wetland mitigation project, it is anticipated that a portion of Pueblo Water’s Tennessee Creek Ranch property will be encumbered by a conservation easement or other similar encumbrance designed to permanently protect the wetland mitigation project. For 53% of the acres so encumbered, Utilities will make a payment of \$6,593 per acre to Pueblo Water in consideration for the land that Pueblo Water contributed to the wetland mitigation project.
- 5.3. Fifty-three percent (53%) of the credits generated by the wetland mitigation project will be allocated to Utilities to be used by Utilities to offset aquatic resource impacts for the Clear Creek Project and other projects in the Arkansas River basin if Clear Creek Project is not constructed or if excess credits are developed that are not needed for the Clear Creek Project.

## **6. Purchase of Property for Clear Creek Project**

Pueblo Water is in negotiations on potential land acquisition(s) in support of the Clear Creek Project. If such negotiations result in a contract for sale to Pueblo Water of property that must be acquired as part of the Clear Creek Project (“Project Property”), then within 63 days after Pueblo Water closes on the Project Property, Utilities will pay to Pueblo Water 53% of Pueblo Water’s cost to acquire the Project Property. Pueblo Water will hold title to the Project Property and will not sell, transfer, or otherwise convey any Project Property prior to a mutual determination by the Parties that the Clear Creek Project will not be constructed, or that one or more of the permits or authorizations required for the Project cannot be obtained. If the Parties decide not to proceed with the Clear Creek Project, then Pueblo Water will attempt to sell the Project Property. If the Parties decide to proceed with the Clear Creek Project, then Pueblo Water may attempt to sell any portion of the Project Property not used for the enlargement. Any sale of the Project Property will be sold consistent with the Right of Repurchase granted to Circle A or, if the Right of Repurchase is not exercised, for fair market value as determined by a third-party appraiser chosen by mutual agreement of the Parties. Upon sale of the Project Property, or any portion thereof, Pueblo Water will pay Utilities 53% of the proceeds from the sale.

## **7. Operations and Maintenance**

Once purchased, Pueblo Water is responsible for the operations and maintenance of the Project Property. Pueblo Water shall be responsible for removing any hazardous materials, rubbish, and any structures as necessary. Additionally, Pueblo Water shall manage noxious weeds, and any other items identified by the Parties or other governmental entities having jurisdiction. Parties will not engage in any activity on the Project Property which may result in the environmental contamination thereof or which violates any applicable law. Utilities will reimburse Pueblo Water for 53% of these expenses. As the expenses are incurred Pueblo Water will provide Utilities with an invoice setting forth the specific items being billed with a breakdown of individual cost items. Utilities will pay all invoices within 63 days of receipt.

#### **8. Water Quality Monitoring**

The Parties may work collaboratively to develop a Water Quality Monitoring Program for the Clear Creek expansion watershed area with the goal of establishing baseline water quality conditions in the Clear Creek expansion watershed area. In developing any such program, the Parties shall work according to the general principles of the IGA, its exhibits, and addendums thereto. The costs of the water quality monitoring will be shared among the Parties with Pueblo Water paying 47% of the costs and Utilities paying 53% of the costs.

#### **9. Payments**

Utilities, at its sole discretion, may opt to pay any of the costs described in this agreement in advance based upon a reasonable estimate of the costs. Once the actual costs are known, Pueblo Water will reimburse any overpayments by Utilities within 63 days or invoice Utilities for any underpayments. Utilities will pay all invoices within 63 days of receipt.

#### **10. Additional Requirements**

Upon the completion of the feasibility study described in the IGA, if the Parties agree that there is a reasonable likelihood that the necessary permits and other authorizations for the Clear Creek Project can be obtained, and the total cost of the Clear Creek Project is reasonable, then the Parties will enter into further negotiations for one or more subsequent agreements for the permitting, design, construction, operation and maintenance associated with the enlargement of Clear Creek Reservoir and the allocation of storage therein. The subsequent agreement negotiations will be based on the general terms stated in the revised Exhibit 2 of the IGA and any subsequent Addendums to the IGA. The general terms of any subsequent agreement will grant Utilities a first right of refusal, subject to any existing rights of first refusal or rights of repurchase of Project Property, to acquire the interest in the Project Property offered for sale by Pueblo Water and will include such other related provisions as the parties may mutually agree.

#### **11. Effect of Addendum**

In the event of a conflict between the IGA and the Addendum, the terms and conditions of the Addendum shall prevail. Except to the extent amended by this Addendum, all other terms of the IGA shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Addendum on the dates set forth below.

**City of Colorado Springs**  
on behalf of its enterprise  
**Colorado Springs Utilities**

\_\_\_\_\_  
Travas Deal  
Chief Executive Officer

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Colorado Springs City Attorney's Office

\_\_\_\_\_  
Date

**Board of Water Works of Pueblo, Colorado**

\_\_\_\_\_  
Seth J. Clayton, Executive Director

\_\_\_\_\_  
Date

## REVISED EXHIBIT 2 to IGA

### TERM SHEET FOR POTENTIAL PHASE II IGA BETWEEN PUEBLO WATER AND UTILITIES TO ENLARGE CLEAR CREEK RESERVOIR

The following is a conceptual outline of the terms of the Phase II IGA for the enlargement of Clear Creek Reservoir. These terms are based on discussions between Utilities and Pueblo Water and will be subject to further negotiation in the formulation of the Phase II IGA.

#### 1. **Term of the Agreement:**

Utilities will have a perpetual right for firm storage in Clear Creek Reservoir and the ability to use Pueblo Water's portion of the expanded storage for 30 years following the end of construction.

#### 2. **Construction Costs:**

The non-storage restricted Clear Creek Reservoir capacity is 11,000± acre-feet and assumes Pueblo Water independently completes the necessary improvements to remove the Dam Safety storage restriction prior to any enlargement. Pueblo Water's GEI Consultants, Inc. report, Clear Creek Dam Reservoir Enlargement Conceptual Design Study (September 2016), contemplates four enlargement scenarios: 1,600 acre-feet; 4,400 acre-feet; 9,500 acre-feet; and 18,900 acre-feet. The maximum size of the enlargement will be determined by a future Feasibility Study. If the parties elect to proceed with constructing the enlargement as partners, then the construction cost estimate for the 1,600 acre-feet enlargement will be updated and Pueblo Water's portion of the construction costs will be the estimated cost for the 1,600 acre-feet enlargement and all additional construction costs will be borne by Utilities.

- a. Example: Expand Clear Creek Reservoir by 18,900 acre-feet, then costs would be divided as follows:
  - i. Pueblo Water Cost Share = Present Cost Estimate for 1,600 acre-feet storage via raise of spillway crest.
  - ii. Springs Utilities Cost Share = Total Cost less Pueblo Water Cost Share.
- b. Should the Parties decide on a larger or smaller enlargement the costs will be divided in the same manner as the example above. The final decision on a larger or smaller enlargement rests with Pueblo Water.

#### 3. **Quantity of additional storage:**

The maximum enlargement in the 2016 GEI Study contemplates approximately 18,900 acre-feet of additional storage over the existing physical capacity of 11,000± acre-feet.

- a. Utilities will acquire a perpetual right to 53% of the additional storage and Pueblo Water will have a perpetual right to 47% of the additional storage.
- b. Utilities will acquire a right to use Pueblo Water's portion of the additional storage (47%) for the first 30 years after completion of construction of the enlargement.

After the initial 30-year period the permanent right to use the 47% of additional storage will revert to Pueblo Water.

- c. Pueblo Water retains the right to “buy-back” some or all of the 47% of additional storage during the initial 30-year period in which Utilities has the right to use Pueblo Water’s additional storage. The price Pueblo Water pays Utilities if this right is exercised will be equal to the final cost per acre foot Utilities paid for the additional storage.
- d. Either Party may store water in the other Parties’ capacity on an if-and-when basis subject to a fee per acre-foot to be agreed upon prior to any such storage.
- e. Third parties may use storage space on a temporary or long-term basis subject to a right of first refusal by the other Party on any such arrangement.
- f. The future Feasibility Study should determine the absolute maximum enlargement for the reservoir prior, which may be more than 18,900 acre-feet.

**4. Land Acquisition:**

- a. Private lands:
  - i. Pueblo Water will acquire and hold title to any additional private lands necessary for the expansion. Costs of such lands will be borne 47% by Pueblo Water and 53% by Utilities.
- b. Federal lands and/or easements:
  - i. Pueblo Water will attempt to acquire federal lands via land trades.
  - ii. Easements will be sought if land trades are not feasible.
  - iii. Costs of federal lands and/ or easements will be borne 47% by Pueblo Water and 53% by Utilities.
  - iv. The value of Pueblo Water’s land traded is not part of the costs to be paid by Utilities.

**5. Design:**

- a. Parties will choose an enlargement alternative to refine to final design and used as the parties preferred alternative for permitting purposes.
- b. Pueblo Water has final decision-making authority on design decisions but will regularly consult with Utilities on all design matters.
- c. Design costs will be split based upon the same percentage used for construction costs.

**6. Permitting:**

- a. Pueblo Water will take the lead on all permitting. However, given Utilities substantial experience in permitting large water projects, Pueblo Water will routinely and regularly consult with Utilities on all permitting matters. Pueblo Water will have final decision-making authority for permitting.
- b. Permitting costs will be borne 47% (8,900 acre-feet / 18,900 acre-feet) by Pueblo Water and 53% (10,000 acre-feet / 18,900 acre-feet) by Utilities.

**7. Construction Management:**

- a. Pueblo Water, after consultation with Utilities, will choose the contractor and will be responsible for construction management. Pueblo Water will regularly consult with Utilities on all construction matters. Pueblo Water will have final decision-making authority regarding construction matters.

**8. On-going Operation & Maintenance:**

- a. Pueblo Water will be responsible for the coordination of all annual Operation and maintenance of the enlarged Clear Creek Reservoir.
- b. The Parties will meet annually, each spring, to discuss and plan expected water operations for the upcoming 12 months.
- c. At the conclusion of each calendar year, Utilities will reimburse Pueblo Water for 20% of the costs associated with that year's operation and maintenance. A detailed accounting of said costs will be provided to Utilities along with the invoice.

**9. Future capital repairs:**

- a. Costs for all future capital repairs will be split pro-rata based upon the percentage of storage available to each Party at the time the capital repairs are made. Parties will take a pro-active approach to capital repairs, to limit future, larger repairs. Parties will exercise good faith efforts to fund and make capital repairs promptly.
- b. The Parties will consult, annually, to develop a 10-year plan for capital repairs.
- c. Pueblo Water will have final decision-making authority on the necessity and scheduling of capital projects but will regularly consult with Utilities on all such matters.

**10. Emergency repairs:**

- a. Pueblo Water will act, immediately, on any emergency related repairs. Pueblo Water, in its sole discretion, will determine what constitutes an emergency.
- b. Pueblo Water will inform Utilities of an emergency as soon as practicable.
- c. Emergency related costs will be split pro-rata based upon the percentage of storage available to each Party at the time of the emergency.

**11. Water Rights:**

- a. Pueblo Water holds absolute storage rights for the existing reservoir and conditional storage rights for an expanded reservoir. Pueblo Water also holds several absolute and conditional rights of exchange into the reservoir.
- b. Utilities also holds absolute and conditional rights of exchange into the reservoir.
- c. The respective priorities of the Parties water rights will be used to determine the right to inflow and exchange potential when there is not enough stream flow and/or reservoir inflow to satisfy the desired exchange rates of each Party.
- d. Neither Party may use its senior priority against the other Party to store in If and When space in the other Parties allocated storage space.
- e. Neither Party will make claims for new storage rights or exchange rights into the reservoir without first consulting with the other Party.



**12. Outlet Works:**

- a. Utilities, at its own expense, may make a connection from the outlet works of Clear Creek Reservoir to its Otero Pipeline as long as such connection does not interfere with Pueblo's ability to make releases to the Arkansas River.
- b. If the Parties combined desired release rate exceeds the capacity of the outlet works, then the release capacity will be allocated pro-rata based on how much of the total space is allocated to each Party at the time.

Clear Creek Reservoir Expansion: Potential cost and expanded capacity split between Pueblo Water and Colorado Springs Utilities

	Enlargment Capacity (af)	Estimated Cost (GEI 2016)	Springs Utilities Permanent Storage = 53% of Expanded Storage (af)	Springs Utilities 30 year lease (af)	Springs Utilities Cost Share	Pueblo Water Cost Share
Alt 1	1,600	\$ 10,037,000	-	-	0% \$ -	100% \$ 10,037,000
Alt 2	4,400	\$ 37,622,000	2,332	2,068	73% \$ 27,585,000	27% \$ 10,037,000
Alt 3	9,500	\$ 59,701,000	5,035	4,465	83% \$ 49,664,000	17% \$ 10,037,000
Alt 4	18,900	\$ 75,023,000	10,017	8,883	87% \$ 64,986,000	13% \$ 10,037,000

\*Assume PW would maintain ownership and control of 1,600 af of expanded storage. Springs Utilities would gain ownership/control of 53% of expansion for Alt 2-4, and 30yr lease on remaining expanded capacity