

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT ("**Agreement**") is dated as of September 29, 2017 and is by and between **Southeastern Colorado Water Activity Enterprise**, a quasi-municipal subdivision of the State of Colorado with its principal place of business at 31717 United Avenue, Pueblo, CO 81001 ("**Seller**") and the City of Fountain, Colorado, acting by and through its Electric , Water and Wastewater Utility Enterprise with its principal place of business at 116 South Main Street, Fountain, CO 80817 ("**Purchaser**"). Seller and Purchaser each may be referred to as "Party" and jointly as "Parties"

RECITALS

A. Seller is the owner and operator of a hydroelectric generating plant at Pueblo Dam Hydroelectric Project in Pueblo County, Colorado with a design capacity of approximately 7,500 kW ("**Generating Facility**").

B. Seller wishes to sell the Fountain Entitlement to Purchaser, and Purchaser desires to purchase, subject to the terms and conditions hereof, the Fountain Entitlement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the representations, warranties, conditions and promises contained in this Agreement, and intending to be legally bound by this Agreement, the Parties agree as follows.

1. INTERPRETATION AND DEFINED TERMS

1.1 In addition to the defined terms above, the following capitalized terms shall have the following meanings:

"**Agreement**" means this Power Purchase Agreement and all Exhibits attached hereto, all as may be hereafter amended.

"**Applicable Laws**" means all laws, statutes, rules, regulations, and orders of any federal, state, county, or other governmental body, agency, or other authority, having jurisdiction over the Parties or the Generating Facility.

"**Billing Period**" means each calendar month.

"**Business Day**" means any day other than a Saturday, Sunday or a day on which banking institutions in Denver, Colorado are authorized or obligated by law or executive order to be closed.

"**Commercial Operation Day**" means the day when the Generating Facility is commissioned and tested and ready for full commercial operation.

"**Energy Output**" means the total quantity of all actual net energy generated by the Generating Facility (measured in kWh) and delivered to the Point of Delivery in any given period of time.

“Forced Outage” means an immediate full or partial interruption of the generating capability of the Generating Facility that is not the result of (i) a request by Purchaser in accordance with this Agreement, (ii) a Scheduled Outage or (iii) an event or occurrence of Force Majeure.

“Fountain Entitlement” means 50% of the Energy Output from the Commercial Operation Day to December 31, 2027, and 100% of the Energy Output beginning January 1, 2028 through the Term of the Agreement.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

“Interconnection Facilities” means all equipment, facilities, protective devices, and related equipment necessary to physically and electrically interconnect the Generating Facility to the Black Hills Colorado (Black Hills) electric system at the Pueblo Reservoir Substation.

“kWh” means kilowatt-hour alternating current.

“Metering System” means all meters, metering devices and data acquisition equipment used to measure the Energy Output at the Point of Delivery.

“Party” or “Parties” means Purchaser or Seller or both, as the context may require.

“Point of Delivery” means the 115 kV bus of the Pueblo Reservoir Substation owned by Black Hills.

“Renewable Energy Certificates” or “REC” means green tags, renewable energy credits, tradable renewable certificates, and portfolio energy credits associated with the Energy Output of the Generating Facility.

“Scheduled Energy Output” means the electrical energy generated by the Generating Facility, scheduled and delivered at the Point of Delivery, excluding transformation losses.

“Scheduled Outage” means a planned full or partial interruption of the Generating Facility’s generating capability that (i) is not a Forced Outage; (ii) has been scheduled and allowed by Purchaser; and (iii) is for inspection, testing, preventive maintenance, corrective maintenance or improvement of the Generating Facility.

“Test Energy” means that energy which is produced by the Generating Facility during testing of the Generating Facility before the Commercial Operation Day.

“Term” is defined in Section 3.

1.2 Further, in interpreting this Agreement:

1.2.1 Except where expressly stated otherwise, the headings of the Paragraphs are primarily for convenience and in the event of a conflict between a heading and the more specific provision of a Paragraph, the language of the Paragraph shall control in construing the provisions of this Agreement;

1.2.2 The singular includes the plural and vice versa;

1.2.3 References to Sections, Paragraphs, Schedules and similar designations are, unless the context otherwise requires, references to designations in this Agreement; and

1.2.4 References to any agreement, enactment, ordinance or regulation include any amendment thereof or any replacement in whole or in part.

2. SALE AND PURCHASE OF ENERGY

2.1 Sale to Purchaser. Subject to, and in accordance with, the terms of this Agreement, (i) Seller shall make available and sell to Purchaser the Fountain Entitlement and (ii) Purchaser agrees to purchase the Fountain Entitlement.

2.2 Price. Purchaser shall pay to Seller a price per kWh for the Scheduled Energy Output of the Generating Facility as set forth in Exhibit A:

2.2.1 In the event the Term of the Agreement extends beyond December 31, 2047, the price for the Scheduled Energy Output shall be as set forth in Exhibit B.

2.2.2 The purchase price shall include all Renewable Energy Certificates associated with the Metered Output purchased by Purchaser.

2.3 Test Energy. Seller shall coordinate the production and delivery of Test Energy with Purchaser. Purchaser shall cooperate with Seller to facilitate Seller’s testing of the Generating Facility and shall accept delivery of all Test Energy produced by the Generating Facility, and shall purchase all such Test Energy delivered to Purchaser at the Point of Delivery at a payment rate of 50% of the price set forth in Exhibit A for 2018.

3. TERM

3.1 Initial Term. The initial term of this Agreement shall commence on the Commercial Operation Day and shall end December 31, 2047, unless this Agreement is terminated earlier pursuant to the provisions of this Agreement allowing for termination in the event of a breach or default by either of the Parties (“**Term**”). Any early termination of this Agreement shall be without prejudice to all rights and obligations of the parties accrued under this Agreement prior to such termination.

3.2 Renewal Term. The Term of this Agreement shall be extended automatically, unless either Party gives a two-year advance notice prior to the end of the Term to the other Party.

4. PAYMENTS AND BILLING

4.1 Billing and Payment.

4.1.1 *Monthly Invoices.* Within five (5) days after the end of each month during the Term of this Agreement, Seller shall prepare and deliver to Purchaser an invoice reflecting amounts payable pursuant to this Agreement for the Fountain Entitlement during the prior Billing Period. Seller's invoice shall include calculations in reasonable detail of the amounts owed.

4.1.2 *Payment.* Purchaser shall pay the sums owed under Section 4.1.1 by wire transfer in immediately available funds within twenty (20) days of each monthly invoice to an account that is held and specified by the Seller. If electronic transfer of funds is not practicable or is not desired by the receiving Party, the Parties shall agree on specific alternative payment procedures.

4.1.3 *Special Invoices.* If there is an event for which this Agreement specifies payment of any other amounts, the Party to be compensated shall prepare and deliver to the other Party a special invoice that shows the calculation of any amounts due pursuant to this Agreement, specifies the provisions applied, and details the periods of delay or other factors on which the claim is based. Amounts under special invoices shall be due 30 days after the date of the invoice.

4.2 Disputed Invoices. If either Party, on reasonable grounds, disputes any portion of an invoice or the correctness of the amount received in payment of an invoice, then it shall, within 14 days of the receipt of such invoice or payment, serve a notice on the other Party indicating the amount and basis of the dispute. Neither Party shall be required to pay a disputed amount pending resolution of the dispute. The dispute shall be settled by mutual discussion and, if necessary, resolved pursuant to Paragraph 13 (Resolution of Disputes). If it is determined that either Party owes the other an amount of money, the owing Party shall, within 7 days after its receipt of such determination, pay such sum together with interest at a rate equal to eight percent (8%) to the other Party in the manner specified for payment of the disputed invoice.

4.3 Renewable Energy Certificates. Upon payment by Purchaser, all Renewable Energy Certificates associated with the metered Energy Output shall be automatically deemed conveyed to the Purchaser in the Purchaser's Western Renewable Energy Generation Information System (WREGIS) account. Seller shall cooperate with Purchaser upon Purchaser's request by providing additional documentation or confirmation relating to the conveyance of the same.

5. INTERCONNECTION AND TRANSMISSION

5.1 Seller's Responsibilities. Seller shall, at its sole cost and expense, design, construct, install, operate and maintain the Interconnection Facilities, in order to maintain continuous delivery of metered Energy Output to Purchaser.

5.2 Required Transmission Lines. Seller will be responsible, at its sole cost and expense, for the design, construction, installation, ownership and operation of any transmission lines (and associated switchgear and protective devices) needed to deliver the Energy Output to the Point of Delivery.

5.3 Transmission Service. Seller shall be responsible for the cost of securing and paying for the transmission service to deliver the Scheduled Energy Output to the Point of Delivery; and the Purchaser is responsible for the cost of securing and paying for the transmission service to deliver the Scheduled Energy Output from the Point of Delivery.

5.4 Transfer of Title. Purchaser shall be deemed to take title and shall assume risk of loss of the Energy Output and the associated capacity at the Point of Delivery.

6. METERING

6.1 Ownership of Metering System. Seller shall own, operate and maintain the Metering System used to acquire the performance measurements from which payments to Seller pursuant to this Agreement are calculated. The metering point shall be at the Point of Delivery, at low side of the transformer in the Black Hills Colorado Pueblo Reservoir Substation that connects to the Generating Facility.

6.2 Testing and Inspection of Metering Equipment. Testing, inspection, repair, recalibration and replacement of the Metering System shall be performed by Seller in accordance with Good Utility Practice.

6.3 Measurement of Energy Output.

6.3.1 *Notice of Reading.* Seller shall read the Metering System for the purpose of measuring the Energy Output of the Generating Facility. Purchaser may request a test of the accuracy of the Metering System, at Purchaser's expense, not more than once per year.

6.3.2 *Inaccurate Meters.* In the event that the Metering System is found to be inaccurate or functioning improperly, the correct amount of Energy Output shall be determined using historical records or other procedures as agreed. The fourteen (14) day dispute period in Section 4.2 shall not be a bar to disputing past payments made as a result of Metering System failures. If the Parties cannot agree, either Party may submit the issue to the dispute resolution procedure under Section 13.

7. OPERATIONS AND MAINTENANCE

7.1 Permits and Licenses. Seller, at its sole cost and expense, shall acquire and maintain in effect all permits, licenses and approvals required by all federal, state, county and

local agencies, commissions and authorities with jurisdiction over Seller or the Generating Facility, so that Seller may lawfully perform its obligations under this Agreement.

7.2 Operating Standards. During the Term of this Agreement, Seller shall, at its sole cost and expense, operate and maintain the Generating Facility in accordance with Good Utility Practice and all Applicable Laws.

7.3 Energy Output Projection. Seller shall provide monthly estimates of anticipated Energy Output for May through September to Purchaser prior to each summer season, based on projected hydrological conditions.

7.4 Energy Output Scheduling. Seller shall provide hourly Scheduled Energy Output to Purchaser at least two days in advance of the operating day.

7.5 Scheduled Outages. Seller shall use its best efforts to advise Purchaser, in writing, of its Scheduled Outages no less than 2 months prior to each such outage. Seller shall notify Purchaser promptly after the Generating Facility experiences a Forced Outage.

7.6 Emergencies. Purchaser and Seller shall jointly establish plans for operating the Generating Facility during an Emergency affecting Seller or Purchaser.

7.7 Inspection and Records.

7.7.1 *Seller and Purchaser Records.* Each Party shall keep complete and accurate records and other data required by each of them for the purposes of proper administration of this Agreement during the term of this Agreement and for a period of three (3) years thereafter. Among other records and data, Seller shall maintain an accurate and up-to-date operating log for the Generating Facility.

7.7.2 *Copies of Records.* Either Party shall have the right, upon reasonable prior written notice to the other Party, to examine or to make copies of the records and data of the other Party relating to the proper administration of this Agreement, at any time during normal office hours during the period such records and data are required to be maintained.

8. MUTUAL WARRANTIES OF THE PARTIES

8.1 Warranties. Each Party warrants to the other that:

8.1.1 It is duly formed, validly existing and in good standing under the laws of Colorado and is qualified to do business in Colorado and has complied with all Applicable Laws;

8.1.2 It has full power to carry on business and to enter into, legally bind itself by, and perform its obligations under this Agreement;

8.1.3 The signatories to this Agreement on its behalf are duly authorized and competent to execute and deliver this Agreement as being valid and legally binding on it;

8.1.4 The execution, delivery, and performance of this Agreement, subject to the granting and maintenance of the relevant consents, does not, and will not, constitute a violation of any legal or contractual constraint validly applied to such Party;

8.1.5 There are, to the best of its knowledge, no existing or threatened legal, contractual, or financial matters of any kind that could reasonably be expected to affect materially either its ability to perform its obligations under this Agreement or the enforceability of this Agreement; and

8.1.6 No information given by it in relation to this Agreement contains any material misstatement of fact or omits to state a fact that would be materially adverse to the enforcement of the rights and remedies of the other Party.

9. DEFAULTS AND TERMINATION

9.1 Time. Where the Parties or a Party is required to perform any act or to fulfill an obligation under this Agreement within a specified time, and for any commercially reasonable reason that Party cannot perform within the time stated, then that Party may request an extension of the time for performance. The non-requesting Party shall not unreasonably deny a request, but the non-requesting Party may grant such a request on terms and conditions as to future performance.

9.2 Seller Defaults. Purchaser may give a notice of default under this Agreement (a “**Purchaser Notice of Default**”) upon the occurrence of any of the following events, unless caused by a breach by Purchaser of this Agreement (each a “**Seller Event of Default**”).

9.2.1 Abandonment of the operation of the Generating Facility by the Seller, without the written consent of Purchaser.

9.2.2 Failure by Seller to make any payment required to be made by it under this Agreement on the due date for the payment.

9.2.3 Except when taken for the purpose of merger or reorganization (provided that such merger or reorganization does not affect the ability of the merged or reorganized entity to perform its obligations under this Agreement), the occurrence of any of the following events:

(a) passage of a resolution by the Board of Directors of Seller for the winding up of Seller;

(b) Seller becomes insolvent or generally unable to pay its debts as they become due;

(c) appointment of a liquidator in a proceeding for the winding up of Seller after notice to Seller and due hearing; or

(d) a court order to wind up Seller; or

9.2.4 Any material breach by Seller of any representation, warranty or covenant in this Agreement.

9.3 Purchaser Defaults. Seller may give a notice of default under this Agreement (a “Seller Notice of Default”) upon the occurrence of any of the following events, unless caused by a breach by Seller of this Agreement (each a “Purchaser Event of Default”).

9.3.1 Abandonment of the operation at the Point of Delivery by the Purchaser, without the written consent of Seller.

9.3.2 Failure by Purchaser to make any payment required to be made by it under this Agreement on the due date of the payment.

9.3.3 The occurrence of any of the following events, except where done for the purpose of merger or reorganization that does not affect the ability of the merged or reorganized entity, as the case may be, to perform its obligations under this Agreement:

(a) passage of a resolution by the City Council of Purchaser for the winding up of Purchaser;

(b) Purchaser becomes insolvent or generally unable to pay its debts as they become due;

(c) appointment of a liquidator in a proceeding for the winding up of Purchaser, after notice to Purchaser and due hearing; or

(d) a court order winding up Purchaser;

9.3.4 Any material breach by Purchaser of any representation, warranty or covenant in this Agreement.

9.4 Notice and Cure. A Purchaser Notice of Default or a Seller Notice of Default shall specify in reasonable detail the Seller Event of Default or Purchaser Event of Default, respectively, giving rise to the Notice of Default. In the case of a default, the defaulting party shall have 30 calendar days to cure the default.

9.5 Rights and Remedies Upon an Event of Default.

9.5.1 *Seller Default.* If a Seller Event of Default has occurred and the Seller Event of Default has not been cured within the period specified in Paragraph 9.4, Purchaser, in its sole discretion, may take any or all of the following actions:

(a) terminate this Agreement by delivering written notice to the Seller (Purchaser Termination Notice) or

(b) proceed in accordance with Paragraph 13 (Resolution of Disputes) to protect and enforce its rights and to recover any damages to which it may be entitled, including all costs and expenses reasonably incurred in the exercise of its remedy, or

(c) at its election, take such steps as are reasonably necessary to cure the default before so proceeding.

9.5.2 *Purchaser Default.* If a Purchaser Event of Default has occurred and the Purchaser Event of Default has not been cured within the period specified in Paragraph 9.4, Seller, in its sole discretion, may take any or all of the following actions:

(a) terminate this Agreement by delivering written notice to Purchaser (Seller Termination Notice) or

(b) proceed in accordance with Paragraph 13 (Resolution of Disputes) to protect and enforce its rights and to recover any damages to which it may be entitled, including all costs and expenses reasonably incurred in the exercise of its remedy, or

(c) at its election, take such steps as are reasonably necessary to cure the default before so proceeding.

9.5.3 *Nature of Rights on Default.* These rights and remedies shall not be exclusive but, to the extent permitted by law, shall be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise. The Parties may seek to exercise such rights and remedies only in accordance with the procedures set forth in Paragraph 13 (Resolution of Disputes). The Parties may exercise each right and remedy afforded by this Agreement or by law from time to time and as often as reasonably deemed expedient by the Party exercising this right. No delay by, or omission of, Seller or Purchaser to exercise any right or remedy arising upon any event of default of the other Party shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

9.5.4 Notwithstanding the above, the total amount of damages that Seller shall be entitled to for any breach of this Agreement by Purchaser shall not exceed, in the aggregate, the value of the remaining metered Energy Output during the remaining Term of this Agreement, calculated based on the average annual metered Output from the inception of this Agreement less all amounts received by Seller for the sale of the metered Energy Output for the remaining Term of the Agreement.

9.6 Survival. Notwithstanding anything to the contrary contained in this Agreement, where applicable the rights and obligations set forth in this Paragraph 9 shall survive the termination of this Agreement.

10. **FORCE MAJEURE**

10.1 Meaning of Force Majeure. In this Agreement, "Force Majeure" means any event, circumstances, or combination of events or circumstances beyond the reasonable control of a Party that materially and adversely affects the performance by that Party of its obligations or the enjoyment by that Party of its rights under or pursuant to this Agreement, including, but is not limited to acts of Nature and acts of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage. Force Majeure shall expressly not include the following conditions, except to the extent they result from an event or circumstances of Force Majeure: unavailability, late delivery or changes

in cost of plant, machinery, equipment, materials, spare parts, or consumables for the Generating Facility; a delay in the performance of any contractor; non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment; and non-performance caused by, or connected with, the non-performing Party's (a) negligent or intentional acts, errors or omissions, (b) failure to comply with applicable laws, or (c) breach of, or default under, this Agreement.

10.2 Consequences of Force Majeure.

10.2.1 Upon the occurrence of a Force Majeure event or circumstances, the non-performing Party shall, within forty-eight (48) hours, give the other Party written notice describing the particulars of the occurrence. The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. The non-performing Party shall use its best efforts to remedy its inability to perform; and when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall promptly give the other Party written notice to that effect.

10.2.2 Neither Party shall be deemed in breach of this Agreement because of any failure or delay in complying with its obligations pursuant to this Agreement due solely to Force Majeure.

11. **LIABILITY AND GOVERNMENTAL IMMUNITY**

11.1 Neither Party intends herein to waive its rights and protections under the Colorado Governmental Immunity Act. All such claims shall be subject to the limitations, procedures and protections of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*, as amended, or similar or successor statutes.

11.2 Limitation on Damages. Each Party's liability to the other Party for failure to perform its obligations under this Agreement shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any punitive, incidental, indirect, special, or consequential damages of any kind whatsoever, including loss of business opportunity or profits, regardless of whether such damages were foreseen.

11.3 Any and all of the obligations of Seller under this Agreement, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by the Enterprise from or attributable to the ownership and operation of the Project being constructed by Seller and are not payable from any other source whatsoever. Nothing herein shall be deemed to prevent the Seller from making any payments from any other legally available source. In no event shall the Seller be required to spend money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Agreement or which would cause the Seller to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, the Seller shall not be required to expend any funds or impair any assets of the Southeastern Colorado Water Conservancy District in the performance of its obligations under this Agreement. The obligations of the Seller under this Agreement do not constitute a debt or indebtedness of the Southeastern Colorado Water Conservancy District within the meaning of any constitutional, charter or statutory provision or limitation, and shall

not be considered or held to be a general obligation of the Southeastern Colorado Water Conservancy District.

12. INSURANCE

12.1 Insurance Coverage. At all times during the term of this Agreement, Seller shall obtain and maintain at its own cost insurance coverage which shall include, but not be limited to:

12.1.1 *Commercial General Liability Insurance* with bodily injury and property damage limits of at least \$2,000,000 per occurrence, and in the aggregate.

12.2 Endorsements. Seller shall cause its insurers to amend such of its insurance policies as are applicable with the endorsement terms set forth immediately below:

12.2.1 Purchaser as an additional insured under the commercial general liability policies;

12.2.2 Insurance is primary with respect to the interest of Purchaser and any other insurance maintained by Purchaser is excess and not contributory; and

12.2.3 These policies may not be canceled, renewed or materially changed by the insurer without giving thirty 30 days prior written notice to Purchaser.

12.3 The proceeds of any property insurance obtained shall be applied to the repair of the Generating Facility.

12.4 Certificates of Insurance. Seller shall on request, cause its insurers or agents to provide Purchaser with certificates of insurance evidencing the insurance policies and endorsements required by this Paragraph 12.

13. RESOLUTION OF DISPUTES

13.1 Mutual Discussions. If any dispute or difference of any kind whatsoever (a “**Dispute**”) arises between the Parties in connection with, or arising out of, this Agreement, the Parties within 30 days shall attempt to settle such Dispute in the first instance by mutual discussions between Seller and Purchaser. If the Dispute cannot be settled within 30 days by mutual discussions, then the Dispute shall be finally settled under the provisions of this Paragraph 13.2.

13.2 If the dispute cannot be settled through mutual discussions pursuant to paragraph 13.1., the Parties shall endeavor to settle the dispute by mediation before recourse to any other dispute resolution procedures contained in this Agreement. Mediation shall be conducted under the terms of Uniform Arbitration Act as adopted in Colorado, C.R.S. 13-22-201, et. seq. The location of the mediation shall be Pueblo County, Colorado. Once one Party files a request for mediation with the other contracting party, the parties agree to conduct such mediation within forty-five (45) days of filing of the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the party’s

representative to the other party's representative and the mediator. In the event mediation is terminated as provided herein, either Party may pursue its remedies by an action at law. Venue for any such action shall be in the District Court for the County of Pueblo, Colorado.

13.3 Continued Performance. During the pendency of any mediation or litigation (a) Seller shall continue to perform its obligations under this Agreement to, among other things, Scheduled Energy Output; (b) Purchaser shall continue to pay all amounts when due, in accordance with Paragraph 4 (Payments and Billing); and (c) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in Dispute.

14. NOTICES

14.1 Procedure for Giving Notice. All notices or other communications (together "notices") to be given or made hereunder (including, but not limited to, account information for payments) shall be in writing, shall be addressed for the attention of the person indicated in Paragraph 14.2 below and shall either be delivered personally, by overnight carrier such as Federal Express, or sent by prepaid post (with receipt acknowledgment required) or by email. Notices given by email shall be confirmed by a written copy of the notice delivered or sent as prescribed in this Paragraph. The failure to so confirm shall not vitiate actual notice.

14.2 Addresses for Notices. The addresses for service of Parties and their respective telephone number and email address shall be:

For Purchaser:

City of Fountain, CO
Attention: Curtis Mitchell, Utilities Director
Address: 116 South Main Street
Fountain, CO 80817
Telephone: 719-322-2040
Email: cmitchell@fountaincolorado.org

For Seller:

Southeastern Colorado Water Activity Enterprise
Attention: James Broderick, Executive Director
Address: 31717 United Avenue
Pueblo, CO 81001
Telephone: 719-948-2400
Email: jwb@secwcd.com

A Party may modify its address information by notice provided as prescribed in this Paragraph. The information shown above shall be deemed correct unless and until modified as provided herein.

14.3 Effectiveness of Notice. Notices under this Agreement shall be effective only upon actual delivery or receipt thereof.

15. MISCELLANEOUS PROVISIONS

15.1 Variations in Writing. All additions, amendments or variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of both Parties.

15.2 Entire Agreement. This Agreement and its accompanying Schedules together represent the entire understanding between the Parties with respect to the subject matter of this Agreement and supersede any or all previous agreements or arrangements (whether oral or written) between the Parties with respect to the Generating Facility.

15.3 Waivers.

15.3.1 *Limited Effect.* No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall: (a) operate or be construed as a waiver of any other or further default whether of a like or different character; or (b) be effective unless in writing duly executed by an authorized representative of the non-defaulting Party.

15.3.2 *Indulgences.* The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

15.4 Confidentiality.

15.4.1 *Treatment of Confidential Information.*

(a) Except as may otherwise be required by the Colorado Open Records Act or the Freedom of Information Act, each Party shall hold in confidence all documents and other information, whether technical or commercial, relating to the design, financing, construction, ownership, operation or maintenance of the Generating Facility supplied to it by or on behalf of the other Party that is of a confidential nature and is designated as such. The Party receiving such documents or information shall not publish or otherwise disclose them or use them for its own purposes (otherwise than as may be required by the Party, its professional advisers, potential lenders or investors to perform its obligations under this Agreement).

(b) The provisions of Paragraph 15.4.1(a) above shall not apply to any information: that is or becomes available to the public other than by breach of this Agreement; that is in or comes into the possession of the receiving Party prior to the aforesaid publication or disclosure by the other Party and was or is not obtained under any obligation of confidentiality; that was or is obtained from a third Party who is free to divulge the same and was or is not obtained under any obligation of confidentiality; or that is required by law or appropriate regulatory authorities to be disclosed, provided that the Party supplying the information is notified of any such requirement at least 5 business days prior to such disclosure and the disclosure is limited to the maximum extent possible.

15.4.2 *Similar Provisions.* For the avoidance of doubt, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement or other referenced agreements in any agreements prepared and issued in connection with other projects.

15.1 Successors and Assigns. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement to its financing providers for collateral security purposes. This shall not apply to any merger or acquisition of Purchaser or Seller by any third party, which shall be bound to the terms and conditions herein to the same extent as the Parties.

15.2 No Liability for Review. No review or approval by a Party of any agreement, document, instrument, drawing, specification or design proposed by the other Party shall relieve the proposing Party from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification or design or from the failure to comply with applicable laws with respect thereto, nor shall a Party be liable to the other Party or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification or design of the other Party.

15.3 No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, any liability to any person not a Party to this Agreement.

15.4 Governing Law. The rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to the laws of Colorado.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day, month and year first mentioned above.

"SELLER"

**SOUTHEASTERN COLORADO WATER
ACTIVITY ENTERPRISE**

By: James W Broderick
Name: James W Broderick
Title: Executive Director

“PURCHASER”

CITY OF FOUNTAIN, COLORADO

By: Scott Trainer

Name: Scott Trainer

Title: City Manager

Exhibit A

Pricing Schedule

| | |
|------|-----------|
| 2018 | \$0.04950 |
| 2019 | \$0.04950 |
| 2020 | \$0.05034 |
| 2021 | \$0.05120 |
| 2022 | \$0.05207 |
| 2023 | \$0.05295 |
| 2024 | \$0.05385 |
| 2025 | \$0.05477 |
| 2026 | \$0.05570 |
| 2027 | \$0.05665 |
| 2028 | \$0.05761 |
| 2029 | \$0.05859 |
| 2030 | \$0.05958 |
| 2031 | \$0.06060 |
| 2032 | \$0.06163 |
| 2033 | \$0.06268 |
| 2034 | \$0.06374 |
| 2035 | \$0.06482 |
| 2036 | \$0.06593 |
| 2037 | \$0.06705 |
| 2038 | \$0.06819 |
| 2039 | \$0.06935 |
| 2040 | \$0.07053 |
| 2041 | \$0.07172 |
| 2042 | \$0.07294 |
| 2043 | \$0.07418 |
| 2044 | \$0.07544 |
| 2045 | \$0.07673 |
| 2046 | \$0.07803 |
| 2047 | \$0.07936 |

Exhibit B
Pricing Schedule
(After 2047)

Price for Energy Output beginning January 1, 2048: \$0.0606/kWh

Price for Energy Output shall increase by 2.5% beginning January 1, 2049 and each January 1 thereafter.