

Hydroelectric Power Purchase Agreement
between
Colorado Springs Utilities
and
Southeastern Colorado Water Conservancy District
acting by and through its Water Activity Enterprise

This Hydroelectric Power Purchase Agreement ("PPA") is entered into as of October 3, 2017, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, with its principal place of business at 121 South Tejon Street, 5th floor, Colorado Springs, CO 80903 ("UTILITIES") and the Southeastern Colorado Water Conservancy District, acting by and through its Water Activity Enterprise, a government-owned business within the meaning of article X, section 20(2)(d) of the Colorado Constitution, organized pursuant to Colorado Revised Statutes, Sections 37-45.1-101, *et seq.*, and owned by the Southeastern Colorado Water Conservancy District, with its principal place of business at 31717 United Avenue, Pueblo, CO 81001 ("Seller"). UTILITIES and Seller may be referred to individually as a "Party" and collectively as the "Parties" within this PPA.

WHEREAS, Seller desires to develop, to design, to construct, to operate, and to maintain the Pueblo Dam Hydropower Project ("Facility") with a design capacity of approximately 7,500 kW as defined below; and

WHEREAS, Seller desires to sell and to deliver to UTILITIES, and UTILITIES desires to purchase and to accept from Seller, certain electric energy and environmental attributes produced by the Facility; and

WHEREAS, UTILITIES intends to resell the electric energy and environmental attributes produced by the Facility to the United States Department of the Army at the Fort Carson Military Installation to further the renewable-energy goals of the United States and to that end will enter into the Pueblo Hydro GSA Exhibit as defined below.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained within this PPA, the Parties agree as follows:

Article 1 – Definitions and Rules of Construction

1.1 Rules of Construction.

The capitalized terms listed within this Article have the meanings set forth within this Article whenever the terms appear within this PPA, whether in the singular or the plural or in the present tense or the past tense. Other terms used within this PPA, but not listed within this Article, have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined within this Article that have well known and generally accepted technical or trade meanings are used within this PPA in accordance with those recognized meanings. In addition, the following rules of interpretation apply:

- (1) The masculine includes the feminine and the neuter.
- (2) References to "Articles," "Sections," or "Exhibits" are to articles, sections, or exhibits of this PPA.

(3) The Exhibits attached to this PPA are incorporated in and are intended to be a part of this PPA; provided that in the event of a conflict between the terms of any Exhibit and the terms of this PPA, the terms of this PPA will take precedence.

(4) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions of this PPA may be construed against one Party on the ground that the Party is the author of this PPA or any part of this PPA.

(5) The Parties must act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, or similar action by a Party, the consent, approval, or similar action may not be unreasonably withheld, conditioned, or delayed; and (ii) wherever the PPA gives a Party a right to determine, require, specify, or take similar action with respect to a matter, the determination, requirement, specification, or similar action must be reasonable.

(6) Use of the words "include" or "including" or similar words are to be interpreted as "including, but not limited to" or "including, without limitation."

(7) Use of the words "tax" or "taxes" are to be interpreted to include taxes, fees, surcharges, and the like.

(8) The premises of this PPA are incorporated by reference as if fully set forth within this PPA.

1.2 Definitions.

When used in this PPA, the terms below have the following meanings:

"Affiliate" of any named person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term "control" (including the terms "controls," "under the control of," and "under common control with") means the possession, directly or indirectly, of the power to direct or to cause the direction of the management of the policies of a person or entity, whether through ownership interest, by contract, or otherwise.

"Applicable Laws" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses, and permits of any governmental authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a governmental authority having jurisdiction, and all applicable judicial, administrative, arbitration, and regulatory decrees, judgments, injunctions, writs, orders, awards, or like actions (including those relating to human health, safety, the natural environment, or otherwise).

"Average Hourly Delivery" is defined in Section 7.3(2).

"Balancing Authority" means Public Service Company of Colorado (or successor).

"Business Day" means any calendar day that is not a Saturday, Sunday, or NERC-recognized holiday.

"CCR" means the Colorado Code of Regulations, as amended.

"Code" means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated under it, as amended from time-to-time.

"Commercial Operation Date" means the date upon which the Facility is commissioned, tested, and ready for commercial operation.

"Contract Price" is defined in Section 7.2.

"Contract Year" means any rolling twelve (12)-month period that begins on the Commercial Operation Date or any anniversary of that date and ends on the Day before the next anniversary of the Commercial Operation Date.

"Day" means a calendar day.

"Delivery Point" means the physical point at the existing 115kV bus at the Midway Substation at which the electrical interconnection is made between the Transmission Service Provider and UTILITIES' Electrical System, or at a new point or location as may be defined under Section 7.6.

"Demand Reduction" is defined in Section 7.3(4).

"Dispute" is defined in Section 11.7.

"Dispute Notice" is defined in Section 11.7.

"Effective Date" means the date first written above.

"Eligible Energy Resource" means any resource that qualifies under 4 CCR 723-3-3652(n).

"Emergency" means any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or to limit loss of UTILITIES' load or generation supply that could adversely affect the reliability of UTILITIES' system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

"Event of Default" is defined in Article 10.

"Facility" means the Pueblo Dam Hydropower Project constructed by Seller pursuant to the Lease of Power Privilege between the United States of America and the Southeastern Colorado Water Conservancy District, acting by and through its Water Activity Enterprise, for the Construction, Operation, Maintenance, and Replacement associated with development of hydroelectric power at Pueblo Dam, Lease No. 17XX650016, issued by the United States Department of the Interior, Bureau Of Reclamation.

"Facility Output" means all electric energy and capacity generated by the Facility (net of station use) and delivered by Seller to the Interconnection Point throughout the Term.

"FERC" means the Federal Energy Regulatory Commission or any successor agency.

"Forecast" means the hourly forecast to be delivered in accordance with Section 9.2 of (i) the sum of electric energy (in MWh) expected to be generated by the Facility and delivered to the Delivery Point; and (ii) available capacity of the Facility.

"Force Majeure" is defined in Article 12.

"Forced Outage" means any condition at the Facility that requires immediate removal of the Facility, or some part of it, from service, another outage state, or a reserve shutdown state.

"General Services Agreement" or "GSA" means the Areawide Public Utility Contract For Electric, Gas, Water, Wastewater, Energy Management Services, and Services Provided under the Appropriate Regulatory Authority (Contract No. GS-00P-16-BSD-1216) by and between the United States of America and UTILITIES, dated April 12, 2016, governing, among other things, the provision of electrical energy by UTILITIES to the United States Department of the Army at the Fort Carson Military Installation.

"Good Utility Practice(s)" means the practices, methods, and acts engaged in or approved by a significant portion of the power generation industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition.

"Governmental Authority" means any federal, state, local, or municipal governmental body; any governmental, quasi-governmental, regulatory, or administrative agency, commission, body, or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power; or any court or governmental tribunal. "Governmental Authority" excludes UTILITIES and excludes Seller for purposes of this PPA.

"Interconnection Facilities" means the facilities and equipment to be provided and owned by the Interconnection Provider that are necessary to interconnect the Facility to the electrical system of the Interconnection Provider at the Interconnection Point.

"Interconnection Point " means the physical point at the Pueblo Reservoir substation of Black Hills/Colorado Electric Utility Company, LP (or successor) at which the electrical interconnection is made between the Facility and the Black Hills/Colorado Electric Utility Company, LP electrical system (or successor).

"Interconnection Provider" means Black Hills/Colorado Electric Utility Company, LP (or successor).

"kW" means kilowatt.

"kWh" means kilowatt hour.

"Loss Factor" means the loss percentage contained in the Transmission Service Provider's FERC Open Access Transmission Tariff or successor tariff and applied to energy delivered to the Delivery Point by the Transmission Service Provider.

"Month" means a calendar month unless the context requires otherwise.

"Monthly Amount" is defined in Section 7.3(1).

"MW" means megawatt or one thousand kW.

"MWh" means megawatt hours.

"NERC" means the North American Electric Reliability Corporation or any successor.

"On Peak Demand with Product" is defined in Section 7.3(3).

"On Peak Demand without Product" is defined in Section 7.3(3).

"Party" means Seller or UTILITIES.

"Parties" means Seller and UTILITIES collectively.

"Party Representative" is defined in Section 11.7.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or governmental authority.

"PPA" means this Power Purchase Agreement between Seller and UTILITIES including the attached Exhibits.

"Product" means 50% of the Facility Output (less the Loss Factor) that is scheduled for and delivered to UTILITIES at the Delivery Point. Product includes the associated RECs and other environmental attributes attributable to 50% of the Facility Output (less the Loss Factor) throughout the Term. Because of the Transmission Service Provider's scheduling requirements, on a day-to-day basis the Product delivered to the Delivery Point may not be exactly 50% of the Facility Output (less the Loss Factor). Each Month Seller will use its best efforts to deliver 50% of the Facility Output (less the Loss Factor) to UTILITIES at the Delivery Point. Actual Monthly deliveries may vary slightly due to scheduling requirements and rounding. UTILITIES will only be billed by Seller for the actual energy delivered to the Delivery Point and received by Utilities for any Month.

"Product Delivery Deficiency Credit" is defined in Section 7.3(6).

"Proprietary Information" is defined in Section 16.12.

"Pueblo Hydropower GSA Exhibit" means that certain Authorization For Electric Service, Change in Electric Service, or Disconnection and/or Termination of Electric Service under Contract No. GS-00P-16-BSD-1216 by Fort Carson Contracting Office, Fort Carson, CO and UTILITIES, attached as Exhibit E, under which: (i) UTILITIES will sell and will transmit electrical energy delivered from Seller to UTILITIES from the Delivery Point to UTILITIES' retail delivery point(s) for United States Department of the Army at the Fort Carson Military Installation ("Ft. Carson"); (ii) UTILITIES will pass through to Ft. Carson the cost of such electrical energy delivered and sold by Seller to UTILITIES under this PPA; and (iii) UTILITIES will credit Ft. Carson for any Product Delivery Deficiency Credit UTILITIES receives pursuant to Section 7.3 of this PPA based on Product scheduled and delivered each Month from Seller to UTILITIES under this PPA.

"Renewable Energy Credits" or "RECs" has the meaning set forth in the Colorado Revised Statutes, Section 40-2-124(d), as amended, and 4 CCR 723-3-3652(y) and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Eligible Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the Facility's actual energy production or the Facility's energy production capability because of the Facility's environmental or renewable characteristics or attributes. For the avoidance of doubt, "RECs" excludes (i) any local, state, or federal Production Tax Credits ("PTCs"), depreciation deductions, or other tax credits providing a tax benefit to Seller based on ownership of, or energy production from, any portion of the Facility, including the investment tax credit expected to be available to Seller with respect to the Facility under Code Section 48 (Energy Credits); and (ii) depreciation and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

"Renewable Energy Resource" means any resource that qualifies under 4 CCR 723-3-3652(aa).

"Scheduling Agent" means Seller or designee of Seller.

"Seller" means the Southeastern Colorado Water Conservancy District, acting by and through its Water Activity Enterprise, a government-owned business within the meaning of article X, section 20(2)(d) of the Colorado Constitution, organized pursuant to Colorado Revised Statutes, Sections 37-45.1-101, *et seq.*, and owned by the Southeastern Colorado Water Conservancy District.

"Site" means the physical location in Pueblo County, CO of the Pueblo Dam Hydropower Project, which is approximately 500 feet downstream of the Pueblo Dam Hydropower Bifurcation along the Delivery Manifold from the North Outlet Works at the Pueblo Dam.

"Term" is defined in Article 2.

"Transmission Service Provider" means Black Hills/Colorado Electric Utility Company, LP (or successor), the person responsible for transmitting Product from the Interconnection Point to the Delivery Point.

"UTILITIES" means Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation.

"WECC" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"WREGIS" means the Western Renewable Energy Generation Information System or any successor organization.

Article 2 – Term

2.1 Term.

This PPA is effective as of the Effective Date and will remain in full force and effect through December 31, 2027, unless terminated earlier in accordance with Section 2.2.

2.2 Early Termination.

This PPA will terminate earlier than the expiration of the Term:

- (1) As provided in Section 10.2; or
- (2) Upon the delivery of written notice from UTILITIES to Seller that: (A) the Pueblo Hydropower GSA Exhibit has expired or has been terminated by the United States Department of the Army, Fort Carson Military Installation, and (B) UTILITIES has elected early termination of this PPA, provided that UTILITIES is not required to elect early termination upon expiration or termination of the Pueblo Hydropower GSA Exhibit; or
- (3) Upon the delivery of a written notice from Seller to UTILITIES that: (A) the Lease of Power Privilege between the United States of America and Seller for the Facility has been revoked or has been amended; or (B) achieving Commercial Operation as provided for in Article 4 is not feasible due to construction or contracting issues.

Article 3 – The Facility

3.1 Facility Size and Location.

The Facility will be designed, constructed, and operated by Seller or by Seller's designee; any designee is subject to notice from Seller to UTILITIES. The Facility will be designed to have a capacity of approximately 7,500 kW.

3.2 Design and Construction of the Facility.

Seller will engineer, design, procure, construct, test, commission, operate, and maintain the Facility in accordance with Good Utility Practices and Applicable Laws.

3.3 Test Energy.

Any test energy produced by the Facility will be delivered to UTILITIES at no charge. Deliveries of test energy to UTILITIES will only occur with UTILITIES' express agreement to receive test energy.

Article 4 – Commercial Operation

4.1 Revision in Commercial Operation Date.

In the event that Seller determines that its projected Commercial Operation Date as of the Effective Date is not feasible or is impossible to achieve as expected, Seller must promptly notify and advise UTILITIES of the new expected Commercial Operation Date.

4.2 Delays.

If Seller fails to achieve the Commercial Operation Date by December 31, 2018, then UTILITIES may terminate this PPA in accordance with Section 10.1 (1) (F) and with Section 10.2 of this PPA.

4.3 Conditions to Commercial Operation.

No fewer than thirty (30) Days prior to the anticipated Commercial Operation Date of the Facility, Seller must notify UTILITIES in writing that the Facility is nearing Commercial Operation and must provide the expected Commercial Operation Date.

4.4 Electricity Standards

Electricity generated by Seller will be delivered to UTILITIES by the Transmission Service Provider as provided by the Transmission Service Provider's FERC Open Access Transmission Tariff or successor tariff.

Article 5 – Delivery and Measurement

5.1 Delivery Arrangements.

Seller is responsible for all interconnection and transmission arrangements and for all costs (of every type) required to deliver Product from the Facility and its Interconnection Point to UTILITIES at the Delivery Point. Seller is responsible for any change in interconnection or transmission arrangements or for any increase in those costs occurring during the Term.

5.2 Measurement; Transmission Service Provider's FERC Open Access Transmission Tariff.

(1) Product to be delivered under this PPA will be measured as provided under the Transmission Service Provider's FERC Open Access Transmission Tariff or successor tariff.

(2) Any measurement devices will be inspected, tested, and, if necessary, adjusted from time-to-time in accordance with the Transmission Service Provider's FERC Open Access Transmission Tariff or successor tariff. Seller will request inspection or testing of the measurement devices by the Transmission Service Provider when reasonably requested by UTILITIES.

(3) If any measurement device is found to be inaccurate and outside the standards of the Transmission Service Provider's FERC Open Access Transmission Tariff or successor tariff, then Seller's invoice(s) for the applicable billing period will be adjusted in accordance with Section 8.3.

Article 6 – Conditions

6.1 Pueblo Hydropower GSA Exhibit

This PPA is subject to the execution of the Pueblo Hydropower GSA Exhibit by the United States Department of the Army at the Fort Carson Military Installation.

6.2 Appropriations.

This PPA is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing within this PPA will constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of the City of Colorado Springs contrary to article X, section 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this PPA, with respect to any financial obligation of the City of Colorado Springs or UTILITIES that may arise under this PPA in any fiscal year after the year containing the Effective Date, in the event that the budget or other means of appropriation for any year fails to provide funds in sufficient amounts to discharge the obligation, (i) that failure terminates this PPA at the time that the then-existing and available appropriations are depleted, and (ii) neither that failure nor the termination of this PPA constitutes a default or breach under this PPA (including any sub-agreement, attachment, schedule, or exhibit to it) by the City of Colorado Springs or by UTILITIES. As used within this Section, the term "appropriation" means and includes the due adoption of an appropriation ordinance and budget that contains an allocation of sufficient funds for the performance of fiscal obligations arising under this PPA.

6.3 Limits of Liability to Enterprise

Any and all of the obligations of Seller under this PPA, whether financial or otherwise, are payable solely from the revenues, income, rents, and receipts earned by the Seller Enterprise from or attributable to the ownership and operation of the Facility which is being constructed by Seller and are not payable from any other source whatsoever. Nothing within this PPA can be deemed to prevent Seller from making any payments from any other legally available source. In no event will 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 PPA or which would cause Seller to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, the Seller is not required to expend any funds or impair any assets of the Southeastern Colorado Water Conservancy District in the performance of its obligations under this PPA. The obligations of Seller under this PPA 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 cannot be considered or held to be a general obligation of the Southeastern Colorado Water Conservancy District.

6.4 Governmental Immunity.

Neither Party by any provision of this PPA intends to waive its rights and protections under the Colorado Governmental Immunity Act. All such claims are subject to the limitations, procedures, and protections of the Colorado Governmental Immunity Act, Colorado Revised Statutes, Sections 24-10-101, *et seq.*, as amended, or similar or successor statutes.

Article 7 – Sale and Purchase of Electric Energy

7.1 Sale and Purchase.

Beginning on the Commercial Operation Date, Seller will sell to UTILITIES, and UTILITIES will purchase from Seller, the Product that is delivered to the Delivery Point.

7.2 Contract Price.

The Contract Price is (United States) 4.75 cents (US \$0.0475) per kWh for deliveries of Product during calendar years 2018 and 2019; that price will be increased by 2.39% beginning on January 1, 2020 and then on January 1 of each succeeding year the then-current price will be increased by 2.39% through the Term.

7.3 Product Delivery Deficiency Credit.

As stated in the premises, UTILITIES intends to resell Product to the United States Department of the Army at the Fort Carson Military Installation ("Ft. Carson") to further the United States' renewable energy goals. As part of those goals, Ft. Carson seeks to reduce its daily electric demand. If UTILITIES' Pueblo Hydro GSA Exhibit remains in effect, then this Section 7.3 will apply. If UTILITIES' Pueblo Hydro GSA Exhibit is not in effect, then this Section 7.3 will not apply.

(1) At the completion of each Month, UTILITIES will determine the total Product received at the Delivery Point and that Product total then will be reduced by 1% for losses on UTILITIES' electric system during Product resale to Fort Carson, this reduced amount is the "Monthly Amount".

(2) UTILITIES will then divide the Monthly Amount by the total number of clock hours in the Month to determine Seller's average hourly delivery ("Average Hourly Delivery").

(3) While the calculations are performed for Section 7.3 (1) and Section 7.3 (2), UTILITIES also will review Ft. Carson's demand on UTILITIES' electric system over the same Month. UTILITIES will calculate Ft. Carson's highest On-Peak Demand for the Month in accordance with the then-current UTILITIES' calculation process without removing Product delivered at the Delivery Point ("On-Peak Demand with Product"). UTILITIES will then calculate Ft. Carson's highest On-Peak Demand for the Month in accordance with the then-current UTILITIES' calculation process removing Product delivered at the Delivery Point ("On-Peak Demand without Product").

(4) UTILITIES will then subtract the amount of the On-Peak Demand without Product from the amount of the On-Peak Demand with Product. The difference of these two amounts is the "Demand Reduction."

(5) The Demand Reduction must equal or exceed eighty percent (80%) of the Average Hourly Delivery.

(6) If the Demand Reduction does not equal or exceed eighty percent (80%) of the Seller's Average Hourly Delivery, then Seller must give UTILITIES a Product Delivery Deficiency Credit on the next billing statement provided to UTILITIES pursuant to Article 8 (the "Product Delivery Deficiency Credit").

(7) The Product Delivery Deficiency Credit is calculated by subtracting the Demand Reduction from Seller's Average Hourly Delivery multiplied by 0.8. The resulting product is then multiplied by UTILITIES' then-current Electric Rate Schedule, Contract Service – ECD (or its successor), Demand Charges – Primary, On-Peak Billing Demand rate and that resulting product is then multiplied by the number of Days in the Month (Difference * ECD On-Peak Primary Billing Demand Rate * number of Days in the Month). The resulting product of the entire calculation is the Product Delivery Deficiency Credit for that Month.

(8) An example of the calculation of the Product Delivery Deficiency Credit provided for in this Section 7.3 is attached as Exhibit D to this PPA.

7.4 Title and Risk of Loss.

Title and risk of loss to Product transfers from Seller to UTILITIES at the Delivery Point.

7.5 UTILITIES' Right to Curtail Delivery.

If UTILITIES requests Seller to curtail, interrupt, or reduce deliveries of electrical energy, then UTILITIES does not have any purchase obligation or liability with respect to that electrical energy: (A) if UTILITIES determines, using Good Utility Practices, that curtailment, interruption, or reduction is necessary due to an Emergency; (B) to the extent Force Majeure prevents or limits UTILITIES' ability to accept delivery of electrical energy; or (C) if due to any curtailment of UTILITIES' transmission services.

7.6 Joint Transmission Tariff; Regional Transmission Organization; Independent System Operator.

UTILITIES and Seller each acknowledge that as of the Effective Date, UTILITIES, the Transmission Service Provider, and other persons are discussing creation of a joint electric energy transmission tariff or joining or establishing a regional transmission organization or an independent system operator for the Front Range region of the state of Colorado, the state of Wyoming, and adjacent areas. UTILITIES and Seller each acknowledge that:

(1) Seller will transfer title and risk of loss to Product to UTILITIES at the Delivery Point, and Seller will incur cost to move Product from the Interconnection Point to the Delivery Point over the Transmission Service Provider's electric system; and

(2) UTILITIES intends to resell Product to the United States Department of the Army at the Fort Carson Military Installation ("Ft. Carson") under UTILITIES' tariffs and will provide electric energy transmission service to Ft. Carson for Product over UTILITIES' electric system, the cost of which electric energy transmission service will be paid by Ft. Carson; and

(3) Under a joint electric energy transmission tariff or under a regional transmission organization or under an independent system operator, (A) the Delivery Point under this PPA may be changed, or (B) the cost of the Transmission Service Provider and the cost of UTILITIES for electric energy transmission service (or portions of those costs) may be combined under a new tariff, or (C) both may occur.

For these reasons, if a joint electric energy transmission tariff or a regional transmission organization or an independent system operator is created and joined by UTILITIES, or is later joined by UTILITIES, and that event causes change to the economic benefit of the purchase of Product under this PPA by UTILITIES and the resale of that Product to Ft. Carson, then Seller and UTILITIES each agree to negotiate in good faith to amend this PPA so that the economic benefit may be returned to as near as practicable as that economic benefit was before the creation of the joint electric energy

transmission tariff, or the joining or establishing of the regional transmission organization or the independent system operator. If Seller refuses to negotiate in good faith to amend this PPA or the Parties are unable to reach agreement on the amendment within one-hundred eighty (180) Days after notice from UTILITIES to begin negotiations, then UTILITIES may terminate this PPA and have no further obligation to Seller.

Article 8 – Billing and Payment

8.1 Billing Statement.

This PPA will be considered a “Take and Pay” Agreement; UTILITIES will pay for electric energy that is delivered to UTILITIES at the Delivery Point. The billing period under this PPA is the calendar month (“Month”). Not later than five (5) Business Days after the end of each Month, Seller must provide to UTILITIES, by first-class mail and email, a billing statement for Product deliveries during the previous Month, as measured in accordance with Article 5, which statement must show: (A) the quantity of Product delivered on an hourly basis, (B) the Contract Price for each kWh of Product delivered during the previous Month, and (C) the total amount due for that Month.

8.2 Billing Disputes.

If UTILITIES disputes any amount in the statement provided by Seller, UTILITIES must notify Seller in writing identifying the items in dispute. Seller then must provide a detailed response in writing (including all supporting documentation for Seller’s position) within fifteen (15) Business Days after the date of UTILITIES’ notice. Any adjustment of credits based on resolution of the billing dispute must be made in the next billing statement. In the event that the Parties cannot resolve the dispute within fifteen (15) Business Days, then the dispute will be resolved in accordance with Section 11.7.

8.3 Billing Adjustment for Inaccurate Measurement.

If a measurement device fails to register, or if the measurement made by a measurement device is found upon testing to be inaccurate, an adjustment will be made correcting all measurements by the inaccurate or defective measurement device for both the amount of the inaccuracy and the period of the inaccuracy, in the manner and for the time period provided for in the Transmission Service Provider’s FERC Open Access Transmission Tariff or successor tariff. To the extent that any adjustment period covers a period of deliveries for which payment has already been made by UTILITIES, then the corrected measurements will be used to re-compute the amount due for the period of the inaccuracy and, (A) if the difference is a positive number, the difference will be credited to Seller; (B) if the difference is a negative number, that difference will be credited to UTILITIES.

Article 9 – Operations and Maintenance

9.1 Facility Operation.

Seller (or its approved designee) will control, operate, and maintain the Facility in accordance with Good Utility Practices and Applicable Laws, including adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair.

9.2 Forecasting and Scheduling

(1) Seller is responsible for providing the Forecasts of Product to be delivered to the Delivery Point during the Term.

(2) Approximately three (3) Months prior to the Commercial Operation Date, and thereafter by April 1 of each succeeding year, Seller must provide to UTILITIES, or cause to be provided to

UTILITIES, a good-faith estimate of each Month's average-day deliveries of Product, by hour, for the following calendar year.

(3) Ten (10) Business Days before the beginning of each Month, Seller must provide to UTILITIES, or cause to be provided to UTILITIES, a good-faith estimate of each Day's projected deliveries of Product, by hour, for the following month.

(4) Seller must provide to UTILITIES, or cause to be provided to UTILITIES, by 6:00 a.m. Mountain time (or Mountain Daylight time as the case may be) on each Day, a good-faith estimate of the hourly quantities of Product for the immediately succeeding Day.

(5) If at any time following submission of a good-faith estimate as described in sub-sections 9.2 (2), (3), and (4), Seller becomes aware of any change that materially alters the values previously provided to UTILITIES, Seller must notify UTILITIES of that change as soon as possible if the change is then occurring, or if it is a change in planned or forecasted information then as soon as possible prior to the change taking effect or the next Business Day.

(6) The Scheduling Agent is responsible for scheduling Product in accordance with this PPA.

9.3 Outage Reporting.

Seller must notify UTILITIES of the existence, nature, expected duration, and impact on deliveries, of any immediate or near-term forced outage as soon as possible. Seller must notify UTILITIES of any similar changes in any planned outages that may impact delivery of Product within 48 hours of the occurrence of those changes.

9.4 Operating Procedures.

(1) Seller will develop operating arrangements for the generation, delivery, and receipt of Product under this PPA. Those operating arrangements cannot modify the terms or conditions of this PPA.

(2) Prior to the Commercial Operation Date, the Seller must provide UTILITIES with written Operating Procedures developed under Section 9.4(1), which must include methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list; operations and maintenance scheduling and reporting; Product delivery reports; unit operations log; and those other matters as may be mutually agreed upon by the Parties.

9.5 Maintenance.

Approximately three (3) Months prior to the Commercial Operation Date and after that by April 1 of each year, Seller must deliver to UTILITIES a projected schedule of maintenance of the Facility for the subsequent one (1)-year period or the remainder of the Term, whichever period of time is shorter. If the need arises for Seller to conduct further maintenance on the Facility as necessary in accordance with Good Utility Practices, Seller must notify UTILITIES of the required maintenance, together with proposed dates for carrying out that additional maintenance and the estimated duration of the work to be carried out, such changes to be mutually agreed upon in good faith with UTILITIES.

9.6 Renewal Energy Credits ("RECs").

The Parties acknowledge that existing legislation creates, and future legislation or regulation may create, value in the ownership, use, or allocation of RECs. To the full extent allowed by any law or regulation and for all Product that UTILITIES purchases under this PPA, UTILITIES will own or be entitled to claim all RECs to the extent that Product is delivered to UTILITIES during the Term. On or before the fifth (5th) Day of each Month, Seller must deliver to UTILITIES a REC Attestation and Bill

of Sale in the form attached to this PPA as Exhibit A for all RECs delivered to UTILITIES in the preceding Month. Each of Seller and UTILITIES acknowledges that Product will be delivered to UTILITIES from Seller over the Transmission Service Provider's electric system from the Interconnection Point to the Delivery Point and that the Transmission Service Provider may, from time-to-time, firm the Product deliveries at the Delivery Point. Seller agrees to provide RECs for all Product delivered to UTILITIES at the Delivery Point including any deliveries that may have been firmed by the Transmission Service Provider. In the event that UTILITIES elects to register the RECs with WREGIS, Seller agrees to cooperate with and assist UTILITIES to register the Facility with WREGIS and to transfer the RECs into UTILITIES' WREGIS account.

Article 10 - Default and Remedies

10.1 Events of Default.

(1) The following constitute an Event of Default by Seller:

(A) Seller dissolves or liquidates;

(B) Seller makes a general assignment for the benefit of creditors;

(C) Seller files a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any similar law or act by answer or otherwise;

(D) An involuntary bankruptcy or insolvency proceeding is filed against Seller and not stayed or dismissed within sixty (60) Days;

(E) Seller breaches or fails to comply with any other material obligation under this PPA, and that breach or failure is not cured within thirty (30) Days following receipt of written notice of the breach or failure to comply;

(F) An early termination has not occurred pursuant to Section 2.2(3) and the Facility fails to achieve Commercial Operation by December 31, 2018; provided that the date will be extended on a day-for-day basis for up to ninety (90) Days if the failure is due to Force Majeure; or

(G) The Facility ceases to be an Eligible Energy Resource and a Renewable Energy Resource.

(2) The following constitute an Event of Default by UTILITIES:

(A) UTILITIES dissolves or liquidates; provided that division of UTILITIES into multiple entities will not constitute dissolution or liquidation;

(B) UTILITIES makes a general assignment for the benefit of creditors;

(C) UTILITIES files a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any similar law or act by answer or otherwise;

(D) An involuntary bankruptcy or insolvency proceeding is filed against UTILITIES and not stayed or dismissed within sixty (60) Days; or

(E) UTILITIES breaches or fails to comply with any other material obligation under this PPA, and that breach or failure is not cured within thirty (30) Days following receipt of written notice of the breach or failure to comply.

10.2 Remedies upon Default.

(1) Upon the occurrence of an Event of Default by Seller and upon written notice to Seller, UTILITIES may suspend performance of or terminate this PPA and is entitled to all its rights and remedies.

(2) Upon the occurrence of an Event of Default by UTILITIES and upon written notice to UTILITIES, Seller may suspend performance of or terminate this PPA and is entitled to all its rights and remedies.

10.3 Remedies Cumulative.

Each right or remedy of the Parties provided for within this PPA is cumulative of and is in addition to every other right or remedy provided for within this PPA. The exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for within this PPA does not preclude the simultaneous or later exercise by the Party of any or all other rights or remedies provided for within this PPA.

10.4 No Consequential Damages.

Neither Party will be liable to the other Party for consequential, incidental, punitive, exemplary, special, or indirect damages, lost profits, or other business interruption damages by statute, in tort, or in contract (except to the extent expressly provided within this PPA).

10.5 Duty to Mitigate.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages that it may incur as a result of the other Party's performance or non-performance of this PPA.

Article 11 – Contract Administration and Notices

11.1 Notices in Writing.

Notices required by this PPA must be addressed to the other Party at the addresses noted in Exhibit B as either Party updates those addressees from time-to-time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party must be in writing. The notice must either be hand-delivered or mailed, postage prepaid, to the representative of the other Party. If mailed, the notice, request, consent, or other communication must be simultaneously sent by facsimile or other electronic means. Any notice, request, consent, or other communication will be deemed to have been received by the close of the Business Day on which it was hand-delivered or transmitted electronically (unless hand-delivered or transmitted after the close of the Business Day in which case the notice will be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations are exempt from this Section.

11.2 Representative for Notices.

Each Party will maintain a designated representative to receive notices. By written notice to the other Party, either Party may change the representative or the address to who notices and communications are to be sent.

11.3 Authority of Representatives.

The Parties' representatives have authority to act for its respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However in their capacity as representatives, the Parties' representatives do not have the authority to amend or to modify any provision of this PPA.

11.4 Operating Records and Reports.

Seller will keep complete and accurate records and all other data required by UTILITIES for the purposes of proper administration of this PPA, including any records as may be required by state or federal regulatory authorities and WECC in the prescribed format.

11.5 Operating Log.

Seller will maintain an accurate and up-to-date operating log in electronic format with records of production for each clock hour; changes in operating status; and Forced Outages for the purposes of proper administration of this PPA, including any records as may be required by state or federal regulatory authorities and WECC in the prescribed format.

11.6 Billing and Payment Records.

To facilitate payment and verification, Seller will keep all books and records necessary for billing and payments in accordance with the provisions of Article 8 and grants UTILITIES reasonable access to those records.

11.7 Dispute Resolution.

(1) In the event of any dispute arising under this PPA (a "Dispute"), within ten (10) Days following the delivered date of a written request by either Party (a "Dispute Notice"): (A) each Party must appoint a representative (individually, a "Party Representative," together the "Parties' Representatives"); and (B) the Parties' Representatives will meet, negotiate, and attempt in good faith to resolve the Dispute quickly, informally, and inexpensively. In the event that the Parties' Representatives cannot resolve the Dispute within thirty (30) Days after commencement of negotiations, then within ten (10) Days following any request by either Party at any time thereafter, each Party Representative: (C) will independently prepare a written summary of the Dispute describing the issues and claims; (D) will exchange its summary with the summary of the Dispute prepared by the other Party Representative; and (E) must submit a copy of both summaries to a senior officer of the Party Representative with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties must negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within fourteen (14) Days following receipt of the Dispute summaries by the senior officers, either Party may seek available legal and equitable remedies.

(2) Each of Seller and UTILITIES knowingly, voluntarily, and intentionally waive any rights that they may have to a trial by jury in respect of any litigation based on this PPA, or arising out of, under, or in connection with this PPA and expressly agree to have any disputes arising under or in connection with this PPA be adjudicated by a judge of the court having jurisdiction without a jury.

Article 12 – Force Majeure

12.1 Definition of Force Majeure.

(1) The term "Force Majeure," as used in this PPA, means causes or events beyond the reasonable control of, and without the fault or negligence of, the Party claiming Force Majeure,

including Acts of God; vandalism beyond that which could reasonably be prevented; terrorism; war; riots; fire; explosion; blockades; insurrection; actions, requirements, or failures to act by any Governmental Authority taken after the Effective Date (including the adoption or change in any rule, regulation, or environmental constraint lawfully imposed by the Governmental Authority) but only if those actions, requirements, or failures to act prevent or delay performance; and the inability despite due diligence to obtain any licenses, permits, or approvals required by any Governmental Authority.

(2) Notwithstanding the foregoing, the term "Force Majeure" does not include (A) inability by Seller for any reason to procure equipment or any component parts for that equipment (the risk of which is assumed by Seller); (B) any other acts or omissions of any third party including any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure; (C) any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishaps, events, or conditions attributable to normal wear and tear or flaws, unless caused by reason of Force Majeure; (D) failure to abide by Good Utility Practices; (E) changes in market conditions that affect the cost of Seller's supplies or that affect demand or price for power and/or RECs; (F) any labor strikes, slowdowns, stoppages, or other labor disruptions against Seller or Seller's contractors or subcontractors; or (G) weather events or sudden actions of the natural elements within twenty (20)-year normal weather patterns.

12.2 Applicability of Force Majeure.

(1) Neither Party is responsible or liable for any delay or failure in its performance under this PPA nor will any delay, failure, or other occurrence or event become an Event of Default to the extent that the delay, failure, occurrence, or event is substantially caused by Force Majeure, provided that:

(A) The non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(B) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(C) The non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(D) When the non-performing Party is able to resume performance of its obligations under this PPA that Party gives the other Party written notice to that effect.

(2) Except as otherwise expressly provided for in this PPA, the existence of a condition or event of Force Majeure does not relieve the Parties of their obligations under this PPA (including payment obligations) to the extent that performance of those obligations is not precluded by the condition or event.

12.3 Limitations on Effect of Force Majeure.

In no event will any delay or failure of performance caused by Force Majeure extend this PPA beyond its stated Term. In the event that any delay or failure of performance caused by Force Majeure affecting Seller continues for an uninterrupted period of three-hundred sixty-five (365) Days from its inception (with respect to Force Majeure occurring after the Commercial Operation Date), then at any time following the end of that uninterrupted three-hundred sixty-five (365) Day period UTILITIES or Seller may terminate this PPA upon written notice without further obligation, except as to the obligations and liabilities provided under this PPA which survive that termination.

Article 13 – Representations and Warranties

13.1 Seller's Representations and Warranties.

Seller represents and warrants as follows:

(1) Seller is an enterprise of the Southeastern Colorado Water Conservancy District within the meaning of article X, section 20(2)(d) of the Colorado Constitution, organized pursuant to Colorado Revised Statutes, Sections 37-45.1-101, *et seq.*, duly constituted and validly existing under the laws of the State of Colorado. Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(2) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary governmental action, and do not and will not: (A) require any consent or approval by any governing body of Seller other than that which has been obtained and is in full force and effect (evidence of which will be delivered to UTILITIES upon its request); (B) violate any Applicable Law, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or (C) result in a breach or constitute a default under Seller's governing statutes, formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(3) This PPA is a valid and binding obligation of Seller.

(4) The Facility is an Eligible Energy Resource and a Renewable Energy Resource.

13.2 UTILITIES' Representations and Warranties.

UTILITIES represents and warrants as follows:

(1) UTILITIES is an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation. UTILITIES has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(2) Subject to the conditions identified in Article 6, the execution, delivery, and performance of UTILITIES' obligations under this PPA have been duly authorized by all necessary action, and do not and will not: (A) require any further consent or approval; (B) violate any Applicable Law, the violation of which could have a material adverse effect on the ability of UTILITIES to perform its obligations under this PPA; or (C) result in a breach or constitute a default under UTILITIES' charter or bylaws, or under any agreement relating to the management or affairs of UTILITIES, or under any indenture or loan or credit agreement, or under any other agreement, lease, or instrument to which UTILITIES is a party or by which UTILITIES or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of UTILITIES to perform its obligations under this PPA.

(3) Subject to the conditions identified in Article 6, this PPA is a valid and binding obligation of UTILITIES.

Article 14 – Legal and Regulatory Compliance

14.1 Compliance with Applicable Laws.

Seller and UTILITIES must at all times comply, and will cause its employees, agents, representatives, contractors, and subcontractors to comply, with all Applicable Laws in connection with its performance of this PPA.

14.2 Cooperation with Legal Requirements.

Each Party will deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers, or agents as to matters as may be reasonably requested, and will make available personnel and records relating to the Facility to the extent that the requesting Party requires that personnel or those records in order to fulfill any regulatory reporting or auditing requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions or other governmental bodies.

Article 15 – Assignment and Other Transfer Restrictions

15.1 No Assignment without Consent.

Neither Party may assign this PPA or any portion of the PPA without the prior written consent of the other Party.

15.2 Transfer without Consent is Null and Void.

Any sale, transfer, or assignment made without fulfilling the requirements of this PPA is null and void and constitutes an Event of Default pursuant to Article 10.

15.3 Contractors and Subcontractors.

Seller may rely on one or more contractors and subcontractors in the performance of its duties or obligations under this PPA; provided that no contract or subcontract will relieve Seller of any of its duties or obligations under this PPA.

Article 16 – Miscellaneous

16.1 Waiver.

Subject to the provisions of Section 11.7(2), the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights under this PPA, will not constitute a waiver or relinquishment of any such terms, conditions, or rights, but they will be and remain at all times in full force and effect.

16.2 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA will remain in effect for the Term. Absent the Parties' separate written agreement, this PPA will not be subject to change by application of either Party pursuant to Section 205 or Section 206 of the Federal Power Act.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the FERC acting *sua sponte* is the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (also known as the "Mobile-Sierra doctrine").

16.3 Disclaimer of Third-Party Beneficiary Rights.

Nothing in this PPA may be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

16.4 Relationship of the Parties.

(A) This PPA is not to be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller is solely liable for the payment of all wages, taxes, and other costs related to the employment of persons by Seller to perform services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller may be considered employees of UTILITIES for any purpose; nor may Seller represent to any person that he or she is or may become a UTILITIES employee.

16.5 Severability.

In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, are held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby remain in force and effect; provided that UTILITIES and Seller must negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal, or unenforceable.

16.6 Entire Agreement; Amendments.

This PPA constitutes the entire agreement between UTILITIES and Seller with respect to the Facility and the purchase of electric energy and RECs. This PPA supersedes all previous communications, representations, or agreements, either verbal or written, between UTILITIES and Seller with respect to the subjects of this PPA.

16.7 Amendments.

This PPA may be amended, modified, or supplemented only by a writing signed by both Parties; provided that Exhibit B may be changed in accordance with Section 11.1.

16.8 Binding Effect.

This PPA is binding upon and inures to the benefit of the Parties and their respective successors and assigns.

16.9 Headings.

Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

16.10 Governing Law; Jurisdiction; Venue.

This PPA is governed by and is to be construed in accordance with the laws of the State of Colorado and the Charter and City Code of the City of Colorado Springs, Colorado. The Parties submit to the exclusive jurisdiction of the courts of the State of Colorado, and venue is stipulated as El Paso County, Colorado.

16.11 Press Releases and Media Contact.

Upon the request of either Party, the Parties will develop a mutually agreed joint press release to be issued describing the location, size, type, and timing of the Facility, the nature of this PPA, and other relevant factual information about the relationship of the Parties.

16.12 Open Records Act; Confidentiality.

(A) Each Party acknowledges that the other Party is a public entity subject to the provisions of the Colorado [Open] Public Records Act, Colorado Revised Statutes, Sections 24-72-201, *et seq.* Subject to the foregoing requirements, each Party agrees not to disclose to a third party (other than a Party's outside counsel, consultants, accountants, lenders, and prospective lenders, investors, and prospective investors, prospective purchasers, and other agents having a need to know, who agree to maintain the confidentiality of the information) or use for purposes other than related to this PPA, any non-public information of the other Party proprietary information provided by one Party to the other pursuant to the terms of this PPA, proprietary information obtained pursuant to a Party's audit or inspection of the other Party's assets and/or records, and any other information that has been designated in writing as confidential by the disclosing Party (collectively, "Proprietary Information"), unless the receiving Party obtains the prior written consent of the disclosing Party. Without limiting the generality of the foregoing, each Party will observe the same safeguards and precautions with regard to Proprietary Information of the other Party, which such Party observes with respect to its own information of the same or similar kind.

(B) Each Party agrees that it will make Proprietary Information available to its own employees, officers, and directors who may include the employees, officers, and directors of a Party's Affiliates, only on a need-to-know basis, and that all persons to whom such Proprietary Information is made available will be required to maintain the confidentiality of the information. Notwithstanding the foregoing, either Party may disclose any Proprietary Information that (A) becomes public information through no wrongful act of the receiving Party; or that is provided to the receiving Party by a third party without restriction known to the receiving Party and without breach of this PPA, or (B) the receiving Party is required to disclose to comply with an applicable legal requirement. To the extent such Proprietary Information is required to be provided pursuant to Applicable Law, including in connection with any regulatory proceeding, the Party required to provide such Proprietary Information will use commercially reasonable efforts to notify the other Party as soon as practicable.

16.13 Forward Contract.

The Parties acknowledge and agree that this PPA constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

16.14 Counterparts.

This PPA may be executed in counterparts, each of which has the same force and effect as an original instrument.

IN WITNESS WHEREOF, the Parties have executed this PPA as of the Effective Date.

UTILITIES:

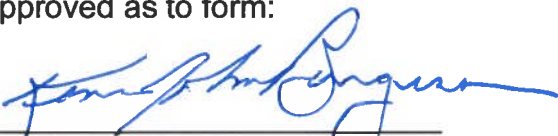
COLORADO SPRINGS UTILITIES

An enterprise of the City of Colorado Springs,
a Colorado home-rule city and municipal corporation

By: 

Its: General Manager

Approved as to form:



City Attorney's Office - Utilities Division

SELLER:

SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT
ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE

By: 

Its: Executive Director

EXHIBIT A

FORM OF ATTESTATION AND BILL OF SALE

_____ ("Seller") hereby sells, transfers and delivers to
_____ ("Buyer") the RECs and Environmental Attributes associated with the generation of Product, as detailed in the Hydroelectric Power Purchase Agreement between the Parties, dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

Name of Renewable Energy Facility

Type/Resource

Nameplate Capacity
Rating (MW)

Commercial Operation
Date

(from) - (to)
Dates

MWh generated

One (1) REC represents the REC and Environmental Attributes reporting rights associated with one (1) MWh generated from the Facility.

Seller further attests, warrants and represents as follows:

- i) each REC and Environmental Attribute is free and clear of any liens, encumbrances, and/or defects of title;
- ii) none of the RECs or Environmental Attributes, has been retired, claimed, or represented as part of electricity output or sales by Seller, or used to satisfy obligations except as contemplated by the Agreement;
- iii) its sale to Buyer is its one and only sale of the RECs and Environmental Attributes with respect to Product referenced herein, to Seller's knowledge after due inquiry, no third party has claimed or could reasonably be expected to claim any interest in such RECs or Environmental Attributes;
- iv) the Facility identified above produced the number of MWh above during the period indicated above;
- v) Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder;
- vi) The RECs and Environmental Attributes sold hereunder are in compliance with the definitions of the Colorado Renewable Portfolio Standard in effect as of the date hereof; and
- vii) Seller owns the _____
Name of the Renewable Energy Facility

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title, and interest in and to the RECs and Environmental Attributes associated with the generation of the above-referenced Product.

Contact Person: _____

phone: _____; fax: _____

[Seller]

Signed: _____

Name: _____

Title: _____

Date: _____

EXHIBIT B
REPRESENTATIVE NAMES AND ADDRESSES
PUEBLO DAM HYDROPOWER PROJECT

UTILITIES:

Colorado Springs Utilities
Kim Schott
Manager, Portfolio Management, Fuels and Purchase Power
215 Nichols Boulevard, Mail Stop Code: 1328
Colorado Springs, CO 80907
Phone: 719-668-4326
Email: kschott@csu.org

with a copy to:

Colorado Springs Utilities
Division Chief – City Attorney's Office, Utilities Division
PO Box 1103, Mail Code 940
Colorado Springs, CO 80947-0920 Phone: 719-385-5609

SELLER:

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

EXHIBIT C

MONTHLY OPERATING REPORT

PUEBLO DAM HYDROPOWER PROJECT

A Monthly Operating Report shall be submitted to UTILITIES within thirty (30) Days of the end of the Month commencing with the Month containing the Commercial Operation Date and continuing through the Term of the Power Purchase Agreement, items to be included in the Monthly Operating Report are:

- a. Monthly actual energy output MWh.
- b. Monthly projected energy output MWh.
- c. Year aggregate energy output MWh.
- d. Projected yearly energy output MWh.
- e. Reserved.
- f. Monthly Facility Availability - Monthly Facility Availability will be determined as the quotient of: (i) the sum of the hours each Month when Product was made available at the Delivery Point (plus Force Majeure and scheduled maintenance hours) and (ii) the sum of the hours each Month [during which there were sufficient water flows from the Pueblo Dam to produce Product]. The Monthly Facility Availability will be reported as a percentage (%).
- g. Contract Year (CY) Facility Availability - CY Facility Availability will be determined as the quotient of: (i) the sum of the hours during each CY when Product was made available at the Delivery Point (plus Force Majeure and scheduled maintenance hours) and (ii) sum of the hours during such CY [during which there were sufficient water flows from the Pueblo Dam to produce Product]. The CY Facility Availability will be reported as a percentage (%).
- h. Monthly Facility Performance Ratio - Ratio of Monthly Actual Energy Output to the expected Product Output for such Month during the respective Contract Year.
- i. Contract Year Facility Performance Ratio (CY FPR) = Simple average of the Monthly Facility Performance Ratios for each Contract Year.
- j. Corrective Action Report - If the CY Facility Performance Ratio in any Month falls below [] percent ([]%), Seller shall provide UTILITIES with an explanation of what caused such ratio to fall below [] percent ([]%) and the proposed corrective action(s), if any, and the timing of any corrective actions required to improve the Monthly Facility Performance Ratio to a value greater than [] percent ([]%).
- k. Forced Outage Report - All Forced Outages involving the Facility or major components thereof occurring during the Month will be reported along with the cause of such Forced Outage.
- l. Scheduled Maintenance Report - All scheduled maintenance outages and any other outages occurring during the Month will be reported.
- m. Curtailment Report - All periods of curtailment and reasons for such curtailment and the estimated amount of Renewable Energy curtailed during the Month will be reported.

n. Summary Report - All significant events and other material information not reflected in the foregoing shall be reported.

o. Contract Year Production Report - The last Monthly Operating Report of each Contract Year shall also include the amount of Excess Energy, if any, generated by the Facility and delivered to the Point of Common Coupling.

Exhibit D

Section 7.3 Product Deficiency Credit Example

Note: All numbers rounded to whole number; dollars rounded to two significant digits

June Example (with deficiency)

Product received at Delivery Point (for Fort Carson)	2,200,000 kWh
Less 1% (2,200,000 x .01)	<u>22,000 kWh</u>
Monthly Amount	2,178,000 kWh
Number of hours in the Month (30 x24)	720 hours
Average Hourly Delivery (2,178,000 / 720)	3,025 kW

On-Peak Demand without product	37,125 kW
On-Peak Demand with product	<u>36,000 kW</u>
Demand Reduction (difference)	1,125 kW

Average Hourly Delivery x 80% (3025 x .8)	2,420 kW
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Since Demand Reduction (1,125 kW) is less than Average Hourly Delivery x 80% (2,420 kW), a Product Delivery Deficiency Credit is required.

Average Hourly Delivery x .8	2,420 kW
Demand Reduction	1,125 kW
Difference	1,295 kW
ECD On-Peak Primary Billing Demand Rate (per kW, per day)	\$0.5680
Days in Month	30
Calculation – 1,295 x \$0.5680 x 30	\$22,066.80

June Example (no deficiency)

Product received at Delivery Point (for Fort Carson)	2,200,000 kWh
Less 1% (2,200,000 x .01)	<u>22,000 kWh</u>
Monthly Amount	2,178,000 kWh
Number of hours in the Month (30 x24)	720 hours
Average Hourly Delivery (2,178,000 / 720)	3,025 kW

On-Peak Demand without product	37,125 kW
On-Peak Demand with product	<u>34,000 kW</u>
Demand Reduction (difference)	3,125 kW

Average Hourly Delivery x 80% (3025 x .8)	2,420 kW
---	----------

Since Demand Reduction (3,125 kW) is greater than Average Hourly Delivery x 80% (2,420 kW), a Product Delivery Deficiency Credit is not required.

EXHIBIT E
General Services Agreement Exhibit for Fort Carson

EXHIBIT "A"

Contractor's ID NO. _____ (Optional)
Ordering Agency's ID W91241-17-F-0005 (Optional)

COLORADO SPRINGS UTILITIES

AUTHORIZATION FOR ELECTRIC SERVICE, CHANGE IN ELECTRIC SERVICE, OR DISCONNECTION AND/OR TERMINATION OF
ELECTRIC SERVICE UNDER CONTRACT NO. **GS-00P-16-BSD-1216**

Ordering Agency: Fort Carson Contracting Office, Fort Carson, Colorado

Address: 1676 Evans Street, BLDG 1220, Fort Carson, CO 80913

Pursuant to Contract No. GS-00P-16-BSD-1216 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Articles 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: Fort Carson, Fort Carson, CO

SERVICE ADDRESS: Fort Carson Army Installation

NATURE OF SERVICE: ☐ Connect, ☐ Change, ☐ Disconnect, ☒ Continue Service, ☐ DSM Work,
☐ Line Extension, Alteration, Relocation, or Reinforcement, ☐ Special Facilities

OTHER TERMS AND CONDITIONS: See Supplement 1 to Exhibit A for special terms and conditions
Attach any other relevant terms and conditions under which service will be provided.

CONNECTION: If this exhibit is used for connection of utility service, the connection charges established in Colorado Springs Utilities' tariffs shall apply. If "Connect" is selected above, the estimated connection charges shall be included in the executed Exhibit. Estimated Connection Charges \$ N/A.

POINT OF DELIVERY: 4605 S State Highway 115 and Minick Ave Substation delivery points at electric meters 27TQ, 4OT, 4WM, 55717, 557618, 557788, 557833, 557440, 557655 under electric utility account number 7957404430.
TERM OF SERVICE: From 02 April 2018 through 31 December 2027.

SERVICE HEREUNDER SHALL BE UNDER RATE SCHEDULE NO. Contract Service - EHYDPWR to include necessary Contract Service - ECD and Contract Service Wheeling (ECW), OATT

*Hereafter amended or modified by the regulatory body having jurisdiction. (see article 5 of this contract.)

ESTIMATED ANNUAL ENERGY USAGE: 13,500,000 KWH, ESTIMATED DEMAND: Peak 3750 kW
ESTIMATED ANNUAL SERVICE COST: \$770K
ESTIMATED CONNECTION/SPECIAL FACILITIES CHARGE: \$ As negotiated (if applicable)**
ACCOUNTING AND APPROPRIATION DATA FOR SERVICE: As placed on invoice by Agency served
FOR CONNECTION/SPECIAL FACILITIES CHARGE: N/A

CLAUSES INCORPORATED BY REFERENCE (Check applicable clauses):

- (1) ☒ 52.232-18 Availability of funds (APR 1984)
- (2) ☒ 52.232-19 Availability of Funds for the Next Fiscal Year (APR 1984)
- (3) ☒ 52.241-4 Change in Class of Service (FEB 1995)
- (4) ☒ 52.241-5 Contractor's Facilities (FEB 1995)
- (5) ☒ 52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services (FEB 1995) (Use Full Text of Clause)
- (6) ☒ 52.241-9 Connection charge Alt 1
- (7) ☒ 52.241-11 Multiple Service Locations (FEB 1995)
- (8) ☒ 52.241-12 Nonrefundable, Nonrecurring Service charge (FEB 1995)
- (9) ☒ 52.243-1 Changes-Fixed Price (AUG 1987)
- (10) ☒ 52.249-8 Default (Fixed Price Supply & Service)

BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS: (1 copy)
Director of Public Works, Bldg. 1219, 1626 Evans St. Ft Carson, CO 80913-4362 and e-mail a copy to:
Gary.L.george4.civ@mail.mil and maelena.l.cortezano.civ@mail.mil

The foregoing shall be effective upon the return of the fully executed original Authorization by the Contractor to the ordering Agency.

ACCEPTED:

MICC Energy and Environmental Acquisitions
(Ordering Agency)

By: _____
Authorized Signature

Title: Gary L. George
Contracting Officer

Date: 9/28/17

* Include a reference to the applicable rate schedule, and attach a copy of such schedule.

** If necessary, attach and make part hereof supplemental agreements or sheets that cover required connection or extension charges and special facilities or service arrangements. (See Article 5 of this Contract for instructions.)

NOTE: A fully executed copy of this Authorization shall be transmitted by the ordering Agency to the Public Utilities Division (PMAA), General Services Administration, Washington, DC 20405.

COLORADO SPRINGS UTILITIES

(Contractor)
By: Carl Ed
Authorized Signature

Title: Chief Customer & Corporate Services Officer

Date: 9/27/17

APPROVED AS TO FORM:
CITY ATTORNEYS OFFICE
UTILITIES DIVISION

Supplement 1 to Exhibit "A"

The Exhibit "A" (the "Authorization") to the General Services Administration Areawide Contract No. GS-00P-16-BSD-1216 between Colorado Springs Utilities (CSU) herein referred as the "Utilities" and the US Army Fort Carson herein referred as the "Customer" for electric service to Fort Carson, CO with an effective date of 02 April 2018 is supplemented as follows:

Product Delivery Deficiency Credit

Per the CONTRACT SERVICE - EHYDPWER Rate Schedule, Any Product Delivery Deficiency Credit provided to Utilities pursuant to Section 7.3 of the Hydro PPA (shown below) between Utilities and Southeastern Colorado Water Conservancy District (SECWCD) herein referred as the "Seller" will be applied to Customer's (Fort Carson's) bill in a billing period that occurs not more than two billing periods after the calendar month in which Utilities receives the Product Delivery Deficiency Credit.

Section 7.3 of the Hydro PPA between the Utilities and SECWCD

7.3 Product Delivery Deficiency Credit.

As stated in the premises, UTILITIES intends to resell Product to the United States Department of the Army at the Fort Carson Military Installation ("Ft. Carson") to further the United States' renewable energy goals. As part of those goals, Ft. Carson seeks to reduce its daily electric demand. If UTILITIES' Pueblo Hydro GSA Exhibit remains in effect, then this Section 7.3 will apply. If UTILITIES' Pueblo Hydro GSA Exhibit is not in effect, then this Section 7.3 will not apply.

- (1) At the completion of each Month, UTILITIES will determine the total Product received at the Delivery Point and that Product total then will be reduced by 1% for losses on UTILITIES' electric system during Product resale to Fort Carson, this reduced amount is the "Monthly Amount".
- (2) UTILITIES will then divide the Monthly Amount by the total number of clock hours in the Month to determine Seller's average hourly delivery ("Average Hourly Delivery").
- (3) While the calculations are performed for Section 7.3 (1) and Section 7.3 (2), UTILITIES also will review Ft. Carson's demand on UTILITIES' electric system over the same Month. UTILITIES will calculate Ft. Carson's highest On-Peak Demand for the Month in accordance with the then-current UTILITIES' calculation process without removing Product delivered at the Delivery Point ("On-Peak Demand with Product"). UTILITIES will then calculate Ft. Carson's highest On-Peak Demand for the Month in accordance with the then-current UTILITIES' calculation process removing Product delivered at the Delivery Point ("On-Peak Demand without Product").
- (4) UTILITIES will then subtract the amount of the On-Peak Demand without Product from the amount of the On-Peak Demand with Product. The difference of these two amounts is the "Demand Reduction."

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- (5) The Demand Reduction must equal or exceed eighty percent (80%) of the Average Hourly Delivery.
- (6) If the Demand Reduction does not equal or exceed eighty percent (80%) of the Seller's Average Hourly Delivery, then Seller must give UTILITIES a Product Delivery Deficiency Credit on the next billing statement provided to UTILITIES pursuant to Article 8 (the "Product Delivery Deficiency Credit").
- (7) The Product Delivery Deficiency Credit is calculated by subtracting the Demand Reduction from Seller's Average Hourly Delivery multiplied by 0.8. The resulting product is then multiplied by UTILITIES' then-current Electric Rate Schedules, Contract Service -- ECD (or its successor), Demand Charges -- Primary, On-Peak Billing Demand rate and that resulting product is then multiplied by the number of Days in the Month (Difference * ECD On-Peak Primary Billing Demand Rate * number of Days in the Month). The resulting product of the entire calculation is the Product Delivery Deficiency Credit for that Month.
- (8) An example of the calculation of the Product Delivery Deficiency Credit provided for in this Section 7.3 is attached as Exhibit D to this PPA.

Exhibit D

Section 7.3 Product Deficiency Credit Example

Note: All numbers rounded to whole number; dollars rounded to two significant digits

June Example (with deficiency)	
Product received at Delivery Point (for Fort Carson)	2,200,000 kWH
Less 1% (2,200,000 x .01)	22,000 kWH
Monthly Amount	2,178,000 kWH
Number of hours in the month (30 x24)	720 hours
Average Hourly Delivery (2,178,000 / 720)	3,025 kW

On-Peak Demand without product	37,125 kW
On-Peak Demand with product	36,000 kW
Demand Reduction (difference)	1,125 kW

Average Hourly Delivery x 80% (3025 x .8)	2,420 kW
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Since Demand Reduction (1,125 kW) is less than Average Hourly Delivery x 80% (2,420 kW), a Product Delivery Deficiency Credit is required.

Average Hourly Delivery x .8	2,420 kW
Demand Reduction	1,125 kW
Difference	1,295 kW
ECD On-Peak Primary Billing Demand Rate (per kW, per day)	\$0.5680*
Days in Month	30
Calculation – 1,295 x \$0.5680 x 30	\$22,066.80

Contractor's ID No. (Optional) _____
Ordering Agency's ID No. W9124J-17-F-0005

June Example (no deficiency)	
Product received at Delivery Point (for Fort Carson)	2,200,000 kWh
Less 1% (2,200,000 x .01)	22,000 kWh
Monthly Amount	2,178,000 kWh
Number of hours in the month (30 x 24)	720 hours
Average Hourly Delivery (2,178,000 / 720)	3,025 kW

On-Peak Demand without product	37,125 kW
On-Peak Demand with product	34,000 kW
Demand Reduction (difference)	3,125 kW

Average Hourly Delivery x 80% (3025 x .8)	2,420 kW
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Since Demand Reduction (3,125 kW) is greater than Average Hourly Delivery x 80% (2,420 kW), a Product Delivery Deficiency Credit is not required.

*ECD On-Peak Primary Billing Demand Rate as of January 1, 2017. This rate is subject to change based on periodic rate filings by CSU and approval of Colorado Springs City Council.