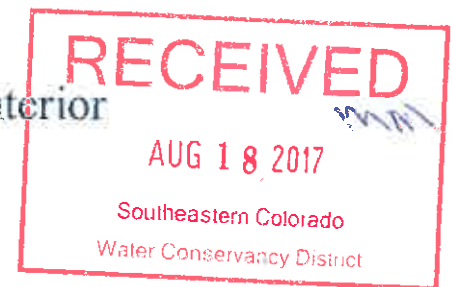


IN REPLY REFER TO:

# United States Department of the Interior

BUREAU OF RECLAMATION  
Great Plains Regional Office  
P.O. Box 36900  
Billings, MT 59107-6900

**COPY**



GP-4100  
WTR-4.03

AUG 15 2017



COPIED TO:

Jim Lee 8/21/17  
Kalin

Mr. James Broderick  
Executive Director  
Southeastern Colorado Water Conservancy District  
31717 E United Avenue  
Pueblo, CO 81001

Subject: Transmittal of Executed Lease of Power Privilege Lease No. 17XX650016 (Lease),  
Colorado-Big Thompson Project, Colorado

Dear Mr. Broderick:

Enclosed please find an executed duplicate original of the Lease. The original Lease has been maintained for our files.

If you have any questions regarding the Lease, please contact Ms. Tara Kinsey, Lead Repayment Specialist, at [tkinsey@usbr.gov](mailto:tkinsey@usbr.gov) or 406-247-7650.

Sincerely,

John F. Soucy

**Fot**  
  
Michael J. Ryan  
Regional Director

Enclosure



# United States Department of the Interior

BUREAU OF RECLAMATION  
Great Plains Regional Office  
P.O. Box 36900  
Billings, MT 59107-6900

COPY

IN REPLY REFER TO:

GP-4100  
WTR-4.03

AUG 03 2017



Southeastern Colorado Water Conservancy District  
Mr. James Broderick, Executive Director  
31717 E United Avenue  
Pueblo, CO 81001

Subject: Transmittal for Signature, Lease of Power Privilege Lease No. 17XX650016 (Lease),  
Colorado-Big Thompson Project, Colorado

Dear Mr. Broderick:

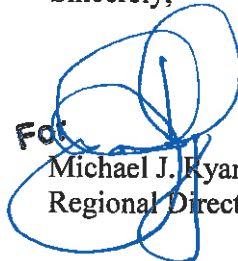
Enclosed please find an original and duplicate original of the Lease for your review and signature. The Lease is to establish conditions for construction, operation, maintenance, and replacement of the proposed hydroelectric facility on Pueblo Dam.

Please review the Lease for accuracy, sign all document copies where indicated, and have them notarized, but do not date the first page of the Lease. Please also provide the letters from Southeastern Colorado Water Conservancy District (SECWCD), Board of Water Works of Pueblo, Colorado, and Colorado Springs Utilities approving that the Lease will be solely in the name of the Water Activity Enterprise of SECWCD. After signature, please return the signed copies and letters to:

Bureau of Reclamation  
Attn: Ms. Tara Kinsey (4100)  
P.O. Box 36900  
Billings, MT 59107

A duplicate original will be returned to you once the Lease has been signed on behalf of Reclamation. If you have any questions regarding the Lease, please contact Ms. Tara Kinsey, Lead Repayment Specialist, at 406-247-7650 or [tkinsey@usbr.gov](mailto:tkinsey@usbr.gov).

Sincerely,

  
Michael J. Ryan  
Regional Director

Enclosures - 2

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Fryingpan-Arkansas Project  
Colorado

**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**

TABLE OF CONTENTS

<u>Article</u> <u>No.</u>	<u>Title</u>	<u>Page</u> <u>No.</u>
	Preamble and Explanatory Recitals .....	1
1	Definitions.....	3
2	Purpose.....	4
3	Limitations .....	4
4	Term of Lease .....	5
5	Termination of Lease .....	5
6	Lease Payments Due to the United States.....	7
7	Water Rights .....	11
8	Ownership, Access, and Occupancy .....	11
9	Construction of the Hydroelectric Facility .....	14
10	OM&R of the Project and the Hydroelectric Facility .....	19
11	Examination and Inspection of the Hydroelectric Facility .....	20
12	Safety, Emergency, and Security Plans .....	21
13	Environmental and Cultural Resources .....	22
14	Irrevocable Letter of Credit .....	23
15	Indemnity and Release of Claims .....	23
16	Severability .....	24
17	Exhibits .....	24

Standard Lease Articles

18	Lease Drafting Considerations.....	24
19	Charges for Delinquent Payments .....	25
20	General Obligation – Benefits Conditions Upon Payment .....	25
21	Contingent on Appropriation or Allotment of Funds .....	25
22	Notices .....	25

23	Officials Not to Benefit.....	26
24	Changes in Lessee's Organization.....	26
25	Assignment Limited – Successors and Assigns Obligated .....	26
26	Books, Records, and Reports .....	26
27	Rules, Regulations, and Determinations .....	27
28	Administration of Federal Project Lands .....	27
29	Protection of Water and Air Quality .....	27
30	Contamination or Pollution of Federal Property .....	28
31	Equal Employment Opportunity .....	29
32	Compliance with Civil Rights Laws and Regulations .....	31
33	Pest Management .....	31
34	Medium for Transmitting Payments .....	32
	Signatures.....	33
	Exhibit A – Map showing Hydroelectric Facility, Access, and Temporary Staging.....	A-1
	Exhibit B – Legal Description and Maps of Hydroelectric Facility Boundaries .....	B-1 to B-3
	Exhibit C – Maps showing Temporary Construction Access, Laydown Area, and Overview of the Hydroelectric Facility .....	C-1 to C-2
	Exhibit D – Environmental Commitment Plan .....	D-1 to D-4

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Fryingpan-Arkansas Project  
Colorado

**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**

THIS LEASE OF POWER PRIVILEGE (Lease), entered into on this 10<sup>TH</sup> day of August, 2017, is pursuant generally to the Act of June 17, 1902, (32 Stat. 388; 43 U.S.C. § 391), and Acts amendatory or supplementary, particularly, but not limited to the Town Sites and Power Development Act of April 16, 1906, (ch. 1631, 34 Stat. 116), Section 9(c) of the Act of August 4, 1939, as amended (ch. 418, 53 Stat. 1187), and the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs of 2013 Act of August 9, 2013, (127 Stat. 498). All are collectively known as the Federal Reclamation laws. This Lease is between the UNITED STATES OF AMERICA, hereinafter called the "United States," acting through the Secretary of the Interior represented by the "Contracting Officer" executing this Lease, and the SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, referred to as the "Lessee." The United States and the Lessee are each sometimes individually called "Party," and sometimes collectively called the "Parties."

**EXPLANATORY RECITALS**

The following statements explain the purpose and background of this lease:

a. WHEREAS, the United States constructed the Fryingpan-Arkansas Project (Project) pursuant to the Act of August 16, 1962, as amended and supplemented, for the purpose of supplying water for irrigation, municipal, domestic, and industrial uses; generating and transmitting hydroelectric power and energy; controlling floods and for other useful and beneficial incidental purposes, including recreation and the conservation and development of fish and wildlife; and

b. WHEREAS, the United States constructed the Project between the years 1970-1975 and holds title to Pueblo Dam, spillway, and tunnel outlet works; and

c. WHEREAS, Section 3 of the Project Act requires that the Project be operated in accordance with the Operating Principles as adopted by the State of Colorado on December 9, 1960, (House Document 130, 87<sup>th</sup> Congress, 1<sup>st</sup> Session); and

d. WHEREAS, the United States and the Southeastern Colorado Water Conservancy District (District) have entered into Contract. No. 5-07-70-W0086, dated January 21, 1965, as amended, for payment of the construction costs allocated to the municipal and industrial and irrigation purposes, and for the payment of Operation, Maintenance, and Replacement (OM&R) charges allocated to those purposes; and

e. WHEREAS, Reclamation is responsible for the OM&R of Pueblo Dam and appurtenant facilities; and

f. WHEREAS, on October 21, 2011, the District, Board of Water Works of Pueblo, Colorado, and Colorado Springs Utilities filed an application for a lease with Reclamation to construct and OM&R the proposed Hydroelectric Facility; and

g. WHEREAS, the Contracting Officer and the District, Board of Water Works of Pueblo, Colorado, and Colorado Springs Utilities executed a preliminary permit on February 27, 2012 to plan and study the proposed project; and

h. WHEREAS, the preliminary permit has been extended numerous times and currently expires on August 27, 2017; and

i. WHEREAS, on August 1, 2017, the Contracting Officer received notification from the District, Board of Water Works of Pueblo, Colorado, and Colorado Springs Utilities that the Hydroelectric Facility will be constructed and the OM&R will be performed solely by the Lessee; and

j. WHEREAS, per the above letter referenced in Subarticle i, herein, the Lease is only between the Contracting Office and the Lessee; and

k. WHEREAS, the Hydroelectric Facility will be located downstream of Pueblo Dam Buttress 16 adjacent to the Arkansas River and will connect through the Hydropower Bifurcation along the Delivery Manifold from the North Outlet Works; and

l. WHEREAS, the Hydroelectric Facility will be constructed by the Lessee at its sole expense; and

m. WHEREAS, it is necessary for the Lessee to enter into this Lease with the United States to establish conditions for construction and OM&R of the Hydroelectric Facility, which will protect the facilities and authorized purposes of the Project; and

n. WHEREAS, the Contracting Officer has determined that this Lease will not impair the operation of the Project, including but not limited to Pueblo Dam for the authorized Project purposes.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

### **DEFINITIONS**

1. Where used, unless specifically expressed otherwise or obviously inconsistent with the intent, the term:

a. "Blasting" shall mean the transportation, storage, handling, and use of commercial explosives and related agents.

b. "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or the Secretary's duly authorized representative.

c. "Colorado Springs Utilities" shall mean the Utility Enterprise for the City of Colorado Springs, Colorado which is also the representative and project manager for the Southern Delivery System (SDS).

d. "District" shall mean the Southeastern Colorado Water Conservancy District, a corporation of the State of Colorado, with its principal place of business in Pueblo, Colorado, a separate and distinct entity from the Lessee.

e. "Pueblo Dam" shall mean Pueblo Dam and appurtenant facilities including, but not limited to, the spillway, outlet works, and inlet structures.

f. "Hydropower Bifurcation" shall mean and include both of the two currently installed 90-inch diameter by 90-inch diameter by 66-inch diameter wyes with 66-inch diameter turnouts terminating in welded pressure domes for future Hydroelectric Facility connections along the Delivery Manifold from the North Outlet Works at Pueblo Dam (commonly referred to as SDS Work Package 1B connection to Pueblo Dam).

g. "Lessee" shall mean 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 Statute § 37-45.1-101 et seq., and owned by the Southeastern Colorado Water Conservancy District.

h. "Hydroelectric Facility" shall mean the penstocks and supports, valves, turbines, generators, electrical transmission equipment, power house, corresponding water conduits, transformers, circuit breakers, fences, poles, wires, control and protection devices to the interconnection point for transportation, distribution, and marketing of power output, and any other associated equipment necessary to run the hydroelectric power plant. This equipment shall be located downstream of the Hydropower Bifurcation.

i. "Lease" shall mean this Agreement Numbered 17XX650016.

j. "North Outlet Works and Delivery Manifold" shall mean the facilities constructed by Colorado Springs Utilities as part of the SDS including modifications to the

existing Project river outlet works at Pueblo Dam (commonly referred to as Buttress 16) and Delivery Manifold. Pursuant to Contract Number 11XX6C0005, the ownership of the North Outlet Works and Delivery Manifold, have been transferred to Reclamation and as such have become part of the Project.

k. "Operation, Maintenance, and Replacement" (OM&R) shall mean OM&R or repair, including any associated administrative, overhead, or general expenses, either directly or indirectly, as necessary to remedy conditions brought about by ordinary use of the subject facility.

l. "Project" shall mean the Fryingpan-Arkansas Project, Colorado, and all features and facilities constructed for authorized purposes thereto, including, but not limited to Pueblo Dam and associated lands and the North Outlet Works and Delivery Manifold.

m. "Reclamation" shall mean the Bureau of Reclamation within the United States Department of the Interior.

n. "Southern Delivery System" (SDS) shall mean the non-federal regional water delivery project that consists of capacity in the North Outlet Works and Delivery Manifold sufficient to deliver 96 million gallons per day.

o. "Supervisory Control and Data Acquisition" (SCADA) shall mean the system that operates with coded signals over communication channels to provide control of remote equipment.

### **PURPOSE**

2. The purpose of this Lease is to provide the Lessee the privilege of developing a Hydroelectric Facility which will connect to the North Outlet Works and Delivery Manifold for the benefit of receiving water under pressure to generate, use, and/or sell electricity.

### **LIMITATIONS**

3. a. Nothing in this Lease is to be construed to affect any contractual commitments under any long-term contract concerning the Project, including, but not limited to the District's Contract No. 5-07-70-W0086 dated January 21, 1965, as amended.

b. Nothing in this Lease is to be construed to require a change in Project operations.

c. Nothing in this Lease is to be construed to require the Contracting Officer to take any action which in his sole determination may cause harm to the Project, authorized Project purposes, or Project beneficiaries including, but not limited to, current and future excess capacity contracts.



d. Nothing in this Lease is to be construed to grant the Lessee any right, title, or interest other than that explicitly provided for in this Lease.

e. The Lessee's liability for any and all of the Lessee's obligations under this Lease, whether financial or otherwise, shall be limited to the revenues, income, rents and receipts earned by the Lessee from or attributable to the ownership and operation of the Hydroelectric Facility, however nothing herein shall be deemed to prevent Lessee from making any payments from any other legally available source of the Lessee. In no event shall the Enterprise be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Lease or which would cause the Lessee to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, the Lessee shall not be required to expend any funds or impair any assets of the District in the performance of its obligations under this Lease. The obligations of the Lessee under this Lease do not constitute a debt or indebtedness of the 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 District.

f. The expenditure or advance of any money or the performance of any obligation of the Lessee under this Lease shall be contingent upon the budgeting, appropriation, or allotment of funds of the Lessee's governing body. No liability shall accrue to the Lessee in case funds are not so budgeted, appropriated or allotted by its governing body. However, payment of charges coming due pursuant to this Lease is a condition precedent to the Lessee receiving benefits of this Lease pursuant to Article 20.

g. Nothing in this Lease is to be construed to impact the title of ownership or grant the Lessee capacity within the North Outlet Works and Delivery Manifold. Hydroelectric Facility operations are limited to if and when physical capacity to deliver water is available through the North Outlet Works and Delivery Manifold to the Hydroelectric Bifurcation.

#### **TERM OF LEASE**

4. a. This Lease shall become effective on the date of execution and shall be in effect 40 years therefrom unless terminated sooner in accordance with the provisions of Article 5.

b. The Lessee may request renewal of this Lease upon written request to the Contracting Officer on or before two years prior to the expiration of this Lease; provided that such renewal shall be upon mutually agreeable terms and conditions and shall be in accordance with the applicable federal laws and policies and state laws in effect at that time.

#### **TERMINATION OF LEASE**

5. a. The United States may, at any time, terminate this Lease for cause upon failure of the Lessee:

i. To make any payment required by this Lease;

ii. To comply with any term or condition of this Lease; or

iii. To comply with any lawful notice, order, or final administrative or judicial determination that the Lessee has violated a law, rule, or regulation of the United States or the State of Colorado directly relating to this Lease. Provided that this Lease shall not be terminated unless such failure or violation continues 60 days after the United States gives the Lessee written notice to correct the problem.

b. If at any time the Contracting Officer determines that the Lessee was not able to obtain all permits, licenses, and approvals necessary to construct and OM&R the Hydroelectric Facility, as described in Subarticle 9.b., the Contracting Officer shall provide notice of this determination to the Lessee. The Lessee may provide the Contracting Officer a written response to the determination within 90 days of its receipt. After consideration of any written response by the Lessee, the United States may terminate this Lease upon a determination by the Contracting Officer that the Lessee was not able to obtain all permits, licenses, and approvals necessary to construct and/or OM&R the Hydroelectric Facility. The Contracting Officer will provide notice of the termination to the Lessee.

c. In the event the Lessee ceases to OM&R and abandons the Hydroelectric Facility, the Contracting Officer may terminate this Lease by giving notice of the termination to the Lessee.

d. Upon termination of the Lease, the United States shall have first right to purchase the Hydroelectric Facility. If the Contracting Officer does not invoke its option of purchasing the Hydroelectric Facility, the Contracting Officer will determine, at its sole discretion, whether the Hydroelectric Facility or parts thereof, will be removed from Project lands. If the Contracting Officer decides the Hydroelectric Facility will be removed, in whole or in part, the Lessee shall remove the Hydroelectric Facility parts designated for removal by the Contracting Officer at the Lessee's sole expense within a period specified by the Contracting Officer, but not more than 18 months from the Lease termination date. Prior to the removal, the Lessee shall furnish a bond secured by an Irrevocable Letter of Credit (ILC) for the protection of the United States in the amount of 100% of the total estimated costs for the removal of the facilities and the clean-up or restoration of the site as determined by the Contracting Officer. This protection is for the removal of the facilities and the clean-up or restoration of the site. The Lessee shall furnish this ILC to the Contracting Officer within 45 working days of the effective date of removal of the facilities. The ILC shall remain in effect until the Hydroelectric Facility is determined in writing by the Contracting Officer as being fully removed. This ILC shall follow the conditions as provided in Article 14. The Lessee shall restore the Project, at the Lessee's sole expense, as nearly as practicable to its original condition, including, but not limited to the installation of a welded pressure dome on the Hydroelectric Bifurcation. If the Parties mutually agree, the Lessee may offer the United States title to the Hydroelectric Facility at no cost.

e. Termination of this Lease for any cause shall not relieve the Lessee of any of the following:

- i. Obligations or duties imposed by this Lease prior to the effective date of termination.
- ii. Obligations or duties described by this Lease related to the Lessee maintaining, closing or removing the Hydroelectric Facility following termination of the Lease.
- iii. Any reimbursement of United States' costs, as set forth in Article 6, including reimbursement of costs incurred by the United States after the effective date of termination if the cost is associated with the Lessee's failure to perform obligations or duties described by the said article.

#### **LEASE PAYMENTS DUE TO THE UNITED STATES**

6. a. LEASE CHARGE

- i. The Contracting Officer will send the first bill of collection within 20 days of the commencement of the initial startup and testing of the generating equipment. The bill will be due and payable within 30 days of the date of such notice.
- ii. The second bill of collection and each subsequent annual bill of collection shall be paid on or before March 1 of each year, or 30 days after the bill is issued by the Contracting Officer if the bill is not issued by February 1 of any such year.
- iii. The first bill of collection will be set at 3 mills per kilowatt-hour (kWh) of estimated gross energy produced at the Hydroelectric Facility. The bill will be adjusted to actual gross energy produced on the succeeding year's bill. The second bill of collection, and subsequent bills thereafter, will adjust the previous year's bill to actual gross energy produced multiplied by the previous year's mill rate and estimate the upcoming year's gross energy produced multiplied by the year's mill rate. The original rate (3 mills) will increase each year commensurate with inflation based on an average of the previous 5 years of the Gross Domestic Product Price Deflator as published by the United States Department of Commerce, Bureau of Economic Analysis: (current website is <http://www.bea.gov/iTable/iTable.cfm?reqid=9&step=3&isuri=1&903=13#reqid=9&step=3&isuri=1&903=13>). If the 5-year Gross Domestic Product Price Deflator average shows no change or deflation, the lease rate will remain the same as the previous year's rate. The annual inflationary rate increase is capped at 5 percent.

- iv. In order to ensure compliance with the parameters of Section 9(c) of the Act of August 4, 1939, the rate established in Subarticle 6.a., which is based on Reclamation Directive and Standard FAC 04-08, may be reviewed using methods published in Appendix D of the Directive and Standard FAC 04-08 and adjusted as necessary every 10 years. The 5 percent inflationary rate cap does not apply to this review.
- v. The lease charge shall be deposited in the Reclamation fund as a credit to the Project and applied against the total outstanding obligation for reimbursable Project construction costs. Once the outstanding obligation for reimbursable Project construction costs is repaid the lease charge will be held as a statutory credit for the Project until an eligible reimbursable Project expense is incurred against which the credit can be applied.

**b. OM&R CHARGE**

- i. Lessee shall pay an OM&R charge for the use of the North Outlet Works and Delivery Manifold pursuant to Contract No. 116CXX0005. Since this Lease will operate using the run of Pueblo Dam, which is the flow that would normally have been released through the river outlet works and will now be conveyed through the Hydropower Bifurcation, there is not a maximum contract amount for this Lease. Therefore, for the purpose of computing the maximum contract amount the charge shall be determined based on the proportion of water that goes through each pipe segment of (i.e. Work Package 1A and segment of Work Package 1B to the turnout) the North Outlet Works and Delivery Manifold to generate power compared to the total maximum amount of water conveyed through each pipe segment of the North Outlet Works and Delivery Manifold.
- ii. The Contracting Officer will estimate the OM&R for the first year of operation of the Hydroelectric Facility and send the first bill of collection within 20 days of the commencement of the initial startup and testing of the generating equipment. The bill will be due and payable within 30 days of the date of such notice.
- iii. The second bill of collection and each subsequent annual bill of collection will be based on actual usage for the previous calendar year and OM&R expenses from the preceding fiscal year (October 1 – September 30). The Lessee's annual bill of collection shall be paid on or before March 1 of each year or 30 days after the bill is issued by the Contracting Officer if the bill is not issued by February 1 of any such year. The OM&R payment will be directly applied to the North Outlet Works and Delivery Manifold annual OM&R expense, which will reduce the amount that Colorado Springs Utilities is responsible for pursuant to Contract No. 11XX6C0005.

c. CONSTRUCTION and OVERHEAD

- i. In addition to the Lessee's payment obligation in Subarticles 6.a. and b., the Lessee shall make advance payment to the United States for all its costs and necessary expenses associated with the work performed under this Lease, including administrative overhead. These advance payments shall include, but are not limited to, the following expenses:
  - a. Permits, designs, reviews, construction, OM&R testing, examinations, inspections, audits, associated reports, and recommendations related to the Hydroelectric Facility.
  - b. Construction and/or OM&R costs of the Project made more expensive by reason of the activities or works of the Lessee, as solely determined and incurred by the Contracting Officer. As an alternative to payment, the Lessee, at its sole cost and within time limits established by the Contracting Officer, may remove or adapt the Hydroelectric Facility to accommodate the Project so no additional expenses occur.
  - c. Requests by the Lessee for consultations, design services, modification reviews, technical studies, or other services.
  - d. Review and/or coordination of construction, OM&R plans, concepts, designs, operating criteria, specifications, Lessee submittals, legal, and other documents related to the Hydroelectric Facility, including, but not limited to, oversight of the environmental commitments described in Article 13.
  - e. Pursuant to 43 Code of Federal Regulations (CFR) Part 429, the value for the right to use Project lands and all administrative costs associated with the Hydroelectric Facility will be the responsibility of the Lessee.
  - f. Copies of reports, drawings, and similar data requested by the Lessee, provided, that such charges shall not be assessed for information or services that would normally be provided free of charge to the public.
  - g. Preparation and administration of permits, agreements, and/or contracts that relate to the Hydroelectric Facility, including, but not limited to this Lease.

- h. Repair and/or replacement of Project facilities damaged as a result of construction and/or OM&R activities of the Hydroelectric Facility as determined solely by the Contracting Officer, including, but not limited to Blasting work.
  - i. Work necessitated by non-performance by Lessee, including but not limited to, failure of the Lessee to perform work in a timely manner as determined by the Contracting Officer and failure of the Lessee to maintain the Hydroelectric Facility access lands in an acceptable condition, as described in Article 9.
  - j. Additional security costs incurred as a result of the Hydroelectric Facility.
- ii. The Lessee has provided advance funding to the United States, under Agreement No. 12XX6C010, which terminates upon execution of this Lease. However, the funding provided is still necessary to cover the expenses associated with the development of the Hydroelectric Facility; therefore, any funds remaining in the MOU will be transferred to this Lease upon execution. Additionally, the Lessee shall provide additional advance funding to the United States in order to bring the amount of advanced funding account to a balance of \$25,000. Whenever the balance in the advance funding account is less than \$10,000 the Contracting Officer shall notify the Lessee and the Lessee shall submit an additional advance in an amount necessary to obtain a \$25,000 balance within 30 days of the date of such notice. If the Contracting Officer estimates the costs of work to be performed to be greater than the \$25,000 balance, the Contracting Officer shall request an amount of advance funding in an adequate amount to perform such work.
  - a. By December 31 of each year, the Contracting Officer will submit to the Lessee an accounting of the costs incurred by the United States in the previous federal fiscal year (October 1 - September 30). If no monies from the advance funding were expended during the federal fiscal year, the Contracting Officer will not provide such documentation.
  - b. In accordance with Article 5, upon termination of this Lease any funds that have been advanced by the Lessee that are not used by the United States will be returned to the Lessee within 90 days of the termination date along with a final accounting of costs incurred by the United States.

### **WATER RIGHTS**

7. a. The Hydroelectric Facility will operate using the run of Pueblo Dam, which is the flow that would normally have been released through the river outlet works and will now be conveyed through the Hydropower Bifurcation. Total flows available through the Hydroelectric Facility conveyed through the 90-inch North Outlets and Delivery Manifold leading to the Hydropower Bifurcation are subject to the 20 feet per second velocity limit. Water operations supporting hydropower generation are subordinate to Project operations including current and future contractual agreements for the use of excess capacity within the Project and shall not jeopardize existing water rights or priority administration under Colorado state water law. The flow regime created by run of Pueblo Dam operations is inherently variable and at times may not provide sufficient water for anticipated power generation. No liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from shortage of water regardless of the cause of the shortage.

b. Water used to generate power at the Hydroelectric Facility is derived from water released from Pueblo Dam. The water includes waters stored or exchanged to and released from Pueblo Reservoir and water that flows through but is not stored in Pueblo Reservoir.

c. No additional water rights need to be acquired or perfected for the operation of the Hydroelectric Facility. However, if additional water rights are obtained prior to the Lessee being able to use those rights, additional environmental compliance may be required, which will be at the sole expense of the Lessee.

### **OWNERSHIP, ACCESS, AND OCCUPANCY**

8. a. Except for the rights-of-access and occupancy specifically described in Subarticles b. and c. below, nothing in this Lease shall be construed to convey or diminish the title that the United States currently holds to the Project, including its existing appurtenances and equipment. The Lessee shall own the entire Hydroelectric Facility and structures downstream of the Hydropower Bifurcation, except for the new 90-inch flowmeter, new auto-control valves, control integration equipment, and SCADA equipment that links the new 90-inch flowmeter, existing 90-inch flow meter new auto control valves and the North Outlet Works fixed cone valve control panel and the Reclamation Pueblo Field Office, all features which are required to be designed in Subarticles 9.c.-g. The SCADA link and all related equipment between the Hydroelectric Facility and the Black Hills Energy Pueblo Reservoir Substation as further illustrated in Exhibit A, which is hereby made a part of the Lease, will be owned by the Lessee. Reclamation shall maintain ownership of each Hydropower Bifurcation.

- i. Upon completion of the Hydroelectric Facility, the following process will be used to transfer ownership of the new 90-inch flowmeter, new auto-control valves, control integration equipment, and SCADA equipment that links the new 90-inch flowmeter, existing 90-inch flow meter new auto control valves and the North Outlet Works fixed cone valve control panel and the Reclamation Pueblo Field Office. These items will be constructed by the Lessee and owned by the Lessee until transfer.

- a. The Contracting Officer and Lessee will conduct a joint inspection and functional test on the proposed transferred works to determine if the facilities to be transferred are in operating condition. After conclusion of the joint inspection, the Contracting Officer will furnish a written list of deficiencies, if any, to the Lessee.
  - b. After addressing and correcting all deficiencies, if any, found during the transfer inspection, the Lessee shall submit a Final Transfer Report, provided in both paper form and in electronic "word searchable pdf format" to the Contracting Officer, along with a written request that the proposed transferred works be transferred to OM&R status. If the Contracting Officer determines the Transfer Report is complete, the Contracting Officer will sign the Transfer Report and will provide a copy to the Lessee.
  - c. The Final Transfer Report will contain the following information:
    - 1. A general description of the features being transferred, including associated equipment and buildings and the general condition and sufficiency of the features being transferred.
    - 2. The specific non-Federal costs for each of the features being transferred. This information will be used to record the assets in Reclamation's financial system.
    - 3. The effective date of the transfer agreed upon by the Contracting Office and the Lessee.
    - 4. The date of the transfer inspection.
    - 5. Copies of the construction contract(s) and specifications.
    - 6. The OM&R history of the facilities being transferred.
    - 7. Copies of necessary instructions including the Designer's Operating Criteria, Design Summary, revised Standard Operating Procedures pages, revised Emergency Action Plan pages, and other appropriate operating documents.
    - 8. Copies of "as-Built" drawings for the facilities to be transferred and construction inspection reports.
    - 9. Deficiencies found during the transfer inspection, if any, including work items needing completion, recommendations made during the transfer inspection, and observations not considered construction deficiencies but which would be valuable information for future examiners.
    - 10. Photographs of the features being transferred as well as any other important items that would be useful in the inspection report for future reference.
- ii. In the event that any of the features to be transferred are not



completed to the satisfaction of the Contracting Officer, or remain incomplete for a period greater than 90 days without a schedule for completion, the Contracting Officer may perform any work the Contracting Officer determines, in the Contracting Officer's sole discretion within the bounds of applicable laws and regulations, that is necessary to prevent or correct any adverse impact to the Project. The Lessee shall reimburse the United States for all costs incurred under this Subarticle 8.a.ii.

- iii. If at any time, including after title transfer, the Contracting Officer determines that any of the transferred works are not functioning properly because of design flaws, the Contracting Officer may take the necessary corrective actions, including design work, determined necessary by the Contracting Officer's sole discretion within the bounds of applicable laws and regulations. The Lessee shall reimburse the United States for all costs incurred under this Subarticle 8.a.iii. This Subarticle 8.a.iii. is limited to damages caused by design flaws and does not address damages caused by normal wear and tear, by routine operation, or by improper OM&R.

b. The United States hereby recognizes the Lessee's need to enter upon, occupy, and use United States owned lands in the vicinity of Pueblo Dam. The Lessee is granted the right of access and occupancy for the purposes described in this Lease to the United States owned lands as further illustrated and described in Exhibits A, B, and C. However, the Lessee understands that the right to access the lands shown as temporary areas in the Exhibits are only for the construction period and to perform the activities required in Exhibit D.

c. The Lessee is advised that any of the Hydroelectric Facility and associated components which are located on United States owned lands may only be used for the authorized construction and OM&R of such facilities as specifically granted to the Lessee by this Lease. The Lessee is expressly prohibited from using United States owned lands for any other purpose not in accordance with this Lease. The Lessee is also prohibited from issuing any permits, licenses, easements, leases, granting any type of use authorization to, or entering into any type of verbal or contractual agreement with third parties allowing the temporary or permanent use of United States owned lands not directly associated with the Lessee's OM&R of its authorized facilities.

d. The Lessee at its own expense shall provide the United States with the capability to measure, proportionally limit, and shut off flow to the Hydroelectric Facility remotely with integration with the existing Project SCADA. However, the Lessee shall ensure that physical and electronic isolation of SCADA for the Hydroelectric Facility and Project's SCADA be maintained.

e. The United States reserves all oil, gas, and other minerals lying in or under Project lands together with the right to prospect, lease, or develop the same.

f. The Lessee's access is subject to existing easements, rights-of-way, or reservations on United States owned lands. The United States reserves the right to issue additional licenses, rights-of-way, or permits for compatible uses of the United States owned land involved in this Lease. The United States will inform the Lessee of any additional licenses, rights-of-way, or permits that are issued that may affect the Hydroelectric Facility.

g. Pursuant to 43 CFR Part 429, the Lessee agrees to obtain special use permits or other required licenses as may be required from the United States for any use of United States owned lands outside of the descriptions in Exhibits A, B, and C.

h. Any use of United States owned lands not herein prescribed shall be considered a trespass. Any violation or trespass on any United States owned lands by the Lessee shall be cause for termination of this Lease in accordance with Article 5.

i. The Lessee shall be responsible for noxious weed control within the Lease boundary, as illustrated and described in Exhibits A, B, and C.

j. The Lessee shall not cause nor permit to be caused by any of its independent contractors, agents, consultants, representatives, or employees, contamination of lands, water or facilities owned by the United States by any hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, pesticides, or any other pollutant.

k. The Lessee shall not cause nor permit to be caused by any of its independent contractors, agents, consultants, representatives, or employees, any earth disturbing activities without prior notification and consultation with Reclamation. Reclamation, in its sole discretion, will determine the appropriate mitigation, if any, required.

l. The Lessee shall provide access to the Contracting Officer at all times to those portions of the Hydroelectric Facility on lands owned by the United States.

### **CONSTRUCTION OF THE HYDROELECTRIC FACILITY**

#### **9. a. REVIEW AND APPROVAL**

- i. In order to ensure that environmental compliance and the structural and operational integrity of the Project is not impaired by the construction and/or OM&R of the Hydroelectric Facility, the Lessee shall not initiate onsite construction activities on the Hydroelectric Facility until the Hydroelectric Facility permits, designs, specifications, construction plans, Site Security Plan described in Subarticle 12.k., and schedule have been reviewed and approved by the Contracting Officer in writing. The said reviews will be to the level of detail necessary to ensure environmental compliance and that the structural and operational integrity of the Project is not impaired by the construction and/or OM&R of the Hydroelectric

Facility. The Contracting Officer shall review all materials provided by the Lessee within 30 working days of receipt. The Lessee shall perform, at a minimum, all design work, including calculations, drawings, and reports, by an engineer who is under the supervision of a professional engineer(s) experienced in the specific fields needed for the features of the work. All final designs and drawings shall be stamped by the responsible professional engineer(s) who shall be registered in the State of Colorado.

- ii. Should the Lessee deem Blasting to be required for the Hydroelectric Facility construction activities, the Lessee shall provide Reclamation with a conceptual Blasting plan, weekly Blasting plans, and individual shot plans. Approval from the Contracting Officer must be granted prior to any Blasting work occurring. The Contracting Officer will not approve any Blasting work until the Lessee's submittals meet the requirements of Section 24 titled "Blasting Operations" of Reclamation's Safety and Health Standards and any additional documentation required by the Contracting Officer. The transportation or storage of Blasting materials at the construction site is prohibited without an approved Blasting plan. Only those Blasting materials needed for immediate use may be stored on the construction site. The Lessee shall protect existing United States facilities from damage during Blasting operations. Should United States facilities be damaged, the Lessee shall be responsible for repair of damaged facilities at no cost to the United States.
- iii. During the construction of SDS, buried utility lines were installed for the temporary use by Colorado Springs Utilities pursuant to a Special Use Permit between Reclamation and Colorado Springs Utilities. Pursuant to this Lease, the Lessee assumes temporary responsibility of these buried utility lines which will be used during the construction of the Hydroelectric Facility. The Lessee at its sole expense will remove the electrical lines which are located below ground and restore the area once construction of the Hydroelectric Facility is complete unless other arrangements are coordinated and approved in writing by Reclamation.
- iv. The Lessee has provided Reclamation with design drawings, specifications, and design computations at the 30 percent design interval. The Lessee shall provide Reclamation with design drawings, specifications, and design computations at a minimum of the 60 percent design, 90 percent design, and final design milestones according to a phased design submittal schedule as follows: Phase I – blasting, excavation, and cofferdam construction, Phase II-powerhouse, penstock, bifurcation, and turbine shut-off valves, Phase III-powerhouse electrical, powerhouse controls, SCADA interface with Reclamation, substation and transmission lines. Additional sets may be requested. All subsequent changes in the design and construction of the Hydroelectric Facility must be approved by the Contracting Officer prior to implementation. All

designs need to be in compliance with the following requirements:

- a. Designs need to be coordinated with Colorado Springs Utilities.
- b. Designs must not limit prioritized flows in the SDS pipeline.
- c. Designs must include an eight path ultrasonic flowmeter that measures the flow between the Hydropower Bifurcation and the Hydroelectric Facility.
- d. Designs must include an auto-control valve (or functional equivalent) between the Hydropower Bifurcation and the Hydroelectric Facility with feedback from the similar existing eight path ultrasonic SDS flowmeter.
- e. Designs must include control integration equipment for the purpose of regulating flow between the Hydroelectric Facility and the SDS required flows.
- f. Designs must include SCADA equipment linking the new 90-inch flowmeter, new auto-control valves, new control integration equipment, the existing 90-inch flow meter, the North Outlet Works fixed cone valve control panel and the Reclamation Pueblo Field Office.
- g. Designs must include any miscellaneous equipment necessary to integrate the existing SDS flowmeter and the Hydroelectric Facility equipment noted above.
- h. Designs and work must not impede access to the existing North Outlet Works and Delivery Manifold, and the SDS. The designs and construction of Hydroelectric Facility must provide adequate room for OM&R of the North Outlet Works and Delivery Manifold.

b. PERMITS AND LICENSES

The Lessee shall have the sole cost and responsibility to obtain any and all necessary Federal, State, and local permits, licenses, consultations, and plan approvals including, but not limited to, environmental planning and/or certification for the design, construction, OM&R of the Hydroelectric Facility and transmission facilities as required. Copies of such approved permits, licenses, consultations, and plans shall be submitted to the Contracting Officer prior to start of the work.

c. TIMING OF CONSTRUCTION

The Lessee shall not initiate any construction activities that will interfere with the OM&R of Project facilities. Flows in the Arkansas River must be maintained during construction. Construction activities for the Hydroelectric Facility must be coordinated with the SDS and approved by Colorado Springs Utilities. The Lessee shall provide the Contracting Officer access to the

Hydroelectric Facility at all times during construction of the Hydroelectric Facility. The Lessee agrees to keep the construction area in a clean and orderly state.

d. CONSTRUCTION DATA

- i. The schedule described in Subarticle 9.a.i. shall be kept current at all times. Any changes to the schedule will be immediately provided to the Contracting Officer. The Lessee shall also maintain an accurate and current detailed schedule of all construction activities as well as a full set of drawings at the worksite. All drawings shall be marked with any changes, modifications, and/or additions that occur during the course of construction to reflect as-built conditions. Upon request, the Lessee shall provide the Contracting Officer with access to the construction schedule and drawings at the worksite.
- ii. At the completion of construction, the Lessee shall prepare and submit to the Contracting Officer three complete sets of as-built drawings of the Hydroelectric Facility in durable reproducible form and in an electronic format acceptable to the Contracting Officer. The as-built drawings shall be provided within one year from the date of initial operation of the Hydroelectric Facility for all Hydroelectric Facility features. All as-built drawings shall be signed by a State of Colorado Registered Professional Engineer. The Contracting Officer reserves all rights to use all documents provided by the Lessee under the conditions of this Lease. The as-built drawings shall contain labels illustrating "Existing Facilities" and "Hydroelectric Facility"; as well as drawings delineating ownership and access rights on access roads, transmission lines, and any other ancillary feature necessary for the construction and OM&R of the Hydroelectric Facility. A chain of custody for all drawings forwarded to the Contracting Officer shall be maintained by the Lessee and shall include the signature of the Contracting Officer's representative that received the drawings, the date of receipt, and a description of the drawings received. The United States shall maintain the same chain of custody for drawing transfer between offices.
- iii. In addition to said as-built drawings, the Lessee shall prepare and submit complete Hydroelectric Facility specifications with all amendments, all design data and construction records, technical OM&R manuals, final construction reports, warranty enforcement inspections report(s), and/or any other Hydroelectric Facility documentation as determined necessary to the Contracting Officer. With the exception of the warranty enforcement inspection report, said information shall be submitted to the Contracting Officer within one year from the date of initial operation of the

Hydroelectric Facility for all Hydroelectric Facility features. The warranty enforcement inspection report(s) shall be submitted within 30 days following the date(s) of inspection.

e. TESTING

The Hydroelectric Facility will not commence operation until all components and equipment that may affect Project facilities are satisfactorily tested in a manner acceptable to the Contracting Officer. The Lessee shall submit an operations testing plan and schedule to the Contracting Officer within 60 days of starting on-site construction work. The United States reserves the right to require the Lessee to perform any additional tests or modifications to the Hydroelectric Facility that the Contracting Officer deems reasonably necessary to assure that the Hydroelectric Facility is not structurally or operationally detrimental to the Project facilities.

f. INSPECTIONS DURING CONSTRUCTION

The Hydroelectric Facility shall be subject to periodic or continuous inspection by the Contracting Officer throughout its time of construction. The Contracting Officer shall inspect the Hydroelectric Facility to the extent necessary, as determined by the Contracting Officer, to ensure the continued safe operation and structural integrity of the Project facilities. Any construction and/or OM&R deficiencies or difficulties detected by the Contracting Officer will be immediately reported to the Lessee. In those cases when a construction and/or OM&R practice or deficiency may result in a situation that would or could endanger the structural integrity, environmental quality, safety, operational commitment of the Project facility, the Contracting Officer shall have the authority to stop construction and/or OM&R activities until the problem or situation is resolved to the satisfaction of the Contracting Officer.

g. POST-CONSTRUCTION INSPECTION

Following the completion of construction, the Parties shall conduct a joint inspection of the construction area to determine that the United States lands used for construction, including access roads and bridges, have been adequately restored to pre-project conditions or to such necessarily modified conditions that are acceptable to the Contracting Officer.

h. LIABILITY FOR DAMAGES

The Lessee shall be responsible for any damages to property not owned by the Lessee during pre-construction, construction, or post-construction activities involving the Hydroelectric Facility and shall be solely responsible for any associated costs.

**OM&R OF THE PROJECT**  
**AND THE HYDROELECTRIC FACILITY**

10. a. UNITED STATES OM&R

- i. The Parties acknowledge that the OM&R of the Hydroelectric Facility is subject to, and subordinate to, the authorized Project purposes. The OM&R of the Project, including the timing, quantity, and location of water releases and release changes from Pueblo Dam, will be at the sole discretion of the Contracting Officer. The Parties will not alter OM&R of Pueblo Dam or the Project for the benefit of power generation by the Lessee.
- ii. The United States reserves the right to gain access to the Hydroelectric Facility when such access is necessary to protect the safe efficient OM&R of the Project. The Lessee shall provide the Contracting Officer all keys or codes necessary for such access to the Hydroelectric Facility.
- iii. Even though the United States will own after the title is transferred per Subarticle 8.a. and will provide the performance of the OM&R of the flowmeter, auto-control valves, control integration equipment, and SCADA equipment, the Lessee will be responsible for all costs associated with the OM&R of these features.

b. LESSEE OM&R

- i. The Lessee shall be solely responsible for the OM&R and all associated costs of all constructed Hydroelectric Facility features that are not transferred to the United States per Subarticle 8.a.
- ii. Performance of any OM&R of the Hydroelectric Facility by the Lessee shall not interfere with normal or extraordinary OM&R of the Project; Project water rights and/or allocations; or Project-related contracts in which the United States is party.
- iii. OM&R of the Hydroelectric Facility shall not be detrimental to the Project. Upon notice from the Contracting Officer, the Lessee at its sole expense, shall modify its OM&R or the Hydroelectric Facility to correct any problem causing such detriment and shall repair any damage in a manner acceptable to the Contracting Officer.
- iv. The Hydroelectric Facility shall be designed and OM&R performed in such a manner that shall not alter the timing, quantity, and location of the water released from Pueblo Dam. It is understood that the only releases, if any, which may be made available for the Hydroelectric Facility are those

releases that would normally have been made through Pueblo Dam in the course of the ordinary and normal operation of the Project by the United States, as determined by the Contracting Officer.

- v. The Lessee is responsible for future water quality monitoring and any corrective actions that may become necessary to address water quality problems as a result of OM&R of the Hydroelectric Facility.
- vi. The Lessee shall provide and/or prepare detailed operating manuals for the Hydroelectric Facility and provide them to the Contracting Officer upon request. Copies of the operating manuals shall be maintained and kept up-to-date at the Hydroelectric Facility and the Lessee's office. The Lessee shall notify the Contracting Officer of any revision of the operating manuals and shall provide the revised operating manuals, to the Contracting Officer. All operating manuals shall identify the following:
  - a. Complete detailed operating instructions for all equipment installed.
  - b. List of contacts for both Parties for normal and emergency events and procedures for updating such contacts.
  - c. Procedures for the Contracting Officer to alter releases from Pueblo Dam in the event a powerplant operator is not readily available.
  - d. Procedures to minimize the effect on downstream water deliveries due to a generator shutdown.

#### **EXAMINATION AND INSPECTION OF THE HYDROELECTRIC FACILITY**

11. a. Pursuant to Article 9.f, the Contracting Officer may from time to time conduct periodic or continuous inspections of the Hydroelectric Facility during construction. Post construction, the Contracting Office retains the right to conduct periodic or continuous inspections of the Hydroelectric Facility. The Contracting Officer may conduct inspections of any Hydroelectric Facility works operated by the Lessee and audit the Lessee's books and records to ascertain the extent of any OM&R deficiencies and to determine the remedial measures required for their correction. Except in an emergency, any inspection or audit shall be made only after the Contracting Officer's written notice has been delivered to the Lessee.

b. The Lessee shall provide access to the Hydroelectric Facility, operate any mechanical or electrical equipment, and be available to assist in the examination, inspection, or audit.

c. The Contracting Officer shall prepare reports based on the examinations, inspections, or audits. The Contracting Officer will provide copies of the reports to the Lessee, upon their request.



d. Post original construction of the Hydroelectric Facility, if any serious deficiencies arise from any supplemental construction and/or OM&R or difficulties are detected by the Contracting Officer, they will be immediately reported to the Lessee. In those cases when a construction and/or OM&R practice or deficiency may result in a situation that would or could endanger the structural integrity, environmental quality, safety, or operational commitment to the Project, the Contracting Officer shall have the authority to stop and/or modify construction and/or OM&R activities until the problem or situation is resolved to the satisfaction of the Contracting Officer.

### **SAFETY, EMERGENCY, AND SECURITY PLANS**

12. a. The Lessee shall not require any of its employees or subcontractor employees, employed in the performance of the construction and/or OM&R of the Hydroelectric Facility to work under conditions which are unsafe or unhealthy, as determined under 29 CFR Part 1926, Safety and Health Regulations for Construction and "Reclamation Safety and Health Standards," published by Reclamation.

b. The Lessee shall fully comply with the "Reclamation Safety and Health Standards" and any current or future amendments, supplements, or revisions thereto. Copies of this handbook are currently available at <http://www.usbr.gov/ssle/safety/RSHS/rshs.html>. Construction Safety and Health Standards promulgated by the Secretary of Labor may be obtained from any regional or area office of the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor.

c. The Lessee shall submit in writing a proposed safety program in the form and at time intervals prescribed in Sections 2, 3, and Appendix B of the "Reclamation Safety and Health Standards." The Lessee's safety program shall be site-specific, submitted, and made acceptable to the Contracting Officer as it relates to the portions of the Hydroelectric Facility located on United States owned land and to penstock isolation valves prior to commencing on-site construction activities.

d. The Lessee shall insert Subarticles 12.a.-c. in all subcontracts that involve the performance of construction or OM&R of the Hydroelectric Facility that occur on United States owned land.

e. The Lessee is responsible for being cognizant of and ensuring compliance with the requirements set forth in Subarticles 12.a.-c. above. Such responsibility shall apply to both the Lessee's operations and those of the Lessee's contractors and/or subcontractors. When violations of the safety and health requirements contained in the standards referenced in Subarticles 12.a.-c. are called to the Lessee's attention by the United States, the Lessee shall immediately correct the condition to which attention has been directed. Such notice, either oral or written, when served on the Lessee or the Lessee's representative, shall be deemed sufficient. Should the Contracting Officer consider the Lessee's safety effort inadequate, the Contracting Officer may require the Lessee to employ a full-time safety professional at no cost to the United States. Further, the Lessee is subject to Federal OSHA regulations and standards while

performing construction and OM&R work on United States owned lands.

f. In the event the Lessee fails or refuses to promptly comply with the compliance directive issued under Subarticles 12.a.-c. above, the Contracting Officer may issue an order to stop all or any part of the work. When satisfactory corrective action is taken, an order to resume work will be issued. The Lessee shall not be entitled to any claim for damage due to either the directive or the stop order. Failure of the Contracting Officer to order discontinuance of any or all of the Lessee's operations shall not relieve the Lessee of its responsibility for the safety of personnel and property.

g. The Lessee shall maintain an accurate record of and shall report to the Contracting Officer, all cases incurred in the performance of this Lease, which occur on United States owned land, of: (1) death; (2) occupational illnesses; (3) personal injuries to employees or the public; and (4) property damage in excess of \$500 per incident.

h. The rights and remedies of the United States provided in this Article are in addition to any other rights and remedies provided by law or under this Lease.

i. In the event there is a conflict in the requirements contained in the "Reclamation Safety and Health Standards," the Lessee's safety program, referenced safety and health codes and standards; or 29 CFR Part 1926, Safety and Health Regulations for Construction, the more stringent requirement will prevail as determined by the Contracting Officer.

j. The Lessee, in coordination with the Contracting Officer, shall develop an emergency plan setting forth the procedures to be followed in case of accident to, or failure of, the Hydroelectric Facility. The emergency plan shall be subject to the approval of the Contracting Officer. In the event of an emergency at the Hydroelectric Facility, the Lessee shall notify the Contracting Officer. The Contracting Officer may take appropriate action as necessary to prevent or minimize damage to the United States' Project facilities. The Contracting Officer may take further action as necessary to prevent or minimize damage to the Hydroelectric Facility. The emergency plan shall be reviewed annually by both the Lessee and the Contracting Officer to ensure the document is current and sufficient.

k. The Lessee, in coordination with the Contracting Officer, shall develop a Site Security Plan. The Site Security Plan shall be implemented to ensure that the Project, the Hydroelectric Facility, and Reclamation information and documents are secure from unauthorized access and activity. The Site Security Plan shall be subject to the approval of the Contracting Officer. The Site Security Plan shall be reviewed annually by both the Lessee and the Contracting Officer to ensure the document is current and sufficient.

### **ENVIRONMENTAL AND CULTURAL RESOURCES**

13. a. The Lessee shall implement the environmental commitments set forth in FONSI No. 2016-01 dated June 7, 2016. The environmental commitment plan (Exhibit D) summarizes the environmental commitments that protect natural resources, cultural resources, and other values, which is made a part of this Lease, and shall be enforced during all pre-construction,

construction, and post-construction activities involving the Hydroelectric Facility. The Contracting Officer shall have oversight authority over environmental commitments. Oversight authority shall include, but is not limited to, requiring the Lessee to provide status reporting on the environmental commitments, including measuring the effectiveness of environmental commitments and the funding necessary to complete the environmental commitments.

b. The Lessee shall be responsible for the costs of all current and future National Environmental Policy Act and Endangered Species Act compliance and environmental commitments identified in FONSI No. 2016-01.

### **IRREVOCABLE LETTER OF CREDIT**

14. The Lessee shall furnish a bond secured by an ILC for the protection of the United States in the amount of \$100,000.00. This protection is for the construction period of the Hydroelectric Facility. The Lessee shall furnish this ILC to the Contracting Officer prior to commencing construction. The ILC shall remain in effect during the construction period and until the Hydroelectric Facility is determined in writing by the Contracting Officer as being complete and the transferred facilities per Subarticle 8.a. are transferred to the United States. The ILC shall be irrevocable, require presentation of no document other than a written demand by the Contracting Officer and the ILC, and be issued and confirmed by an acceptable federally insured financial institution. ILC means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Contracting Officer (the beneficiary) of a written demand therefore. Neither the financial institution nor the Lessee can revoke or condition the letter of credit. The Lessee shall provide the ILC form only from federally insured financial institutions rated investment grade or higher. The Lessee shall provide the Contracting Officer a credit rating from a recognized commercial rating service as specified in Office of Federal Procurement Policy Pamphlet No. 7 that indicates the financial institution has the required rating as of the date of issuance of the ILC. If the Contracting Officer learns that a financial institution's rating has dropped below the required level, the Contracting Officer shall give the Lessee 30 days to substitute an acceptable ILC or shall draw on the ILC. The ILC shall provide that, unless the issuer provides the Contracting Officer written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment.

### **INDEMNITY AND RELEASE OF CLAIMS**

15. a. The United States is not responsible for the economic and technical feasibility of the Lessee's Hydroelectric Facility. To the extent allowed by law, the Lessee agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, OM&R, supervision, examination, inspection, or other duties of the Lessee or the United States on the Hydroelectric Facility as

required under this Lease, regardless of who performs those duties. Provided, however, that Lessee does not intend herein to waive its rights and protections under the Colorado Governmental Immunity Act. All such claims against Lessee 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. The Lessee does not agree to indemnify the United States for any damages arising from intentional torts or malicious actions committed by employees of the United States.

b. In exchange for the terms and conditions of this Lease, the Lessee waives, releases, and discharges all known and unknown claims, demands, obligations, liabilities, actions, costs, damages, fees, and causes against the United States and its officers, employees, agencies, and agents arising out of, or in any way related to matters that include, but are not limited to loss of hydroelectric power production; introduction of invasive species into the Hydroelectric Facility; Contracting Officer's approval of Lessee documents as required by this Lease; or issuance of stop-work notices by the Contracting Officer.

c. Nothing in this Article limits the rights of the Parties to performance of this Contract that may be available under applicable Federal law.

### **SEVERABILITY**

16. In the event that any one or more of these provisions shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability, shall not affect any other provisions of this Lease. This Lease shall be construed as if such invalid, illegal or unenforceable provisions had never been, unless deletion of such provision or provisions would result in such a material change so as to cause the fundamental benefits afforded the Parties by this Lease to become unavailable or materially altered.

### **EXHIBITS**

17. A map showing details of the Hydroelectric Facility, access, and temporary staging areas is in Exhibit A. The Hydroelectric Facility boundaries located on United States lands are in Exhibit B. The Hydroelectric Facility temporary construction access and laydown area and an overview of the area are in Exhibit C. A list of environmental commitments is in Exhibit D. All Exhibits are considered part of this Lease.

### **STANDARD LEASE ARTICLES**

### **LEASE DRAFTING CONSIDERATIONS**

18. This Lease has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Lease pertains. Articles 1 through 17 of this Lease have been drafted, negotiated, and reviewed by the Parties, and no one Party shall be considered to have drafted the stated articles.

### **CHARGES FOR DELINQUENT PAYMENTS**

19. a. The Lessee shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Lessee shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Lessee shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Lessee shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Lessee shall also pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

c. When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

### **GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT**

20. a. The obligation of the Lessee to pay the United States as provided in this Lease is a general obligation of the Lessee.

b. The payment of charges becoming due pursuant to this Lease is a condition precedent to receiving benefits under this Lease. The United States shall not make water available to the Lessee through Project facilities during any period in which the Lessee is in arrears in the payments due the United States.

### **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

21. The expenditure or advance of any money or the performance of any obligation of the United States under this Lease shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Lessee from any obligations under this Lease. No liability shall accrue to the United States in case funds are not appropriated or allotted.

### **NOTICES**

22. Any notice, demand, or request authorized or required by this Lease shall be deemed to have been given, on behalf of the Lessee, when mailed, postage prepaid, or delivered to the:

Regional Director  
Great Plains Region  
Bureau of Reclamation  
P.O. Box 36900  
Billings, MT 59107-6900

and on behalf of the United States, when mailed, postage prepaid, or delivered to the:

Southeastern Colorado Water Conservancy District acting by and through its Water  
Activity Enterprise  
Attn: Executive Director  
31717 E United Avenue  
Pueblo, CO 81001

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

#### **OFFICIALS NOT TO BENEFIT**

23. No member of or delegate to Congress, resident Commissioner, or official of the Lessee shall benefit from this Lease, other than as a water user or landowner in the same manner as other water users or landowners.

#### **CHANGES IN LESSEE'S ORGANIZATION**

24. While this Lease is in effect, no change may be made in the Lessee's organizations which may affect the respective rights, obligations, privileges, and duties of either the United States or the Lessee under this Lease including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

#### **ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED**

25. The provisions of this Lease shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Lease or any right or interest therein by either Party shall be valid until approved in writing by the other Party.

#### **BOOKS, RECORDS, AND REPORTS**

26. The Lessee shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Lease, including the Lessee's financial transactions; water supply data; project OM&R logs; project land and rights-of-way use agreements; land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable

Federal laws and regulations, each Party to this Lease shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters covered by this Lease.

### **RULES, REGULATIONS, AND DETERMINATIONS**

27. a. The Parties agree that the delivery of water or the use of Federal facilities pursuant to this Lease is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

b. The Contracting Officer shall have the right to make determinations necessary to administer this Lease that are consistent with its expressed and implied provisions, the laws of the United States and the State of Colorado, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Lessee.

### **ADMINISTRATION OF FEDERAL PROJECT LANDS**

28. The lands and interests in lands acquired, withdrawn, or reserved and needed by the United States for the purposes of care, operation, and maintenance of the Project works may be used by the Lessee for such purposes. The Lessee shall ensure that no unauthorized encroachment occurs on Federal Project lands and rights-of-way. The Lessee does not have the authority to issue any land-use agreement or grant that conveys an interest in Federal real property, nor to lease or dispose of any interest of the United States.

### **PROTECTION OF WATER AND AIR QUALITY**

29. a. Project facilities used to make available and deliver water to the Lessee shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer. Provided, that the United States does not warrant the quality of the water delivered to the Lessee and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Lessee.

b. The Lessee shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Lessee; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Lessee facilities.

c. This Article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

**CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY**

30. a. The Lessee shall not allow contamination or pollution of Federal Project lands, Project waters, or Project works of the United States or administered by the United States and for which the Lessee has the responsibility for care, operation, and maintenance by its employees or agents. The Lessee shall also take reasonable precautions to prevent such contamination or pollution by third parties.

b. The Lessee shall comply with all applicable Federal, State, and local laws and regulations and Reclamation policies and instructions existing, or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, released, or disposed of on or in Federal Project lands, Project waters, or Project works.

c. "Hazardous material" means (1) any substance falling within the definition of "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution, refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste; and (4) any other substance regulated as hazardous or toxic under Federal, State, local or Tribal law.

d. Upon discovery of any event which may or does result in contamination or pollution of Federal Project lands, Project water, or Project works, the Lessee shall immediately undertake all measures necessary to protect public health and the environment, including measures necessary to contain or abate any such contamination or pollution, and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.

e. If violation of the provisions of this Article occurs and the Lessee does not take immediate corrective action, as determined by the Contracting Officer, the Lessee may be subject to remedies imposed by the Contracting Officer, which may include termination of this Lease.

f. The Lessee shall be liable for any response action or corrective measure necessary to protect public health and the environment or to restore Federal Project lands, Project waters, or Project works that are adversely affected as a result of such violation, and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State, local or Tribal laws and regulations concerning hazardous material. At the discretion of the Contracting Officer, the United States may also terminate this Lease as a result of such violation.

g. The Lessee shall defend, indemnify, protect and save the United States harmless from and against any costs, expenses, claims, damages, demands, or other liability arising from or relating to Lessee's violation of this Article.



h. Reclamation agrees to provide information necessary for the Lessee, using reasonable diligence, to comply with the provisions of this Article.

**EQUAL EMPLOYMENT OPPORTUNITY**

31. a. During the performance of this Lease, the Lessee agrees as follows:
- i. The Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The Lessee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
  - ii. The Lessee will, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.
  - iii. The Lessee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Lessee's commitments under section 202 of Executive Order 11246 of September 24, 1965, as amended (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - iv. The Lessee will comply with all provisions of EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - v. The Lessee will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- vi. In the event of the Lessee's noncompliance with the nondiscrimination clauses of this Lease or with any of such rules, regulations, or orders, this Lease may be canceled, terminated or suspended, in whole or in part, and the Lessee may be declared ineligible for further Government contracts in accordance with procedures authorized in EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - vii. The Lessee will include this clause (a), including all provisions of paragraphs(i) through (vii), in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions will be binding upon each subcontractor or vendor. The Lessee will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Lessee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.
- b. The Lessee hereby agrees to incorporate, or cause to be incorporated, clause (a) as it appears above, including paragraphs numbered (i) through (vii), into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R., Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.
- c. The Lessee will be bound by clause (a) with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the Lessee so participating is a state or local government, clause (a) is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.
- d. The Lessee will assist and cooperate actively with the Contracting Officer and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with this Article and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Contracting Officer and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Contracting Officer in the discharge of his or her primary responsibility for securing compliance.
- e. The Lessee will refrain from entering into any contract or contract modification subject to EO 11246 with a contractor debarred from, or who has not demonstrated eligibility

for, Government contracts and federally assisted construction contracts pursuant to EO 11246 and will carry out such sanctions and penalties for violation of this Article as may be imposed upon contractors and subcontractors by the Contracting Officer or the Secretary of Labor pursuant to Part II, Subpart D, of EO 11246. In addition, the Lessee agrees that if it fails or refuses to comply with these undertakings, the Contracting Officer may take any or all of the following actions: cancel, terminate, or suspend, in whole or in part, this Lease; refrain from extending any further assistance to the Lessee under the program with respect to which its failure or refusal occurred until satisfactory assurance of future compliance has been received from the contractor; refer the case to the Department of Justice for appropriate legal proceedings.

### **COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS**

32. a. The Lessee shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Reclamation.

b. These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Lease, the Lessee agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The Lessee makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Lessee by Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Lessee recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article and that the United States reserves the right to seek judicial enforcement thereof.

d. Complaints of discrimination against the Lessee shall be investigated by the Contracting Officer's Office of Civil Rights.

### **PEST MANAGEMENT**

33. a. The Lessee is responsible for complying with applicable Federal, State, and local laws, rules, and regulations related to pest management in performing its responsibilities under this Lease.

b. The Lessee is responsible for effectively avoiding the introduction and spread

of, and for otherwise controlling, undesirable plants and animals, as defined by the Contracting Officer, on or in Federal Project lands, Federal Project waters, and Federal Project works for which and to the extent that the Lessee has operation and maintenance responsibility. The Lessee is responsible for exercising the level of precaution necessary in meeting this responsibility, including inspecting its vehicles and equipment for reproductive and vegetative parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive species and other pests, and removing such materials before moving its vehicles and equipment onto any Federal land or out of any area on Federal Project land where work is performed.

c. Where decontamination is required prior to entering Federal Project land, it shall be performed at the point of prior use, or at an approved offsite facility able to process generated cleaning wastes. Upon the completion of work, the Contractor will perform any required decontamination within the work area before moving the vehicles and equipment from Federal Project lands.

d. Programs for the control of undesirable plants and animals on Federal Project lands, and in Federal Project waters and Federal Project works for which the Contractor has OM&R responsibility will incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, the Lessee will adhere to applicable Federal and State laws and regulations and Department of the Interior and Reclamation policies, directives, guidelines, and manuals, including but not limited to, the Department of the Interior Manual, Part 609 Weed Control Program, the Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February 3, 1999.

#### **MEDIUM FOR TRANSMITTING PAYMENTS**

34. a. All payments from the Lessee to the United States under this Lease shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

b. Upon execution of the Lease, the Lessee shall furnish the Contracting Officer with the Lessee's taxpayer identification number (TIN). The purpose for requiring the Lessee's TIN is for collecting and reporting any delinquent amounts arising out of the Lessee's relationship with the United States.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the day and year first-above written.

UNITED STATES OF AMERICA

By: 

Michael J. Ryan  
Regional Director  
Great Plains Region  
Bureau of Reclamation

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

(SEAL)



By: \_\_\_\_\_

James W. Broderick  
Executive Director

ATTEST:

By: 

Name: Toni Gonzales

Title: Administrative Manager

Exhibit A



**Exhibit B**



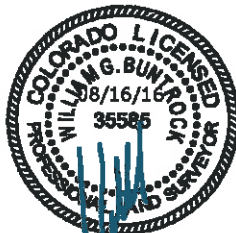
**Lease Parcel  
Exhibit B**

A lease parcel being a strip of land 50.00 feet in width lying 25.00 feet on each side of the following described centerline, lying in the East Half of Section 36 Township 20 South, Range 66 West and the West Half of Section 31, Township 20 South, Range 65 West of the 6<sup>th</sup> P.M., County of Pueblo, State of Colorado, more particularly described as follows:

**Commencing** at the Northeast Corner of said Section 36, being monumented with a 3.25" brass cap stamped BLM 1984 whence the Southeast Corner of Section 36, being monumented with a Tack and Brass Plug set in 0.5' concrete referenced by Two BLM Monuments bears S 00°40'04" E, a distance of 5280.46 feet; Thence S 56°45'17" W, a distance of 1969.80 feet to the **POINT OF BEGINNING**;

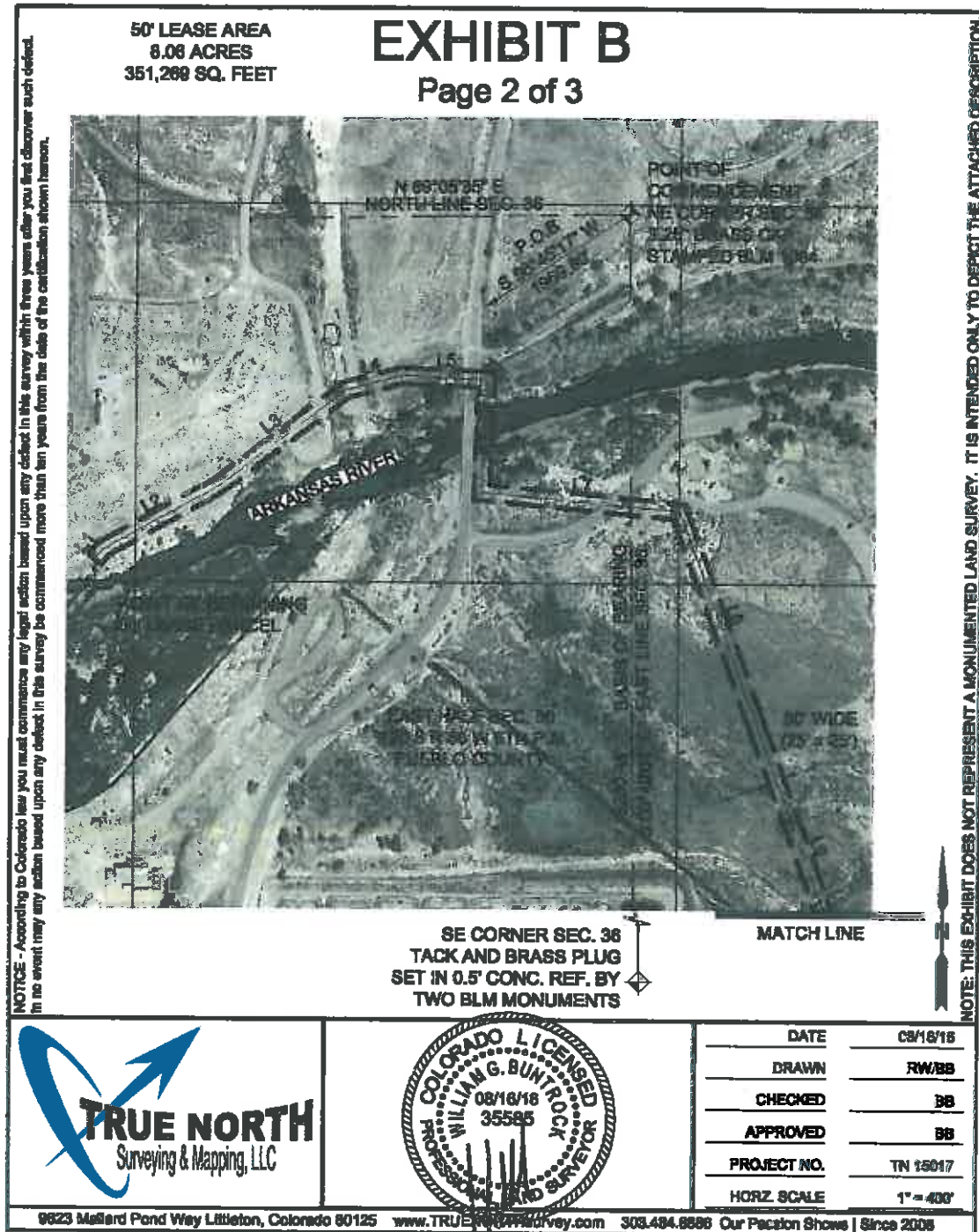
Thence N 37°55'37" E, a distance of 40.00 feet; Thence N 60°41'18" E, a distance of 400.00 feet; Thence N 52°38'09" E, a distance of 500.00 feet; Thence N 75°46'31" E, a distance of 180.00 feet; Thence S 87°52'04" E, a distance of 266.77 feet; Thence S 02°07'56" W, a distance of 351.07 feet; Thence S 84°40'20" E, a distance of 611.51 feet; Thence S 20°26'38" E, a distance of 715.36 feet; Thence S 20°28'07" E, a distance of 810.42 feet; Thence S 00°00'00" E, a distance of 225.00 feet; Thence S 65°26'54" E, a distance of 375.00 feet; Thence S 00°00'00" E, a distance of 620.00 feet; Thence S 48°50'14" E, a distance of 1100.31 feet; Thence S 41°09'46" W, a distance of 829.96 feet to the **POINT OF TERMINUS**.

Sidelines of said strip of land are to be lengthened and/or shortened to prevent gaps and/or overlaps. The above description contains 351,269 square feet or 8.06 acres more or less.



William G. Buntrock, PLS Colorado Licensed Land Surveyor No. 35585  
TRUE NORTH Surveying & Mapping, LLC  
TN 15017 Pueblo Lease (Exhibit B)







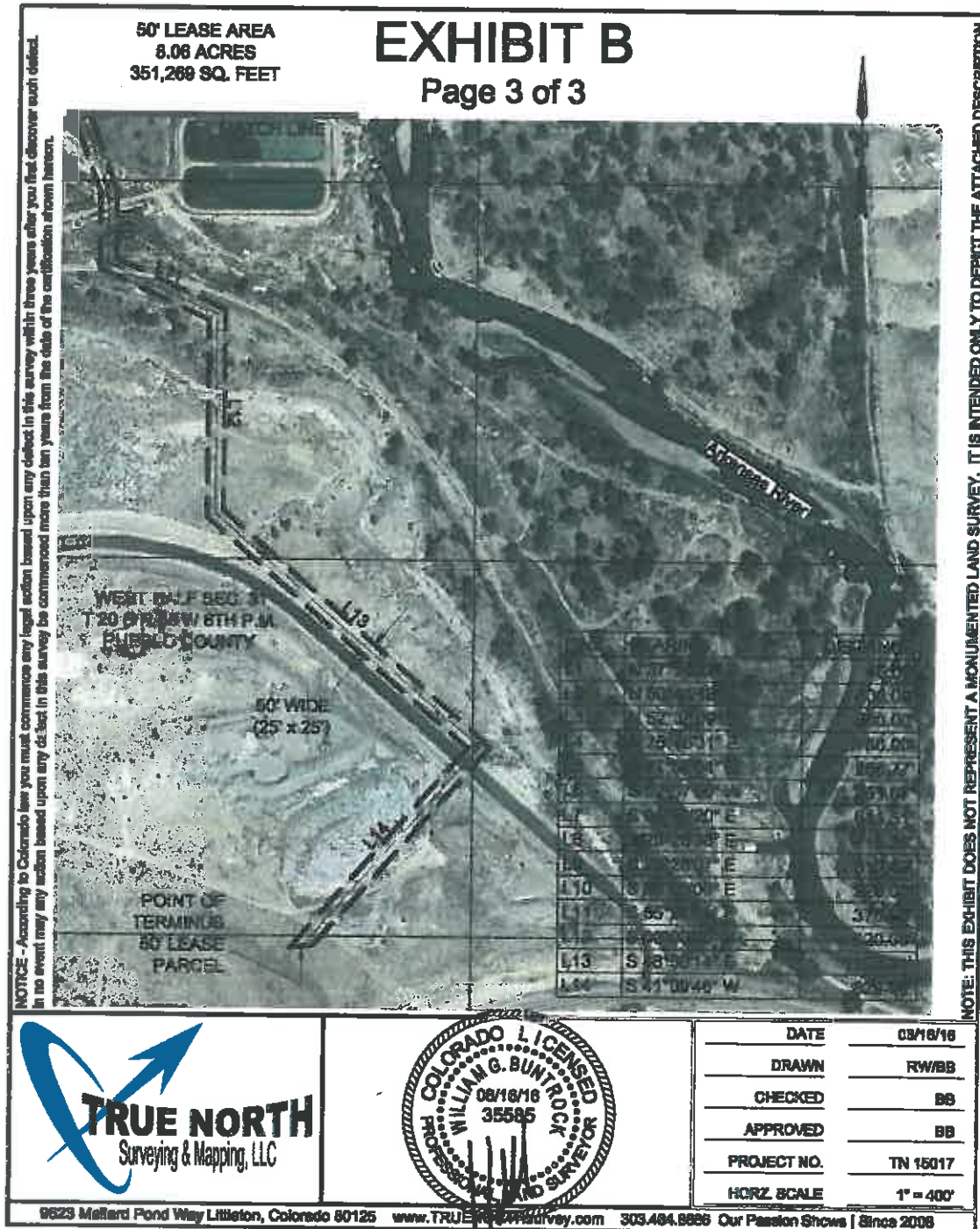


Exhibit C







## Exhibit D

ENVIRONMENTAL COMMITMENT PLAN			
Environmental Commitments (EC) (Summarized from FONSI)	Responsible Agency for Monitoring	Timing of Compliance	Date of Compliance
<b>Pueblo Dam Releases and Power Plant Operations</b>			
EC#1. There will be no changes in water releases from the Pueblo Dam solely for hydropower uses permitted under the Lease. The Hydroelectric Facility will be operated as a "run of dam" facility based on dam release requirements and operations.	Reclamation	Life of Project	On-going
EC# 5. The construction and operation of the Hydroelectric Facility is required to be operated in a manner that does not interfere with operation and maintenance of Pueblo Dam, the Project and its operating principles, and other existing contract obligations.	Reclamation	Life of project	On-going
EC #6. The Hydroelectric Facility is required to maintain Reclamation's existing unrestricted access to the dam during both construction and operation.	Reclamation	Life of Project	On-going
EC #7. Water released to deliver irrigation and municipal and industrial supplies, dam releases, and dam maintenance access will be maintained at all times during construction, operations and maintenance.	Reclamation	Life of Project	On-going
<b>Pueblo County</b>			
EC #3. Pueblo County stipulations contained in the January 7, 2015, 1041 Permit FONSI are incorporated as environmental commitments. Any material change in the construction, use, or operation of the Hydroelectric Facility may require reconsideration of Pueblo County's FONSI and a determination that a 1041 Permit is required.	Pueblo County		On-going
<b>Historic Properties</b>			
EC #19. In the event that possible human remains or cultural/paleontological resources are discovered during ground-disturbing activities associated with the Lease, whether on the surface or subsurface, all ground-disturbing activities in the vicinity of the discovery shall cease and Reclamation's Eastern Colorado Area Office archaeologist shall be notified immediately. Ground-disturbing activities in the vicinity of the discovery shall not be resumed until approved by Reclamation.	Reclamation & Lessee	During construction	

<b>Environmental Commitments (EC) (Summarized from FONSI)</b>	<b>Responsible Agency for Monitoring</b>	<b>Timing of Compliance</b>	<b>Date of Compliance</b>
EC #20. If any additional areas of impact (for example: borrow pits or waste areas) are identified during the course of construction, additional National Historic Preservation Act compliance may be required prior to the approval of any ground-disturbing activities.	Reclamation & Lessee	During construction	
<b>Threatened and Endangered Species</b>			
EC #17. In the event of discovery of threatened or endangered species, Lessee and their contractors will immediately cease all ground-disturbing activities in the vicinity and notify Reclamation. Work will not be resumed until approved by Reclamation	Reclamation & Lessee	During construction	
<b>Recreation</b>			
EC #18. Lessee will coordinate construction and maintenance activities with Pueblo Lake State Park staff to minimize potential conflicts between recreational users.	Lessee & Colorado Parks and Wildlife (CPW) (Development of MOA)	Life of Project	On-going
<b>Air Quality &amp; Noise</b>			
EC #21. Dust abatement Best Management Practices (BMPs) will be undertaken in all areas disturbed during construction.	Reclamation & Lessee	During construction	
<b>Visual Resources</b>			
EC #22. Powerhouses and substations will be non-reflective and painted to blend with the project area background and meet Reclamation and CPW requirements.	Reclamation & Lessee	During construction	
<b>Wetlands and Water Quality</b>			
EC #8. Erosion-control BMPs for drainage and sediment control will be implemented to prevent or reduce non-point source pollution during and following construction.	Reclamation & Lessee	During construction	
EC #9. Fuel storage, equipment maintenance, and fueling procedures will be developed to minimize the risk of spills and the impacts from these incidents. No fuel storage, equipment maintenance, or fueling will occur within 100 ft. of wetlands or waters of the U.S. A Spill Prevention Control and Countermeasure Plan will be prepared prior to construction.	Reclamation & Lessee	During construction	

Environmental Commitments (EC) (Summarized from FONSI)	Responsible Agency for Monitoring	Timing of Compliance	Date of Compliance
EC #11. Lessee will install and operate a monitoring station in the Arkansas River immediately downstream of the Hydroelectric Facility. The station will monitor dissolved oxygen (DO) concentrations before and after construction. If hydropower plant operations cause DO concentrations to drop below baseline conditions, Lessee would install and operate an aeration system to mitigate decreased DO concentrations, after additional consultation with Reclamation and CPW.	Lessee, Reclamation, CPW	Prior to construction	
<b>Wildlife &amp; Vegetation</b>			
EC #12. Lessee will be responsible for noxious weed control within the limits of the facility for the life of the project. Lessee is responsible for consultation with Reclamation for acceptable weed control methods, including pesticides/herbicides approved for use on public land. Use of herbicides will comply with the applicable federal and state laws. Herbicides will be used only in accordance with their registered uses and within limitations imposed by the Secretaries of the Interior and Agriculture. Disturbance to nearby shrubs and other ground cover will be kept to a minimum, with disturbance occurring only in those areas which are absolutely necessary for project construction. Lessee will provide a report to Reclamation on the brands and quantities of pesticides/herbicides used. The Lessee will submit copies of State of Colorado pesticide/herbicide application forms to Reclamation on a quarterly basis, after initiation of construction	Reclamation	Life of Project	On-going
EC #13. All construction equipment shall be power-washed and free of soil and debris prior to entering the construction site to reduce the spread of noxious and unwanted weeds.	Reclamation & Lessee	During construction	
EC #14. Topsoil, where available, will be stockpiled during construction for later use in re-vegetation. Disturbed areas will be contoured to reduce erosion and facilitate re-vegetation. Disturbed areas will be re-seeded. The plan for re-vegetation and related erosion control/re-contouring will be coordinated with CPW and require approval by Reclamation.	Reclamation & Lessee	During construction	

Environmental Commitments (EC) (Summarized from FONSI)	Responsible Agency for Monitoring	Timing of Compliance	Date of Compliance
EC #16. Reclamation and the Lessee will coordinate activities with the CPW biologist to determine if any identified osprey nest is active prior to commencing with construction of the underground power and fiber-optic line and determine if timing restrictions are appropriate. Typical timing restrictions include no construction within 0.25 miles of an active osprey nest between May 1 and September 1.	Reclamation & Lessee	Prior to and during construction	
<b>Notice to Proceed with Construction</b>			
EC #4. Lessee will request and receive permission from Reclamation a minimum of 5 working days prior to any earth disturbing activities to insure that all environmental commitments have been met or are in compliance.	Reclamation	Prior to construction	