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Contract No. _____

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
UNCOMPAHGRE PROJECT

LEASE OF POWER PRIVILEGE
AMONG
THE UNITED STATES OF AMERICA,
AND
UNCOMPAHGRE VALLEY WATER USERS ASSOCIATION
FOR
THE DEVELOPMENT OF HYDROELECTRIC POWER
ON SOUTH CANAL DROP 5

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THIS Lease of Power Privilege is made this _____ day of _____, 2015 (the “Effective Date”), pursuant to the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, and particularly the Act of August 4, 1939 (53 Stat. 1189) as amended, and the Act of June 22, 1938 (52 Stat. 941), and Public Law 113-24 The Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act, among the UNITED STATES OF AMERICA (“United States”), acting by and through the Bureau of Reclamation; and the UNCOMPAHGRE VALLEY WATER USERS ASSOCIATION (“Association”), a corporation organized and existing under laws of the State of Colorado, having its principal place of business at Montrose, Colorado.

1. PREAMBLE

- a. WHEREAS, the United States has constructed the Uncompahgre Project, a Federal Reclamation Project, residing in two Counties (Delta and Montrose), Colorado, hereinafter called the “Project”, which was authorized by the Secretary of the Interior on March 14, 1903, under the provisions of the Reclamation Act of June 17, 1902; and
- b. WHEREAS, construction of the Project, which includes, but is not limited to, the Gunnison Diversion Dam and Tunnel, the East and West Canals, the South Canal, and various laterals, was completed in 1925; and
- c. WHEREAS, the Project provides for storage water in Taylor Park Reservoir located on the Taylor River, which is a part of the Gunnison River Basin, and diversion of water from the Gunnison River by the Gunnison Diversion Dam through the Gunnison Tunnel and the South Canal to the Uncompahgre River; and
- d. WHEREAS, the initial repayment contract between the United States and the Association was dated December 3, 1904. The Project was transferred to the Association for operation and maintenance in 1932 and is operated and maintained pursuant to Amendatory Contract No. Ilr-1530, dated December 13, 1948; and
- e. WHEREAS, in accordance with the Memorandum of Understanding, dated November 6, 1992, between the Federal Energy Regulatory Commission and the

Department of the Interior, it has been determined that authority for licensing hydroelectric power on the Uncompahgre Project rests with the Bureau of Reclamation; and

f. WHEREAS, under the authority of Public Law 113-24 (The Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act) "...the Secretary shall first offer the lease of power privilege to an irrigation district or water users association operating the applicable transferred conduit."; and

g. WHEREAS, based on the proposal submitted by the Association for development of hydropower on the South Canal Drop 5 (Drop 5), the Bureau of Reclamation has determined that negotiations should proceed with the Association for this Lease of Power Privilege at Drop 5; and

h. WHEREAS, the Association has entered into a contract with (Insert Company Name) to construct, own, and operate the Facility.

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, the parties to this Lease of Power Privilege agree as follows:

2. DEFINITIONS

For the purpose of this Lease of Power Privilege, the following definitions shall apply:

(a) "Reclamation" means the Bureau of Reclamation, Department of the Interior.

(b) "Facility" means a hydroelectric power facility or facilities, to be constructed on the Leased Premises, consisting of the complete unit for a hydroelectric power generation feature associated with the South Canal at Drop 5 and including, but not limited to, structures, turbines, generators, and corresponding water conduits, valves, transformers, circuit breakers, fences, poles, wires, and control and protection devices to the interconnection point identified as Drop 5 power plant site in Exhibit A for transportation, distribution and marketing of the Facility's output.

(c) "Leased Premises" means any interest in lands, roads, dam, and structures which the United States may hold, the use or occupancy of which are concurred by the Department of the Interior, Bureau of Reclamation as reasonably necessary or appropriate for the construction, operation, or maintenance of the Facility, as depicted in the site plans, and attached hereto and incorporated by reference as Exhibit A, A1 and A2.

(d) "Lease of Power Privilege" or "Lease" means the total agreement embodied in the combined terms and conditions of this Lease.

(e) "Lessee" means the Association.

(f) "Project Water Rights" means:

(1) The rights of the Association adjudicated under Decree No. 110, Priority No. 111 $\frac{1}{4}$, on June 1, 1901, in the amount of 1,300 cubic feet per second (cfs). The South Canal Drop 5 hydroelectric power project will rely upon these existing water rights held by the United States for the sole use and benefit of the Association, as defined below: In Case No. CA1945 in Water Division 4, 1,300 cfs absolute was decreed "for the sole use, diversion, and benefit of the [Uncompahgre] project." The water right has an appropriation date of June 1, 1901, and an adjudication date of May 8, 1913. The priority number for the water right is 111 $\frac{1}{4}$.

- a. In 1984, the Division Engineer placed 250 cfs of the 1,300 cfs on the abandonment list. In Case No. 84CW142, the Association protested the abandonment of the 250 cfs, and in a stipulation, agreed to have 239 cfs designated as conditional in return for the Division Engineer's withdrawal of the 250 cfs from the abandonment list.
- b. In Case No. 86CW01, 61 cfs of the 239 cfs was made absolute. In Case No. 87CW231, 13 cfs was made absolute. In Case No. 94CW33, 40 cfs was made absolute. As of January 2010, 1,175 cfs absolute and 125 cfs conditional comprise the Association's 1,300 cfs right.

(2) No new rights will be appropriated for the operation of this Facility.

(3) Any water from other sources that may from time to time be available for power generation.

(g) "South Canal" means the water conveyance course originating from the "A" Canal approximately 4 miles from the outlet of the Gunnison Tunnel. The "A" Canal is also known as the South Canal which originates at the outlet of the Gunnison Tunnel approximately $\frac{1}{2}$ mile south of the intersection of US Hwy 50 and Miguel Road, approximately 7 miles east of Montrose, Colorado.

(h) "Uncompahgre Project" or "Project" means those features and operation of the Project authorized for construction by the Secretary of the Interior on March 14, 1903, under the provisions of the Reclamation Act of June 17, 1902.

3. LEASE OF POWER PRIVILEGE

(a) Subject to the conditions and terms herein set forth, the United States leases to the Lessee:

- (1) The opportunity or privilege to utilize the Leased Premises for the purpose of developing the Facility for generation and use and/or sale of hydroelectric power, and
- (2) The right to use the Project Water Rights appropriated for hydropower purposes as defined in Article 2.(f)(1) herein.

(b) No Federal funds will be provided by Reclamation, pursuant to this Lease, to develop, construct, operate, or maintain the Facility, unless acquired by a separate grant or loan.

4. TERM OF CONTRACT

This Lease shall be effective for forty (40) years from the date the Lease is executed unless terminated by mutual consent among the parties hereto or by default or cancellation under provisions of this Lease.

5. USE OF POWER

The Lessee will use or market the power generated at the Facility.

6. LEASE PAYMENTS TO THE UNITED STATES

(a) The Lessee shall make annual lease payments in the amount of 2 mills per kilowatt-hour of gross energy produced by the Facility, measured at the generator, to the United States for the use of the Leased Premises. Calculation of said payments will begin after the initial successful startup and testing of the generating equipment, or within twenty (20) days from the commencement of initial startup and testing of the generating equipment, whichever comes first. In addition, during initial startup and testing, the Lessee shall make said annual lease payments for that portion of gross energy produced by the Facility that is sold and which results in a payment made for the energy produced. The Lease rate shall increase each year commensurate with inflation, based on the average of the previous five (5) years of the GDP Price Deflator. If the 5-year GDP Price Deflator average shows no change or deflation, the LOPP rate will remain the same as the previous year's rate. The rate of increase of the average 5-year GDP Price Deflator will be capped at five (5) percent.

(b) Each payment shall be made on or before April 1 in each year for the total generation during the prior calendar year as reported in Article 13.(d) herein. Reclamation will send an invoice for lease payments to the Association at least thirty (30) days prior to their due date.

(c) Lease payments to the United States shall reference this Lease by title and number. Reclamation will provide a billing document to the Lessee. Payment will be made payable to the "Bureau of Reclamation," and payment instructions will be followed as stated in the billing document, unless directed otherwise by the United States.

(d) Lease payments will be credited to the Reclamation Fund.

(e) The obligation for lease payments to the United States is independent of the obligation of the Lessee for Reclamation expenses under article 7 herein and is not a general obligation guaranteed by other Lessee's revenues.

7. RECLAMATION EXPENSES

(a) The Lessee shall advance funds in minimum increments of \$10,000 (Incremental Advance) to Reclamation to pay for future expenses which may be incurred by Reclamation under this Lease. Expenses shall include an hourly rate, travel, materials, mailing, copying costs, and administration overhead costs at the then current rate, as incurred by Reclamation's personnel, contractors or consultants; provided, however, that no charge shall be assessed for information, services, or relationships that would normally be provided by Reclamation to the public at no charge. Reclamation expenses under this Lease may include, but are not limited to, the following:

- (1) Environmental compliance.
- (2) Inspections of the Facility called for by the United States, either routine or based upon a unique problem, major rehabilitation, or a reasonable concern for the integrity of a Federal structure or operation of other Facility features.
- (3) Preparation or review of technical studies.
- (4) Review of designs, specifications, legal and other documents.
- (5) Site visits and participation in meetings.
- (6) Copies of reports, drawings, and similar data.
- (7) Consultation, observation, review, and comment on tests of piping, valving, automated equipment, supervisory control systems, and any and all other aspects of construction, operation, maintenance and replacement that might impact the integrity of a Federal structure or environmental commitments.
- (8) Work necessitated by non-performance of the Lessee.
- (9) The expenses incurred in the event of failure of Federal structures resulting from operations and/or maintenance of the Facility.
- (10) All administrative costs incurred in the execution of the above-listed activities.

(b) Reclamation will establish a non-interest bearing federal account for the funds advanced by the Lessee; an initial advance of \$10,000 will be required upon execution of this Lease. At such time when funds in the account are anticipated to be reduced to or below \$5,000, Reclamation will request an Incremental Advance of funds as provided in Article 7.(a) herein. Reclamation will not pay or credit the Lessee for any interest. When performing work identified in Article 7.(a) herein, Reclamation will furnish the Lessee, not less than on a quarterly basis prior to completion of the activity, an accounting of activity, an itemization of all expenses incurred under this Article, and a reconciliation of such expenses billed with the amounts requested under this Article. After completion of the activity an accounting of expenses will be furnished to the Lessee on an annual basis or upon request of further Incremental Advances.

(c) Each request for an Incremental Advance of funds under this Article shall be in writing and shall include a statement describing the anticipated use of the requested funds.

Reclamation will discuss with the Lessee in advance of requesting funds to identify anticipated activities related to the Facility. The Lessee shall advance the requested funds within 30 days after receiving the request.

(d) Following the expiration, cancellation or termination of this Lease, Reclamation will determine its expenses associated with the Facility and submit a final accounting report to the Lessee within sixty (60) days after the date of expiration, cancellation or termination. Reclamation will refund to the Lessee any surplus in the account within 60 days after submitting the final accounting report. The Lessee shall pay any deficit in the account within 60 days after receipt of the final accounting report.

8. DISTRIBUTION OF REVENUES

All power revenues received by the Lessee from the Facility shall be applied in the following priority:

- (1) To lease payments to the United States.
- (2) To Reclamation expenses as outlined in Article 7.
- (3) To the annual operation and maintenance cost of the Facility.
- (4) To the recovery of costs and/or the payment of debts associated with construction of the Facility.
- (5) To the reserve fund (Article 23 herein).
- (6) All additional power revenues received by the Association shall be available for their use.

9. ENVIRONMENTAL COMPLIANCE

(a) Reclamation will be the lead federal agency for compliance with the National Environmental Policy Act (NEPA), as amended.

(b) The Lessee agrees to comply with the applicable terms and conditions, including environmental commitments and mitigation measures, resulting from the completion of NEPA and Endangered Species Act compliance.

(c) Reclamation will complete an Environmental Commitment Plan prior to approving final designs for the Facility; this plan will provide specific details on environmental commitments and other environmental documents required under law. The Lessee shall implement and comply with the Environmental Commitment Plan during design, construction and operation phases of the Facility.

10. WATER AND LAND USE

(a) The Water Rights described herein for power development shall be non-consumptive, and the Facility shall be developed, operated, and maintained consistent with applicable Federal and State law.

(b) Reclamation does not guarantee either the quality or quantity of water for the Facility and has no obligation to alter operations of the South Canal or other Federal projects for the benefit of power generation at the Facility. The Lessee shall not be entitled to compensation for loss of generation due to changes in operations at the Uncompahgre Project so long as such changes are consistent with all applicable laws.

(c) The operation of the Facility shall not interfere or conflict with the purpose and operations of the Uncompahgre Project, including, but not limited to, the South Canal.

(d) The Lessee shall be responsible to be sure that land rights, as necessary, are available for the construction and operation of the Facility. The Leased Premises and all rights hereunder shall be held by the Lessee at all times subject to the rights of the United States. Jurisdiction and supervision of the United States over the Leased Premises are not surrendered or subordinated by issuance of this Lease. The United States reserves the right to issue licenses, rights-of-way, or permits for compatible uses of the Leased Premises. Said issuance will be made consistent with existing laws and in consultation with the parties to this Lease.

(e) There is also reserved the right of the United States, its officers, agents, and employees, at all times to reasonable unrestricted ingress to, passage over, and egress from all of said Leased Premises for the purpose of exercising, enforcing, and protecting the rights reserved herein provided the United States notifies Lessee in advance and does not interfere with operations of the Facilities. In addition, the United States reserves the right of its officers, agents, and employees at all times to have reasonable unrestricted access and ingress to, passage over, and egress from all of said Leased Premises, to make investigations of all kinds, dig test pits and drill test holes, to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever. Ingress and egress to the hydroelectric facilities by the United States, its officers, agents, and employees, will be granted when supervised by qualified Association personnel or when adequate safety training to access the facility is verified. There is a reserved right to ingress and egress, without the requisite prior notice, in an emergency situation.

(f) The Lessee shall reimburse the United States for all costs and expenses incurred in the defense of any action which challenges the Lessee's use of the Leased Premises under this Lease.

(g) Any existing survey markers shall not be changed or destroyed. In the event that any survey markers are moved or destroyed, inadvertently or otherwise, by construction or any other activity of the Lessee, they shall be replaced by a licensed land surveyor in consultation with the Bureau of Reclamation and/or Bureau of Land Management.

11. PRECONSTRUCTION REQUIREMENTS

(a) The following Plans for the Facility are subject to approval by Reclamation, not to be unreasonably withheld, before construction of the Facility begins:

- (1) Plans, specifications, and schedules(s) for construction and operation, including site restoration plans. Upon approval, such plans, specifications, and schedules, shall be deemed the "Plans and Specifications" as used in this Lease.
- (2) Construction agreement between the Lessee and the contractor selected for construction of the Facility.
- (3) Operations plans in harmony with the Association's contracts and agreements for the operation and maintenance of the Project.
- (4) Environmental Commitment Plan and Environmental Commitment Checklist (Checklist). The Checklist will include, but not be limited to, environmental commitments contained in the documentation completed under NEPA for execution of this Lease.
- (5) Test plan describing tests to be performed prior to acceptance of construction as complete.
- (6) Emergency Action Plan, developed in harmony with the current Emergency Action Plan for the Project, setting forth the procedures to be followed in case of accident to, or failure of, the Facility.
- (7) Security Plan. The Lessee shall meet with representatives from Reclamation to develop a security plan that will be consistent with and integrated into Reclamation's security program for the Project. Security measures from the security plan will be included in construction of the Facility. The Lessee shall be responsible for any additional security costs incurred by Reclamation related to construction, operation and maintenance of the Facility subject to Article 7 herein.

The Lessee shall provide an electronic copy of the above documents to Reclamation.

(b) The Lessee shall require its contractor to submit to the Lessee and Reclamation, prior to construction, evidence of the existence of a **payment bond and a performance bond**, as required by Article 12.(b) herein, and certificates of insurance as required by the construction agreement. Any such insurance certificate shall name the Lessee and United States as additional insured parties.

(c) The Lessee must receive written approval from Reclamation prior to beginning construction. Such approval shall be based upon approval of the documents identified in Article 11.(a) and in compliance with Article 12.(b) herein, and shall not be unreasonably withheld.

12. CONSTRUCTION

(a) The Lessee shall construct the Facility in accordance with the approved Plans and Specifications, construction agreement, and the approved Environmental Commitment Plan and the Checklist, as identified in Article 11.(a)(4) herein.

(b) The Lessee shall provide evidence of a comprehensive and sufficient performance bond, for construction of the project, held by the contractor constructing the Facility, for the benefit of the United States and the Lessee in an amount necessary to cover any costs for the removal of the Facilities and the clean-up or restoration of the site on Leased Premises, securing the faithful performance of its contractual obligations under its construction agreement. The performance bond shall remain in effect a minimum of one (1) year after completion of construction of the Facility, or such additional warranty period as provided in the construction agreement. The date of completion of construction shall be as defined in Article 12.(n) herein. The bonds shall be issued by a Surety Company satisfactory to Reclamation.

(c) The Lessee shall provide evidence of a comprehensive and sufficient commercial surety bond held by the Lessee, for the benefit of the United States, to cover any costs for the removal of facilities and the clean-up or restoration of the site on Leased Premises during the operational phase of the Lease securing the Lessee's faithful performance of Article 21.(a)(2).

(d) In the event of an emergency at the Facility or Project, Reclamation, the Lessee, or the Lessee's agent(s) may take appropriate action pursuant to the Emergency Action Plan, or may take such further action as necessary to prevent or minimize damage to Project structures or Facility.

(e) The Lessee shall obtain and comply with any and all necessary Federal, State, and local permits and licenses. The Lessee agrees to comply with all applicable codes, ordinances, and regulations.

(f) The Lessee agrees to notify Reclamation of the Lessee's intent to begin construction at least ten (10) days before commencement of such work or delivery of materials. Reclamation shall have the right to post and maintain on the Leased Premises notices authorized under applicable law.

(g) Reclamation shall have reasonable access to the Facility for the purpose of assuring compliance with the terms and conditions of this Lease and to monitor the effects of the Facility on the South Canal. The Lessee shall cooperate with Reclamation in such reviews and inspections. If during construction of the Facility Reclamation determines that such construction poses a threat to the structural and operational integrity of South Canal, Reclamation may order corrective action be taken by the Lessee at the Lessee's sole cost and expense. If such action is not promptly undertaken by the Lessee, and if Reclamation determines the threat is real and imminent, Reclamation may order the Lessee to stop work

on or operation of the Facility and may perform the necessary work at the Lessee's expense notwithstanding the dispute resolution provisions of Article 24 herein.

(h) Construction of the Facility includes site restoration to reasonably approximate the conditions of the site prior to construction. If, for any reason, site restoration is not completed by the Lessee in accordance with the Plans and Specifications, the work may be done by Reclamation at the Lessee's expense upon thirty (30) days prior notice to Lessee.

(i) The Lessee shall exercise reasonable care to preserve the natural landscape and shall conduct its construction operations to prevent any unnecessary destruction or scarring or defacing of the natural surroundings in the vicinity of the work. Movement of crews and equipment shall be within the areas defined in the Plans and Specifications.

(j) The Facility shall not interfere with reasonable and safe access to Project structures on the South Canal, including, but not limited to, the operation and maintenance road.

(k) The Lessee shall require all contractors to accomplish onsite construction in accordance with all applicable Occupational Safety and Health Administration (OSHA) rules and regulations.

(l) The Lessee will be provided a maximum of nine (9) months from the date of execution of this Lease to complete final designs, specifications, and other necessary permits and an additional one (1) year to begin construction. Once any work affecting the Project is begun, the Lessee shall, with diligence, pursue construction to completion of the Facility. The Facility shall be constructed as shown in the approved Plans and Specifications or as shown in written change orders approved by Reclamation in writing. The Lessee's failure to complete construction within five (5) years from the date of this Lease, in accordance with the terms and conditions of this Lease, shall be considered a default under Article 20 herein.

(m) Unless otherwise agreed to, the Lessee shall give Reclamation no less than two (2) weeks notice prior to commencement of testing of the Facility. Testing will be harmonious with the approved test plan and operations plan. Reclamation shall have the opportunity to review and observe the testing. If, because of the addition of the Facility, Reclamation believes additional tests are reasonably required to ensure that the structural and operational integrity of the South Canal is preserved, it shall outline such tests for the review and reasonable approval of the Lessee. If the Lessee approves of the additional testing, the Lessee shall provide such additional test as Reclamation may prescribe. If the Lessee objects to the requested additional testing, the question over whether to conduct additional testing shall be resolved pursuant to Article 24 herein. The Lessee shall provide written official test reports within 30 days after completion of the tests. Reclamation will accept or reject the test results, in writing, within 30 days after receipt of the test reports. Testing shall be considered complete upon acceptance of the test report by Reclamation. The Lessee may use or sell power generated during the test period.

(n) At such time as the Lessee determines that construction, testing, and site restoration of the Facility are complete, the Lessee shall arrange a joint inspection with Reclamation. Any remaining work, testing, or modification needed on the Facility, identified in writing by the parties during the inspection, will be completed as soon as practical by the Lessee. For the purpose of this Lease, construction of the Facility shall be complete as of the later date of either the date of the final inspection or the date the Lessee complete the tasks, if any, identified in the final inspection to the satisfaction of Reclamation. Within 60 days of completion of the Facility, the Lessee shall provide Reclamation with electronic copies of the drawings in a format reasonably acceptable to Reclamation; and electronic copies of operation and maintenance manuals for Facility equipment that could have an impact on the operational and structural integrity of the South Canal.

(o) Revisions required to the Standing Operating Procedures (SOP) for the Project as a result of construction and operation of the Facility shall be recommended by the Lessee and submitted to Reclamation for its review and approval. Such revisions will be completed at the Lessee's expense. Final copies and revisions of the Project's SOP will be distributed by Reclamation to the Association.

13. OPERATION AND MAINTENANCE OF THE FACILITY

(a) Throughout the term of the Lease, the Lessee shall, at the Lessee's sole cost and expense, operate, and maintain the Facility in good condition and repair and in accordance with all applicable laws, rules, ordinances, orders, and regulations. The Facility shall be operated and maintained in accordance with the operations plans, the Emergency Action Plan, and the Checklist as each may be amended. No material alterations in the Facility or its operation, as depicted in the record drawing and operations plan, shall be undertaken by the Lessee without the written approval of Reclamation, which shall not be unreasonably withheld. Reclamation will withhold such approval only to (i) ensure the structural and operational integrity of the South Canal or (ii) ensure that the operations of the Project are not otherwise interfered with. After modification to the Facility, the Lessee shall perform testing, related to such modification, as may be required by Reclamation to ensure the structural and operational integrity of the South Canal. The Lessee assumes full responsibility for any pollution caused by its operations of the Facility and agrees to indemnify the United States for damages caused by any such pollution.

(b) If the Facility or operation thereof interferes with or threatens to interfere with the Project, the Lessee shall correct the interference immediately and, if necessary, as determined by Reclamation, shut down the Facility notwithstanding the dispute resolution provision of Article 24 herein. Upon notice, the Lessee shall modify the Facility or its operation of the Facility to correct any problem and shall repair any damage in a manner acceptable to Reclamation, or the Lessee shall bear the complete cost for Reclamation to repair any damage to the Project caused by the Facility notwithstanding the dispute resolution provisions of Article 24 herein.

(c) Reclamation shall have reasonable access to the Facility for the purpose of assuring compliance with the terms and conditions of this Lease and to monitor the effects of the Facility on the South Canal. The Lessee shall cooperate with Reclamation in such reviews and inspections.

(d) Daily water flows and energy generation data shall be made available to Reclamation on a monthly basis or as otherwise reasonably specified by Reclamation to calculate annual payments.

14. RECLAMATION REVIEWS AND APPROVALS

Reclamation reserves the right to review and reasonably approve schedules, designs, specifications, inspections, inspection reports, tests and reports, and construction and construction reports of the Facility, but only for the express purpose of determining any impacts to the structural and operational integrity of the Project.

15. FUTURE WORK

(a) The implementation of this Lease does not in any way restrict Reclamation, in discussion with the Association, from making any future changes to the Project consistent with all applicable laws. For any proposed changes that may affect the Facility or its operation, Reclamation will first confer with the Lessee.

(b) The costs of any future changes to the Project shall be in accordance with the then existing contracts and agreements between Reclamation and the Association. The costs of any future structural or operational changes to the Facility, necessitated as the result of changes to the Project or otherwise, will be assumed by the Lessee.

16. OWNERSHIP

Title to the Facility will remain in the name of the Lessee except as provided under Article 21 or Article 22.

17. LIABILITY

(a) The Lessee hereby acknowledges that Reclamation will not be responsible for making sure the Facility is technically or economically feasible. Inspections, reviews, and approvals by Reclamation do not relieve the Lessee of its responsibilities under the terms of this Lease or otherwise.

(b) The Lessee agrees to indemnify the United States for any injury, loss or damage incurred by any person or entity, resulting from any action performed hereunder, and any

negligent act or omission of the Lessee in connection with its performance under this Lease.

(c) The Lessee shall have no claim against the United States for loss of generation caused by the normal or extraordinary operation and maintenance of the Project including, but not limited to, the quantity or quality of water delivered through the South Canal.

18. INSURANCE

(a) The Lessee shall maintain workmen's compensation insurance on their own employees as may be necessary to comply with current applicable law.

(b) The Lessee shall, at their sole cost and expense, keep or cause the Facility to be kept insured for the mutual benefit of the United States and the Lessee, against loss or damage by fire, flood, and such other risks as are now or hereafter included in an extended coverage endorsement in common use for hydroelectric powerplants. Insurance proceeds shall be used by the Lessee to replace or repair the compensated loss, subject to review and concurrence by Reclamation.

(c) Throughout the term of this Lease, the Lessee shall, at their sole cost and expense, keep or cause to be kept in force, for the benefit of the United States and the Lessee, comprehensive broad form general public liability insurance in the amount of at least \$2,000,000 against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse, or conditions of the Facility and, adjoining areas or ways, providing coverage for bodily injury or death to any person or persons for each accident or occurrence; and for property damage for each accident or occurrence.

(d) The amount of insurance coverage shall be adjusted annually by the insurance company based upon accepted standard adjustment practices.

(e) For each policy or certificate evidencing insurance, the Lessee shall instruct the insurance company to notify Reclamation not less than 30 days prior to the effective date of any cancellation, termination, or assignment of the policy or certificate or any modification of the policy or certificate. The notice shall be sent to Reclamation and shall identify this Lease, the policy and the insured.

(f) Lessee agrees to maintain insurance coverage as stated in this Article herein throughout the term of this Lease in substantially the same form and amounts as are provided for in the certificates of insurance to be attached and identified as and made a part thereof upon completion of the construction.

(g) Any insurance proceeds remaining after complying with the provisions of this Lease shall be the Lessee's sole property.

19. FAILURE TO MAKE PAYMENTS

Upon failure of the Lessee to pay any sum of money when due as provided in this Lease, that amount past due will be assessed the following:

- (1) Interest per annum on the unpaid balance from the due date of the bill through the date of the payment. The interest charged will be based on the "Treasury Current Value of Funds Rate" in effect at the time the debt becomes overdue.
- (2) An administrative charge of \$5.00 per month.
- (3) Penalty charge of 6% per annum on the unpaid balance computed after ninety (90) days of delinquency, from the due date to the date of payment.

Further collection efforts will be consistent with the Debt Collection Improvement Act of 1996.

20. DEFAULT

(a) Each or any of the following events shall constitute default under this Lease:

- (1) Failure of the Lessee to comply with each and every material condition of this Lease.
- (2) Abandonment of the Facility by the Lessee for twelve (12) consecutive months.

(b) In the event of default by the Lessee, Reclamation will give written notice to the Lessee and the Lessee shall then have sixty (60) days to correct the default condition specified in the notice. However, in the event action to correct a default requires more than sixty (60) days, the Lessee shall have a reasonable time to correct the default if the Lessee commences the action within thirty (30) days after written notice and diligently pursues it to full correction in a manner satisfactory to Reclamation.

(c) Failure of the Lessee, without just cause, to initiate construction of the Facility within one (1) year and nine (9) months of the date of this Lease, or to complete construction within five (5) years of the date of this Lease, shall be considered to be abandonment of the Facility. Failure to operate the Facility, without just cause, for a period of twelve (12) consecutive months or to maintain the Facility in good condition and repair shall be considered to be abandonment of the Facility. Failure of the Lessee to generate electricity with the Facility, in and of itself, shall not constitute a failure to operate the Facility, provided that the Lessee maintains the Facility in good condition and repair, and provides justification to Reclamation as their failure to generate electricity.

(d) Any prevention, delay, nonperformance, or stoppage due to an act of nature or inability to obtain labor or materials or reasonable substitutes or any court or regulatory order enjoining, or restricting performance under this Lease shall excuse nonperformance, or stoppage, except obligations imposed by this Lease for the payment of monies due under this Lease.

(e) Each party hereto may use any remedy available either at law or in equity against a party in default hereof. The waiver of a default or a provision of this Lease shall not be deemed to be a waiver of any other provision, or of a subsequent default of the same provision.

(f) Any excessive delay resulting from compliance with the provisions of Federal environmental laws or administrative review by a Federal agency, pertaining to the Facility, may extend the time periods provided in this Article and Article 4 herein for a period equal to that of the delay. In the event of judicial review of environmental studies prepared in compliance with NEPA, or litigation arising out of this Lease, time periods provided in this Article and Article 4 herein will be extended for a period equal to that of the delay, provided such review or litigation was initiated by parties other than the Lessee.

21. CANCELLATION

(a) In the event of any default by the Lessee that is not corrected as provided in Article 20 herein, Reclamation shall have the right to cancel this Lease and pursue either of the following actions:

- (1) Assume possession of the Facility for its own use, or lease the Facility to someone other than the Lessee. In either event, all right to use the Leased Premises and hydropower water rights for hydroelectric power purposes shall automatically revert to the United States and the Lessee shall be compensated for any un-depreciated value remaining in the Facility, based upon a 20-year straight line depreciation method of the construction cost of the Facility. Any new lessee assuming possession of the Facility will be required to enter into a contract with the Association to coordinate operation and maintenance of the Facility with the Project.
- (2) Require the Lessee to remove all or part of the Facility and restore the Leased Premises to their original condition at the Lessee's expense. In this event, the Lessee shall be entitled to salvage, for its own benefit, any features or equipment so removed. Any features or equipment left in place under this Article shall automatically become the property of the United States.

(b) The Lessee shall make payments due Reclamation under this Lease as of the date of cancellation within sixty (60) days after cancellation. The Lessee shall be responsible for any other debts associated with the Facility unless otherwise provided in this Lease.

22. EXPIRATION OF LEASE

(a) Upon expiration of the lease term pursuant to Article 4 herein, Reclamation shall have the right to:

- (1) Enter into a new lease with the Lessee;

- (2) Assume title and possession of the Facility on Leased Premises for its own use;
- (3) Assume title possession and thereafter transfer ownership of the Facility and use the water rights for the hydroelectric power generation to any other party subject to terms and conditions of a new lease of power privilege; or
- (4) Discontinue operation of the Facility. In the event Reclamation determines the Facility should no longer be operated, Reclamation may require the Lessee, at its expense, to remove the Facility and restore the Leased Premises to their original condition, as far as practical. Such features and equipment, or parts thereof, including piping and control devices installed on the South Canal that are necessary for the unimpaired operation of the Project, shall be left in place and shall become the property of the United States.

(b) If Reclamation elects to assume title and possession of the Facility or assume possession and transfer its ownership to another party, the United States shall either compensate the Lessee, or obligate a new lessee to compensate the Lessee, in an amount equal to the value of the Facility on the date of expiration as determined by an independent appraiser and appraisal methods to be jointly selected and determined by the Lessee and Reclamation. Reclamation shall not transfer ownership of the Facility to any third party until such compensation has been paid pursuant to a new contract. Any new lessee assuming possession of the Facility will be required to enter into a contract with the Association to coordinate operation and maintenance of the Facility with the Project.

23. RESERVE FUND

(a) Commencing one (1) year after operation of the Facility and continuing during the life of this Lease, the Lessee shall maintain a reserve fund equal to one year's anticipated operation and maintenance expenses and one year's annual lease expense to Reclamation, for use in the manner, for the purposes and the circumstances agreed upon by Reclamation and the Lessee. The reserve fund will be established and maintained through annual deposits in the amounts stated to a segregated account created by the Lessee. Deposits shall be derived from funds obtained from revenues received pursuant to Article 8 herein or from other revenues of the Lessee. The annual deposit shall be made in the month of May in each year. The reserve fund shall be used for the following purposes:

- (1) To cure any financial default under this Lease to Reclamation.
- (2) For extraordinary repair or replacement of the Facility, subject to agreement by Reclamation.
- (3) For annual operation and maintenance costs for the Facility to the extent that power revenues are not sufficient therefore and for costs encountered or created by emergency conditions.

(b) The Lessee shall deposit its reserve fund in an account in accordance with the Lessee's investment policy and practices, provided, any interest paid on the reserve funds shall be and become a part of the fund from which interest was accrued. Interest that caused the fund to exceed the reserve fund maximum may be withdrawn by the Lessee to bring the

fund balance back down to the maximum or disbursed in accordance with Article 8 herein, at the sole discretion of the Lessee.

(c) Upon expiration of the term of this Lease, any amounts then remaining in a reserve fund shall be disbursed and applied in accordance with Article 8 herein.

(d) The maximum annual deposits and reserve fund amounts may be adjusted from time to time as mutually agreed to by both Reclamation and the Lessee.

24. DISPUTE RESOLUTION

(a) In the event of a dispute between the parties, the decision of Reclamation must be appealed to the Assistant Secretary – Water and Science for his/her determination prior to review by the federal court. The decision of the Assistant Secretary will be final for Reclamation and will be binding upon all parties hereto unless determined otherwise by a federal court. In the event that any action is filed in federal court, following a determination of the Assistant Secretary, the nature of the remedies will be determined by applicable federal law.

(b) This Article shall not apply to any action or inaction by the Lessee during construction, operation and maintenance of the Facility that may impair the structural integrity of the South Canal.

25. AUDIT

(a) The Lessee and Reclamation shall maintain accurate records and books of account in accordance with generally accepted accounting principles and consistent with this Lease. Said books and records shall present fairly all costs and expenses utilized either directly or indirectly in computing any charges or payments to the other parties to this Lease.

(b) Upon thirty (30) days written notice, each party to this Lease shall afford the other party, or its independent auditor, reasonable access to the relevant records and books of account during the term of the Lease, and for a period of twenty-four months thereafter.

(c) The party to this Lease that requests the audit under this Article will be solely responsible for its own costs incurred to perform the audit.

26. NOTICES

(a) Any notice authorized or required to be given to the Association shall be delivered to or mailed postage prepaid to the Manager, Uncompahgre Valley Water Users Association, P.O. Box 69, Montrose, Colorado 81402-0069. Any notice authorized or required to be given to the United States shall be delivered to or mailed postage prepaid to the Area

Manager, Bureau of Reclamation, 445 West Gunnison Avenue, Grand Junction, Colorado 81501-5711. Notice shall be effective on the date of delivery or mailing.

(b) The designation of the addresses or the addresses given above may be changed by notice given in the same manner as provided in this Article for other notices.

27. ASSIGNMENT LIMITED – SUCCESSORS IN INTEREST OBLIGATED

The provisions of this Lease shall apply to and bind the successors and assigns of the parties to this Lease, but no assignment or transfer of this Lease or any right or interest therein shall be valid until approved in writing by Reclamation. Said approval shall not be unreasonably withheld.

28. RULES, REGULATIONS AND DETERMINATIONS

(a) The parties to this Lease agree that the delivery of water or the use of Federal facilities pursuant to this Lease is subject to Reclamation law, as presently amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law

(b) Reclamation shall have the right to make determinations necessary to administer this Lease that are consistent with the laws of the United States of America and the State of Colorado, and the express and implied provisions of this Lease, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in discussion with the parties to this Lease.

29. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress or Resident Commissioner or officer of the Lessee shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, other than as a water user or landowner in the same manner as other water users or landowners or as a shareholder in the company.

30. LIAISON OFFICER

Each party shall provide the name of a Liaison Officer and the address and telephone number through which contacts are to be made during the term of this Lease. Changes in the appointment of the Liaison Officers shall be made by written notice to the other parties. At all times, the Lessee shall provide qualified personnel to inspect the work, to ensure compliance with the Plans and Specifications, and to represent the Lessee in the ongoing construction, operation and maintenance work.

31. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of the warranty, Reclamation shall have the right to cancel this Lease without liability.

32. AMENDMENT

This Lease may be amended, altered, or modified only in writing and signed by all of the parties.

IN WITNESS WHEREOF, the parties to this Lease have caused this Lease to be duly executed as the day and year first written above.

APPROVED

DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Office of the Regional Solicitor

By: _____
Regional Director

ATTEST:

UNCOMPAHGRE VALLEY WATER USERS ASSOCIATION

Secretary

By: _____
President