

FINAL November 2, 2016

SUBCONTRACT

**BETWEEN SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT
AND EXCESS CAPACITY STORAGE PARTICIPANT**

This Subcontract is entered into this 16 day of Nov., 2016, by and between the Southeastern Colorado Water Conservancy District ("District"), acting by and through the Southeastern Colorado Water Activity Enterprise, and Stratmoor Hills Water and Sanitation District ("Participant").

EXPLANATORY RECITALS

The following statements are made in explanation:

- A. WHEREAS, the District has entered into a contract with the United States for Excess Capacity storage in Pueblo Reservoir, Contract No. 16XX650031 (the "Master Contract"), a copy of which is attached as **Exhibit 1**. The Master Contract provides Excess Capacity storage in Pueblo Reservoir for the Participants.
- B. WHEREAS, Article 9 of the Master Contract allows the District to subcontract with Participants for the use of a collective maximum amount of 29,938 acre-feet of Excess Capacity in Pueblo Reservoir.
- C. WHEREAS, the Parties to this Subcontract wish to obligate themselves to use excess capacity storage in Pueblo Reservoir as described in the Master Contract and this Subcontract.
- D. WHEREAS, execution of the Subcontract will implement the Master Contract and define Participant's obligations to the District.

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

- 1. **Master Contract**. The Master Contract is incorporated herein and made a part of this Subcontract. All of the charges, terms and conditions in the Master Contract are binding upon Participant as if set forth in full in this Subcontract. Any term defined in the Master Contract and used in this Subcontract shall be given the meaning defined in the Master Contract.
- 2. **Amount of Excess Capacity**. As of January 1, 2017, Participant is authorized to annually utilize up to 150 acre-feet of Excess Capacity in Pueblo Reservoir, if and when available, as shown in **Exhibit 2**, subject to the terms and conditions of this Subcontract, the Master Contract and Federal Reclamation law ("Participant's Excess Capacity"). The maximum amount of the Participant's Excess Capacity is also set forth in **Exhibit 2**.
- 3. **Spill**. If the Contracting Officer notifies the District that Project operations may require a Spill, the District shall notify Participant as soon as reasonably possible of the quantity and timing of the water that may be spilled.

4. Charges for Excess Capacity Storage. Beginning with calendar year 2017, Participant shall pay for a minimum of 150 acre-feet of Excess Capacity each year. This minimum amount of Participant's Excess Capacity for which Participant must pay cannot be decreased and shall be referred to as the "Excess Capacity Floor."

- a. Participant is authorized to, and may at any time notify the District that it is going to utilize, pursuant to the terms and conditions of the Master Contract and this Subcontract, Participant's Excess Capacity in an amount, including space needed for any Nonproject Water or Project Water Returns Flows carried over from a previous year, greater than the Excess Capacity Floor in a given year, up to the maximum amount of Participant's Excess Capacity analyzed pursuant to the National Environmental Policy Act of 1969 ("NEPA") in the FEIS and ROD, or any other subsequent NEPA analysis. In this event, the greater amount becomes a new Excess Capacity Floor and cannot be decreased.
- b. If Participant gives notice after making the payment required by paragraph 5 below, that it is going to utilize a greater amount of Participant's Excess Capacity than the Excess Capacity Floor which was in effect when it made payment for the following calendar year, then the increased amount becomes the Excess Capacity Floor for the entire calendar year no matter when notice is given.
- c. The initial rate for an acre-foot of Excess Capacity (hereafter the "Excess Capacity Rate") will be \$40.04 per acre-foot for calendar year 2017.
- d. Each subsequent calendar year's Excess Capacity Rate shall increase by 1.79 percent per year over the preceding year's rate and shall be the applicable rate set forth in Exhibit A to the Master Contract.
- e. The Excess Capacity Rates set forth in Exhibit A to the Master Contract shall be the same regardless of the end use of the Nonproject Water or Project Water Return Flows which are stored in Excess Capacity (municipal, industrial, irrigation, augmentation, or other beneficial use) or of the means of delivery of such water (direct use, by exchange, diversion from Pueblo Reservoir or by release to the river).
- f. The total annual charge for the use of Excess Capacity in Pueblo Reservoir for the storage of Nonproject Water and Project Water Return Flows ("Excess Capacity Storage Charge") will be the Excess Capacity Rate (expressed as dollars per acre-foot of storage space) for a given year multiplied by the Excess Capacity Floor (expressed in acre-feet) for that year.

5. Payment.

- a. Payment for Excess Capacity storage shall be due October 1 of each year for storage requested for the following calendar year.
- b. In addition to the Excess Capacity Storage Charge owed to the United States, Participant shall pay the District its share of administrative costs. The District anticipates that administrative costs in 2017 will total \$948.50. The District will

annually estimate administrative costs for a given year. Administrative costs will be allocated pro-rata among Participants. The District will send an invoice for administrative costs quarterly, together with an accounting detailing the amount and basis of the charges and the allocation of total costs among the Participants. Participant agrees to pay the invoice within thirty (30) days. The District shall furnish a detailed reconciliation of the annual charges comparing the estimated to actual costs for the year, with appropriate credits or charges to carry over into the next year.

6. Charges for Delinquent Payments. Participant shall be subject to interest, administrative, and penalty charges on delinquent payments.

- a. If a payment is not received by the due date, Participant shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes sixty (60) days delinquent, Participant 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 ninety (90) days or more, Participant 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 six percent (6%) per year. Participant shall also pay any fees incurred for debt collection services associated with a delinquent payment.
- b. The interest rate charged shall be equivalent to that charged to the District in the Master Contract, namely, 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.

7. Measurement and Accounting.

- a. At the request of the District, Participant shall submit and revise, if necessary, a written schedule of the anticipated monthly demands for the Excess Capacity storage of Participant's Nonproject Water and Project Water Return Flows pursuant to this Subcontract.
- b. Participant shall be solely responsible for making whatever arrangements are necessary to make Nonproject Water or Project Water Return Flows available for storage in Excess Capacity under this Subcontract including, but not limited to, obtaining any necessary approval of the Water Court and the State of Colorado Division of Water Resources.

- c. Participant is solely responsible for any transit losses after release of water from storage and evaporation losses after water is placed into storage that are assessed by the State of Colorado Division of Water Resources and/or associated with Participant's use of Excess Capacity for the Nonproject Water and Project Water Return Flows under this Subcontract.
- d. Participant shall maintain and shall furnish the District, without charge, the information necessary for daily accounting of water stored under this Subcontract, as well as any other records that may be required for daily accounting. The records shall account for Nonproject Water and Project Water Return Flows according to the limitations of the Participant's water rights listed in the FEIS or in a subsequent NEPA analysis.

8. Benefit Contingent upon Payment. Participant's receipt of any benefit under this Subcontract is conditioned upon payment of the Excess Capacity storage charges due pursuant to Paragraph 5 of this Subcontract.

9. Participant's Use of Water. Participant understands that the Excess Capacity made available to all Participants in Pueblo Reservoir under the Master Contract is limited to: a maximum of 29,938 acre-feet of storage space; use only in those areas that are within the boundaries of the District; use for lawfully decreed purposes that were analyzed in FEIS and associated ROD; and use consistent with the Master Contract and all federal, state and local laws. The sources of water stored in Excess Capacity are restricted to the water rights identified and analyzed for each Participant in the FEIS, and those water rights for the Participant are set forth in the attached Exhibit 3, which may be modified by agreement of both parties without modification of this Subcontract. Any deviation by Participant from the maximum quantities or sources of water analyzed in the FEIS is prohibited, unless the District approves in writing. Participant acknowledges that if it desires to modify the water rights stored in Excess Capacity in Pueblo Reservoir, additional environmental analysis pursuant to NEPA may be required and, if required, will be at the sole expense of the Participant.

10. Carryover. The amount of Nonproject Water and Project Water Return Flows that is not delivered or spilled during a given year, less the evaporation and other applied losses for that year as further described in Article 8 of the Master Contract, may be carried over to the next year while the Master Contract is in effect, but total Nonproject Water and Project Water Return Flows stored in the Excess Capacity in Pueblo Reservoir by the Participants may not exceed the amount of Excess Capacity paid for in that calendar year.

11. Annual Contracts. Nothing in this Subcontract shall affect any right Participant may have to execute annual excess capacity contracts with Reclamation for storage in Project facilities to the extent permitted by Reclamation at the time the contract is requested.

12. Other Rights. Nothing in this Subcontract is to be construed to grant Participant any right, title, or interest other than that explicitly provided for in this Subcontract.

13. Representations of the District.

- a. The District is a statutory water conservancy district pursuant to C.R.S. § 37-45-101 *et seq.*
- b. The District has formed a Water Activity Enterprise in compliance with C.R.S. § 37-45.1-101 *et seq.*
- c. The District represents and warrants that it is an "Enterprise" as defined in Article X, Section 20(2)(d) of the Colorado Constitution, and that it is authorized to enter into the multiple fiscal year financial obligations provided in this Subcontract, notwithstanding Article X, Section 20(4)(b) of the Colorado Constitution.
- d. The District will deposit funds received from Participant in an interest bearing account, for use to pay costs of Excess Capacity as defined in the Master Contract.

14. Representations of Participant.

- a. Participant is a municipal or quasi-municipal entity that supplies water for municipal purposes.
- b. Participant represents and warrants that it is an "Enterprise" as defined in Article X, Section 20(2)(d) of the Colorado Constitution, and that it is authorized to enter into the multiple fiscal year financial obligations provided in this Subcontract, notwithstanding Article X, Section 20(4)(b) of the Colorado Constitution.

15. Assignment. Participant may assign its rights and obligations under this Subcontract only upon approval of the District. Such approval is within the sole discretion of the District, and determination of whether Participant may assign or subcontract will be made on a case-by-case basis. In any case, Participant may only request to assign or subcontract its rights and obligations to another municipal water supplier supply enterprise within District boundaries. Any assignment of subcontract must be consistent with the FEIS, ROD or subsequent NEPA analysis.

16. Termination. In the event the Master Contract is terminated in accordance with Article 13 of the Master Contract, this Subcontract shall terminate as of the same effective date of the Master Contract termination.

17. MOA. The Parties agree that the MOA dated May 16, 2011 is superseded and fully replaced by this Subcontract, and that, following the execution of this Subcontract, said MOA is no longer in effect, in whole or in part, and neither party has any liability to the other party thereunder.

18. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by U.S. Mail or a nationally recognized overnight courier (receipt requested); or (c) on the date sent by email, if sent during normal business hours of the recipient, and on the next business

day if sent after normal business hours of the recipient. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this paragraph):

To the District: Executive Director
Southeastern Colorado Water Conservancy District
31717 United Avenue
Pueblo, CO 81001
Chris@secwcd.com

To Participant: District Manager
Stratmore Hills Water District
1811 B Street,
Colorado Springs, CO 80906

19. Headings for Convenience Only. Paragraph headings and titles contained in this Subcontract are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Subcontract.
20. Entire Agreement. This Subcontract constitutes the entire agreement between the Parties relating to the subject matter of the Master Contract. This Subcontract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
21. Amendment. This Subcontract may be modified, amended or changed in whole or in any part only by an agreement in writing duly authorized and executed by Participant and the District with the same formality as this Subcontract.
22. Non-Severability. Each paragraph of this Subcontract is intertwined with the others and is not severable unless by mutual consent of Participant and the District.
23. Effect of Invalidity. If any portion of this Subcontract is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both Parties, the Parties agree to use their best efforts to reform as soon as possible any such invalidity and achieve a valid agreement that accomplishes the purposes of this Subcontract as originally set forth.
24. Governing Law. This Subcontract shall be construed in accordance with the laws of the State of Colorado.
25. Multiple Originals. This Subcontract may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Subcontract.

26. No Attorneys' Fees. In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this Subcontract, the Parties agree that each shall be responsible for their own costs and attorneys' fees associated with any such activities, with the exception of any claims found by the courts to be frivolous or groundless as per Colorado statutes.

27. Intent of Agreement. This Subcontract is intended to describe the rights and responsibilities of and between Participant and the District and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto; nor to limit, impair or enlarge in any way the powers, regulatory authority and responsibilities of Participant or the District, or any other governmental entity not a party hereto.

28. Non-Business Days. If the date for any action under the Subcontract falls on a Saturday, Sunday or a day this is a "holiday" as such term is defined in C.R.C.P. 6, then the relevant date shall be extended automatically until the next business day.

29. Successors and Assigns. This Subcontract and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns in the event assignment is allowed.

The Parties to this Subcontract have executed this Subcontract effective on the day and year above written.

**Southeastern Colorado Water
Conservancy District**

Party

By: 

By: 

Printed

Name: JAMES W. BRODERICK

Printed

Name: DIANNE M. COOPER

Title:

EXECUTIVE DIRECTOR

Title:

PRESIDENT

EXHIBIT 1
MASTER CONTRACT

EXHIBIT 2**TO SUBCONTRACT BETWEEN SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT AND EXCESS CAPACITY PARTICIPANT**

Participants	2017 Amount	Maximum Amount
Poncha Springs	10	200
Salida	625	2,000
Upper Arkansas Water Conservancy District	700	1,000
Cañon City	10	1,000
Florence	10	2,250
Penrose	400	900
Fountain	250	1,000
Security	250	1,500
Stratmoor Hills	150	200
Widefield	300	650
Pueblo West	10	6,000
St. Charles Mesa Water District	600	2,000
96 Pipeline Company	0*	25
Crowley County Water Association	0*	1,000
Olney Springs	10	125
Ordway	0*	750
Eads	0*	50
Beehive Water Association	0*	18
Bents Fort Water Company	0*	10
Fayette Water Association	0*	16
Fowler	0*	50
Hilltop Water Company	0*	35
Holbrook Center Soft Water	0*	12
Homestead Improvement Association	0*	6
La Junta	600	2,000
Lower Arkansas Valley Water Conservancy District	2,500	5,000
Manzanola	0*	60

Participants	2017 Amount	Maximum Amount
Newdale-Grand Valley Water Company	0*	50
Patterson Valley	0*	40
Rocky Ford	100	1,200
South Side Water Association	0*	8
South Swink Water Company	0*	80
Valley Water Company	0*	47
Vroman	0*	41
West Grand Valley Water, Inc.	0*	15
Las Animas	0*	300
May Valley Water Association	0*	300

* In addition to being Master Contract Participants, these entities are Participants in the Arkansas Valley Conduit ("AVC"). The District will not require AVC Participants to commit to an Excess Capacity Floor until appropriate terms for conveyance of water through the AVC are agreed upon.



Stratmoor Hills Water & Sanitation Districts

1811 B Street, Colorado Springs, CO 80906 / (719)576-0311 / stratmoorhillswater.org

5/29/25

Chris,

Stratmoor Hills Water & Sanitation District would like to increase the storage from 150 acre-feet to 200 acre-feet.

Sincerely,

A handwritten signature in dark ink, appearing to read "Darren Adame", written over a horizontal line.

Darren Adame
District Manager

5/29/25
Date