

## **Agreement for Conveyance of Southern Colorado Power Water Rights And Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo**

This Agreement for Conveyance of Southern Colorado Power Water Rights and Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo (“**Agreement**”) is entered into by and between Black Hills/Colorado Electric Utility Company, LP, a Delaware Limited Partnership, whose address is 625 Ninth Street, Rapid City, SD 57701 (“**Black Hills**”), the Board of Water Works of Pueblo, Colorado, established pursuant to Section 15-2 of the charter for the City of Pueblo, Colorado, whose address is 319 W Fourth Street, Pueblo, Colorado 81003 (“**Pueblo Water**”), and Pueblo, a Municipal Corporation, organized and existing under the constitution and laws of the state of Colorado, whose address is 1 City Hall Place, 2<sup>nd</sup> Floor, , Pueblo, CO 81003 (“**City**”), collectively, referred to as the **Parties**, effective as set forth in Paragraph 17 below.

### **RECITALS**

- A.** Whereas, Pueblo Water and the City are parties, along with Pueblo County, Colorado, the Pueblo Conservancy District and the Urban Renewal Authority of Pueblo, to the Amended and Restated Historic Arkansas Riverwalk of Pueblo (“HARP”) Authority Intergovernmental Agreement, dated May 19, 2008 (“**IGA**”). Pueblo Water holds water rights for the HARP, including the HARP Water Right and the Harp Tailwater Right, decreed in Case No. 93CW86, District Court, Water Division 2.
- B.** Whereas, Black Hills owns a water cooled power plant (“**Power Plant**”) located at the head of the HARP. The water rights associated with the Power Plant include the Southern Colorado Power Company (“**SCPC**”) Cooling and Condensing System Water Right, decreed in Case No. 19693, District Court, County of Pueblo (“**SCPC Direct Flow Right**”). In addition, Black Hills owns a series of cooling basins, including what is commonly known as Lake Elizabeth, the water right for which was decreed in Case No. 19693, District Court, County of Pueblo (“**SCPC Storage Right**”). Collectively, the SCPC Direct Flow Right and the SCPC Storage Right are referred to herein as the “**SCPC Water Rights.**”
- C.** Whereas, Pueblo Water entered into a Real Property Lease on September 9, 1996 (“**Lease**”), with Utilicorp United, Inc., by its Division, WestPlains Energy (“**WestPlains**”). Black Hills is the successor-in-interest to WestPlains as Landlord of the Lease. By its terms, the Lease allows, *inter alia*, Pueblo Water to use the water conveyance facilities associated with the SCPC Water Rights, and

grants Pueblo Water a right of first refusal to purchase the SCPC Water Rights and said related water facilities under certain circumstances. The water conveyance facilities associated with the SCPC Water Rights, together with any easements or rights of way that may be necessary for and associated with those facilities and owned by Black Hills, are collectively referred to herein as the “**SCPC Water Facilities.**” The SCPC Water Facilities shall include, but are not limited to, any interest that Black Hills may have in and to the facilities listed on **Exhibit 1**, attached hereto and the real property described in Exhibit 2, attached hereto. Exhibit 3, attached hereto, provides the approximate location for the SCPC Water Facilities. All Exhibits to this Agreement are incorporated by reference. Black Hills has made no representation of ownership, interests or title in and to any of the SCPC Water Facilities, inclusive of those facilities and the real property listed in Exhibits 1 and 2. Nor does Black Hills represent that the list of facilities in Exhibit 1 and real property described in Exhibit 2 provide a comprehensive list of all the conveyance facilities and easements associated with the SCPC Water Rights.

- D. Whereas, by Ordinance 8186, effective August 12, 2010, the City granted to Black Hills a non-exclusive franchise to furnish and sell electricity to the City and its residents (“**Franchise Agreement**”) which, *inter alia*, includes a right of first refusal to the City for certain of Black Hills’ real estate or water facilities under certain circumstances.
- E. Whereas, Black Hills is no longer generating electricity at the Power Plant and is in the process of decommissioning the Power Plant. Accordingly, Black Hills is not currently using the SCPC Water Rights and SCPC Water Facilities for cooling purposes at the Power Plant. In support of the HARP, Black Hills wishes to convey and Pueblo Water desires to own the SCPC Water Rights. In addition, Black Hills wishes to convey and the City wishes to own the SCPC Water Facilities.

## **AGREEMENT**

**NOW THEREFORE**, for and in consideration of the understandings of the Parties set forth in the Recitals and the mutual promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Conveyance.** Black Hills agrees to convey the SCPC Water Rights to Pueblo Water by quit claim deed, substantially in the form attached as Exhibit 4, and the

SCPC Water Facilities to the City by quitclaim deed, substantially in the form attached as Exhibit 5, on the closing date, as defined below. Black Hills will also provide the City a Bill of Sale, substantially in the form attached hereto as Exhibit 6, for any equipment or tangible property appurtenant to the SCPC Water Facilities, which bill of sale will be subject to paragraphs 7 and 10 of this Agreement. All defined terms contained in the Recitals, including but not limited to SCPC Water Rights, SCPC Water Facilities, Lease, IGA, HARP and Franchise Agreement, are applicable to this Agreement.

2. **Price.** Black Hills will not seek monetary remuneration from Pueblo Water or from the City for its conveyance of the SCPC Water Rights and SCPC Water Facilities; instead, Black Hills will seek a tax credit/deduction for the donation of the value of those assets under this Agreement. Pueblo Water and the City agree that the SCPC Water Rights and SCPC Water Facilities have actual value to them and to the HARP, and agree to cooperate with Black Hills in the valuation of those rights for tax purposes.
3. **Public Utilities Commission Contingency.** Black Hills is regulated by the Public Utilities Commission (“PUC”); Black Hills may need PUC approval prior to carrying out certain obligations that are the subject of this Agreement. The Parties agree to cooperate to obtain any PUC approvals necessary for Black Hills to carry out its obligations under this Agreement. Black Hills anticipates that it will make the necessary filing with the PUC in order to obtain a determination whether PUC approval of certain Black Hills obligations pursuant to this Agreement is required and, if necessary, to obtain approval during the month of \_\_\_\_\_ 2016 and that the PUC will make its final decision within the statutory timeframe provided in §40-6-109.5, C.R.S. The PUC decision may be subject to review or appeal as provided by law. This Agreement is expressly contingent on Black Hills obtaining any requisite PUC approval of certain obligations that are the subject of this Agreement prior to closing, which decision will be deemed final at the time the PUC’s decision is no longer subject to review, appeal or litigation (“**Final PUC Approval**”). Black Hills will not be considered in breach of this Agreement for failure to perform any of its obligations due to a failure to obtain the Final PUC Approval of obligations that are the subject of this Agreement following its good faith efforts to do so. In the event the PUC does not approve of certain obligations that are the subject of this Agreement, or approves of certain obligations that are the subject of this Agreement subject to terms and conditions that Black Hills deems unacceptable in its sole discretion, Black Hills may, but is not required to, appeal the decision as allowed under law. If the PUC does not approve of certain obligations that are the subject of this

Agreement, or approves them subject to terms and conditions that Black Hills deems unacceptable in its sole discretion, this Agreement will terminate and all rights and obligations hereunder will become null and void, and of no effect at the time the PUC's decision is no longer subject to review, appeal or litigation. Black Hills will provide notice to Pueblo Water and the City of satisfaction of the contingency contained in this paragraph or termination of this Agreement pursuant to this paragraph.

4. **Due Diligence.** Pueblo Water and the City may conduct any due diligence investigations as they see fit prior to Closing. Black Hills will cooperate with the City and Pueblo Water at no cost to Black Hills in order for due diligence activities to be completed. As part of this cooperation, Black Hills will, without charge, make available for review and copying by Pueblo Water and the City existing SCPC Water Rights diversion records, Power Plant years of production records, maintenance records for the SCPC Water Facilities and maps or drawings of the SCPC Water Facilities. Pueblo Water and City will be responsible for copy costs. At any time prior to closing pursuant to this Agreement, Pueblo Water or the City may notify the other Parties that as a result of its due diligence efforts it has determined that it will not proceed with the transaction pursuant to this Agreement. The determination not to proceed will be at the sole discretion of the City or Pueblo Water and this Agreement will terminate once notice is provided pursuant to this paragraph.
5. **Closing.** The Parties shall schedule a closing to be held at a mutually agreeable time in Pueblo, Colorado, to be held on or before 10 calendar days after Black Hills provides notice of satisfaction of the contingency in Paragraph 3 above ("**Closing**"), unless said date for Closing is extended in writing by the Parties.
6. **Decommissioning.** Black Hills, as a condition of decommissioning the Power Plant, may need to perform work on water conveyance facilities associated with the Power Plant other than those SCPC Water Facilities being conveyed to the City. In order to perform such work, Black Hills may need to dewater all or a portion of the SCPC Water Facilities. Pueblo Water and the City agree to cooperate with Black Hills in the completion of any such necessary work associated with the decommissioning of the Power Plant, at no cost to Pueblo Water and the City. As part of this cooperation, the Parties will coordinate to attempt to schedule any dewatering at a time which will not conflict with scheduled HARP activities.
7. **No Warranties.** Black Hills makes no warranties concerning the past or future legal right, title, interest, condition, operation or use of the SCPC Water Rights or

SCPC Water Facilities for either Pueblo Water's or the City's purposes, or the use of the same in conjunction with the HARP. Pueblo Water and the City agree to accept the SCPC Water Rights and the SCPC Water Facilities respectively in their "as is-where is" condition.

8. **Notice.** All notices and other communications that are required or permitted to be given to the Parties under this Agreement will be sufficient in all respects if given in writing and delivered in person, by express courier, or by First Class U.S. Mail, postage prepaid. Notice delivered in person or by courier will be effective upon such delivery; notice provided through U.S. Mail will be effective three days after deposit in the U.S. Mail. Notice will be given to the receiving party at the following addresses:

If to Black Hills: Bret Jones  
105 S. Victoria Avenue  
Pueblo, CO 81003

If to Pueblo Water: Board of Water Works of Pueblo  
Attn: Executive Director  
Mail: P.O. Box 400 Pueblo, CO 81002-0400      or      Hand Delivery: 319 West 4<sup>th</sup> Street Pueblo, Colorado 81003

If to the City:  
  
City Manager  
1 City Hall Place, 2<sup>nd</sup> Floor  
Pueblo, CO 81003

With a copy to:

City Attorney  
1 City Hall Place, 3<sup>rd</sup> Floor  
Pueblo, CO 81003

or to such other address as such party may have given to the other by notice pursuant to this paragraph.

## 9. **Prior Agreements.**

9.1. Pueblo Water and Black Hills agree that the Lease will terminate upon closing on this Agreement and no terms, right or obligations of the Lease shall survive said closing. Pueblo Water consents to Black Hills entering into all aspects of this Agreement, including but not limited to the conveyance of the SCPC Water Facilities to the City, and, upon closing pursuant to this Agreement, waives any claims it may have for a right of first refusal for the purchase of the SCPC Water Facilities under the Lease.

9.2. The City consents to Black Hills entering into all aspects of this Agreement, including but not limited to the conveyance of the SCPC Water Rights to Pueblo Water, and, upon closing pursuant to this Agreement, waives any claims it may have for a right of first refusal for the purchase of the SCPC Water Rights under the Franchise Agreement.

9.3. Pueblo Water represents that this Agreement is consistent with the Lease and IGA. The City represents that this Agreement is consistent with the Franchise Agreement and IGA. Black Hills makes no representations regarding the consistency of the Agreement with the Lease and IGA.

10. **DISCLAIMER.** BLACK HILLS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, STATUTORY OR IMPLIED WITH RESPECT TO THE CONVEYANCE OF THE SCPC WATER RIGHTS TO PUEBLO WATER AND THE SCPC WATER FACILITIES TO THE CITY. BLACK HILLS EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHER, INCLUDING BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR CONFORMITY TO ANY PARTICULAR STANDARDS, IT BEING EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT PUEBLO WATER AND THE CITY SHALL BE DEEMED AS AGAINST BLACK HILLS TO OBTAIN AND ACCEPT THE PROPERTY AND ANY APPURTENANT EQUIPMENT OR TANGIBLE PROPERTY IN THEIR PRESENT STATUS, CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS" WITH ALL FAULTS, AND THAT PUEBLO WATER AND THE CITY HAVE MADE OR CAUSED TO BE MADE SUCH INSPECTIONS AS THEY HAVE DEEMED APPROPRIATE AS AND WHEN PERMITTED BY THIS AGREEMENT.

11. **No Third Party Beneficiaries.** Nothing in this Agreement entitles any person other than Black Hills, Pueblo Water, and the City, or their respective successors and permitted assignees, to any claims, causes of action, remedy or right of any kind.
12. **Survive Closing.** The terms of paragraphs 6, 7, 8, 9, 10, 11 and 16 of this Agreement will survive closing and the transfer of the SCPC Water Rights and SCPC Water Facilities to Pueblo Water and the City respectively.
13. **Headings for Convenience Only.** The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.
14. **Government Authority.** In the performance of this Agreement the Parties shall comply with any and all valid state, federal or local laws or regulations covering the subject of this Agreement, and any and all valid orders, regulations or licenses issued pursuant to any federal, state or local law or regulation governing the subject of this Agreement.
15. **Counterparts.** This Agreement can be executed in counterparts, each of which is deemed an original of this Agreement, and which together constitutes one and the same instrument. When executed in counterparts, no Party is bound to this Agreement until all parties have executed and delivered to the other Parties an executed counterpart.
16. **Property Taxes.**  
Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of closing will be prorated to date of closing based on taxes for the calendar year immediately preceding closing. If this cannot be determined on the date of closing, Black Hills agrees to pay the City and/or Pueblo Water an amount equal to the taxes owed through the date of closing on property conveyed by Black Hills pursuant to this Agreement. This amount will be paid within thirty (30) days of receipt of a copy of a tax bill and a request for payment by the City and/or Pueblo Water. This provision will survive closing.
17. **Effective Date.** This Agreement is effective on the latest date of signature below.

IN WITNESS WHEREOF, the parties have executed this Agreement, as of the effective date.

**BLACK HILLS/COLORADO  
ELECTRIC UTILITY COMPANY LP  
A DELAWARE LIMITED PARTNERSHIP  
By: BLACK HILLS/COLORADO UTILITY  
COMPANY, LLC AS GENERAL PARTNER**

By \_\_\_\_\_

Date: \_\_\_\_\_

**Name: Christopher Burke**

**Title: Vice President of Electrical Operations**

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF PUEBLO            )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public



**BOARD OF WATER WORKS OF PUEBLO, COLORADO**

By \_\_\_\_\_

Date: \_\_\_\_\_

**Terry R. Book**  
**Executive Director**

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF PUEBLO            )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Terry R. Book \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

**PUEBLO, a Municipal Corporation**

By \_\_\_\_\_  
**Stephen G. Nawrocki**  
**Title: President of City Council**

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**Gina Dutcher, City Clerk**

STATE OF COLORADO )  
 ) ss.  
COUNTY OF PUEBLO )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Stephen G. Nawrocki, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Daniel C. Kogovsek, City Attorney**

## EXHIBIT 1

### To Agreement for Conveyance of Southern Colorado Power Water Rights And Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo

The following facilities located in the S1/2 of the NW1/4 and the SW1/4 of the NE/1/4 of Section 36, Township 20 S, Range 65 W of the 6th P.M.:

1. Diversion Dam in Arkansas River;
2. Sand Gate at Diversion Dam;
3. Debris wall at intake;
4. Intake grizzlies (a.k.a. trash racks);
5. North tile gate (48" gate at intake at head of north water conduit);
6. South tile gate (48" gate at intake at head of south water conduit);
7. Control structure on top of the two 48" tile gates;
8. Electrical equipment below control structure inside the flood dike on top of the two 48" inch tile gates;
9. The two 48" conduits from the intake under the rail yards to the North and South Ponds;
10. Recirculation gate between North and South ponds, located proximate to intakes;
11. Culverts under the rail spur connecting west and east portions of the North and South Ponds;
12. South Pond Screen House, related control gates, control gate structure and weir, including related controls (to regulate the water over the weir from south pond to Lake Elizabeth) (Note: the conduits from the Screen House to the decommissioned power plant, and from said power plant back to the Screen house have been filled with concrete and are no longer operational);
13. Two gates and dyke between North Pond and Lake Elizabeth (one is not operational, the other known as the Gabby Gate is the primary structure used to deliver water to Lake Elizabeth for the HARP; and
14. Any interest in the North Pond (west and east portions), South Pond (west and east portions), and Lake Elizabeth structures, exclusive of any water rights that may be associated therewith (which ponds structures may also be known as the "SCPC Lakes" or "SCPC Cooling Ponds"). (NOTE: The Pueblo County Assessor Office online mapping records indicate that the parcels underlying these structures are owned by various other entities).

**Note: This exhibit is provided subject to the terms of the Agreement, including but not limited to paragraphs 7 and 10 thereof. Black Hills makes no representation of ownership, interest or title in and to any of the above listed structures, property or facilities and expressly disclaims any warranties pertaining thereto.**

## EXHIBIT 2

### To Agreement for Conveyance of Southern Colorado Power Water Rights And Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo

#### Parcel 1

That certain diversion dam, with its appurtenances, constructed in the new channel of the Arkansas River as part of the intake works provided by the grantor as a part of the Official Plan of The Pueblo Conservancy District for diverting water from said new channel for the purpose of preserving for said grantee its supply of water for cooling and condensing purposes at its Pueblo power plants, with the right on the part of the grantee to operate, alter, repair, reconstruct, remove or extend to same; together with an easement for all of said purposes upon the land of the grantor upon which said diversion dam is located, and upon and along the adjoining lands of the grantor located within the new channel of the Arkansas River, as may well as the north and south embankments of said channel, as may be necessary for any and all of said purposes, said dam being located upon the following described tract of land, to-wit:

A tract of land fifty (50) feet wide and three hundred (300) feet long, in the South half of the Northwest Quarter (S1/2 of NW1/4) of Section 36, Township 20 South, Range 65 West of the, Sixth Principal Meridian, bounded and described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89° 24' 27" W which is the basis of bearing; thence S 82° 48' 03" W, 1,868.24 feet to a point which is on the center-line between two existing four foot concrete pipe conduits, said point being 99.00 feet Northeasterly at right angles from the center-line of the now existing West Bound main line track of the Denver & Rio Grande Western Railroad Company; thence along the center-line between the two four foot concrete pipe conduits, (which the Official Plan of The Pueblo Conservancy District shows to bear S 57° 02' 40" W,) S 57° 14' 11" W, 515.00 feet; thence S 32° 45' 49" E, 5.95 feet to the True Point of Beginning of Parcel 1, hereby conveyed; thence S 57° 34' 11" W, 300.00 feet; thence S 32° 25' 49" E, 50.00 feet; thence N 57° 34' 11" E, 300.00 feet; thence N 32° 05' 49" W, 50.00 feet to the True Point of Beginning.

#### Parcel 2:

That certain intake structure, with its appurtenances, located in the northerly levee embankment of the new channel of the Arkansas River, as said intake works were constructed by the grantor as a part of the Official Plan of The Pueblo Conservancy District for the purpose of preserving for said grantee its supply of water for cooling and condensing purposes at its Pueblo power plants, with the right on the part of the grantee to operate, alter, repair or reconstruct the same; together with an easement for all of said purposes upon the land of the grantor upon which said intake structure is located within the new channel of the Arkansas River, as well as the north levee embankment of said channel, as may be necessary for any and all to said purposes, said

intake structure being located upon the following described tract of land, to-wit:

A tract of land fifty (50) feet wide and seventy-five (75) feet long, in the South half of the Northwest Quarter (S1/2 of NW1/4) of Section 36, Township 20 South, Range 65 West of the

Sixth Principal Meridian, bounded and described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89°24' 27" W which is the basis of bearing; thence S 82° 48' 03" W, 1,868.24 feet to a point which is on the center-line between two existing four foot concrete pipe conduits, said point being 99.00 feet Northeasterly at right angles from the center-line of the now existing West Bound main line track of the Denver & Rio Grande Western Railroad Company; thence along the center-line between the two four foot concrete pipe conduits, (which the Official Plan of The Pueblo Conservancy District shows to bear S 57° 02' 40" W,) S 57° 14' 11" W, 460.00 feet to the True Point of Beginning of Parcel 2, hereby conveyed; thence N 32° 45' 49" W, 25.00 feet; thence S 57° 14' 11" W 75.00 feet; thence S 32° 45' 49" E 50.00 feet thence N 57° 14' 11" E, 75.00 feet; thence N 32° 45' 49" E, 25.00 feet to the True Point of Beginning.

**Parcel 3:**

Those certain conduit structures consisting of two (2) forty-eight (48) inch reinforced concrete pipes, and their supports and appurtenances, extending Northeasterly from the intake structure described in Parcel 2 hereof, in a straight line into the old channel of the Arkansas River, as said conduit structures were constructed as a part of the Official Plan of The Pueblo Conservancy District, for the purpose of preserving for said grantee its supply of water for cooling and condensing purposes at its Pueblo power plants; together with an easement for the maintenance and operation of said conduit structures upon the following described tract of land upon which said structures are located, to-wit:

A tract of land, fifty (50) feet wide and four hundred sixty (460) feet long, in the South Half of the Northwest Quarter (S1/2 of NW1/4) of Section 36, Township 20 South, Range 65 West, of the Sixth Principal Meridian, being a strip of land twenty-five (25) feet in width on each side of a center-line, four hundred sixty (460) feet in length, described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89° 24' 27" W which is the basis of bearing; thence S 82° 48' 03" W, 1,868.24 feet to the True Point of Beginning; thence S 57° 14' 11" W, 460.00 feet, said center-line being located along the center-line of two existing four foot concrete pipe conduits which lie under the tracks of the Denver & Rio Grande Western Railroad Company (which the Official Plan of The Pueblo Conservancy District shows to bear S 57° 02' 40" W,).

**Parcel 4:**

An easement and right of way for the flow, pondage and circulation of water over, upon, along, and across that portion of the old channel of the Arkansas River adjacent to the Southerly bank thereof and lying between the conjunction of the conduit structures described in Parcel 3 hereof with said old channel, and the Southwesterly boundary of the existing railway transfer

yards as constructed by The Pueblo Conservancy District, together with all culverts and water-way structures located thereon, said portion of said old channel covered by the easement and right of way in this Parcel 4 granted being more particularly described as follows, to-wit:

A tract of land in the South half of the Northwest Quarter (S1/2 of NW1/4) of Section 36, Township 20 South, Range 65 West, of the Sixth Principal Meridian, being a part or portion of the old channel of the Arkansas River, and more particularly described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89° 24' 27" W which is the basis of bearing; thence S 82° 48' 03" W, 1,868.24 feet to a point which is on the center-line between two existing four foot concrete pipe conduits that bear S 57° 14' 11" W, (which the Official Plan of The Pueblo Conservancy District shows to bear S 57° 02' 40" W,) , said point being 99.00 feet Northeasterly at right angles from the center-line of the now existing West Bound main line track of the Denver & Rio Grande Western Railroad Company; thence S 32° 45' 49" E, 25.00 feet; thence S 57° 14' 11" W, 107.00 feet; thence S 70° 27' 20" E, 211.82 feet; thence S 00° 00' 00" E, 60.00 feet; thence S 81° 48' 20" E, 630.00 feet; thence N 81° 20' 43" E, 87.54 feet to a point which lies 34.00 feet Southwesterly at right angles from the center-line of the Northerly track of the Missouri Pacific Railroad Company; thence N 61° 02' 49" W, 237.05 feet parallel to and 34.00 feet Southwesterly of the center-line of the Missouri Pacific Railroad Company's Northerly track; S 75° 16' 18" W, 36.83 feet; thence S 60° 55' 29" E, 600.08 feet; thence S 69° 11' 31" W, 86.00 feet; thence S 15° 52' 35" W, 75.99 feet; thence S 57° 14' 11" W, 188.00 feet; thence S 32° 45' 49" E, 25.00 feet to the True Point of Beginning.

#### **Parcel 5:**

An easement and right of way for the flow, pondage and circulation of water over, upon, along and across the following described lands, together with all culverts and water-way structures now located thereon, and together with the right to operate, maintain, alter, repair and reconstruct existing structures of grantee thereon, and to erect, construct, maintain, alter, repair, reconstruct and operate such new structures as grantee, its successors and assigns, may at any time determine to be useful or convenient in connection with its water supply for its Pueblo power plants as now existing or hereafter constructed; provided, however, that no such new structures shall be erected by the grantee which shall in any way unreasonably interfere with the use of railway rights of way now existing or hereafter to be granted in accordance with the Official Plan of The Pueblo Conservancy District; the tract of land covered by the easement and right of way in this Parcel 5 conveyed being described as follows, to-wit:

A tract of land in the South Half of the Northwest Quarter (S1/2 of NW1/4), and in the South Half of the Northeast Quarter (S1/2 of NE1/4) of Section 36, Township 20 South, Range 65 West of the Sixth Principal Meridian, being a part or portion of the old channel of the Arkansas River, and more particularly described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89° 24' 27" W

which is the basis of bearing; thence S 20° 58' 32" W 220.64 feet to the True Point Beginning; thence N 74° 02' 42" W, 258.00 feet; thence N 89° 52' 38" W, 370.00 feet; thence S 80° 05' 00" W, 300.00 feet; thence S 27° 37' 43" W, 35.20 feet; thence S 08° 18' 26" E, 60.94 feet, to a point on the center-line of the Northerly track of the Missouri Pacific Railroad Company; thence S 75° 16' 18" W, 49.23 feet; thence S 61° 02' 49" E, 237.05 feet parallel to and 34.00 feet Southwesterly of the center-line of the Missouri Pacific Railroad Company's Northerly track; thence S 82° 16' 15" E 541.87 feet thence along a curve to the left whose center bears N 18° 07' 08" W, 711.22 feet as shown on said recorded plat of the Historic Arkansas Riverwalk Project, Filing One a distance of 230.28 feet; thence N 53° 19' 47" E 27.83 feet; thence N 00° 35' 33" W, 149.47 feet; to the True Point of Beginning.

**Historic Arkansas Riverwalk Project, Parcel A, Block 1:**

An easement and right of way for the purposes of a water course as flow, pondage, circulation, and outlet of the water supply of the power plants of the grantee at Pueblo, Colorado, now existing or hereafter erected over, upon, along and across the following described strip of land, together with all culverts and water-way structures now located thereon, and together with the right to operate, maintain, alter, repair and reconstruct such existing culverts and water-way structures, and to erect, construct, maintain, alter, repair, reconstruct and operate such new or additional structures on said strip of land as grantee, its successors and assigns, may at any time determine to be useful or convenient in connection with the easement and right of way in this Parcel 7 conveyed being described as follows, to-wit:

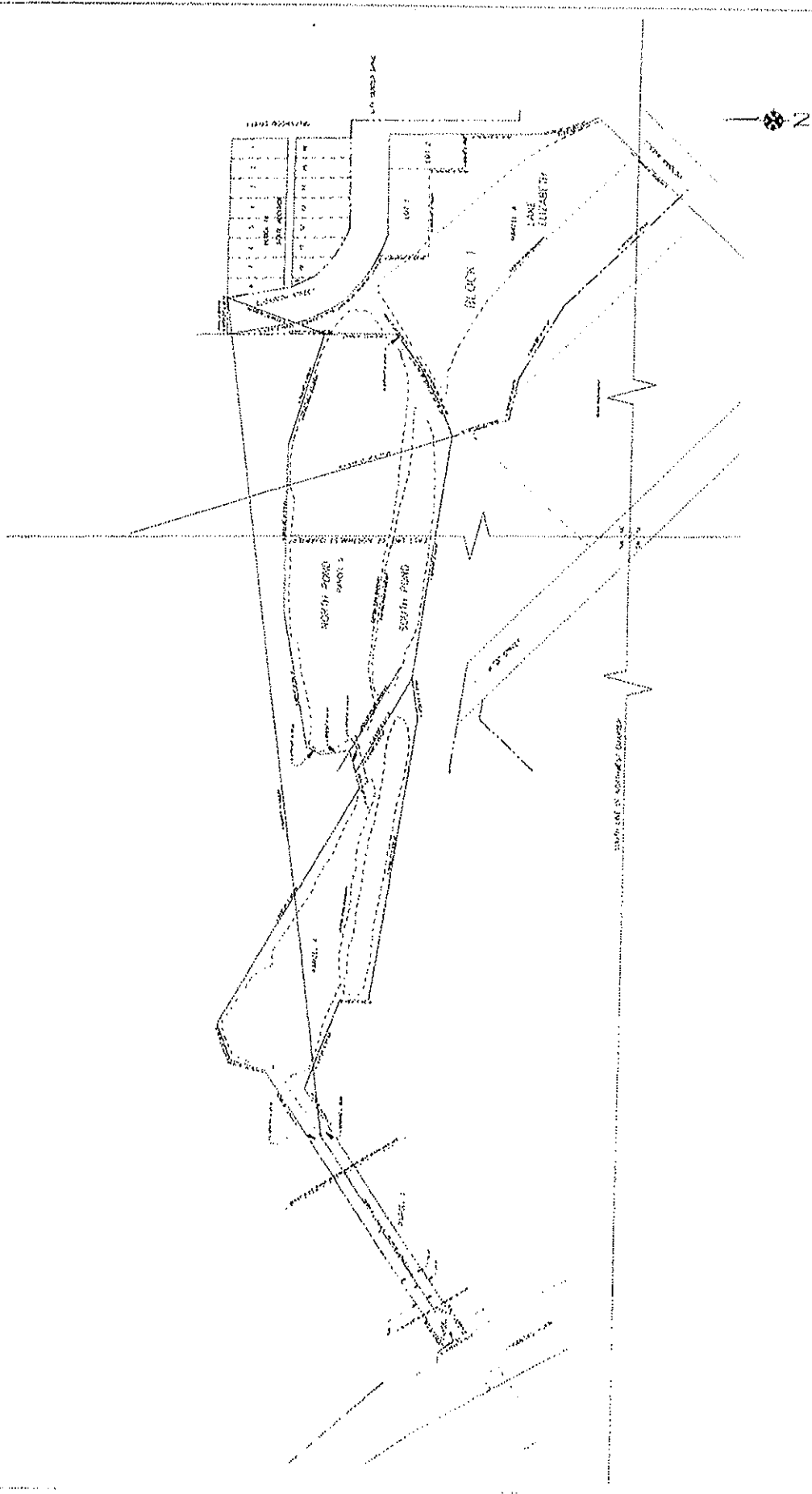
A tract of land, being a part or portion of the old channel of the Arkansas River, in the East half (E1/2) of Section 36, Township 20 South, Range 65 West of the Sixth Principal Meridian, more particularly described as follows:

A Certain parcel as platted in the Historic Arkansas Riverwalk Project, Filing One according to the recorded plat thereof; being Parcel A, Block 1 of said Historic Arkansas Riverwalk Project, Filing One.

Book: 2933 Page: 15 Chris C. Munoz  
Page: 24 of 25 Pueblo Co. Clk. & Rec.

Exhibit 3

To Agreement for Conveyance of Southern Colorado Power Water Rights  
 And Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo



**SOUTHERN COLORADO POWER CO**  
**PARCEL LEGAL DESCRIPTION**

City of Pueblo, Colorado  
 Pueblo, Colorado

Map No. 117  
 Date: 11/17/04  
 Project: Pueblo Riverwalk

All parties shown are located in  
 Section 16, Township 37 S,  
 Range 64 W, City of Pueblo,  
 Colorado



**Exhibit 4**

**To Agreement for Conveyance of Southern Colorado Power Water Rights  
And Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo**

**QUIT CLAIM DEED**

**THIS DEED**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, between Black Hills/Colorado Electric Utility Company, LP, a Delaware Limited Partnership, Grantor, and the Board of Water Works of Pueblo, Colorado, established pursuant to Section 15-2 of the Charter for the City of Pueblo, Colorado, whose legal address is 319 W. Fourth Street, Pueblo, Colorado 81003, of the County of Pueblo, and State of Colorado, Grantee.

**WITNESSETH**, that the Grantor, for and in consideration of the sum of Zero Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and **QUIT CLAIMED**, and by these presents does remise, release, sell and **QUIT CLAIM** unto the Grantee, its heirs, successors and assigns, forever, all the right, title, interest and demand which the Grantor has in and to the decreed water rights described as follows:

The Southern Colorado Power Company’s Cooling and Condensing System for 200 cubic feet of water per second with Non-Irrigation Priority No. 1; and the Southern Colorado Power Company’s Cooling Basin, Non-Irrigation Reservoir Priority No. 5, with the Priority Date of April 14, 1926, for 4,553,548 cubic feet (104.78 acre-feet); all as more fully described in the October 13, 1932, Decree in Case No. 19693 in the Pueblo County District Court entitled “In the Matter of the Adjudication of Rights to the Use of Water for Beneficial Purposes other than Irrigation in Water District No. 14, of the State of Colorado.”

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantee, its heirs, successors and assigns forever.

**IN WITNESS WHEREOF**, the Grantor has executed this Deed on the date set forth above.

Black Hills/Colorado Electric Utility Company, LP,  
a Delaware Limited Partnership  
By: Black Hills/Colorado Utility Company, LLC, as General Partner

By: \_\_\_\_\_  
Title: Manager

STATE OF COLORADO )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing document was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_ as \_\_\_\_\_ of Black Hills/Colorado Utility Company, LLC as General Partner for Black Hills/Colorado Electric Utility Company, LP, a Delaware Limited Partnership.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**Exhibit 5**

**To Agreement for Conveyance of Southern Colorado Power Water Rights  
And Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo**

**QUIT CLAIM DEED**

**THIS DEED**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, between Black Hills/Colorado Electric Utility Company, LP, a Delaware Limited Partnership, Grantor, and Pueblo, a Municipal Corporation, organized and existing under the constitution and laws of the State of Colorado, whose legal address is 1 City Hall Place, 2<sup>nd</sup> Floor, Pueblo, Colorado 81003, of the County of Pueblo, and State of Colorado, Grantee.

**WHEREAS**, that Grantor has conveyed by deed, dated as of the same date as this deed, the Southern Colorado Power Company’s Cooling and Condensing System water right and the Southern Colorado Power Company’s Cooling Basin reservoir right (collectively referred to herein as the “SCPC Water Rights”) to the Board of Water Works of Pueblo, Colorado and Grantor desires to deed to Grantee, as provided herein, the water conveyance facilities associated with the SCPC Water Rights.

**NOW, THEREFORE**, the Grantor, for and in consideration of the sum of Zero Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and **QUIT CLAIMED**, and by these presents does remise, release, sell and **QUIT CLAIM** unto the Grantee, its heirs, successors and assigns, forever, all the right, title, interest and demand which the Grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Pueblo, State of Colorado described as follows:

All water conveyance facilities associated with the SCPC Water Rights, as defined above and incorporated herein, together with any easements or rights of way that may be necessary for and associated with these facilities (collectively referred to herein as the “SCPC Water Facilities”). The SCPC Water Facilities include, but are not limited to, the facilities listed on Exhibit 1 to Agreement for Conveyance of Southern Colorado Power Water Rights and Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo and the real property described in Exhibit 2 to Agreement for Conveyance of Southern Colorado Power Water Rights and Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo. Exhibit 3 to Agreement for Conveyance of Southern Colorado Power Water Rights and Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo provides the approximate location for the SCPC Water Facilities.

Exhibits 1, 2, and 3 are attached hereto and incorporated herein.

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantee, its heirs, successors and assigns forever.

**IN WITNESS WHEREOF**, the Grantor has executed this Deed on the date set forth above.

Black Hills/Colorado Electric Utility Company, LP,  
a Delaware Limited Partnership  
By: Black Hills/Colorado Utility Company, LLC, as General Partner

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

STATE OF COLORADO                     )  
   ) ss  
COUNTY OF \_\_\_\_\_            )

The foregoing document was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_ as \_\_\_\_\_ of Black Hills/Colorado Utility Company, LLC, as General Partner for Black Hills/Colorado Electric Utility Company, LP, a Delaware Limited Partnership.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_ Notary Public \_\_\_\_\_

**Exhibit 6**

**To Agreement for Conveyance of Southern Colorado Power Water Rights  
And Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo**

**BILL OF SALE**

KNOW ALL MEN BY THESE PRESENT, Black Hills/Colorado Electric Utility Company, LP, a Delaware Limited Partnership (“Black Hills”), for and in consideration of Zero Dollars and no cents, from Pueblo, a Municipal Corporation (“City”), of the County of Pueblo, State of Colorado, hereby sells, grants and conveys, without any warranty, unto City, its heirs, successors and assigns, the following property:

See Exhibit 1 to Agreement for Conveyance of Southern Colorado Power Water Rights and Related Facilities in Support of Historic Arkansas Riverwalk of Pueblo, attached hereto and incorporated herein

IN WITNESS WHEREOF, Black Hills hereunto sets its hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Black Hills/ Colorado Electric Utility Company, LP,  
a Delaware Limited Partnership  
By Black Hills/Colorado Utility Company, LLC as General Partner

By: \_\_\_\_\_  
Title: Manager

STATE OF COLORADO        )  
  )   SS  
COUNTY OF PUEBLO        )

The foregoing Bill of Sale was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_ as Manager of Black Hills/Colorado Utility Company, as General Partner for Black Hills/Colorado Electric Utility Company, LP, a Delaware Limited Partnership.

My commission expires: \_\_\_\_\_ Notary Public  
\_\_\_\_\_