# Schedule “C” Mutual Non-Disclosure Agreement

This Non-Disclosure Agreement (the "Agreement") is made and entered into \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Effective Date”) by and between , located at and Platte River Power Authority (“Platte River”), a political subdivision of the State of Colorado located at 2000 East Horsetooth Road, Fort Collins, CO 80525, referred to collectively as “the Parties” and individually as “Party.”

For purposes of this Agreement, the terms "Receiving Party" and "Disclosing Party" shall include the Party's agents, employees and representatives.

In the course of their dealings with each other and in order to engage in discussions and exchanges of information relating to the business and products of both Parties, including but not limited to discussions of related technical and business initiatives, to determine whether the Parties wish to enter into a business relationship for their mutual benefit ("Business Purpose"), the undersigned Parties may, from time to time, disclose certain technical, business and other information, some of which may be Confidential Information, as that term is later defined in this Agreement. The Parties hereby desire to establish and set forth their mutual obligations with respect to the use and disclosure of such Confidential Information. In consideration of the mutual disclosures, promises and obligations contemplated herein, the Parties agree as follows:

1. “Confidential Information” means non-public information of a competitive or commercially sensitive, proprietary, financial, trade secret nature, or information that involves or implicates privacy or security interests. Confidential Information includes business plans, strategies, forecasts, analyses, financial information, employee information, customer information, technology information, trade secrets, products, technical data, specifications, documentation, rules and procedures, methods, contracts, presentations, know-how, product plans, business methods, product functionality, data, customers, markets, competitive analysis, databases, formats, methodologies, applications, developments, inventions, processes, payment, delivery and inspection procedures, designs, drawings, algorithms, formulas or information relating to engineering, marketing, or finance and any other information that the Receiving Party should reasonably believe to be confidential given the circumstances or the nature of the information. Prices contained in a bid proposal are not Confidential Information

II. Notwithstanding the foregoing, "Confidential Information" shall not include information or disclosure that the Receiving Party can demonstrate:

A. Is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available to the public;

B. Was known by the Receiving Party before receiving such Confidential Information from the Disclosing Party;

1. Is received from a third party without restriction on disclosure and without breach of a nondisclosure obligation;
2. Is independently developed by the Receiving Party without use of or reference to the Confidential Information by persons who had no access to the Confidential Information;
3. Was authorized for disclosure by the Disclosing Party.

III. The Confidential Information shall be used solely for the Business Purpose and shall not be used for any other purpose. All Confidential Information supplied by a Party, unless otherwise agreed to in writing, shall remain the property of the Disclosing Party.

IV. Each Party agrees:

1. To use all reasonable precautions to prevent the unauthorized disclosure of the other Party's Confidential Information;
2. Not to disclose such Confidential Information to any third party, except as specifically authorized herein or as specifically authorized by the other Party in writing;

C. Not to disclose the nature of discussions or the proposed business relationship between the Parties without the prior written consent of the other Party;

E. Not to use any Confidential Information for any purpose other than to carry out the Business Purpose specific to the Disclosing Party.

1. Each Party agrees to preserve, to the maximum extent permitted by law, the confidentiality of Confidential Information supplied to it by another Party. A Party may only disclose the other Party's Confidential Information to those who have a “need-to-know” such Confidential Information in order to carry out the Business Purpose; such as its affiliates, employees, representatives, auditors, attorneys, consultants, advisors, contractors, persons providing financing to the Receiving Party, and to other third parties; provided that any such persons must be informed of and agree to be bound by the confidentiality provisions herein.
2. It shall not be a breach of the confidentiality obligations hereof for the Receiving Party to disclose Confidential Information where, but only to the extent that, such disclosure is required by applicable law, including the Colorado Open Records Act, C.R.S. §§24-72-200.1 et seq., or other laws or regulations. In order to ensure that the Disclosing Party’s Confidential Information is protected, the parties hereby agree that the Disclosing Party’s Confidentlal Information, as designated herein, is provided to the Receiving Party in reliance on this Agreement, and may constitute the trade secrets of Disclosing Party, independently protected by state and federal law. In the event that the Receiving Party shall receive a request from any person, entity, or governmental authority to disclose any information including a public record containing Confidential Information obtained from Disclosing Party, then the Receiving Party shall, (i) give the earliest notice possible to Disclosing Party in writing that such disclosure is or may be required including the terms and circumstances of such request so that Disclosing Party may seek any appropriate protective order, and (ii) cooperate with Disclosing Party seeking the orders, procedures or assurances needed to ensure that all portions of such information which are the trade secrets of, or the proprietary, privileged and confidential commercial and financial information of, Disclosing Party, will be treated as such.
3. ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS.” EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.
4. Upon the request of the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party all copies of the Confidential Information, will destroy all notes, abstracts and other documents that contain Confidential Information, and will provide to the Disclosing Party a written certification of an officer of the Receiving Party that it has done so.
5. Nothing in this Agreement shall be construed as granting any property or other rights (express or implied) to the Receiving Party, by license or otherwise, to any of the Disclosing Party's Confidential Information, except as specifically stated herein.
6. Each Party acknowledges that the covenants and agreements made in this Agreement are reasonable and are required for the reasonable protection of the Parties and that the unauthorized use or disclosure of the other Party's Confidential Information would cause irreparable harm to the other Party. Accordingly, each Party agrees that the other Party will have the right to obtain an immediate injunction against any breach or threatened breach of this Agreement and to enjoin the other Party from engaging in any activity in violation hereof, to enforce the specific performance obligations hereunder; and that no claim by the Party against the other Party or its successors or assigns will constitute a defense or bar to the specific enforcement of such obligations, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.
7. This Agreement shall apply to all Confidential Information disclosed by one Party to the other Party on or after the Effective Date. Unless sooner terminated by mutual written agreement of the Parties hereto, this Agreement and the mutual obligations contained in this Agreement will terminate two (2) years after the Effective Date. All obligations of the Parties hereto with respect to the Confidential Information shall survive any termination or expiration of this Agreement for a period of two (2) years.
8. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege.
9. This Agreement constitutes the complete and exclusive understanding reached between the Parties with reference to the subject matter herein and supersedes all prior communications and agreements, whether oral or written. The terms and conditions set forth herein shall be modified, replaced, assigned or rescinded only in writing and signed by a duly authorized representative of each Party. If one or more of the provisions in this Agreement are deemed void by law, the remaining provisions will continue in full force and effect. This Agreement will be construed and enforced according to the laws of the State of Colorado, U.S.A. without application of the principles of conflict of laws. Venue shall be in the County of Larimer, State of Colorado. This Agreement is not, however, intended to limit any rights that the Parties may have under trade secret, copyright or patent laws which may apply to the subject matter of this Agreement both during and after the term of this Agreement.

Agreed:

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| For: |  |  | For: | Platte River Power Authority |
| By: |  |  | By: |  |
|  | Authorized Signature |  |  | Authorized Signature |
|  |  |  |  |  |
|  | Printed Name |  |  | Printed Name |
|  |  |  |  |  |
|  | Title |  |  | Title |

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| APPROVED AS TO FORM |
|  |
| Deputy General Counsel |