

## Utility directors meeting

MS Teams

Friday, April 16, 2021, 10 a.m.

### Agenda

- Estes Park technical discussions  
a. None provided  
Reuben Bergsten
- Fort Collins technical discussions  
a. None provided  
Adam Bromley
- Longmont technical discussions  
a. None provided  
David Hornbacher
- Loveland technical discussions  
a. None provided  
Joe Bernosky
- Platte River technical discussions  
a. Long haul fiber contracts  
b. Technical support IGA  
c. Wholesale rates  
d. Modeling software  
e. Platte River history  
Paul C. or Darren  
Sarah  
Dave S.  
Pat  
Jason

### Roundtable

### Upcoming topics

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## **Overview of Proposed Intergovernmental Agreement for Technical Support Services**

### **Purpose**

We see growing opportunities for Platte River and its owner communities to collaborate and share staffing expertise (particularly on projects that may require engineering, IT, or other kinds of technical support). To speed up and simplify the contracting and approval process for these types of arrangements, we propose a basic “enabling” or framework agreement (the Intergovernmental Agreement for Technical Support Services or enabling IGA).

### **Approach**

- Each owner community would have a separate enabling IGA, customized according to its needs and preferences to facilitate city council or town board approval
- Each enabling IGA would map out how the parties work together to develop “project orders” when the owner community would like Platte River to provide support services
- Each enabling IGA would list the names and titles of representatives authorized to approve mutually agreeable project orders (individual project orders would not require further governing body approval)
- Each project order would specify key elements like start and end dates, type of expertise needed, estimated staff hours and other resources, and project management process
- Owner communities receiving Platte River support services would be billed at cost for Platte River staff time, vehicle use, and materials

### **Core terms**

The enabling IGA would cover basic terms to underpin all project orders, such as how the parties develop and authorize project orders, billing procedures, governmental immunity, governing law, and so forth.

### **Examples of potential uses**

- Periodic “one-off” projects when owner community in-house staff need extra hands or different expertise
- Follow-on agreements for the existing intergovernmental agreement among Platte River, Fort Collins, and Longmont for customer information systems support
- Follow-on agreements for the existing intergovernmental agreement among Platte River, Loveland, and Estes Park for supervisory control and data acquisition (SCADA) services

## INTERGOVERNMENTAL AGREEMENT FOR TECHNICAL SUPPORT SERVICES

This Intergovernmental Agreement for Technical Support Services (“ Agreement”) is made this \_\_\_\_\_ day of 2021 (the “Effective Date”) by and between the [NAME OF OWNER COMMUNITY], a Colorado municipal corporation (“[Owner Community]”) and PLATTE RIVER POWER AUTHORITY, a political subdivision of the state of Colorado (“Platte River”). [Owner Community] and Platte River may be referred to individually as a “Party” and together as the “Parties.”

### RECITALS

- A. Platte River is a political subdivision of the state of Colorado, formed by agreement of its owner communities of Estes Park, Fort Collins, Longmont, and Loveland with the primary purpose of providing electric generation and transmission services to the owner communities.
- B. To fulfill its mission, Platte River maintains full-time staff with engineering and other types of technical expertise relevant to utility operations and associated business functions.
- C. [Owner Community] may at times have projects that could be completed efficiently with assistance from Platte River to complement the technical expertise of [Owner Community's] own staff.
- D. As governmental entities in Colorado, [Owner Community] and Platte River are authorized under Colorado Revised Statutes section 29-1-203 to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.
- E. Platte River is willing to provide technical services to support [Owner Community] projects when requested from time to time, provided Platte River's Authorized Signatory (as defined in **Section 1**) determines Platte River's available staff have the necessary qualifications and capacity to do so without compromising Platte River's ability to fulfill its primary purpose.

The Parties agree therefore agree as follows:

### AGREEMENT

#### 1. **Defined Terms.**

“Active Project” means a Project for which a Project Order is in effect but not yet completed.

“Agreement” has the meaning given in the preamble.

“Authorized Contact” means a specific individual, as listed on Exhibit B to this Agreement on the Effective Date or as subsequently designated as provided in **Section 6.2**, who serves as the primary contacts for Project implementation under **Section 6.6** and for all routine, informal communications related to this Agreement on behalf of the designating Party.

“**Authorized Signatory**” means a specific individual, as listed on Exhibit B to this Agreement on the Effective Date or as subsequently designated as provided in **Section 6.2**, who has authority to bind a Party by approving and signing Project Orders.

“**Effective Date**” has the meaning given in the preamble.

“**[Owner Community]**” has the meaning given in the preamble.

“**Party**” and “**Parties**” have the meanings given in the preamble.

“**Platte River**” has the meaning given in the preamble.

“**Project**” means a specific set of tasks or services or activities that, with the agreement of the Authorized Signatories for [Owner Community] and Platte River, may be implemented according to the terms of this Agreement and a signed Project Order.

“**Project Order**” means a written instrument (consisting of or including an agreed-upon Project Work Scope) that has been approved and signed by at least one Authorized Signatory of each Party and is therefore binding on the Parties according to its terms and this Agreement.

“**Project Work Scope**” means a written instrument, consistent with the requirements of Exhibit A, that describes a particular Project to be carried out subject to the terms of this Agreement.

2. **Purpose.** The purpose of this Agreement is to establish a framework and set of general terms and conditions to govern periodic collaborations where Platte River may assist [Owner Community] by providing technical support services (such as engineering). Consistent with these general terms and conditions, when terms specified in a Project Work Scope are mutually acceptable to [Owner Community] and Platte River, Authorized Signatories can approve and sign Project Orders to facilitate more timely and efficient completion of agreed-upon Projects using the Parties’ combined technical resources.
3. **Term and Termination.**
  - 3.1 **Term.** This Agreement will be effective on the Effective Date and will remain in effect for a period of one year. Thereafter, this Agreement will automatically renew for additional one-year periods unless both Parties agree in writing to terminate it or one of the Parties exercises its termination rights under **Section 3.2**.
  - 3.2 **Termination.** Either Party may, at any time in its sole discretion for any reason or no reason, terminate this Agreement by providing at least 60 days’ prior written notice to the other Party.
  - 3.3 **Survival.** If this Agreement terminates, any provisions in a Project Order that has not been completed by the termination date will survive until completed unless the Parties specify a written instrument providing for termination that all Active Projects are to be terminated concurrently with this Agreement. Any payment obligations outstanding on the termination date, as well as the provisions in **Section 5**

(Reimbursement for Services; Payment), will survive until fully satisfied. In addition, this **Section 3.3** (Survival), **Section 8** (Standard of Service; No Warranties), **Section 9** (Limitation of Liability) **Section 10** (Independent Contractor Relationship), **Section 11** (No Third-Party Beneficiaries), **Section 13** (Governmental Immunity), **Section 14** (Governing Law and Venue), **Section 15** (Headings; Section and Other References), **Section 16** (Severability), and **Section 18** (Entire Agreement; Amendment) will survive until all statutes of limitations related to claims that could be made in connection with this Agreement have run.

4. **Services.** Subject to **Section 6.4** and **Section 8**, Platte River's services to [Owner Community] under this Agreement will generally consist of engineering, field services, or other technical support services, as more specifically described in Project Orders the Parties elect to issue from time to time.
5. **Reimbursement for Services; Payment.** Platte River will invoice [Owner Community], and [Owner Community] will reimburse Platte River, for its costs to fulfill any Project Orders, as specified in this **Section 5**. If [Owner Community] asks for a Project cost estimate (and Platte River elects to offer a Project proposal under **Section 6.4**), Platte River will provide a good-faith estimate of its total cost to complete the Project Order based on the information [Owner Community] has provided. Any cost estimate for a Project is nonbinding and offered as courtesy only. [Owner Community's] payment obligations for any Project Orders will be as stated in **Sections 5.1** through **5.4**.
  - 5.1 **Invoicing.** Platte River will invoice [Owner Community] on a monthly basis for services provided for all Active Projects. Monthly invoices will reflect (a) the time spent by Platte River staff on Active Projects (calculated as provided in **Section 5.2**), (b) Platte River's actual costs for any parts or third-party services purchased on behalf of [Owner Community], (c) Platte River's actual costs for any unique equipment necessary to carry out Active Projects, and (d) vehicle costs incurred by Platte River on behalf of [Owner Community] (using the applicable federal business mileage rate).
  - 5.2 **Billing Rate.** Platte River's billing rate for staff time devoted to Project Orders will consist of the applicable staff members' direct pay and benefits (without the addition of any administrative costs).
  - 5.3 **Changes to Billing Rate.** [Owner Community] acknowledges that Platte River's billing rate for staff time may change from time to time during the term of this Agreement to reflect changes to applicable staff members' pay and benefits. The billing rate in any Project Order is binding for the duration of the applicable Project.
  - 5.4 **Payment Terms.** Payment will be due within 20 days after Platte River's delivery to [Owner Community] of an invoice under this Agreement. Platte River has the right apply a late fee of 1% per month to any balance outstanding after the due date.
6. **Project Order Development Process.** Whenever the Parties propose to collaborate on a Project within the scope of this Agreement, they will follow the procedures specified in this **Section 6** with the goal of developing a mutually acceptable Project Order.

- 6.1 **Project Work Scope Elements.** Each Project Work Scope under this Agreement must contain, at a minimum, the information specified in Exhibit A, "Project Work Scope Elements."
- 6.2 **Authorized Signatories and Contacts.** A Project Order must be approved and signed by at least one Authorized Signatory for each Party. As of the Effective Date, the Authorized Signatories and Contacts of the Parties are as listed in Exhibit B, "Authorized Signatories and Contacts." Platte River's Authorized Signatories and Contacts may be changed only by Platte River's delivery to [Owner Community] of written notice specifically referring to this Agreement and signed by an officer of Platte River. [Owner Community's] Authorized Signatories and Contacts may be changed only by [Owner Community's] delivery to Platte River of written notice specifically referring to this Agreement and signed by [Owner Community's] Executive Director of Electric Services. Exhibit B, "Authorized Signatories and Contacts," may be updated from time to time to reflect notices validly given under this **Section 6.2**. For [Owner Community], only the Authorized Signatory may bind [Owner Community], approve Project Orders under **Section 6.5**, or approve Changes to Project Orders in writing under **Section 6.7**. [Owner Community's] Authorized Contacts may participate in development of Project Work Scope by initiating requests under **Section 6.3** and will be the primary contacts for Project implementation under **Section 6.6** and for all routine, informal communications between the Parties. Two Authorized Contacts are provided to ensure availability and redundancy for [Owner Community], and Platte River may confer with one or both of them as appropriate for a given project and as each is available.
- 6.3 **Request for Support Services.** [Owner Community] may request support services from time to time according to its needs and preferences. The process to develop a Project Order will begin when an [Owner Community] Authorized Signatory or Contact contacts a Platte River Authorized Signatory to request a proposed Project Work Scope. A request under this **Section 6.3** may be informal (for example, by telephone call or email), but should describe the applicable Project and requested support services in enough detail to enable Platte River to develop a proposed Project Work Scope under **Section 6.4**.
- 6.4 **Proposed Project Work Scope.** After [Owner Community] requests a proposed Project Work Scope under **Section 6.3**, Platte River will make good-faith efforts to promptly acknowledge and consider [Owner Community's] request. Platte River will determine, in its sole discretion, whether it has available and qualified staff and other resources to accommodate the request and whether to develop and deliver to [Owner Community] a proposed Project Work Scope. [Owner Community] acknowledges and agrees that Platte River has no obligation to provide a proposed Project Work Scope and may decline to do so for any reason or no reason. Upon Platte River's decision to decline to provide a proposed Project Work Scope, it will inform [Owner Community] within a reasonable time of the request so that [Owner Community] may make other arrangements.
- 6.5 **Project Order Approval and Memorialization.** A Project Order will take effect and become binding on the Parties when the terms of the Project Order (including the applicable Project Work Scope) have been approved by at least one Authorized Signatory for each of the Parties, which they must signify by signing

and dating the applicable Project Order. All Project Orders will be governed by this Agreement; nothing in a Project Order or Project Work Scope may amend, modify, or override any provision of this Agreement. The Parties recognize and agree that multiple Active Projects may be in effect concurrently.

- 6.6 **Project Implementation.** Whenever there are one or more Active Projects under this Agreement, the Parties will collaborate in good faith to facilitate efficient, successful completion of the applicable Projects. The Parties envision that consistent coordination, ongoing communication, and periodic monitoring will enhance the likelihood of mutually satisfactory outcomes.
- 6.7 **Changes to Project Orders.** Once signed as provided in **Section 6.5**, a Project Order may be modified only by a written instrument (specifically referring to the applicable Project Order) signed by the Authorized Signatories of both Parties.
7. **Notices.** Any formal notice, request, consent, approval, or communication under this Agreement will be binding only if delivered in writing to the Authorized Signatory of the intended recipient by (a) personal service, (b) first class mail, (c) email (confirmed by reply email from the Authorized Signatory) at the contact information specified for the Authorized Signatory in Exhibit B, "Authorized Signatories and Contacts."
8. **Standard of Service; No Warranties.** Platte River, in carrying out Project Orders, will make good-faith efforts to carry out the applicable tasks or activities or services according to the terms specified in the Project Orders using suitably qualified staff members. Except as stated in the preceding sentence, Platte River disclaims all warranties or guarantees concerning its performance under this Agreement (and all associated Project Orders) or the results of any tasks or activities or services it may provide (including warranties of merchantability or fitness for a particular purpose). [Owner Community] acknowledges and agrees that it is fully and independently responsible for determining whether to accept or rely on any services, advice, or recommendations provided by Platte River in connection with this Agreement or any Project Order.
9. **Limitation of Liability.** Neither Party will be liable to the other Party under this Agreement for any consequential, incidental, punitive, exemplary, special, equitable, or indirect damages, lost profits, or other business interruption damages, whether by statute, in tort, or by contract.
10. **Independent Contractor Relationship.** The Parties agree that Platte River is an independent contractor and not an employee, agent, or servant of [Owner Community]. Nothing in this Agreement creates an association, joint venture, or partnership between the Parties or imposes any partnership obligation or liability on either Party. Neither Party will have any right, power, or authority to enter into any agreement or undertaking for, act on behalf of, or act as an agent or representative of the other Party.
11. **No Third-Party Beneficiaries.** This Agreement governs only rights and obligations between the Parties with respect to its subject matter. There are no express or implied third-party beneficiaries of this Agreement.
12. **Appropriation Required.** The financial obligations of the Parties under this Agreement are from year to year only and do not constitute a multiple-fiscal-year debt or other

financial obligation or fiscal obligation of any kind payable in any fiscal year beyond the fiscal year for which funds are appropriated for the payment of expenditures related to this Agreement.

13. **Governmental Immunity.** Nothing in this Agreement will operate as an express or implied waiver by either Party of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*, or of any other defenses, immunities, and limitations of liability available by law to the Parties or their governing bodies, officers, or employees.
14. **Governing Law and Venue.** This Agreement will be governed in all respects by the laws of the state of Colorado (exclusive of choice-of-law principles), and venue for any action related to this Agreement will be in Larimer County, Colorado.
15. **Headings; Section and Other References.** Captions and headings in this Agreement are for ease of reference only and do not constitute part of this Agreement. References to “preamble,” “Section,” and “Exhibit” are to the preamble, sections, and exhibits of this Agreement and encompass the preamble, relevant section (and associated subsections) or exhibit in its entirety unless specifically stated otherwise.
16. **Severability.** If any term (or the application of any term) of this Agreement (or any Project Order) is held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms and their application will remain valid and the Parties will attempt to amend this Agreement in a mutually acceptable manner to restore the Parties to the positions they would be in but for the holding.
17. **Authority.** The Parties recognize the legal constraints imposed on them by the constitutions, statutes, and regulations of the state of Colorado and of the United States, as well as those imposed on [Owner Community] by its charter. Subject to these constraints, the Parties intend to carry out the terms of this Agreement and any Project Order. Nothing in this Agreement obligates either Party to exercise any power or take any action prohibited by applicable law.
18. **Entire Agreement; Amendment.** This Agreement (together with provisions set forth in any Project Orders) contains the entire agreement of the Parties concerning its subject matter. This Agreement may not be amended, modified, or overridden except by a signed, written instrument that specifically refers to this Agreement and is authorized by the city council of [Owner Community] and the general manager of Platte River. Project Orders approved and signed under **Section 6.5** do not constitute amendments to this Agreement.
19. **Counterparts.** This Agreement (and Project Orders) may be signed in counterparts, each of which will be deemed an original and which together will constitute a single binding instrument (and, in the case of a Project Order, an integrated part of this Agreement).

**PLATTE RIVER POWER AUTHORITY**

ATTEST:

By: \_\_\_\_\_  
General Manager/CEO  
Date: \_\_\_\_\_

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel

**[OWNER COMMUNITY NAME]**

ATTEST:

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

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
[Authorizing representative]

APPROVED AS TO FORM:

\_\_\_\_\_  
[Legal representative]

EXHIBIT A

**PROJECT WORK SCOPE ELEMENTS**

- Effective date of Project Order
- Expiration date of Project Order (if any)
- General description of Project
- Type of expertise and skills needed for Project
- Project start date
- Project completion date
- Estimated staff work hours, vehicle charges, and materials to be devoted to Project
- General description of Project management and coordination process
- Nonbinding cost estimate (upon request)
- [Optional additional information]

EXHIBIT B

**AUTHORIZED SIGNATORIES AND CONTACTS**

(Updated March XX, 2021)

*Platte River Power Authority*

For Platte River, only an Authorized Signatory may bind Platte River, approve Project Orders under **Section 6.5**, or approve Changes to Project Orders in writing under **Section 6.7**. Platte River's Authorized Contacts will be the primary contacts for Project implementation under **Section 6.6** and for all routine, informal communications between Parties.

*Authorized Signatory:*

[Name and contact information]

*Authorized Signatory:*

[Name and contact information]

*Authorized Contact:*

[Name and contact information]

*Authorized Contact:*

[Name and contact information]

*Authorized Contact:*

[Name and contact information]

*[Owner Community]*

For [Owner Community], only the Authorized Signatory may bind [Owner Community], approve Project Orders under **Section 6.5**, or approve Changes to Project Orders in writing under **Section 6.7**. [Owner Community's] Authorized Contacts may participate in development of Project Work Scope by initiating requests under **Section 6.3** and will be the primary contacts for Project Implementation under **Section 6.6** and for all routine, informal communications between the Parties.

*Authorized Signatory:*

[Name and contact information]

*Authorized Contact:*

[Name and contact information]

*Authorized Contact:*

[Name and contact information]