**MUTUAL NONDISCLOSURE AGREEMENT**

**PREAMBLE**

This Mutual Nondisclosure Agreement (“**Agreement**”) is made and entered into \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (the “**Effective Date**”) by and between Platte River Power Authority, a political subdivision of the state of Colorado located at 2000 East Horsetooth Road, Fort Collins, CO 80525 (“**Platte River**”) and [**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**], a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] located at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] **(“[*short name/Counterparty*]**”). Platte River and [*short name/Counterparty*] are sometimes individually referred to in this Agreement as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

Through the issuance of a request for proposals, Platte River seeks to purchase up to 200 MW of dispatchable resources interconnected at transmission voltage, that will qualify as accredited capacity for resource adequacy purposes. This Mutual Non-Disclosure Agreement will allow the Parties to share confidential information.

The Parties therefore agree as follows:

**AGREEMENT**

1. **Purpose.** This Agreement sets forth the understanding of the Parties with respect to their mutual rights and obligations regarding the use, disclosure, and protection of Confidential Information (as defined in **Section 3** (“Additional Definitions”)) the Parties may exchange to enable them to evaluate the possibility of entering into one or more proposed transactions or other business relationships (the “**Business Purpose**”).
2. **Term.** The term of this Agreement will begin on the Effective Date and terminate two years thereafter unless either Party terminates this Agreement earlier by providing written notice of termination to the other Party.
3. **Additional Definitions.** In addition to definitions given to capitalized terms elsewhere in this Agreement, the additional terms set forth below will have the definitions given in this **Section 3**.
	1. **Definition of Confidential Information.** Subject to **Section 3.2**, “**Confidential Information**” means information (in whatever form provided (whether orally, in hard copy, electronically, or otherwise)) that (a) is maintained in confidence by Disclosing Party (including information of third parties to which Disclosing Party owes legal or contractual duties of confidentiality), (b) has been marked or otherwise clearly identified by Disclosing Party as confidential at the time of disclosure, and (c) is disclosed to Recipient to further the Business Purpose. “Confidential Information” also includes documents (hard copy or electronic) prepared by Recipient containing or using Confidential Information of Disclosing Party. With respect to Confidential Information disclosed orally, Disclosing Party must both notify Recipient at time of disclosure and deliver written confirmation (which may be by email) within three business days following initial disclosure. In furtherance of the Parties’ intent to protect each other’s Confidential Information, each Party, in its capacity as a Recipient, agrees that (1) Disclosing Party’s Confidential Information may constitute or include trade secrets of Disclosing Party, independently protected by state and federal law, and (2) Disclosing Party has disclosed its Confidential Information to Recipient in reliance on this Agreement

* 1. **Exclusions from the Definition of Confidential Information.** “Confidential Information” does not include information that (a) is or becomes generally available to the public by lawful means and not as a result of any disclosure by Recipient, (b) becomes available to Recipient on a non‑confidential basis from a source other than Disclosing Party, provided the source obtained the information, to the best of Recipient’s knowledge after reasonable inquiry, lawfully and under circumstances not involving a breach of any confidentiality obligation to Disclosing Party, (c) was rightfully in Recipient’s possession or known to Recipient before disclosure by Disclosing Party, as demonstrated by records existing before the date of this Agreement, (d) is furnished by Disclosing Party to others with written permission to disclose to the public without restriction, or (e) is independently developed by Recipient by persons who had no access to Disclosing Party’s Confidential Information and without use of or reference to Disclosing Party’s Confidential Information.
	2. **Definition of Disclosing Party.** “**Disclosing Party**” means the Party disclosing Confidential Information to the other Party.
	3. **Definition of Recipient.** “**Recipient**” means the Party receiving Confidential Information from the other Party.
	4. **Definition of Representative.** “**Representative**” includes a Party’s directors or other members of its governing body, officers, employees, consultants, contractors, agents, and legal and accounting representatives and advisers
1. **Terms and Obligations Governing Confidential Information.**
	1. **Nondisclosure.** Recipient may not, without the prior written consent of Disclosing Party, disclose Disclosing Party’s Confidential Information to any third party, except as required by law and then only in accordance with **Section 4.5**. Each Recipient will make available Confidential Information of Disclosing Party only to those of its Representatives who need to know Confidential Information for the Business Purpose or to otherwise fulfill their duties to Recipient and who have agreed (or are legally required) to abide by confidentiality obligations applicable to Recipient. Before giving any Representative access to any of Disclosing Party’s Confidential Information, Recipient will inform the Representative of the terms of this Agreement and confirm the Representative’s agreement to comply with them.
	2. **Protection and Standard of Care.** Each Recipient will maintain all Confidential Information of Disclosing Party in confidence and will make commercially reasonable efforts to protect all Confidential Information of Disclosing Party from inadvertent or unauthorized disclosure, using at least the same degree of care it employs with respect to its own confidential information. Each Party represents that, subject to applicable law, it has adopted reasonable policies and procedures to protect confidential information (its own and that of others in its possession) from unauthorized disclosure.
	3. **Use Restriction.** Each Party, in its capacity as a Disclosing Party, grants to the other Party, in its capacity as a Recipient, the right to use Disclosing Party’s Confidential Information exclusively for the Business Purpose and for no other purpose. Each Party, in its capacity as a Recipient, agrees to use Disclosing Party’s Confidential Information exclusively for the Business Purpose and for no other purpose; *provided, however,* that if the Parties proceed with one or more transactions or other business relationships under a subsequent agreement with terms governing the use of Confidential Information disclosed under this Agreement, the subsequent agreement will thereafter govern use of that Confidential Information.
	4. **Ownership of Confidential Information; No Transfer of Rights; No Obligation to Provide Confidential Information.** Recipient acknowledges and agrees that the Confidential Information of Disclosing Party is the exclusive property of Disclosing Party (or the entity that has provided the Confidential Information to Disclosing Party subject to confidentiality obligations) and that Disclosing Party has not, by the terms of this Agreement, granted to Recipient any right, title, license, or other interest in Disclosing Party’s Confidential Information except as stated in **Section 4.3**. Nothing in this Agreement obligates either Party to disclose Confidential Information to the other Party.
	5. **Compelled Disclosure.** If Recipient is requested or required, by public disclosure laws (including the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 *et seq.*), legal process, or otherwise, to disclose any of Disclosing Party’s Confidential Information, Recipient will (a) give prompt notice of the request or requirement to Disclosing Party (to the extent permitted by law) to enable Disclosing Party, at Disclosing Party’s sole expense, to seek a protective order or other appropriate remedy, (b) cooperate with Disclosing Party and use commercially reasonable efforts (at Disclosing Party’s sole expense) to enable Disclosing Party to obtain a protective order or other appropriate remedy to limit any disclosure to the minimum legally required and retain as much confidential treatment of the Confidential Information as reasonably possible, (c) keep Disclosing Party informed of the status of the applicable request or requirement and any disclosures made, and (d) allow Disclosing Party to participate, to the maximum extent permitted by law, in any disclosure proceeding.
	6. **Notice and Cooperation in Case of Loss, Theft, or Unauthorized Disclosure.** Recipient will (a) promptly deliver written notice to Disclosing Party if any of Disclosing Party’s Confidential Information in Recipient’s possession or control is lost, stolen, or disclosed without authorization, and (b) cooperate with Disclosing Party to recover Disclosing Party’s Confidential Information, to minimize any resulting harm to Disclosing Party, and to prevent any further loss, theft, or unauthorized disclosure.
	7. **Obligations to Return or Destroy Confidential Information.**

* + 1. **Return or Destruction; Certification.** Subject to **Sections 4.7.2** and **4.7.3**, whenever requested by Disclosing Party during the term of this Agreement, and promptly following its termination or expiration, Recipient will (a) destroy or return to Disclosing Party all originals and copies of Disclosing Party’s Confidential Information, (b) destroy all notes, abstracts, and other documents that contain Disclosing Party’s Confidential Information, and (c) deliver to Disclosing Party written certification, signed by an authorized Representative of Recipient, that it has done so.
		2. **Exception for Routine Backups and Compliance with Law.** Nothing in this Agreement requires Recipient to identify, segregate, alter, or delete Confidential Information of Disclosing Party that may be held electronically in archive or backup systems in accordance with Recipient’s general systems archiving or backup policies. Recipient may also retain copies of Disclosing Party’s Confidential Information as necessary to comply with law.
		3. **Continuing Obligations.** Any Confidential Information retained by Recipient as permitted by **Section 4.7.2** will remain subject to Recipient’s obligations under **Sections 4.1** through **4.6** for so long as the Confidential Information remains in Recipient’s possession or control.
1. **Remedies.** Each Party agrees, in its capacity as a Recipient, that its breach of this Agreement with respect to Disclosing Party’s Confidential Information would cause irreparable and immediate harm to Disclosing Party that could not be made whole by monetary damages alone. Without limiting any rights and remedies otherwise available to Disclosing Party, Recipient agrees that Disclosing Party will be entitled to seek a temporary restraining order, injunction, or other equitable relief (without the requirement of posting any bond) to prevent or remedy a breach by Recipient.
2. **Miscellaneous.**
	1. **Notices.** Any notices required or permitted to be given under this Agreement must be given in writing and delivered by personal service or by certified mail with return receipt requested. Notice will be deemed given upon receipt. Routine communications may be transmitted by email. Either Party may change its contact information at any time by providing written notice to the other Party.

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| **To Platte River:** | **To [Counterparty]:** |
|  |  |
| Platte River Power Authority  |  |
| Attn: Director of Portfolio Strategyand Integration | Attn: [x] |
| 2000 E Horsetooth Road | Address: [x] |
| Fort Collins, CO 80525 |  |
| Email: connorsp@prpa.org  | Email: [x] |
|  |  |
| Platte River Power Authority  |  |
| Attn: General Counsel |  |
| 2000 E Horsetooth Road |  |
| Fort Collins, CO 80525 |  |
| Email: leonards@prpa.org |  |

* 1. **No Agency or Other Relationship.** Nothing in this Agreement creates an agency, partnership, joint venture, trust, association, or other legal relationship between the Parties.
	2. **Amendment and Waiver**. This Agreement may be modified only by a written instrument specifically referencing this Agreement and signed by authorized Representatives of both Parties. No waiver of any term of this Agreement will be binding unless set forth in writing and signed by an authorized Representative of the Party granting the waiver.
	3. **Assignment; Binding Effect.** This Agreement may not be assigned by either Party without the other Party’s prior written consent. This Agreement will inure to the benefit of and be binding upon each Party’s respective successors and permitted assigns.
	4. **Severability.** Each provision of this Agreement is intended to have independent effect. If one or more of the provisions of this Agreement are for any reason held to be invalid or unenforceable, the remaining provisions will be unimpaired and will remain in effect and binding on the Parties. The Parties will negotiate in good faith to modify this Agreement to reflect, to the extent possible, the original intent of the Parties with respect to any invalid or unenforceable provision.
	5. **Survival.** All obligations set forth in **Section 4** (“Terms and Obligations Governing Confidential Information”) will survive termination of this Agreement and remain in effect for two years following termination, except as otherwise provided in **Section 4.7.3** (“Continuing Obligations”). The provisions set forth in **Sections 5**, **6.4**, **6.6**, **6.7**, **6.8**, and **6.9** (“Remedies,” “Assignment; Binding Effect,” “Survival,” “Governmental Immunity,” “Governing Law and Venue,” and “Complete Agreement”) will survive and remain in effect following any expiration or termination of this Agreement until all statutes of limitations governing claims that could be made in connection with the Agreement have run.
	6. **Governmental Immunity.** No term or condition of this Agreement will operate as Platte River’s express or implied waiver 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 Platte River or any of its directors, officers, employees, or agents.
	7. **Governing Law and Venue.** This Agreement is governed by the laws of the state of Colorado (exclusive of choice-of-law principles). Venue in any dispute or proceeding related to this Agreement will be in the state and federal courts of Larimer County, Colorado.
	8. **Complete Agreement**. With respect to the subject matter of this Agreement, this Agreement (a) contains the entire agreement of the Parties, (b) supersedes all prior and contemporaneous offers, negotiations, agreements, or understandings, whether oral or written, between the Parties, and (c) precludes any claim by either Party of express or implied promises or understandings between the Parties other than as stated in this Agreement.
	9. **Counterparts.** This Agreement may be executed in counterparts, both of which will be deemed originals, and which together will constitute one and the same instrument.

**SIGNATURES**

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| --- | --- | --- | --- | --- |
|  | **[Counterparty Name]** |  |  | **Platte River Power Authority** |
| By: |  |  | By: |  |
|  | Authorized Signature |  |  | Authorized Signature |
|  |  |  |  |  |
|  | Printed Name |  |  | Printed Name |
|  |  |  |  |  |
|  | Title |  |  | Title |

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| --- |
| APPROVED AS TO FORM |
|  |
| Director of Legal Affairs |