



## REGULAR MEETING AGENDA

### CALL TO ORDER

### NEW EMPLOYEE INTRODUCTIONS

### APPROVAL OF MINUTES – 12/19/2018

### CITIZENS REPORT (\*See procedural instructions on the following page.)

### INFORMATION ITEMS

1. Water Supply Update – Ryan Van Pelt

### CONSENT AGENDA

2. Mod-Valve Vault Construction Contract Award – Leslie Moening
3. Applications for Section 131 Contracts for 12 CBT Units – Ryan Van Pelt

### REGULAR AGENDA

4. Acceptance of Three Shares of South Side Ditch Company Into Water Bank – Nathan Alburn
5. Fiber Management Intergovernmental Agreement with Platte River and Acceptance of Transfer of Fiber Assets and IGA – Brieana Reed-Harmel
6. Proposed Modifications to the Platte River Power Authority (PRPA) Organic Contract and Power Supply Agreement – Joe Bernosky

### COMMISSION & COUNCIL REPORTS

### DIRECTOR'S REPORT

### ADJOURN

#### **\* Citizens Report Procedures**

Anyone in the audience may address the LUC on any topic relevant to the commission. If the topic is a Consent Agenda item, please ask for that item to be removed from the Consent Agenda; pulled items will be heard at the beginning of the Regular Agenda. If the topic is a Regular Agenda item, members of the public will be given an opportunity to speak to the item during the Regular Agenda portion of the meeting before the LUC acts upon it. If the topic is a Staff Report item, members of the public should address the LUC during this portion of the meeting; no public comment is accepted during the Staff Report portion of the meeting.

Anyone making comment during any portion of tonight's meeting should identify himself or herself and be recognized by the LUC chairman. Please do not interrupt other speakers. Side conversations should be moved outside the Service Center Board Room. Please limit comments to no more than three minutes.

#### **Notice of Non-Discrimination**

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#### **Notificación en Contra de la Discriminación**

“La Ciudad de Loveland está comprometida a proporcionar igualdad de oportunidades para los servicios, programas y actividades y no discriminar en base a discapacidad, raza, edad, color, origen nacional, religión, orientación sexual o género. Para más información sobre la no discriminación o para asistencia en traducción, favor contacte al Coordinador Título VI de la Ciudad al [TitleSix@cityofloveland.org](mailto:TitleSix@cityofloveland.org) o al 970-962-2372. La Ciudad realizará las acomodaciones razonables para los ciudadanos de acuerdo con la Ley de Discapacidades para americanos (ADA). Para más información sobre ADA o acomodaciones, favor contacte al Coordinador de ADA de la Ciudad en [adacoordinator@cityofloveland.org](mailto:adacoordinator@cityofloveland.org) o al 970-962-3319”.

**Commission Members Present:** Dan Herlihey, Gary Hausman (Chair), Gene Packer, Larry Roos, John Butler, Randy Williams, Sean Cronin, Stephanie Fancher-English, Tom Vail

**Commission Members Absent:** John Butler

**Council Liaison:** Steve Olson

**City Staff Members Present:** Brieana Reed-Harmel, Courtney Whittet, Derek Turner, Frank Lindauer, Jim Lees, Joe Bernosky, John Beckstrom, John Boornazian, Kim O'Field, Larry Howard, Michelle Erickson, Nathan Alburn, Roger Berg, Ryan Van Pelt, Steve Johnson, Tom Greene

**Guest Attendance:**

**CALL TO ORDER:** Gary Hausman called the meeting to order at 4:01 pm.

**APPROVAL OF MINUTES:** Hausman asked for a motion to approve the minutes of the November 28, 2018 meeting.

**Motion:** Dan Herlihey made the motion to approve the minutes.

**Second:** Randy Williams seconded the motion. The minutes were approved unanimously.

#### NEW EMPLOYEE INTRODUCTION

John Boornazian – Electrical Distribution Designer

#### CITIZENS REPORT

#### INFORMATION ITEMS

##### Item 1: Financial Report Update – Jim Lees

This item summarizes the monthly and year-to date Preliminary financials for October 2018.

Information Item only. No action required.

#### CONSENT AGENDA

##### Item 2: Wastewater Treatment Plant Biosolids Contract with Veris Environmental LLC – Tom Greene

This contract is for Veris Environmental LLC to provide the hauling and disposal services needed to maintain proper treatment at the Wastewater Treatment Plant. The not-to-exceed total in the Veris Environmental LLC biosolids hauling contract for 2019 will be \$638,200.

**Recommendation:** Adopt a motion approving the 2019 Contract for Veris Environmental LLC. for Hauling and Land Application of Biosolids with a “Not to Exceed” contract price of \$638,200 and authorizing the City Manager to execute the renewal for service.

##### Item 3: Big Thompson Canyon Voltage Conversion Phase 3 Contract Increase – Frank Lindauer

The purpose of this item is for the approval of an increase to the contract for construction of Big Thompson Canyon Voltage Conversion Phase 3 to include construction for the next section of work and field changes in the current section.

**Recommendation:** Adopt a motion recommending that City Council approve the change order to the contract for Circuit 911 Voltage Conversion – Phase 3 with Power Contracting, LLC. to increase the not-to-exceed amount to \$922,908.65 and authorize the City Manager to sign the change order on behalf of the City

Motion: Dan Herlihey made the motion to accept consent agenda items as written.  
Second: Randy Williams seconded the motion.

### REGULAR AGENDA

#### Item 4: Municipal Code Title 13 Revisions – Jim Lees

The purpose of this item is to describe proposed changes to outdated sections of the Loveland Municipal Code and to request the Commission adopt a motion recommending that City Council approve the proposed changes to Title 13.04.205 and Title 13.08.101 of the Loveland Municipal Code.

**Recommendation:**

Adopt a motion recommending that City Council approve the proposed changes to Title 13.04.205 and Title 13.08.101 of the Loveland Municipal Code.

Motion: Dan Herlihey made the motion to approve the item.  
Second: Randy Williams seconded the motion. The item was approved unanimously.

#### Item 4: Fourth Amendment to the Fifth Interim Agreement between the Municipal Subdistrict, Northern Colorado Water Conservancy District Windy Gap Firing Project Water Activity Enterprise, and the City of Loveland for Participation in the Windy Gap Firing Project – Larry Howard

The Windy Gap Firing Project participants desire to continue the Fifth Phase of the project, working to complete the acquisition of all permits and approvals and additional land acquisition. This will allow work to continue on those activities as well as continuing with detailed engineering design including preparation of plans and specifications, planning and implementation of required mitigation and enhancement measures and related activities. Approval of this proposed Fourth Amendment to the Fifth Interim Agreement between the Municipal Subdistrict, Northern Colorado Water Conservancy District Windy Gap Firing Project Water Activity Enterprise and the City of Loveland (Fifth Interim Agreement) allows this permitting and design work to continue and would approve the City's allocation of funding according to its pro-rata storage entitlement in the Project.

**Recommendation:** Approve a motion recommending that City Council adopt a resolution directing the Mayor to execute the Fourth Amendment to the Fifth Interim Agreement between the Municipal Subdistrict, Northern Colorado Water Conservancy District Windy Gap Firing Project Water Activity Enterprise and the City of Loveland.

Motion: Dan Herlihey made the motion to approve the item.  
Second: Randy Williams seconded the motion. The item was approved unanimously.

### COMMISSION/COUNCIL REPORTS

#### Item 7: Commission/Council Reports

Discuss events that the Loveland Utility Commission Board members attended, special topics and any City Council items related to the Water and Power Department from the past month.

**Dan Herlihey:** Had a positive experience with Water Metering staff, very professional and pleasant

**Dave Schneider:**

**Gene Packer:**

**Gary Hausman:**

**John Butler:**

**Larry Roos:**

**Randy Williams:** The infamous goat with the elk is in his front yard. They like to run around and play together.



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**Sean Cronin:** NISP participants are talking about selling off shares now that the project has reached \$1.1B; Brought copies of the 2019 Work Plan from the Fort Collins Water Board to continue the conversation of the roles and duties of LUC

**Stephanie Fancher-English:** Bill Wangnild passed away, he was a Water Broker and very active in the Water community

**Tom Vail:**

**Council Report:**

#### DIRECTOR'S REPORT

**Item 8: Director's Report – Joe Bernosky**

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**ADJOURN** The meeting was adjourned at 5:09 pm. The next LUC Meeting will be January 16, 2019 at 4:00 pm.

Respectfully submitted,

Courtney Whittet  
Recording Secretary  
Loveland Utilities Commission  
/s/ Gary Hausman, LUC Chairman





**ITEM TITLE:**

Water Supply Update

**DESCRIPTION:**

Raw water supply update.

**SUMMARY:**

NRCS Colorado SNOTEL Snow Water Equivalent (SWE) Map, as of Jan 10, 2019:

- Indicates the South Platte Basin is at 109% of Median SWE (1981-2010)
- Overall Statewide we are currently at 94% of Median SWE

Locations of Bear Lake & Lake Irene SNOTEL Sites:

- Bear Lake SNOTEL site is in the upper Big Thompson River Basin
- Lake Irene SNOTEL site is in the upper Colorado River Basin

Bear Lake NRCS SNOTEL Site:

- First Graph shows the SWE from October 2018 through January 10, 2019 (red) compared to 2002, 2015, 2016, 2017, and the 30-year Median (1981-2010)
- As of January 10, 2019, the SWE was 7.9 inches
- Second Graph shows the entire snow accumulation and melt-off period from October through mid-June
- Currently, the SWE accumulation is trending above the 30-year median SWE and slightly above the 2016 SWE.




Next Two Tables - NRCS SNOTEL as of January 10, 2019

- Bear Lake SWE at 7.9 inches, or 120% of Median
- Lake Irene SWE at 11 inches, or 96% of Median

**RECOMMENDATION:**

Information item only. No action required.

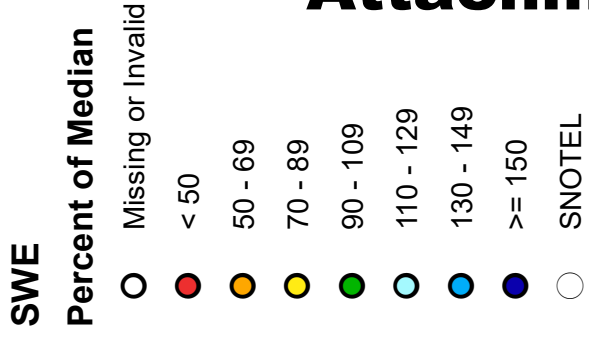
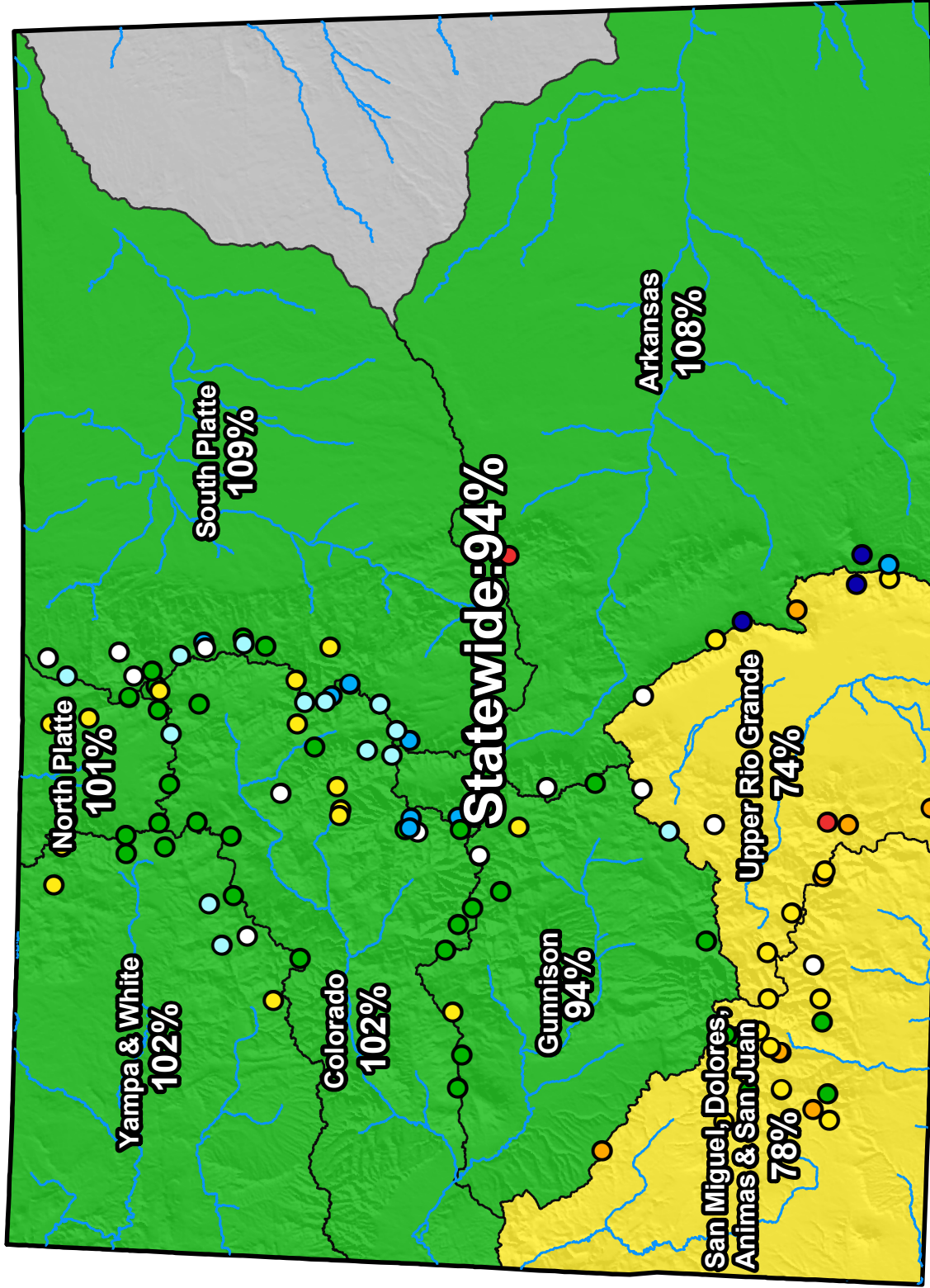
**ATTACHMENTS:**

-  Attachment A: Colorado SNOTEL SWE Update Map
-  Attachment B: Snow-Water Equivalent at Bear Lake
-  Attachment C: Colorado SNOTEL Update Table



# Colorado SNOTEL Snow Water Equivalent (SWE) Update Map with Site Data

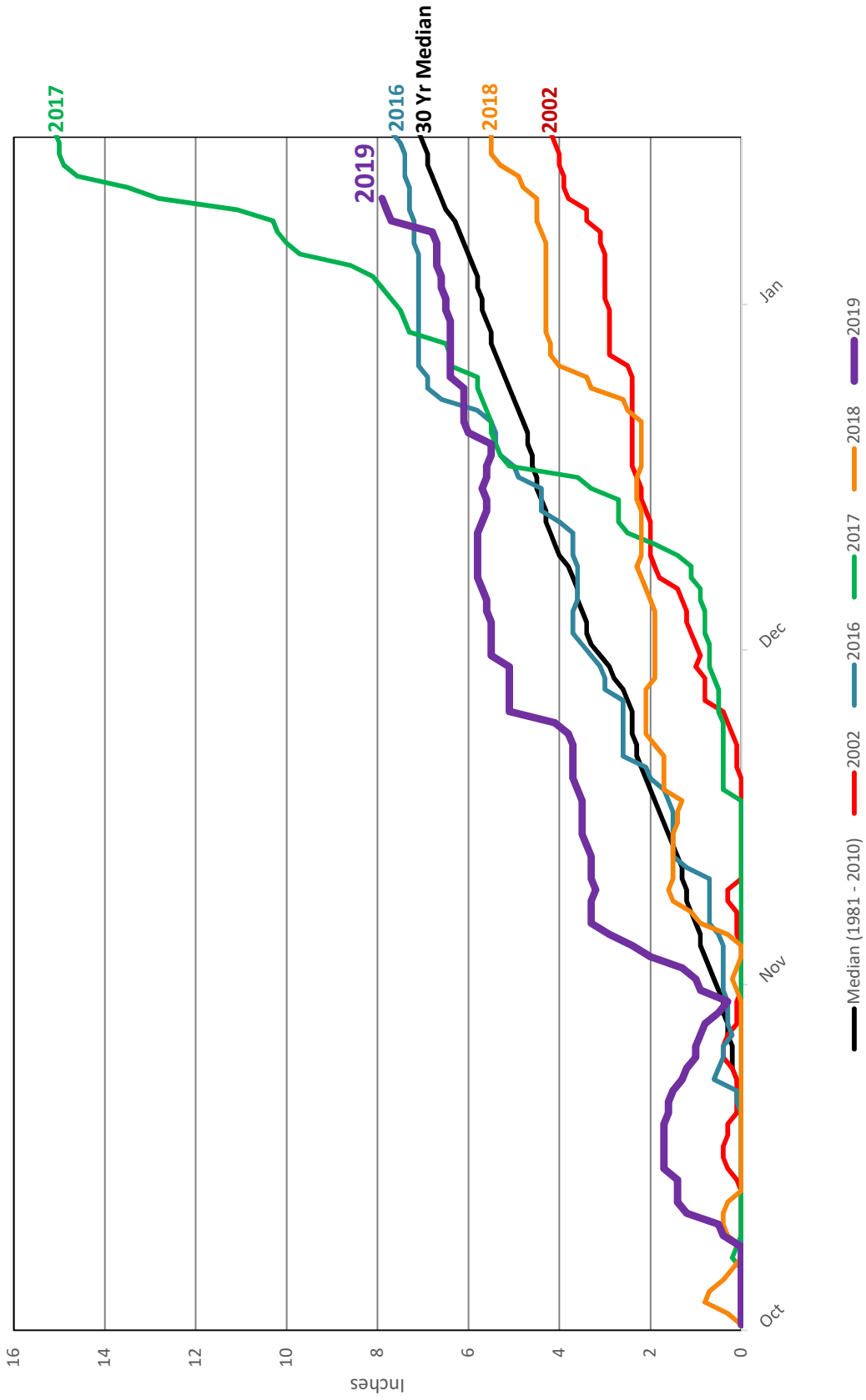
Current as of Jan 10, 2019





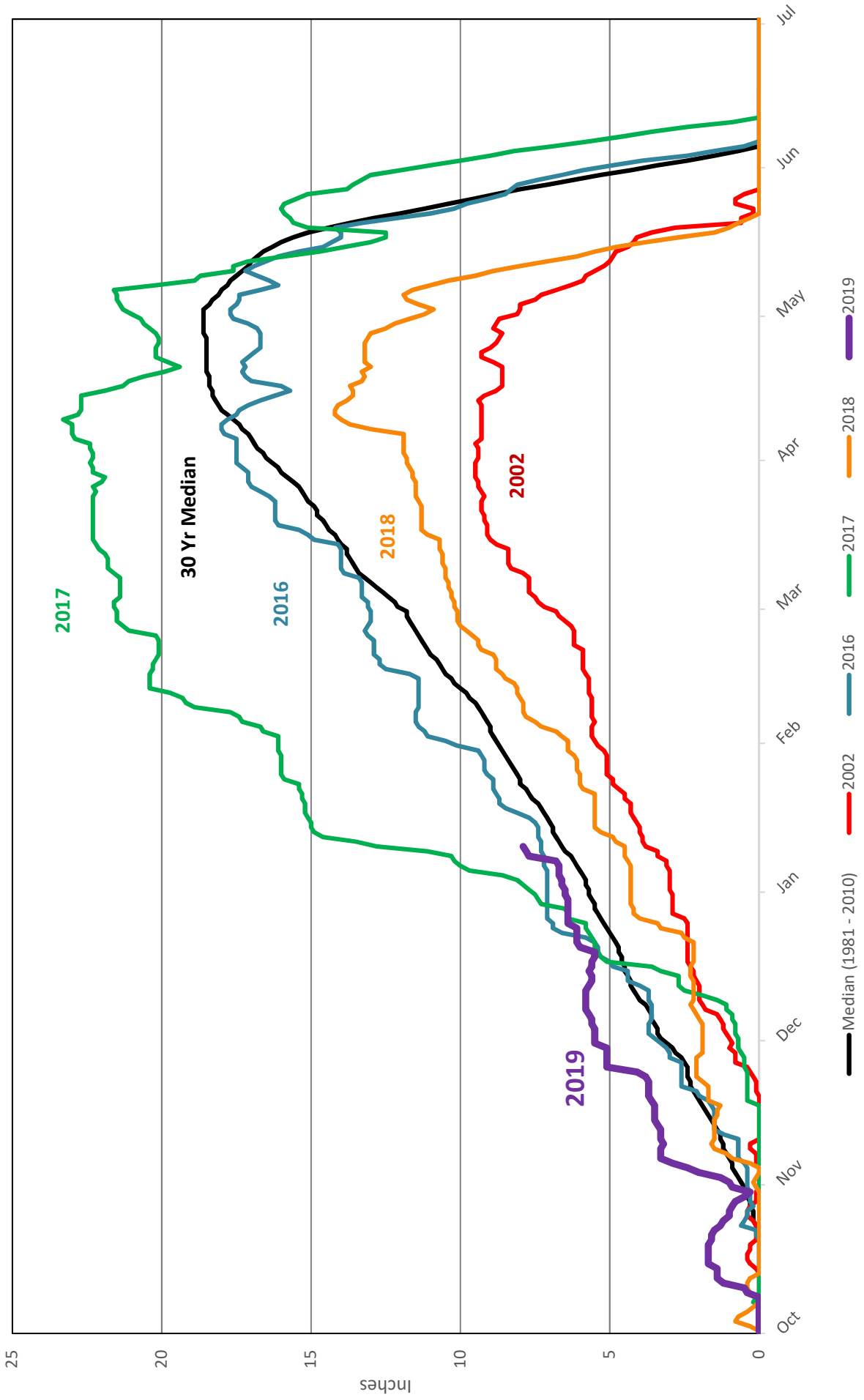
# Attachment B

## Snow - Water Equivalent at Bear Lake as of January 10, 2019





# Snow - Water Equivalent at Bear Lake as of January 10, 2019



# Attachment C

## Colorado SNOTEL Snowpack Update Report

Based on Mountain Data from NRCS SNOTEL Sites

Data based on first reading of the day for: **Thursday 10, 2019**

Station Name	River Basin	Elevation (ft)	Snow Water Equivalent (SWE)				Percent of	
			Current (in)	Today's Median (in)	Median Peak (in)	Median Peak Date	Today's Median (%)	Median Peak (%)
Lake Irene	Upper Colorado	10,700	11.0	11.4	24.9	Apr-07	96	44
Bear Lake	South Platte	9,500	7.9	6.6	18.6	Apr-30	120	42



**ITEM TITLE:**

Modulating Valve Vault Modifications Construction Contract Award

**DESCRIPTION:**

The purpose of this item is to award a construction contract to the lowest qualified bidder for the Modulated Valve Vault Modifications.

**SUMMARY:**

The purpose of this project is the rehabilitation of the City’s existing Modulating Valve Vault located at the northwest corner of State Highway 34 and Hidden Valley Drive. All the treated water that serves the City of Loveland comes through this vault via three transmission mains: 48”, 36” and 20” water mains. The water enters the vaults through a series of piping and valves and is controlled through a “modulating valve.” The existing vault consists of five different chambers constructed at different times. The chambers contain pipes of various sizes and configurations; some are in service and others have been abandoned in-place. This project will replace the obsolete valves and piping. This project will remove and replace two outdated 36” gate valves that have created operational and safety challenges due to their age. One of these new valves will operate as a second modulating valve which will add more flexibility in controlling the flow of finished water into the distribution system. The project will also remove two 24” valves that have not been operational for many years, but are still connected to a live transmission main. This project also had the option to upgrade the existing lighting in the vault and to upgrade the existing modulating valve.

Below is a summary tabulation of bidders:

Name of Bidder	RN Civil Construction	CGRS, Inc	Velocity Constructors, Inc.	Aslan Construction, Inc	Connell Resources, Inc	Glacier Construction Co., Inc
Base Bid	<b>\$611,400.00</b>	\$667,670.00	\$706,884.00	\$720,396.00	\$755,550.00	\$824,780.00
Add Alternates	<b>\$66,000.00</b>	\$72,700.00	\$76,313.00	\$107,804.00	\$101,690.00	\$92,300.00
Base Bid + Add Alternates	<b>\$677,400.00</b>	\$740,370.00	\$783,197.00	\$828,200.00	\$857,240.00	\$917,080.00

The Water Department will have adequate funds available to construct the project with 2019 budgeted funds.

Per Municipal Code 3.12.060A and 3.12.060B, the LUC must approve Water and Power contracts above \$500,000 or any change order that causes a contract to equal or exceed \$500,000 and which, when combined with all previous change orders, equals or exceeds 20% of the original contract amount.

**RECOMMENDATION:**

Adopt a motion to award the contract for the Modulated Valve Vault Modifications to **RN Civil Construction** in an amount not to exceed **\$677,400.00** which includes Base Bid + Add Alternates and authorize the City Manager to execute the contract on behalf of the City.

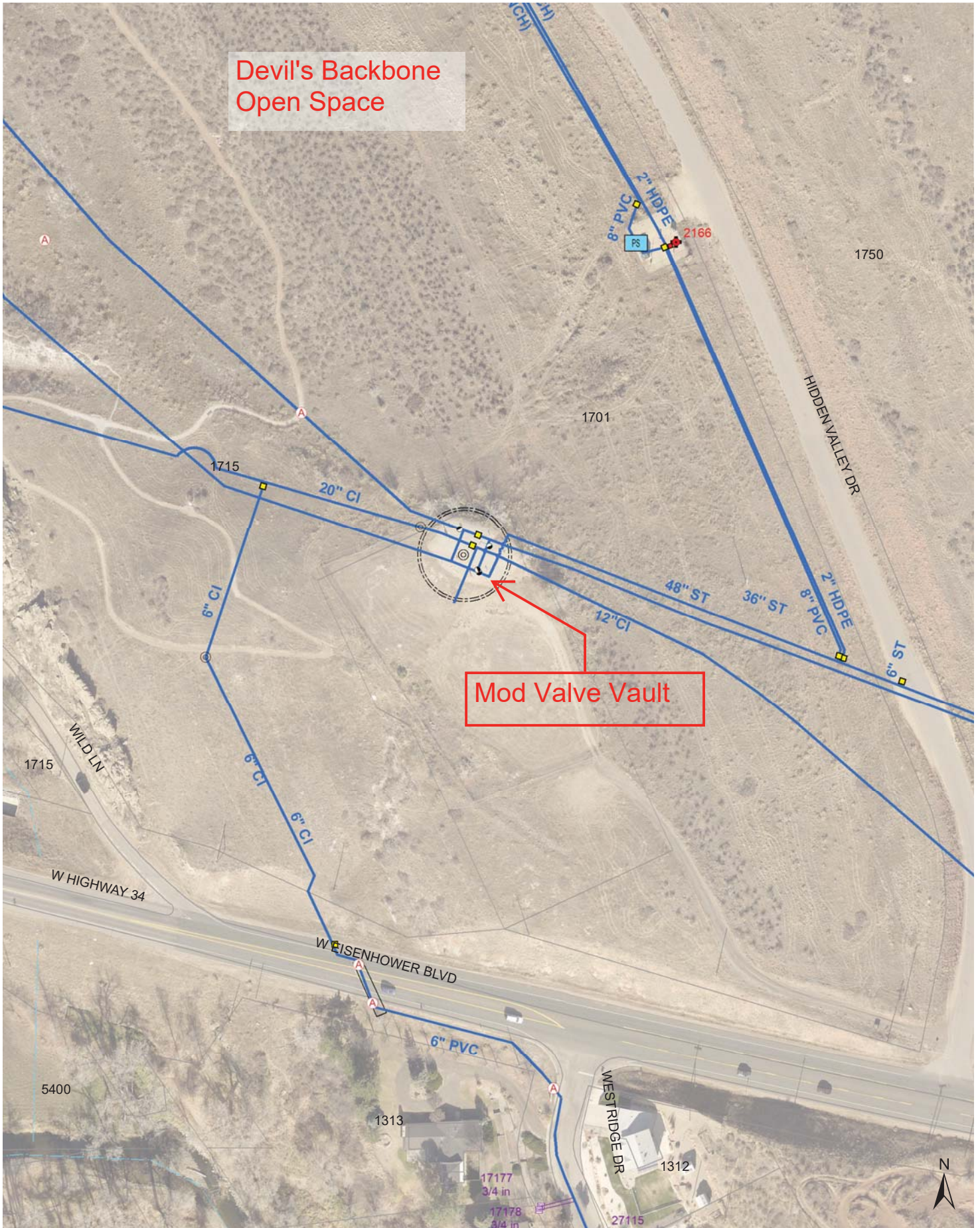
**ATTACHMENTS:**

- Attachment A – Mod Valve Vault Site Maps





# Attachment A







**VAULT SITE PLAN**  
1" = 10'

**GENERAL NOTES**  
1. NO CONSTRUCTION EQUIPMENT ALLOWED ON TOP OF VAULT.





**ITEM TITLE:**

Applications for Section 131 Contract(s) for 12 C-BT Units

**DESCRIPTION:**

The City acquired 12 units of C-BT last year from a transfer from Sylvan Dale Ranch, LLP. These units are currently under two separate Temporary Use Permits and they should be converted to a Permanent Section 131 Contract(s) at the Northern Colorado Water Conservancy District (Northern Water) Board meeting on March 14, 2019.

**SUMMARY:**

The City of Loveland currently holds 12 acre-foot units of Colorado-Big Thompson (C-BT) Project water in the form of temporary use permits, or TUP's. These give the City the temporary right to use the C-BT water associated with these acre-foot units during the calendar year in which they are acquired by the City, prior to obtaining a Section 131 Contract.



The subject 12 C-BT units were acquired in 2018 by the City of Loveland, in conjunction with a long-term water lease agreement with Sylvan Dale Ranch, LLP. One of the TUP's is for 10 C-BT units and one is for 2 C-BT units.

Northern Water policy requires municipal and industrial allottees to convert the TUP's to Section 131 contracts in the year following acquisition. ("Section 131" refers to that section in the Water Conservancy Act of Colorado, Title 31, Article 43, Colorado Revised Statutes of 1973). Failure to convert the TUP's by March 1<sup>st</sup> will result in the District's refusal to deliver the water.

**RECOMMENDATION:**

Approve a motion recommending that City Council adopt a resolution authorizing the Director of the Department of Water and Power to sign the application for the Section 131 Contract(s) and execute any documents required to effectuate such contract.

**ATTACHMENTS:**

-  Attachment A – Applications to Northern Water for Cancellation of Temporary Use Permits
-  Attachment B – Application to Northern Water for Section 131 Contract



# Attachment A

## APPLICATION TO NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR CANCELLATION OF TEMPORARY USE PERMITS

The City of Loveland, hereby applies for the cancellation of the following Temporary Use Permits:

<u>Permits Dated</u>	<u>Acre-Feet</u>
August 9, 2018	02
August 9, 2018	10
<b>Total Quantity to be Released</b>	<b>12</b>

Dated at Loveland, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF LOVELAND

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_  
(SEAL)

### ORDER ON APPLICATION

Application having been made by the City of Loveland, for the cancellation of the above Temporary Use Permits, and Hearing having been held by the Board of Directors of Northern Colorado Water Conservancy District, it is hereby ORDERED that the above Temporary Use Permits be canceled.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NORTHERN COLORADO WATER  
CONSERVANCY DISTRICT

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary



# Attachment B

APPLICATION TO  
NORTHERN COLORADO WATER CONSERVANCY DISTRICT  
FOR ANNUALLY RENEWABLE  
PERPETUAL WATER CONTRACT FOR RIGHT TO USE  
COLORADO-BIG THOMPSON PROJECT WATER  
UNDER C.R.S. 37-45-131

Applicant, City of Loveland, a Colorado municipal corporation acting in its governmental capacity or a water activity enterprise (circle capacity in which applicant is acting), hereby applies to Northern Water, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, for a contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is 12 acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.
2. It is understood and agreed by the Applicant that any water provided for use under this contract by the Board of Directors of Northern Water shall be primarily for municipal, domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of Northern Water.
3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth ( $1/310,000$ ) of the quantity of water annually declared by the Board of Directors of Northern Water to be available for delivery from the water supplies of Northern Water. Applicant agrees that such water shall be delivered from the works of Northern Water at such existing Northern Water delivery point or points as may be specified by the Applicant and that the water delivery obligation of Northern Water shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of Northern Water.
4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of Northern Water at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from Northern Water that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, 31 days prior to the start of the water year, at the rate per acre-foot

established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year.

If an annual payment as herein provided is not made by due date, written notice thereof, by certified mail, will be given by Northern Water to the Applicant at the following address: 200 N. Wilson Avenue, Loveland, Colorado 80537.

Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water as herein made, shall be disposed of at the discretion of the Board of Directors of Northern Water. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above Northern Water's actual expense in terminating and disposing of the contract right of use.

5. This right of use shall be perpetual on an annually renewable basis. If the annual payment is made as provided in this application, the right of use shall be automatically renewed another water year without any further notice of Northern Water; if the annual payment is not timely made, as provided above, the right of use shall terminate.
6. Applicant agrees that the water allocation shall be beneficially used for the purposes and in the manner specified herein, and that this right of use is made for the exclusive benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said Applicant without prior specific approval of the Board of Directors of Northern Water.
7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; the rules, regulations and policies of the Board of Directors of Northern Water as they now exist or as they exist in the future; and by the Repayment Contract of July 5, 1938, between Northern Water and the United States and all amendments thereof and supplements thereto.
8. Applicant agrees, as a condition of this contract, to enter into an "Operating Agreement" with Northern Water if and when the Board of Northern Water finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by Northern Water. Said agreement may contain, but not be limited to, provision for water delivery at times or by means not provided within the terms of standard contracts of Northern Water; additional annual monetary consideration for extension of Northern Water delivery services and for additional administration, operation and maintenance costs; or for other costs to Northern Water which may arise through provision of services to the Applicant.

9. Acquisition of this annually renewable perpetual right of use water contract for the Colorado-Big Thompson Project water from Northern Water and the right to the beneficial use of water thereunder by the Applicant is necessary; the continued acquisition and use of this water supply is essential for the well-being of the community and for the preservation of the public peace, health, and safety; and the adequate protection of the health of the inhabitants of the community.
10. The governing body of Applicant has duly approved this Application in accordance with all legally required procedures.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_.

\_\_\_\_\_  
CITY OF LOVELAND

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(SEAL)



ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in this allocation of the right to use Colorado-Big Thompson Project water and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for 12 acre-feet of water is hereby made to the City of Loveland, a Colorado municipal corporation, for the beneficial uses set forth in said application upon the terms, conditions, and manner of payment as therein specified.

NORTHERN COLORADO WATER  
CONSERVANCY DISTRICT

By \_\_\_\_\_  
President

I hereby certify that the above Order was entered by the Directors of Northern Colorado Water Conservancy District on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20 \_\_\_\_.

ATTEST: \_\_\_\_\_  
Secretary

**ITEM TITLE:**

Acceptance of three shares of South Side Ditch Company into the Water Bank

**DESCRIPTION:**

The O'Hara Settlement Agreement (Agreement) (discussed during the October 17, 2018 LUC) has been fully executed as of January 4, 2019. Item three within the Agreement indicates that South Side Ditch Company (South Side) will submit an application to LUC to transfer to City's Water Bank three shares:

- Two (2) South Side shares associated with South Side Stock Certificate No. 2846;
- One (1) South Side share that was previously associated with South Side Stock Certificate No. 2706;

**SUMMARY:**

City Council has approved and the City Manager executed the attached Agreement on January 4, 2019. Item three within the Agreement indicates that South Side Ditch Company (South Side) will submit an application to LUC to transfer to City's Water Bank three shares:


- Two (2) South Side shares associated with South Side Stock Certificate No. 2846;
- One (1) South Side share that was previously associated with South Side Stock Certificate No. 2706;

As part of its negotiation and execution of the underlying O'Hara Agreement, the Water Resource Staff has reviewed the stock history of these three shares and have no concerns with the ownership history. Staff has sought the opinions of outside water resource engineering and legal counsel on the historical use and dry up issues involved in these shares. Both consultants are confident that the City will have no significant issues changing the shares to municipal use in water court in a forthcoming water court change case that will rely on a previous ditch-wide historical consumptive use analysis that included a quantification of the entire South Side Ditch Company operations, including these shares.

**RECOMMENDATION:**

Adopt a motion accepting into the City of Loveland Water Bank the following three shares of South Side: two (2) South Side shares associated with South Side Stock Certificate No. 2846 and one (1) South Side share associated with South Side Stock Certificate No. 2706.

**ATTACHMENTS:**

-  Attachment A: O'Hara Agreement

# Attachment A

## SETTLEMENT AGREEMENT

This AGREEMENT ("Agreement") is dated January 4, 2019, between the CITY OF LOVELAND, a Colorado home rule municipal corporation with a principal place of business at 500 E. 3<sup>rd</sup> Street, Loveland, CO 80537 ("City"), and the South Side Ditch Company, a Colorado nonprofit corporation with a principal place of business at 1574 W. CR 16, Loveland, CO 80537 ("South Side"). The City and South Side are referred to in this Agreement individually as a "Party" and collectively as the "Parties."

### BACKGROUND

- A. South Side entered into an agreement (appended to a contemporaneous warranty deed and assignment) with Patrick O'Hara on December 13, 1881, recorded with the Larimer County Clerk at Document Number 13982 on February 15, 1883 (the "O'Hara Agreement"), relating to the conveyance of an easement for South Side's ditch and for the delivery of water for irrigation.
- B. The City's Golf Enterprise owns a one-half (1/2) interest in and to the O'Hara Agreement, which interest constitutes the right to receive twenty (20) inches of water under and pursuant to the terms and conditions of the O'Hara Agreement. The City's interest is hereinafter referred to as the "1/2 interest in the O'Hara Water Right;" and
- C. The City and South Side disagree concerning the interpretation and performance of the O'Hara Agreement and desire to resolve their disputes by this Settlement Agreement.

### AGREEMENT:

1. On the Closing Date as described herein, the City shall transfer, sell, and convey by special warranty deed to the South Side its ownership of the 1/2 interest in the O'Hara Water Right. South Side may determine that other documents are reasonably necessary for the City to sign and deliver to South Side to effectuate the transfer of the claims and rights of the City in the O'Hara Agreement, and the City agrees to sign and deliver any other such documents to effectuate the Settlement Agreement.
2. On the Closing Date as described herein, South Side shall transfer, sell, and convey by a standard South Side Stock Assignment form to the City for the benefit of the City of Loveland Golf Enterprise Stock Certificate No. 2845, comprising two shares of outstanding assessable stock in South Side. The

*Settlement Agreement*  
City of Loveland and South Side Ditch Company.  
Page 1 of 6

City may determine that other documents are necessary for South Side to sign and deliver to the City to effectuate the transfer of the shares of stock, and South Side agrees to sign and deliver any other such documents to effectuate the Settlement Agreement.

3. After the execution of this Settlement Agreement, South Side shall submit an application to the Loveland Utilities Commission ("LUC") to transfer to the City's Water Bank the following three shares, pursuant to section 19.04.080 of the Loveland Municipal Code. City Staff shall recommend the LUC's approval of the acceptance of the water rights in exchange for full Water Bank credit without conditions or restrictions.

The three South Side shares subject to this paragraph include the following:

- a. Two (2) South Side shares associated with South Side Stock Certificate No. 2846;
  - b. One (1) South Side share that was previously associated with South Side Stock Certificate No. 2706;
4. If within five years of the date of this Settlement Agreement the owner(s) of the following South Side share applies to the City to transfer such share to the City in exchange for credit in the City's Water Bank, under the procedures described in Section 19.04.080 of the Loveland Municipal Code, City Staff shall recommend to the Loveland Utilities Commission ("LUC") that such share should be accepted for such transfer: One (1) South Side share associated with South Side Stock Certificate No. 2791.
  5. Closing Date. The Closing Date for the exchange of the foregoing documents shall be a date agreed to by the parties no later than fourteen (14) days after the date that the LUC acts on South Side's application to transfer to the City's water bank the shares described above in paragraph 3 of this Settlement Agreement.
  6. South Side agrees that it shall not oppose in water court an application filed by the City to change the use of the City's South Side shares, including the shares involved in this Agreement and other shares acquired by the City, so long as the terms of the City's change of such shares are consistent with and restricted to the terms and conditions of the City's previous ditch-wide historical beneficial consumptive use analysis prepared for and decreed in Case No. 02CW392, Water Division 1. South Side shall not be precluded from submitting a Statement of Opposition or other document in such subsequent change of use case in order to be a party to such case and to monitor and participate in such case as a party, including objection to any part of any

subsequent relief requested by City that is at variance from the Decree in Case No. 02CW392 or this Settlement Agreement

7. **Default.** In the event either Party refuses, defaults, or otherwise fails to carry out any of the terms of this Settlement Agreement, and any such failure requires the other Party to enforce this Settlement Agreement by court action, then the defaulting Party agrees to pay all expenses of such enforcement including, but not limited to court costs, expert witness fees, and reasonable attorney fees.
8. **Governmental immunity.** No term or condition of this Agreement shall be construed or interpreted as a waiver by the City, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, or any other provision of the Colorado Governmental Immunity Act, section 24-10-101, *et seq.* C.R.S.
9. **Successors; term of agreement.** This Agreement shall be binding on each Party's successors or assigns. This Agreement shall be binding on the Parties upon execution of this Agreement by all the Parties. This Agreement shall remain in full force and effect unless terminated by mutual agreement of the Parties.
10. **Assignment.** This Agreement may not be assigned by either Party unless such assignment approved in writing by both Parties.
11. **No third party beneficiaries.** This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.
12. **Interpretation.** The Parties intend that all provisions of this Agreement are legal and enforceable and shall be so interpreted. If any provision of this Agreement is found by a court to be illegal or unenforceable, then the remaining provisions of this Agreement will remain in full force and effect, and such term or provision will be deemed stricken for as long as it remains illegal or unenforceable.
13. **Choice of law.** It is expressly understood and agreed by and between the Parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Colorado.

14. Notices. Any and all notices or communications required under this Agreement shall be made in writing (including electronic mail) to the following addresses:

If to City:

Director, Loveland Water & Power  
City of Loveland  
200 North Wilson Avenue  
Loveland, CO 80537

With a copy to:

Manager, Golf Operations  
City of Loveland  
500 E. Third St.  
Loveland, CO 80537

With a copy to:

City Attorney  
City of Loveland  
Civic Center  
500 East Third St. Suite 330  
Loveland, CO 80537

If to South Side Ditch Company:

William K. Wheeler  
President  
South Side Ditch Company  
South Side Reservoir Company  
South Side Extension Ditch Company  
968 North County Road 19  
Berthoud, CO 80513

With a copy to

Starr & Westbrook, P.C.  
210 East 29<sup>th</sup> Street  
Loveland, CO 80538

15. Joint Preparation; Miscellaneous. This Settlement Agreement shall be construed according to its fair meaning, and as if prepared by all parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the parties hereto pertaining to the matters addressed in this Settlement Agreement. There shall be deemed to be no other terms, conditions, promises, understandings, statements, representations, expressed

or implied, concerning this Agreement, unless set forth in writing signed by all of the parties hereto. Further, Section headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement. This Agreement shall be recorded with the Larimer County Clerk and Recorder.

16. Counterparts and Electronic Signatures. For purposes of this Agreement, there may be any number of counterparts, each of which shall be deemed as originals. This Agreement may be executed by electronic signature in accordance with C.R.S § 24-71.3-101 *et seq*.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.  
{Signature Pages to Follow}







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**ITEM TITLE:**

Fiber Management Intergovernmental Agreement with Platte River and Acceptance of Transfer of Fiber Assets

**DESCRIPTION:**

The Platte River Power Authority (Platte River) Board adopted resolutions on September 27, 2018 authorizing the transfer of title to Loveland of the local fiber optic loop constructed in Loveland for the purposes of electric operations. A condition precedent to the transfer of the assets is the execution of an intergovernmental agreement (IGA) between Platte River and the City addressing fiber management. This IGA was presented on January 9, 2019 to the Loveland Communications Advisory Board (LCAB) with a unanimous recommendation and then will be presented to City Council for consideration at the February 19, 2019 meeting.

**SUMMARY:**

Platte River constructed a fiber optic system within and connecting the owner communities of Estes Park, Longmont, Fort Collins and Loveland for the purposes of electric operations. Excess fiber was installed in the network because the incremental costs of installing additional fiber were insignificant relative to the costs of installing the fibers necessary for Platte River communications. Upon completion of the fiber network Platte River transferred the excess fibers in the Longmont loop to Longmont, but retained ownership of the other local loops and leased dark fiber for the benefit of the other three owner communities.

To enable the owner communities to take ownership and control of the local fiber optic loops, four resolutions were approved by the board of Platte River on September 27, 2018. A condition precedent to the transfer of these assets is the execution of an IGA addressing fiber management. The attached Fiber Management IGA defines the rights and obligations of the parties pertinent to the continued operations and maintenance of the loop fiber and contains protocols applicable to all parties that are accessing the fiber assets.



The long-haul excess fiber will continue to be owned by Platte River and leased for the benefit of the communities. Revenue from long-haul leases will be used for easement acquisition and technology upgrades to the long-haul fiber. In the future, it is contemplated that the ownership of the excess fiber in the long-haul may be transferred to the communities.

The Fiber Management IGA shall be effective between Platte River and Loveland once executed by both parties.

**RECOMMENDATION:**

Adopt a motion recommending that City Council approve a resolution authorizing the City Manager to execute an Intergovernmental Agreement for Fiber Management between Loveland and Platte River Power Authority and approving the City Manager's acceptance of Platte River Power Authority's transfer to the City of Loveland the one hundred and thirty-two strands of excess fiber and associated assets located within the Loveland local fiber optic loop.

**ATTACHMENTS:**

-  Attachment A: Fiber Management IGA
-  Attachment B: PRPA Resolution No. 17-18

# Attachment A

**Intergovernmental Agreement for Fiber Management  
Between  
Town of Estes Park  
City of Fort Collins  
City of Longmont  
City of Loveland  
And  
Platte River Power Authority**

THIS INTERGOVERNMENTAL AGREEMENT FOR FIBER MANAGEMENT (“Agreement”) is made and entered into by and between The Town of Estes Park (“Estes Park”), the City of Fort Collins (“Fort Collins”), the City of Longmont (“Longmont”), the City of Loveland (“Loveland”), collectively (the “Municipalities”), individually (a “Municipality”) and Platte River Power Authority (“Platte River”).

## **1. Background.**

Platte River constructed and maintains a fiber optic network in and around the Municipalities and between them to ensure high quality, reliable communications critical to real-time operation of its electric system. The fiber optic network includes the cables and fiber bundles on local fiber loops within the Municipalities, as well as the long-haul cables and fiber bundles that interconnect these local Municipal loops. Installation of the fiber optic network was necessary to replace and upgrade the communication systems used for Platte River’s operational control of the transmission substations through which Platte River delivers power to the Municipalities. As installed, the fiber optic network includes more fiber than that required for Platte River’s purposes. At the time of installation, the Platte River Board of Directors determined that the incremental costs associated with installing the excess fiber were insignificant. The excess fiber was intended to be dedicated to the Municipalities to be used for their telecommunications purposes. To further the telecommunications purposes of each Municipality, Platte River has conveyed to each Municipality ownership of the excess fiber within their respective local fiber loops. The cost of the excess fiber has been fully depreciated and applied to the equity interests held by each respective Municipality.

To ensure the reliability of its electric system, Platte River must remain responsible for managing the fiber optic network including operations, maintenance and capital replacement services and costs, including the excess fibers regardless of fiber strand ownership. To this end, Platte River adopted an accounting policy through Resolution No. 16-17 that places certain cost responsibilities with Platte River for replacement, operations and maintenance expenses on the fiber optic network in recognition of the importance of the fiber system for electric reliability. Platte River is also willing to perform other services as directed by a Municipality, including but not limited to negotiating dark fiber leases. This Agreement sets forth the terms and conditions whereby Platte River will provide fiber optic network management and related services to the Municipalities.

## **2. Definitions.**

**Dark Fiber** – Excess Fiber within the Fiber Optic Network that is not in use.

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**Excess Fiber** – Fiber optic strands contained within the Fiber Optic Network that are in excess of the twelve (12) strands (or more in some instances) required for Platte River’s electric operations.

**Fiber Cable** – The cable within the Fiber Optic Network that contains the Platte River Fiber and the Excess Fiber.

**Fiber Optic Network** – Consists of cables and fiber bundles on the local fiber loops within the electric service area of the Municipalities, as well as the long-haul cables and fiber bundles that interconnect the Municipalities, irrespective of ownership of the individual fibers, which contain fibers that are utilized to operate the bulk electric system. The Fiber Optic Network does not include the Fiber Laterals not owned by Platte River spliced onto the Fiber Optic Network.

**Fiber Optic Network Accounting Policy** – The policy adopted by Platte River through Resolution No. 16-17 to establish cost responsibility and accounting treatment for the Fiber Optic Network, attached as **Exhibit B**, as such policy may be updated from time to time.

**Fiber Laterals** – Fiber Optic cables connected to the Fiber Optic Network for the purpose of serving specific uses, which may be owned in whole or in part by Platte River, a Municipality, or other users under leases of Excess Fiber.

**Local Loop** – The cables and fiber bundles located on the local fiber ring within the electric service area of a Municipality.

**Long-Haul** – The cables and fiber bundles located on the long-haul sections of the Fiber Optic Network that interconnect the Local Loops.

**Platte River Fiber** – Generally twelve (12) strands of fiber located within a single buffer tube within the Fiber Optic Network which are required for Platte River’s electric operations. There may be instances where Platte River owns additional strands or additional buffer tubes in the Fiber Optic Network.

**System-wide Fiber Maintenance Protocol** – The set of system-wide fiber optic practices and standards for the Fiber Optic Network, equipment, splicing, and the conditions of hand holes and splice cases adopted by Platte River the initial version of which is attached as **Exhibit A**, as may be updated from time to time by the Technical Committee.

### 3. Term.

This Agreement may be executed by the parties hereto in counterparts and will be effective as between Platte River and each Municipality upon execution (“Effective Date”). This Agreement will remain in effect between Platte River and a Municipality that has executed the Agreement for as long as the Municipality continues to use the Excess Fiber located within the Fiber Cable and until terminated as set forth in Section 12 herein. If a Municipality intends to discontinue use of the Excess Fiber, that Municipality will provide one-year written notice of its intent to Platte River.

### 4. Administration.

Two committees will provide assistance in the implementation of this Agreement. Matters coming before the committees will be resolved by majority vote.

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- A. The Technical Committee consists of one representative each from Estes Park, Fort Collins, Longmont, Loveland, and Platte River, each of whom shall have one vote. Each Municipality shall appoint a representative who has technical experience in fiber management. The committee will meet no less frequently than once each calendar year in the fourth quarter, or such other time as the parties may mutually agree and will provide technical support and input regarding Platte River's management of the Fiber Optic Network. The Technical Committee shall have the authority to review and update the System-wide Fiber Maintenance Protocol ("Protocol"). Provided, however, that Platte River shall have the final decision-making authority with respect to aspects of the Protocol that impact the reliability of Platte River's electric system. The agenda for the annual meeting may also include consideration of Platte River's fiber management and other issues involving the operation and management of the Fiber Optic Network.
- B. The Executive Committee consists of the utility or broadband directors of each of the four Municipalities and Platte River's General Manager, each of whom shall have one vote. Provided, however, that Platte River shall have the final decision-making authority with respect to decisions of the Executive Committee that impact the reliability of Platte River's electric system. The Executive Committee will meet as necessary or as requested by members of the Executive Committee. The Executive Committee will evaluate Platte River's fiber management, provide policy direction to Platte River relating to the leasing of Excess Fiber on the Long-Haul and operation of the Long-Haul Fiber Account, resolve any disputes that arise in the management of the Fiber Optic Network and address any other policy issues that require executive decision-making authority.

**5. Management of the Fiber Optic Network – Platte River's Role and Responsibilities.**

In order to prevent or minimize controllable outages the parties hereto acknowledge that it is crucial that a single entity take a holistic system-wide view when managing physical work being performed on the Fiber Optic Network. Platte River will perform the following system-wide management activities:

- a. Coordinate and communicate with the impacted Municipalities when fiber work is performed to ensure that two or more activities are not performed simultaneously thereby opening the fiber loop in multiple places at one time.
- b. Coordinate and communicate with the impacted Municipalities, Platte River's Power System Operations, Substation Engineering, and Telecommunications when fiber work is performed to ensure that no other operational conditions are present which could be compounded by a fiber outage.
- c. In consultation with the Technical Committee, set system-wide fiber optic standards for equipment, splicing, and the conditions of hand holes and splice cases (the "System-wide Fiber Maintenance Protocol"), the initial version of which is attached hereto as **Exhibit A** and incorporated herein, as amended from time to time.
- d. Communicate with the impacted Municipalities and Platte River's Electric Operations so that they know when work is being performed on the Fiber Optic Network.
- e. In consultation with the Technical Committee, ensure that common standards are implemented across the entire Fiber Optic Network and ensure that only qualified entities perform work on the Fiber Optic Network.

- f. Platte River will be responsible for locating the Fiber Optic Network.

Each Municipality shall have the right to perform, with its own forces or through qualified third parties, such physical work as it deems necessary or appropriate to the maintenance, use, and enhancement of its Local Loop and related portions of the Fiber Optic Network, subject to coordination by Platte River in accordance with the forgoing provisions and the System-wide Fiber Maintenance Protocol.

## **6. Cost Responsibility.**

Costs associated with the Fiber Optic Network shall be allocated as set forth in Platte River's Fiber Optic Network Accounting Policy, attached hereto as **Exhibit B** and incorporated herein, as amended from time to time.

Administrative expenses in the amount of ten percent (10%) of the lease revenues collected shall be deducted by Platte River from lease revenues due to the Municipalities to cover Platte River's costs incurred in leasing Excess Fiber on behalf of the Municipalities. The ten percent (10%) fee shall be reviewed and modified periodically by Platte River, as necessary, to ensure that it remains a reasonable estimate of Platte River's actual administrative expenses. No administrative fee shall be assessed for leases that have been pre-paid prior to execution of this Agreement.

Costs to repair damage to the Fiber Optic Network shall be borne by the entity legally responsible for causing such damage.

## **7. Reliability Standards.**

The parties hereto acknowledge that as a "Transmission Operator" (defined by the Glossary of Terms Used in NERC Reliability Standards), Platte River must comply with NERC Standard TOP-001. The parties hereto further acknowledge that Platte River shall follow its adopted outage coordination procedure for TOP-001, as amended from time to time.

## **8. Role and Responsibilities of the Municipalities.**

Each Municipality shall comply with the System-wide Fiber Maintenance Protocol set forth in **Exhibit A** hereto, as amended from time to time by the Technical Committee. No work shall be performed on the Fiber Optic Network by a Municipality without compliance with the System-wide Fiber Maintenance Protocol. Additional temporary and/or limited-area protocols may be agreed upon between Platte River and a Municipality if required to address unique circumstances that affect the Local Loop in that Municipality.

## **9. Excess Fiber Leasing.**

In October 1998, the Platte River Board of Directors adopted Resolution 17-98 which authorized the General Manager to negotiate dark fiber leases on behalf of the Municipalities. Since that time, Platte River has been leasing dark fiber within the Local Loops in Fort Collins, Loveland and Estes Park to third parties and returning the revenue associated therewith to the Municipality within whose electric service area the leased dark fiber is located. Platte River has retained revenue from leases of dark fiber within the Long-Haul to cover its operating expenses.

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As requested by a Municipality, Platte River may perform the following tasks on behalf of the Municipalities:

- a. Negotiate and execute leases, or extensions of current leases, of Excess Fiber located within its Local Loop with telecommunications providers and other entities. The terms and conditions set forth in such leases shall be acceptable to the requesting Municipality. Local Loop lease rates shall be determined independently by the requesting Municipality. At any time, a Municipality may choose to assume responsibility for leasing its own fiber within its Local Loop; and
- b. Pay the net revenues from Local Loop leases (gross revenues less administrative expenses deducted in accordance with Section 6 of this Agreement) quarterly to the Municipality within whose electric service area the leased Excess Fiber is located; and
- c. In consultation with, and consistent with the policy direction given by the Executive Committee, negotiate and execute leases, or extensions of current leases, of Excess Fiber within the Long-Haul with telecommunications providers and other entities. To the extent possible the terms and conditions set forth in such leases shall be consistent with leases of fiber located within the Local Loops, and shall be acceptable to the Executive Committee. Long-Haul lease rates shall be determined independently by Platte River; and
- d. So long as Platte River retains ownership of the Excess Fiber within the Long-Haul, net revenues (gross revenues less administrative expenses deducted in accordance with Section 6 of this Agreement) from Long-Haul Leases shall be maintained in an account to be managed by Platte River for the benefit of the Municipalities (the "Long-Haul Fiber Account"). The Long-Haul Fiber Account shall be used by Platte River, in a manner consistent with the policy direction provided by the Executive Committee, to pay for expenses associated with the Long-Haul which are not covered in the Fiber Optic Network Accounting Policy, including, but not limited to easement acquisition and technology upgrades to, or expansion of, the Long-Haul. Expenses shall not exceed the balance in the account. In the event that ownership of the Excess Fiber within the Long-Haul is transferred to the Municipalities, funds remaining in the Long-Haul Fiber Account shall be transferred with such ownership in the same proportion (i.e., if ownership is transferred to each Municipality equally, the account balance shall be distributed equally); and
- e. Perform related fiber leasing tasks at the request of a Municipality including, but not limited to, customer management and billing, customer notices, and response to customer questions.

#### **10. Additional Tasks.**

In addition to the leasing of Excess Fiber tasks set forth in Section 9 above, Platte River will perform the following tasks within the Fiber Optic Network upon request of a Municipality:

- a. Fiber optic design
  - (i.) Design fiber circuits that meet the customer's needs
  - (ii.) Provide quotes for proposed fiber work
- b. Fiber optic splicing



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- (i.) Build splice diagrams for accepted work
- (ii.) Fiber work coordination
- (iii.) Customer notifications
- (iv.) Equipment maintenance and calibration
- (v.) Traffic control
- (vi.) Document completed work
- c. Fiber optic locating of laterals
- d. Fiber optic database & documentation maintenance
- e. Fiber optic system maintenance, troubleshooting, and repair
  - (i.) Responding to fiber cuts
  - (ii.) Replacing damaged vaults
  - (iii.) Troubleshooting fiber performance issues
  - (iv.) Replacing damaged patch panels
  - (v.) Rebuilding splice cases
- f. Coordinating capital improvements
  - (i.) Procurement
  - (ii.) Project management

Payment for the above tasks shall be made by the requesting Municipality upon billing by Platte River, which billing shall not occur more frequently than monthly and shall identify the tasks performed during the billing period. Platte River will bill the requesting Municipality for labor at the current hourly labor rate and benefits for the Platte River staff performing the work. Platte River will bill the requesting Municipality for equipment use and the actual costs of any contracted labor or parts used in work performed under this Agreement.

Alternatively, each Municipality may perform such work with respect to its Local Loop and other related portions of the Fiber Optic Network through its own forces or a qualified contractor, subject to coordination by Platte River in accordance with Section 5 above and the System-wide Fiber Maintenance Protocol.

### **11. Confidentiality.**

If a party to this Agreement provides confidential information to another party which is identified as such, the receiving party shall, to the extent authorized by law, protect the confidential information from disclosure to third parties with the same degree of care afforded its own confidential and proprietary information. Neither party shall, however, be required to hold confidential any information which becomes publicly available other than through the recipient, which is required to be disclosed by a governmental or judicial order, or by statute, is independently developed by the receiving party, or which becomes available to the receiving party without known restrictions from a third party. Documents and other materials supplied to a party to this Agreement may potentially become public records subject to inspection by outside parties pursuant to the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq., as amended.

### **12. Termination.**

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This Agreement shall terminate between Platte River and a Municipality when either party no longer uses its fiber located within the existing Fiber Cable for a period of twelve (12) consecutive months including any third-party leases. After termination no party shall reuse fiber located within the existing Fiber Cable until such party has provided written acknowledgement that such reuse is subject to the terms of this Agreement. Upon receipt of the notice required under Section 3, the Municipality shall be responsible for the actual costs, if any, associated with reconfiguration of the Local Loop, which costs may include disconnecting any laterals that are no longer necessary. Alternatively, a Municipality may request that Platte River vacate the existing Fiber Cable and, if Platte River agrees to relocate, the Municipality shall build a new fiber route according to Platte River's specifications at its cost for the Platte River Fiber (notwithstanding anything to the contrary in the Fiber Optic Network Accounting Policy). The parties may negotiate the transfer of title of unused or vacated fiber, which may include transfer of title in lieu of costs, if any, associated with reconfiguration. If this Agreement is terminated by one Municipality as set forth herein, Platte River shall have a continuing obligation to provide services under this Agreement to the other Municipalities.

### 13. Notices.

All notices, requests, demands, and other communications under this Agreement shall be in writing and duly given upon delivery, if delivered personally, or upon depositing in the U.S. Mail, postage prepaid and certified, return receipt requested, and addressed to the proper party as follows:

City of Fort Collins  
300 LaPorte Avenue  
Fort Collins, CO 80522  
Attn: City Manager

City of Longmont  
Civic Center Complex  
350 Kimbark  
Longmont, CO 80501  
Attn: City Attorney  
Attn: LPC General Manager

Platte River Power Authority  
2000 E. Horsetooth Road  
Fort Collins, CO 80525  
Attn: General Manager/CEO

Town of Estes Park  
170 MacGregor Ave  
Estes Park, CO 80517  
Attn: Utilities Director

City of Loveland  
500 E 3<sup>rd</sup> Street  
Loveland, CO 80537  
Attn: \_\_\_\_\_

### 14. Assignment.

Neither the Municipalities nor Platte River shall assign or transfer any interest in this Agreement, the Excess Fiber or the Fiber Optic Network without the prior written consent of the other parties. This provision shall survive the termination of this Agreement.

### 15. Provisions Construed as to Fair Meaning.

The provisions of this Agreement shall be construed as to their fair meaning and not for or against any party based upon attribution of the language in question.

### 16. Headings for Convenience.

All headings, captions and titles are for convenience and reference only and of no meaning in the interpretation of effect of this Agreement.

### **17. Compliance with Ordinances and Regulations.**

Platte River and the Municipalities shall perform their obligations under this Agreement in strict compliance with all federal, state and Municipal laws, rules, statutes, charter provisions, ordinances, and regulations applicable to their performance under this Agreement.

### **18. No Implied Representations.**

No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Agreement.

### **19. No Third-Party Beneficiaries.**

None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the Municipalities or Platte River receiving services or benefits under this Agreement shall be only an incidental beneficiary.

### **20. Indemnification.**

- A. To the extent allowed by law, in connection with the obligations of each Municipality under this Agreement, each Municipality agrees to indemnify and hold harmless Platte River, and its officers and employees, against all liabilities, claims and demands which arise from any negligent act or omission of the Municipality's officers or employees which occurred during the performance of their duties and within the scope of their employment. In addition, to the extent allowed by law each Municipality agrees to indemnify Platte River, and its officers and employees, from all costs and expenses related to defending such liabilities, claims and demands, including but not limited to, litigation costs and reasonable attorney's fees, whether any such liabilities, claims and demands are groundless, frivolous, false or fraudulent. However, each Municipality and Platte River acknowledge Land agree that all such liabilities, claims and demands shall be subject to any notice requirements, defenses, immunities and limitations to liability that the Municipality and its officers and employees may have under the Colorado Governmental Immunity Act (C.R.S. §24-10-101, et seq.) and under any other law.
- B. To the extent allowed by law, in connection with the obligations of Platte River this Agreement, Platte River agrees to indemnify and hold harmless the Municipalities, and their officers and employees, against all liabilities, claims and demands which arise from any negligent act or omission of Platte River's officers or employees which occurred during the performance of their duties and within the scope of their employment. In addition, to the extent allowed by law Platte River agrees to indemnify the Municipalities, and their officers and employees, from all costs and expenses related to defending such liabilities, claims and demands, including but not limited to, litigation costs and reasonable attorney's fees, whether any such liabilities, claims and demands are groundless, frivolous, false or fraudulent. However, Platte River and each Municipality acknowledge and agree that all such liabilities, claims and demands shall be subject to any notice requirements, defenses, immunities and limitations to liability that Platte River and its officers and employees may have under the Colorado Governmental Immunity Act (C.R.S. §24-10-101, et seq.) and under any other law.

- C. In no event will any party be liable to another party for consequential, incidental, or punitive damages.

**21. Expenditure Not to Exceed Appropriation.**

The financial obligations of the parties hereto under this Agreement are contingent upon the annual appropriation, budgeting and availability of specific funds to discharge those obligations. Nothing in this Agreement shall create a multiple-fiscal year debt or other financial obligation or fiscal obligation of any kind payable in a fiscal year beyond the fiscal year for which funds are so appropriated for the payment of current expenditures.

**22. Integrated Agreement and Amendments.**

This Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. The parties shall only amend this Agreement in writing with the proper official signatures attached hereto.

**23. Waiver.**

No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

**24. Severability.**

Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provisions of this Agreement.

**25. Governing Law and Enforceability.**

This Agreement shall be governed and construed in accordance with the binding laws of the State of Colorado, venue shall be in the County of Larimer, State of Colorado. In addition, the parties hereto recognize that there are legal constraints imposed upon the Municipalities and Platte River by constitutions, statutes, rules and regulations of the State of Colorado, and of the United States, and imposed upon them by Municipal Charter and Municipal Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner to be effective and valid under applicable law.

**26. Binding Effect.**

This Agreement shall be binding upon the parties and their respective successors and assigns.

**27. Counterparts.**

This Agreement may be executed by the parties hereto in counterparts.

**In Witness Whereof**, the parties execute this Agreement as of the dates set forth in the signature blocks below.

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**PLATTE RIVER POWER AUTHORITY**

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

APPROVED AS TO FORM:

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

ATTEST:

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

**TOWN OF ESTES PARK, COLORADO**

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

**CITY OF FORT COLLINS, COLORADO**

By: \_\_\_\_\_  
City Manager  
Date: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deputy City Attorney

**CITY OF LOVELAND, COLORADO**

By: \_\_\_\_\_  
City Manager  
Date: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Assistant City Attorney

**CITY OF LONGMONT, COLORADO**

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

ATTEST:

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

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APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
Director of Longmont Power & Communications

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

PROOFREAD:

\_\_\_\_\_

## EXHIBIT A

### System-wide Fiber Maintenance Protocol Initial Version

Approved by Technical Committee November 7, 2018

#### 1 Purpose

This protocol governs maintenance activities that are performed on the fiber system to ensure work is planned, coordinated, scheduled, and performed in a manner that does not negatively affect the underlying critical services that rely on the fiber system.

#### 2 Scope

Fiber work is defined as a planned fiber cut or planned fiber disconnect.

What: This protocol applies to fiber work that is performed on infrastructure with fibers owned by both Platte River and a third party. This protocol does not apply to work being performed in meet-me vaults or on lateral cables.

Who: This protocol applies to all fiber optic cable owners and their employees and contractors that oversee or perform work on infrastructure with fibers owned by both Platte River and a third party.

#### 3 Fiber Maintenance Protocol

##### 3.1 Central system-wide Local Loop and long-haul fiber work coordination

The fiber system extends from north to south between Fort Collins and Longmont and from east to west between Loveland and Estes Park. The fiber system enables the monitoring, control, and teleprotection of the bulk electric system in and among Estes Park, Fort Collins, Longmont, and Loveland in addition to supporting local municipal services and commercial communication connectivity.

Many of the fiber strands located within each cable are interconnected with other cables to create circuits that extend across the entire fiber system. Work that is performed anywhere on the fiber system can negatively affect underlying communication rings that extend beyond the electric service area where the work is being performed. Work that is not coordinated may unintentionally open a ring and interrupt critical communication. Therefore, it is essential that all work performed on the fiber system be coordinated, reviewed, assessed for its effect on system-wide communications, and scheduled with all parties to reduce the risk to critical communications.

These protocols must be followed to better understand and manage risk to fiber optic dependent communication services.

##### 3.1.1 Fiber work assessments

Fiber optic communication services can be divided into two broad categories: the logical ring and the physical ring. The physical ring includes the fiber optic vault, splice enclosure, splice trays, fiber cable, buffer tubes and fiber optic strand. The logical ring includes the equipment and logical circuits used to light up and transfer data over the physical fiber optic strands.

Some logical and physical rings are protected from a single equipment failure or a single fiber cut. These systems with multiple equipment failures and/or fiber cuts will open both rings and affect communication services. The logical ring is dependent on the physical ring. A single equipment failure in conjunction with a single fiber cut can open the logical ring in two locations resulting in the loss of communication services.

An assessment must be performed by affected municipalities and Platte River to determine if the proposed work may disrupt any communications services.

Physical ring – Assess the proposed fiber work:

1. Determine how the fiber work may impact services
2. Verify the integrity of the existing physical ring
3. Verify that a physical ring will not be opened by two or more planned cuts or disconnects being performed on the fiber system at the same time

Logical ring – Assess the proposed fiber work and proposed equipment work to evaluate if the fiber work and equipment work will conflict such that the logical network ring will not be opened by one or more planned cuts or disconnects being performed simultaneously on either physical or logical ring.

#### 3.1.1.1 Bulk Electric System (BES) assessment

The fiber system is critical to the operation of the bulk electric transmission system. The fiber system supports SCADA and relay protection.

An assessment is required to evaluate if the proposed fiber optic work will have an adverse effect on the bulk electric system.

#### 3.1.1.2 System-wide assessment on customer dark fiber circuits

Multiple entities in addition to the municipalities and Platte River rely on the reliable operation of the fiber system.

An assessment is required to evaluate if the proposed fiber optic work will have an adverse effect on customer connectivity. Customers must be notified if it is determined that their circuit will be affected by the fiber work. The work must be coordinated with the affected fiber customers.

#### 3.1.1.3 Municipal Assessment

An assessment is required to evaluate if the proposed fiber optic work will have an adverse effect on municipal connectivity.

#### 3.1.2 Work Approval

Entities that are performing non-emergency work and plan on cutting or disconnecting fiber strands on the fiber system must notify Platte River's Power System Operations, according to the Platte River Outage Coordination Procedure, and affected municipalities of proposed scheduled work and receive approval from all parties. A response for non-Platte River fiber cuts or disconnects must be given within four (4) business days or



approval is assumed. Platte River fiber cuts and disconnects must be handled according to the Platte River Outage Coordination Procedure.

Power System Operators and the municipalities have the authority to either approve or delay scheduled fiber work.

The municipalities and Platte River can designate time periods when the risk is too high to perform any fiber optic work. Entities will be required to reschedule the non-emergency fiber optic work.

### 3.1.3 System-wide work scheduling

Fiber work must be scheduled and coordinated so that it does not conflict with other work that is being performed on the fiber system so that the risk of a communication interruption is reduced.

## 4 Fiber System Standards [to be reviewed by the Technical Committee]

The fiber system is comprised of many interconnected parts that must all work together. Fiber optic strands are delicate and difficult to work with. Fiber technicians depend on a consistent, clean, and orderly fiber implementation to perform their work. Uncommon materials and equipment, incorrect labels, or untidy workmanship can make performing fiber work difficult and presents greater risk to the fiber system.

The installation of common materials allows for consistency amongst different inventories and the ability to share parts in a time of need. Consistent equipment and system configurations allows technicians to be better prepared when providing mutual aid and responding to outages or assisting with large jobs.

The proper maintenance of the fiber system will increase its longevity by protecting each fiber system component. A properly maintained fiber system results in a reduction in component replacements and lower costs over the long-term. Splice cases that have not been properly maintained become difficult to work on. Eventually the splice will be rebuilt which results in a reduction in fiber cable length. The issue then cascades as it eventually leads to a cable replacement. The practice of not scoping and cleaning patch panel connectors and fiber jumpers causes damaged to the connector which reduces light carrying capacity and leads to a patch panel replacement. This too can cascade into a cable replacement.

The following standards must be met when installing or maintaining the fiber system:

- Scope & clean connectors
- Use standardized equipment
- Use ultra-low loss fiber
- Accept a maximum of .03 dB loss for splices
- Components must be labeled
- Hand hole layout
- Splice case layout
- Fiber testing and acceptance requirements
- Limit the number of splice cases in a hand-hole
- Maintain hand-holes and splice cases in a consistent, orderly, and clean state

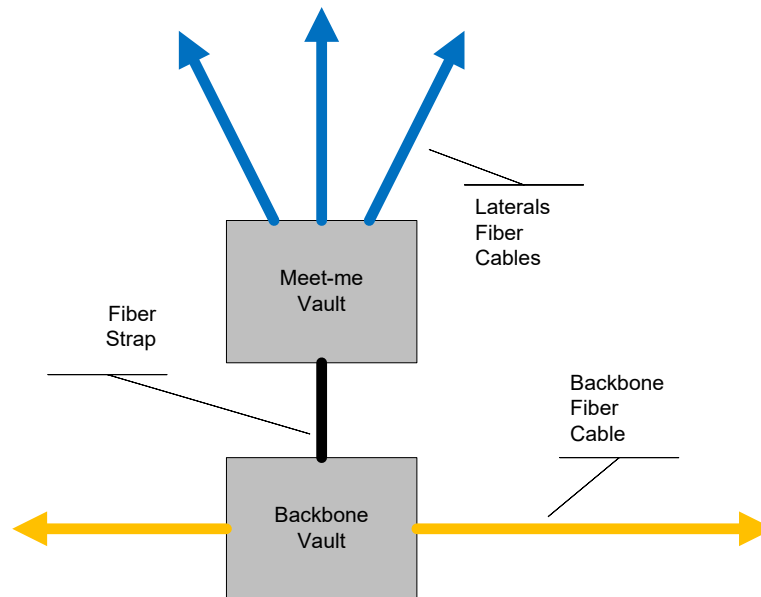
## 5 Meet-me Vaults

Meet-me vaults are preferred means of construction to allow a connection of customer laterals to the Local Loop without compromising or increasing risk to the Local Loop fiber cable.

The Local Loop is only accessed once to install the fiber strap which is a short fiber optic cable that connects two splice cases. From that point on, all customer laterals and all work associated with connecting customer laterals happen within the meet-me vault. This provides many benefits including:

- Reduction in risk to the Local Loop fiber cable because customer work is not performed directly on the Local Loop
- Fiber strands that contain critical traffic can remain protected in the Local Loop vault
- Outages resulting from work in the meet-me vault are localized to the customers in that vault. This allows for:
  - Easier coordination with affected customers
  - Fewer customer notifications
  - Increased confidence for the fiber technician to know which customers will be affected
- It is much easier to rebuild a meet-me vault
- An accident, like dropping a vault lid onto the fiber, affect a subset of the customers
- The Local Loop is only accessed once to install the meet-me vault. This helps ensure the integrity of the Local Loop is not compromised over time through continuous access.
- Initial splicing and re-splicing reduces fiber strand length. This is confined to the meet-me vault.

Meet-me vaults should be utilized whenever possible.



## 6 System-wide fiber optic documentation [to be determined by the Technical Committee].

## EXHIBIT B

## Fiber Optic Accounting Policy

	<b>Policy</b>	Version #: 1.0 Original Effective Date: 12/07/2017 Next Review Date: 12/07/2022
	Fiber Optic Network Accounting Policy	Page 1 of 2

**Purpose:**

To establish cost responsibility and accounting treatment for the fiber optic network primarily installed for electric operation communications. For purposes of this policy the term "fiber optic network" includes the cables and fiber bundles on the local fiber rings within the municipalities as well as the long-haul cables and fiber bundles that interconnect the municipalities, irrespective of ownership of the individual fibers. Fiber optic network does not include the fiber laterals spliced onto the fiber optic network.

Without the fiber optic cables connecting transmission substations, Platte River could not monitor, control, or protect the transmission system. The fiber optic network contains excess capacity beyond that necessary for Platte River operations, and this excess capacity is dedicated for municipal uses. Platte River requires a fiber optic network for electric operations independent of the other benefits provided by the extra capacity. It is for this reason, and in recognition that the cost to add the extra capacity was immaterial and would have little to no impact on the rate setting process, that Platte River is proposing the accounting treatment detailed in this policy.

**Policy:**

This policy covers expenses incurred for the installation of capital fiber assets as well as ongoing operations and maintenance costs.

**Capital Costs**

Platte River will assume all capital costs for newly installed fiber optic cables or for any replacement after the initial installation of the fiber optic network as a capital asset, regardless of fiber strand ownership. The replacement asset will be depreciated as a Platte River asset and will be recovered through Platte River's rates in the same manner as other capital assets.

If portions of the fiber optic network require replacement, Platte River will assume the costs for replacing the fiber optic network and Platte River owned laterals only. The cost for re-splicing other laterals into the system will be borne by the owner of the lateral.

The accounting treatment applied in 1998 for the costs of the original fiber optic assets will remain the same, which assets will be fully depreciated in 2018.

As discussed with Platte River's auditors, this policy does not require the use of GASB Statement No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989, FASB and AICPA Pronouncements*, Regulated Operations, paragraph 476-500, treatment because the incremental cost to install additional fiber strands beyond those needed for Platte River communications would have little to no impact on the rate setting process.

**Operations and Maintenance Costs**

Costs associated with operations and maintenance of the fiber optic network will be borne by Platte River. The relocation costs of the fiber optic network, or any portion thereof, will be borne by the entity requesting the relocation. The cost for splicing laterals into the system will be borne by the owner of the lateral cable.

**Implementing Parties and Assigned Responsibilities:**

	<h1>Policy</h1>	Version #: 1.0 Original Effective Date: 12/07/2017 Next Review Date: 12/07/2022
	Fiber Optic Network Accounting Policy	Page 2 of 2

The Controller reviews and implements this policy. During review, the incremental cost will be assessed, in conjunction with the auditors, for materiality and impacts on the rate setting process. Necessary revisions will be brought before the Platte River Board of Directors.

**Associated Items (if applicable):**

September 2017 Fiber Asset Ownership Whitepaper  
 Fiber optic network asset accounting treatment procedure and Resolution No. 16-17.

**Definitions (if applicable):**

<b>Document Owner:</b> Controller	<b>Original Effective Date:</b> 12/07/2017
<b>Authority:</b> Board of Directors	<b>Review Frequency:</b> Every 5 years
<b>Counsel Review:</b> General Counsel or Associate General Counsel	<b>Current Effective Date:</b> 12/07/2017

Version	Date	Action	Author	Change Tracking (new, review, revision)
1.0	12/07/2017	Original Policy by Board Resolution No. 16-17	Shelley Nywall	New

# Attachment B

## RESOLUTION NO. 17-18

WHEREAS, Platte River Power Authority (Platte River) constructed a fiber optic network (the "Fiber Optic Network") in and around Platte River's owner communities of Estes Park, Fort Collins, Longmont and Loveland, Colorado, (the "Owner Communities") which network includes a fiber ring ("Local Fiber Optic Loop") in each of these communities; and

WHEREAS, installation of the Fiber Optic Network was necessary to replace and upgrade the communication systems used for Platte River's operational control of the transmission substations through which Platte River delivers power to the Owner Communities; and

WHEREAS, costs associated with the Fiber Optic Network are allocated as set forth in Platte River's Fiber Optic Network Accounting Policy, adopted through Resolution No. 16-17, as such policy may be updated from time to time; and

WHEREAS, due to the insignificant incremental cost of installing fiber beyond the operational needs of Platte River, as installed Platte River's Fiber Optic Network includes more fiber than required for Platte River's purposes (the "Excess Fiber"); and

WHEREAS, the Excess Fiber was intended to be used by the Owner Communities for their purposes; and

WHEREAS, the cost of the Excess Fiber has been fully depreciated, resulting in a reduction of equity in Platte River for each respective Owner Community; and

WHEREAS, in 1998 Platte River transferred title to Longmont of One Hundred and Thirty-Two (132) strands of Excess Fiber in the Longmont Local Fiber Optic Loop for its use; and

WHEREAS, Loveland desires to take ownership of the One Hundred and Thirty-Two (132) strands of Excess Fiber located within the Loveland Local Fiber Optic Loop, and ownership of other assets owned by Platte River that support connectivity and operation of such Excess Fiber (the "Associated Assets"); and

WHEREAS, Platte River desires to grant ownership of the One Hundred and Thirty-Two (132) strands of Excess Fiber located within the Loveland Local Fiber Optic Loop, and ownership of Associated Assets, to the City of Loveland; and

WHEREAS, Platte River desires to retain ownership of fiber required to operate Platte River's electric system (the "Platte River Fiber"); and

WHEREAS, Platte River and Loveland desire to enter into an Intergovernmental Agreement for Fiber Management ("Fiber Management IGA") which defines their respective responsibilities related to the operation of the Fiber Optic Network; and

WHEREAS, Platte River desires to document its right to occupy and maintain the Platte River Fiber within the Loveland municipal streets, rights-of-way and electric infrastructure.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Platte River that the General Manager be, and hereby is, authorized to:

- (1) Upon execution of a Fiber Management IGA acceptable to the parties, and upon development of a mutually acceptable detailed description of the assets to be conveyed, transfer ownership of One Hundred and Thirty-Two (132) strands of Excess Fiber located within the Loveland Local Fiber Optic Loop to the City of Loveland, and transfer ownership of Associated Assets; and
- (2) Execute an Acknowledgement of Asset Transfer document to evidence the transfer of the Excess Fiber and Associated Assets from Platte River to the City of Loveland, which Acknowledgement of Asset Transfer document shall be substantially in the form set forth in **Exhibit A**, attached hereto and incorporated herein by this reference; and
- (3) Convey additional Excess Fiber and Associated Assets to the City of Loveland subject to the Fiber Management IGA. In addition to the One Hundred and Thirty-Two (132) strands of Excess Fiber referenced above, Platte River and Loveland may from time to time identify additional Excess Fiber and Associated Assets

owned by Platte River that may be transferred to Loveland. Upon the request of Loveland, and upon development of a mutually acceptable detailed description of the assets to be conveyed, the General Manager is authorized to transfer ownership of such additional Excess Fiber and Associated Assets within the Fiber Optic Network to the City of Loveland by execution of an Acknowledgement of Asset Transfer document in the form provided herein upon a finding by the General Manager that such Excess Fiber and Associated Assets are no longer needed for Platte River's purposes; and

- (4) Work cooperatively with the City of Loveland to identify and address physical access and security issues associated with shared assets including patch panels and ports; and
- (5) Execute such agreements as may be necessary and appropriate to document Platte River's right to occupy and maintain the Platte River Fiber within the Loveland municipal streets, rights-of-way and electric infrastructure.

AS WITNESS, I have executed my name as Secretary and have affixed the corporate seal of the Platte River Power Authority this 27 day of September, 2018.

  
\_\_\_\_\_  
Secretary

Adopted: September 27, 2018  
Vote: 7-0



**EXHIBIT A**

**Acknowledgement of Asset Transfer**

September 27, 2018

This is to acknowledge that Platte River Power Authority, has this day transferred to the City of Loveland, One Hundred and Thirty-Two (132) strands of Excess Fiber located within the Loveland Local Fiber Optic Loop, and Associated Assets, more particularly described in **Attachment A**, attached hereto and incorporated herein by this reference. The cost of the fiber has been fully depreciated, resulting in a reduction of the City of Loveland equity in Platte River Power Authority over the period of 1999 to 2018, thus is transferred to the City of Loveland for no compensation.

By: Jason Frisbie

Jason Frisbie, General Manager/CEO

Platte River Power Authority

Witnessed by:

[Signature]

Secretary

Accepted By: \_\_\_\_\_

[Title]

City of Loveland



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**ITEM TITLE:**

Proposed Modifications to the Platte River Power Authority (PRPA) Organic Contract and Power Supply Agreement

**SUMMARY:**

The Platte River Power Authority was formed in 1975 by an Organic Contract between the four owner cities of Estes Park, Ft. Collins, Longmont, and Loveland. PRPA staff is proposing changes to the Organic Contract and Power Supply Agreement(s) (PSAs) as described below.

**DESCRIPTION:**

The purpose of this item is to describe proposed changes to both the Organic Contract (a contract between the four PRPA Owner Cities) that Power Supply Agreement between the City of Loveland and PRPA. The Organic Contract and (PSAs) were last renewed in 2010 and currently extend through 2050.

PRPA staff is proposing to modify (as noted below), renew, and extend the Organic Contract and PSAs to provide flexibility in future bond issuances as well as flexibility in future Power Purchase Agreements (PPAs) for additional local solar resources. The changes will allow flexibility regarding the possibility of an organized market.

The proposed change to the Organic Contract (between the four owner cities) is:



- Extend the term of the contract to 2060
- The proposed changes to the PSA (each PSA is between PRPA and an individual owner city)
- Extend the term of the agreement to 2060
- Expand the exceptions to the “all requirements” obligation to allow third-party solar development
- Change the metering point to the high side of substation transformers

Additionally, PRPA is proposing minor, non-substantive language changes and clean-up of the two documents.

**RECOMMENDATION:**

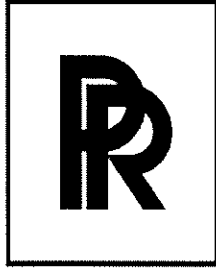
Adopt a motion recommending that City Council approve the proposed changes to the Organic Contract between the four owner cities and Power Supply Agreement with PRPA.

**ATTACHMENTS:**

-  Attachment A: Current Organic Contract
-  Attachment B: Current Power Supply Agreement between City of Loveland and PRPA



# Attachment A



## PLATTE RIVER POWER AUTHORITY ORGANIC CONTRACT

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AMENDED AND RESTATED ORGANIC CONTRACT ESTABLISHING PLATTE RIVER  
POWER AUTHORITY AS A SEPARATE GOVERNMENTAL ENTITY

THIS CONTRACT, originally made and entered into as of June 17, 1975, and amended February 14, 1977, and July 27, 1978, and amended and restated the 31<sup>st</sup> day of March 1980, and the 1<sup>st</sup> day of July, 1998, and as further amended and restated on this 1<sup>st</sup> day of September, 2010, by the parties to this Contract which are: TOWN OF ESTES PARK, COLORADO, a municipal corporation of the State of Colorado ("Estes Park"), CITY OF FORT COLLINS, COLORADO, a municipal corporation of the State of Colorado ("Fort Collins"), CITY OF LONGMONT, COLORADO, a municipal corporation of the State of Colorado ("Longmont"), and CITY OF LOVELAND, COLORADO, a municipal corporation of the State of Colorado ("Loveland"). When specificity is not required, the municipal corporations which are parties hereto will hereinafter be individually referred to as "Municipality" and collectively as "Municipalities."

WITNESSETH:

WHEREAS, Estes Park owns and operates a municipal electric system which supplies electric power and energy at retail to users located within the town limits of Estes Park and the adjacent service area of the Estes Park electric system; and

WHEREAS, Fort Collins owns and operates a municipal electric system which supplies electric power and energy at retail to users located within the city limits of Fort Collins and the adjacent service area of the Fort Collins electric system; and

WHEREAS, Longmont owns and operates a municipal electric system which supplies electric power and energy at retail to users located within the city limits of Longmont and the adjacent service area of the Longmont electric system; and

WHEREAS, Loveland owns and operates a municipal electric system which supplies electric power and energy at retail to users located within the city limits of Loveland and the adjacent service area of the Loveland electric system; and

WHEREAS, the Municipalities on June 17, 1975, established, pursuant to the provisions of C.R.S. § 29-1-204, as then enacted, Platte River Power Authority (the "Authority"), as a separate governmental entity and successor to a nonprofit corporation, to be the instrumentality



of the Municipalities and as such successor, to continue to supply their wholesale electric power and energy requirements; and

WHEREAS, during 1998 the Municipalities contracted with one another to establish, pursuant to the provisions of C.R.S. § 29-1-203, the Authority as a separate legal entity and multi-purpose intergovernmental authority to provide designated functions, services, or facilities lawfully authorized to any combination of two or more of the Municipalities provided that such function, service, or facility constitutes an "enterprise" as defined in subsection 2(d) of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, increased complexity and risk in the electric utility industry have created the need to enhance utility image and customer loyalty, the Municipalities wish to clarify that the Organic Contract authorizes the Authority to engage in a broad range of services which are incidental to or supportive of the Municipalities' continued ability to provide electric power and energy services to their customers on a competitive basis; and

WHEREAS, the Municipalities acting through the Authority wish to ensure a source of electric power and energy that is reliable, cost-effective, and environmentally responsible; and

WHEREAS, providing energy in an environmentally responsible manner requires that the Authority incorporate environmental factors as an integral component of planning, design, construction and operational decisions; and

WHEREAS, the Municipalities now wish to further amend the Organic Contract, to extend its term and to restate the amended provisions thereof in a single updated document.

NOW, THEREFORE, the Municipalities do hereby amend and restate the Organic Contract, originally executed June 17, 1975, and subsequently amended, so that as hereby amended and restated it provides, and the Municipalities do agree, as follows:

1.0 EFFECTIVE DATE

This Contract, as hereby amended and restated, shall become effective when it has been duly executed by all of the Municipalities.

2.0 ESTABLISHMENT OF PLATTE RIVER POWER AUTHORITY

As of June 17, 1975, the Municipalities established a separate governmental entity, to be known as Platte River Power Authority, to be used by the

Municipalities to effect the development of electric energy resources and the production and transmission of electric energy in whole or in part for the benefit of the inhabitants of the Municipalities. As of July 1, 1998, the Municipalities also established the Authority as a separate governmental entity and multi-purpose intergovernmental authority to provide additional designated functions, services, or facilities lawfully authorized to any combination of two or more of the Municipalities, provided that such function, service, or facilities constitutes an "enterprise" as defined in subsection 2(d) of Article X, Section 20 of the Colorado Constitution.

## 2.1 PURPOSES

The purposes of the Authority are to conduct its business and affairs for the benefit of the Municipalities and their inhabitants:

- (i) to provide the electric power and energy requirements of the Municipalities and the retail customers within the Municipalities in a reliable, cost-effective, and environmentally responsible manner;
- (ii) to engage in business activities related to the provision of electric power and energy services, which may include but are not limited to investment in energy efficiency, renewable energy, demand side management, and associated communication systems, that the Board determines are likely to enhance the competitive position of the Authority or the Municipalities; and
- (iii) to provide any additional designated function, service, or facility lawfully authorized to any combination of two or more of the Municipalities, provided that these constitute an "enterprise" as defined in subsection 2(d) of Article X, Section 20 of the Colorado Constitution.



A particular function, service, or facility shall be treated as designated as a separate purpose under clause (iii) of the previous sentence only upon receipt by each Municipality which is designating the function, service, or facility to also be performed by the Authority of (a) a resolution adopted by unanimous vote of the Board of Directors of the Authority designating the function, service, or facility as a purpose to also be jointly exercised by the designating Municipalities through the Authority and (b) opinions of counsel to each Municipality which is designating the function, service, or facility to also be performed by the Authority setting forth the extent to which the designated function, service, or facility is lawfully authorized by such designating Municipality; and (c) an opinion of the Authority's bond counsel to the effect that the designated function, service, or facility constitutes an "enterprise" as defined in subsection 2(d) of Article X, Section 20 of the Colorado Constitution.

## 2.2 FUNCTIONS, SERVICES, OR FACILITIES

The functions, services, or facilities to be provided by the Authority are: The supplying of the electric power and energy requirements of the Municipalities and retail customers within the Municipalities; and, the provision of any additional function, service, or facility, by means of

- (i) acquiring, constructing, owning, reconstructing, improving, rehabilitating, repairing, operating and maintaining electric generating plants, transmission systems and related facilities, or interests therein, for the purpose of producing, transmitting and delivering to the Municipalities, electric power and energy to the extent of their requirements, including renewable energy requirements;



- (ii) purchasing electric power and energy from electric utilities and other producers of energy, as required to supply the Municipalities and perform its other obligations;
- (iii) selling at wholesale to the Municipalities all of the electric power and energy produced or purchased by the Authority which the Municipalities require;
- (iv) selling, exchanging and otherwise disposing of, under the most advantageous terms and conditions obtainable, any surplus power and energy or transmission capacity which the Authority owns, produces or purchases;
- (v) developing electric energy resources (including renewable sources) and producing and transmitting electric energy in whole or in part for the benefit of the inhabitants of the Municipalities;
- (vi) developing cost-effective, reliable, and environmentally responsible products and services to improve the efficiency of generation, transmission and use of electrical energy, which may include but are not limited to investment in energy efficiency, renewable energy, demand side management, and associated communication systems;
- (vii) acquiring, constructing, owning, purchasing, selling, exchanging or otherwise disposing of, reconstructing, improving, rehabilitating, repairing, operating, and maintaining assets, infrastructure, plants, systems, and related facilities or interests therein;
- (viii) developing products, services, infrastructure, and resources related to such function, service, or facility for delivery to

appropriate markets in whole or in part for the benefit of the inhabitants of the Municipalities; and

- (ix) on termination of this Contract to vest in the Municipalities all right, title and interest of the Authority in or to all of its property and assets.

## 2.3 BOARD OF DIRECTORS

The governing body of the Authority shall be a Board of Directors in which all legislative power of the Authority is vested.

### 2.3.1 NUMBER

The number of Directors shall be eight (8).

### 2.3.2 SELECTION

Each Municipality shall be represented by two (2) members on the Board of Directors of the Authority, who shall be designated or appointed as follows:

- (i) MAYORS

The Mayor of each of the Municipalities is hereby designated and shall serve as a member of the Board of Directors of the Authority contemporaneously with service as Mayor; provided, however, that any Mayor may designate some other member of the governing board of such Municipality to serve as a Director of the Authority in place of the Mayor.

- (ii) APPOINTED DIRECTORS

The governing body of each of the Municipalities shall appoint one (1) additional member to the Board of

Directors. Appointed Directors shall be selected for judgment, experience, and expertise which make that person particularly qualified to serve as a Director of an electric utility.

### 2.3.3 TERM

The term of office of the Directors of the Authority shall be as follows:

(i) MAYORS

The Mayor of each Municipality, or the member of the Municipality's governing board designated by the Mayor, shall serve as a Director of the Authority for the same period of time that the Mayor serves as Mayor of that Municipality.

(ii) APPOINTED DIRECTORS

The term of the Appointed Director for Estes Park shall expire on December 31, 2011, the term of the Appointed Director for Fort Collins shall expire on December 31, 2008, the term of the Appointed Director for Longmont shall expire on December 31, 2010, and the term of the Appointed Director for Loveland shall expire on December 31, 2009. Each successor shall be appointed for a term of four years from the date of the expiration of the term for which the predecessor was appointed.

### 2.3.4 REMOVAL

Any Director appointed by the governing board of a Municipality may be removed at any time by such governing board, with or without cause. A Mayor will be automatically removed as a



Director upon vacating the office of Mayor, and a member of the Municipality's governing board designated to serve in place of a Mayor may be removed at any time by the Mayor, with or without cause.

#### 2.3.5 VACANCIES

A vacancy occurring in the directorship of an Appointed Director, whether such vacancy be the result of resignation, death, removal or disability, shall be filled by the appointment of a successor Appointed Director by the governing body of the Municipality which appointed the Director whose office has become vacant. In the case of a vacancy in the directorship of a Mayor or his designee from any Municipality, the vacancy shall be filled by the new Mayor or the Mayor's designation of some other member of the governing board of that Municipality.

#### 2.3.6 COMPENSATION

Directors shall not receive compensation for their services, but Directors may be reimbursed their actual expenses for attendance at meetings of the Board of Directors and for expenses otherwise incurred on behalf of the Authority.

#### 2.3.7 ANNUAL MEETINGS

An annual meeting of the Board of Directors shall be held within the first 120 days in each year at such place in Fort Collins, Colorado, as shall be designated in the notice of the meeting, to elect officers, to pass upon reports for the preceding fiscal year, and to transact such other business as may come before the meeting. Failure to hold the annual meeting at a designated time, or failure to hold the annual meeting in any year, shall not cause a forfeiture or dissolution or otherwise affect the Authority.

2.3.8 REGULAR MEETINGS

The Board of Directors may provide for the time and place for the holding of regular meetings by resolution without notice to Directors other than the resolution adopting the meeting schedule.

2.3.9 SPECIAL MEETINGS

Special meetings of the Board of Directors may be called by the Chairman or any Director and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the Board of Directors shall be held at such time and place within the State of Colorado as shall be fixed by the Chairman or the Director calling the meeting.

2.3.10 NOTICE OF MEETINGS

Written notice of the annual or of any special meeting of the Board of Directors shall be delivered to each Director not less than seven (7), nor more than thirty-five (35), days before the date fixed for such meeting, either personally or by mail, by or at the direction of the Secretary, or, upon his/her default, by the person calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Director at his/her address as it appears on the records of the Authority, with postage prepaid.

2.3.11 WAIVER OF NOTICE

Whenever any notice is required to be given to any Director of the Authority under the provisions of the law or this Contract, a waiver thereof in writing signed by such Director, whether before or after the time stated therein, shall be equivalent to the giving of

such notice. Attendance of a Director at any meeting of the Board of Directors shall constitute a waiver by such Director of notice of such meeting except when such Director attends such meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

#### 2.3.12 QUORUM

A majority of the number of Directors then in office shall constitute a quorum for the transaction of business; provided that, if less than a majority of the Directors then in office is present at a meeting, a majority of the Directors present may adjourn the meeting; and, provided further, that the Secretary shall notify any absent Directors of the time and place of such adjourned meeting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

#### 2.3.13 ATTENDANCE BY TELECONFERENCE

Directors may attend and fully participate in any meeting through electronic teleconferencing.

#### 2.3.14 VOTE IN CASE OF DEADLOCK

In the event the Board of Directors, at a meeting at which a quorum is present, is deadlocked and unable to obtain a majority vote of the Directors present concerning a matter being considered for action, any Director may require a "Weighted Vote." A "Weighted Vote" shall then be taken with each Director's vote being given one half the proportion which:

- (i) the dollar amount of electric power and energy purchased from the Authority during the twelve-month period ending with the close of the billing period for the month



two months prior to the month of the deadlocked meeting and paid for by the Municipality appointing such Director bears to;

- (ii) the dollar amount of all electric power and energy purchased from the Authority and paid for by the Municipalities during said twelve-month period.

The act of a majority of the "Weighted Vote" shall be the act of the Board of Directors.

#### 2.3.15 DUTIES

The duties of the Board of Directors shall be:

- (i) To govern the business and affairs of the Authority.
- (ii) To exercise all powers of the Authority.
- (iii) To comply with the provisions of parts 1, 5, and 6 of Article 1 of Title 29, C.R.S.
- (iv) To adopt a fiscal resolution, which complies with statutory and other restrictions imposed by law on the affairs of the Authority, to govern the financial transactions of the Authority, including the receipt, custody, and disbursement of its funds, securities, and other assets, and to provide for the services of a firm of independent certified public accountants to examine, at least annually, the financial records and accounts of the Authority and to report thereupon to the Board of Directors.

- (v) To keep minutes of its proceedings.

## 2.4 OFFICERS

The officers of the Authority shall be a Chairman, Vice Chairman, Secretary, Treasurer, General Manager and such other officers and assistant officers as may be authorized by the Board of Directors to perform such duties as may be assigned by the Board of Directors. The Chairman and Vice Chairman shall be members of the Board of Directors, but other officers of the Authority need not be members of the Board of Directors.

### 2.4.1 ELECTION OF OFFICERS AND TERMS OF OFFICE

At each annual meeting of the Board of Directors, the members of the Board of Directors shall elect officers who shall serve as such officers of the Authority until the next annual meeting of the Board of Directors and until their successors are elected and qualified. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Vacancies or new offices may be filled at any meeting of the Board of Directors.

### 2.4.2 REMOVAL

Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Authority will be served thereby.

### 2.4.3 DUTIES OF OFFICERS

In addition to duties assigned by the Board of Directors, the duties of the officers shall include the following:



(i) CHAIRMAN

The Chairman shall preside at all meetings of the Board of Directors and, except as otherwise delegated by the Board of Directors, shall execute all legal instruments of the Authority, and shall perform such other duties as the Board of Directors may prescribe.

(ii) VICE CHAIRMAN

The Vice Chairman shall, in the absence of the Chairman, or in the event of the Chairman's inability or refusal to act, perform the duties of the Chairman and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairman. The Vice Chairman shall also perform such other duties as may be prescribed by the Board of Directors.

(iii) SECRETARY

The Secretary shall maintain the official records of the Authority, including all resolutions and regulations approved by the Board of Directors, the minutes of meetings of the Board of Directors, and a register of the names and addresses of Directors and officers, and shall issue notice of meetings, attest and affix the corporate seal to all documents of the Authority, and shall perform such other duties as the Board of Directors may prescribe.

(iv) TREASURER

The Treasurer shall serve as financial officer of the Authority and shall, pursuant to the fiscal resolution adopted by the Board of Directors governing the financial transactions of the Authority and the restrictions imposed

by law, be responsible for the receipt, custody, investment, and disbursement of the Authority's funds and securities and for duties incident to the office of Treasurer, and shall perform other duties as the Board of Directors may prescribe.

(v) GENERAL MANAGER

The General Manager shall be the principal executive officer of the Authority with full responsibility for the planning, operations, and administrative affairs of the Authority, and the coordination thereof, pursuant to policies and programs approved by the Board of Directors, and shall be the agent for service of process on the Authority. When and while a vacancy exists in the office of General Manager, the Board of Directors shall appoint a qualified interim General Manager to act as the principal executive officer of the Authority.

2.4.4 BONDS OF OFFICERS

The Treasurer and any other officer or agent of the Authority charged with responsibility for the custody of any of its funds or property shall give bond in such sum and with such surety as the Board of Directors shall determine. The Board of Directors in its discretion may also require any other officer, agent, or employee of the Authority to give bond in such amount and with such surety as it shall determine. The cost of such bond shall be an expense payable by the Authority.

2.5 INDEMNIFICATION OF OFFICERS AND DIRECTORS

Each Director and officer of the Authority, whether or not then in office, and his/her personal representatives, shall be indemnified by the



Authority against all costs and expenses actually and necessarily incurred by him/her in connection with the defense of any action, suit, or proceeding in which he/she may be involved or to which he/she may be made a party by reason of his/her being or having been such Director or officer, except in relation to matters as to which he/she shall be finally adjudged in such action, suit, or proceeding to be liable for gross negligence or willful and wanton misconduct in the performance of duty. Such costs and expenses shall include amounts reasonably paid in settlement for the purpose of curtailing the costs of litigation, but only if the Authority is advised in writing by its counsel that in his/her opinion the person indemnified did not commit gross negligence or willful and wanton misconduct. The foregoing right of indemnification shall not be exclusive of other rights to which he/she may be entitled as a matter of law or by agreement.

2.6 TERM OF CONTRACT

This Contract shall continue in force and effect until December 31, 2050, and until thereafter terminated by any Municipality following not less than twelve (12) months written notice to the other Municipalities of its intention to terminate; provided, however, that this Contract may be amended, modified, or terminated at any time by a written document approved and executed by each and every Municipality which is a party to this Contract; and, provided further, however, that this Contract may not in any event be terminated so long as the Authority has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations.

2.7 ASSETS AND PROPERTIES

All assets and properties of the Authority shall be held in trust for the purposes herein mentioned, including the payment of the liabilities of the

Authority.

2.8 DISTRIBUTION OF ASSETS UPON TERMINATION

In the event of the termination of this Contract and the dissolution of the Authority, all of its assets shall immediately vest in the Municipalities. The assets of the Authority conveyed to each Municipality shall be that proportion which (i) the total dollar amount of electric power and energy purchased and paid for by such Municipality, from the Authority and its predecessor during their corporate existence, bears to (ii) the total dollar amount of all electric power and energy purchased and paid for by all of the Municipalities, from the Authority and its predecessor during their corporate existence.

2.9 SEAL

The corporate seal of the Authority shall be in the form of a circle and have inscribed thereon the name of the Authority and the words "Corporate Seal," together with such insignia, if any, as the Board of Directors may authorize.

2.10 CONTRACTS

Except as otherwise provided by law, the Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract, or execute and deliver any instrument in the name and on behalf of the Authority.

2.11 CHECKS, DRAFTS, AND OTHER FINANCIAL DOCUMENTS

All checks, drafts, or other orders for payment of money and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority shall be signed by such officer or officers, agent or agents, employee or employees of the Authority and in such manner as shall be determined by the fiscal resolution.

2.12 DEPOSITS

All funds of the Authority shall be deposited in a manner set forth by the fiscal resolution.

2.13 FISCAL YEAR

The fiscal year of the Authority shall be the calendar year.

2.14 PRINCIPAL PLACE OF BUSINESS

The principal place of business of the Authority shall be in Fort Collins, Colorado.

3.0 GENERAL POWERS

The general powers of the Authority shall include the following powers:

(i) ELECTRIC ENERGY

To develop electric energy resources and related services, and produce, purchase, and transmit electric energy, in whole or in part, for the benefit of the inhabitants of the Municipalities.

(ii) CONTRACTS

To make and enter contracts of every kind with the Municipalities, the United States, any state or political subdivision thereof, and any individual, firm, association, partnership, corporation or any other organization of any kind.

(iii) AGENTS AND EMPLOYEES

To employ agents and employees.



(iv) FACILITIES

To acquire, construct, manage, maintain, and operate electric energy facilities, works, and improvements and any interests therein, including, without limitation, to acquire, construct, reconstruct, improve, and rehabilitate, repair, operate, and maintain (separately or jointly) generating plants, transmission systems and related facilities for the purpose of delivering electrical power and energy generated thereby to the Municipalities, and any mine, well, pipeline, plant, structure, or other facility for the development, production, manufacture, storage, fabrication, or processing of fossil or nuclear fuel of any kind for use, in whole or in major part, in any of such generating plants, and any railroad cars, trackage, pipes, equipment, and any structures or facilities of any kind used or useful in the transporting of fuel to any of such generating plants, and to sell, deliver, exchange, or otherwise dispose of the power and energy generated by said plants, and any of the waste or by-products therefrom, and to purchase, lease, or otherwise acquire and equip, maintain, operate, sell, assign, convey, lease, mortgage, pledge, and otherwise dispose of electrical generating plants, transmission systems and related facilities, together with all lands, buildings, equipment, and all other real or personal property, tangible or intangible, necessary or incidental thereto.

(v) PROPERTY

To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, and service including, without limitation, to buy, lease, construct, appropriate, contract for, invest in, and otherwise acquire, and to own, hold, maintain, equip, operate, manage, improve, develop, mortgage, and deal in and with, and to sell, lease, exchange, transfer, convey and otherwise dispose of and to mortgage, pledge, hypothecate and otherwise encumber real and personal property of every kind, tangible and intangible.

(vi) CONDEMNATION

To condemn property for public use, if such property is not owned by any public utility and devoted to such public use pursuant to state authority.

(vii) DEBT

To incur debts, liabilities, or obligations and to borrow money and, from time to time, to make, accept, endorse, execute, issue, and deliver bonds, debentures, promissory notes, bills of exchange, and other obligations of the Authority for monies borrowed or in payment for property acquired or for any of the other purposes of the Authority, and to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement, or other collateral instrument, or by other lien upon, assignment of, or agreement in regard to, all or any part of the properties, rights, assets, contracts, easements, revenues, and privileges of the Authority wherever situated.

(viii) LITIGATION

To sue and be sued in its own name.

(ix) SEAL

To have and to use a corporate seal.

(x) RATES

To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the Authority.

(xi) REGULATIONS

To adopt, by resolution, regulations respecting the exercise of its power and the carrying out of its purposes.

(xii) AGENTS

To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, corporation or governmental entity.

(xiii) JOINT OWNERSHIP

To own, operate, and maintain real and personal property, and facilities in common with others, as permitted by law, and to conduct joint, partnership, cooperative, or other operations with others and to exercise all of the powers granted in this Contract in joint partnership or cooperative efforts and operations with others.

(xiv) OTHER POWERS

To exercise any other powers which are essential, necessary, incidental, convenient, or conducive to providing the wholesale electric power and energy requirements of the Municipalities, as well as to accomplishing the purposes, functions, services, and facilities set forth in Sections 2.0, 2.1, and 2.2 of this Organic Contract.

4.0 POLITICAL SUBDIVISION

The Authority shall be a political subdivision and a public corporation of the State of Colorado separate from the Municipalities. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.

5.0 REVENUE BONDS

The Authority is authorized to issue bonds, notes, or other obligations secured by its electric revenues pursuant to the terms, conditions, and authorization contained in C.R.S. § 29-1-204(7).



6.0 DEBT NOT THAT OF MUNICIPALITIES

The bonds, notes, and other obligations of the Authority shall not be the debts, liabilities, or obligations of the Municipalities.

7.0 FILING OF CONTRACT

A copy of this Contract shall be filed with the Division of Local Government of the State of Colorado within ten (10) days after its execution by the Municipalities.

8.0 NOTICES

Any formal notice, demand, or request provided for in this Contract shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Town of Estes Park, Colorado  
c/o Town Administrator  
P.O. Box 1200  
Estes Park, Colorado 80517

City of Fort Collins, Colorado  
c/o Utilities Executive Director  
P.O. Box 580  
Fort Collins, Colorado 80522

City of Longmont, Colorado  
c/o Director of Longmont Power & Communications  
1100 South Sherman  
Longmont, Colorado 80501

City of Loveland, Colorado  
c/o Water and Power Director  
200 North Wilson  
Loveland, Colorado 80537

9.0 SEVERABILITY

In the event that any of the terms, covenants, or conditions of this Contract or their application shall be held invalid as to any person, corporation, or circumstance by any court having jurisdiction, the remainder of this Contract and the application and effect of its terms, covenants, or conditions to such persons, corporation, or circumstances shall not be affected thereby.

10.0 DUPLICATE ORIGINALS

This Contract may be executed in several counterparts, each of which will be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Municipalities have caused this Contract, as amended, to be executed as of the 1<sup>st</sup> day of September, 2010.

TOWN OF ESTES PARK, COLORADO

ATTEST:

By: /s/ William C. Pinkham  
Mayor

By: /s/ Jackie Williamson  
Town Clerk

CITY OF FORT COLLINS, COLORADO

ATTEST:

By: /s/ Douglas P. Hutchinson  
Mayor

By: /s/ Wanda M. Krajicek  
City Clerk

APPROVED AS TO FORM

By: /s/ Jenny Lopez Filkins  
Assistant City Attorney

CITY OF LOVELAND, COLORADO

ATTEST:

By: /s/ Cecil A. Gutierrez  
Mayor

By: /s/ Teresa G. Andrews  
City Clerk

APPROVED AS TO FORM

By: /s/ Sharon L. Citino  
Assistant City Attorney

CITY OF LONGMONT, COLORADO

ATTEST:

By: /s/ Bryan L. Baum  
Mayor

By: /s/ Valeria L. Skitt  
City Clerk

APPROVED AS TO FORM AND SUBSTANCE

/s/ Tom Roiniotis  
Director of Longmont Power & Communications

APPROVED AS TO FORM

/s/ Jeff Friedland  
Assistant City Attorney

PROOFREAD

/s/ Janet Sorenson

## AMENDED CONTRACT FOR THE SUPPLY OF ELECTRIC POWER AND ENERGY

This contract, made this 1<sup>st</sup> day of September, 2010, between PLATTE RIVER POWER AUTHORITY, a political subdivision organized and existing under and by virtue of the laws of the State of Colorado (hereinafter called "Platte River") and the CITY OF LOVELAND, COLORADO, a municipal corporation of the State of Colorado (hereinafter called "Loveland.")

### WITNESSETH:

WHEREAS, Platte River was formed by Estes Park, Fort Collins, Longmont, and Loveland (hereinafter collectively called "Municipalities") in order to provide the wholesale power and energy requirements of the Municipalities in a reliable, cost-effective, and environmentally responsible manner; and

WHEREAS, Platte River, owns, operates, and maintains electric generating facilities, transmission lines, substations, and related facilities for the purpose of supplying electric power and energy to the electric systems owned and operated by the Municipalities for resale; and

WHEREAS, Platte River has heretofore entered into or will enter into agreements for the sale of electric power and energy similar in form to this Agreement with the cities of Estes Park, Fort Collins, and Longmont; and

WHEREAS, this Agreement replaces the Transmission Facilities Agreement between Platte River and Loveland, dated March 18, 1980; and

WHEREAS, Loveland desires to purchase electric power and energy from Platte River on the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the Parties hereto agree as follows:

### Article 1: Sale and Purchase of Electric Power and Energy

(a) Platte River shall sell and deliver to Loveland and Loveland shall purchase and receive from Platte River all electric power and energy which Loveland shall require for the operation of its municipal electric system to the extent that Platte River shall have such power and energy available; provided, however, that (1) Loveland shall have the right to continue to

generate its own power and energy to the extent of the capacity of its generating facilities in service on September 5, 1974 and may also generate power and energy for its own use from any new generation resource(s) owned and operated by Loveland provided that the total rated capacity of all such new generation is no greater than 1,000 kW or one percent of the peak load of Loveland, whichever is greater, provided further that if Loveland develops new generation resources of a total rated capacity as set forth above Platte River commits that it will meet with Loveland to discuss in good faith an increase in the total rated capacity limit, and (2) Loveland shall not be in violation of the all requirements purchase obligation herein when it purchases power from net metered customers.

(b) Subject to the provisions of Article 2(a), Loveland hereby binds itself to take and pay for all power and energy that is generated, purchased, or otherwise obtained by Platte River, and is furnished to Loveland for resale pursuant to Article 1(a) hereof, said payment to be made at the rates set forth in the Tariff Schedules of Platte River in effect at the time the power and energy is furnished to Loveland.

#### Article 2: Rate for Power and Energy

(a) Loveland shall pay Platte River for all electric power and energy furnished hereunder at the rates and on the terms and conditions as provided in the Platte River Tariff Schedules; provided, however, that notwithstanding any other provision of this Agreement, the obligation of Loveland to pay Platte River for all electric power and energy furnished hereunder shall be, and is, a special obligation of Loveland payable solely from revenues to be received by Loveland from the sale of electric power and energy to its electric utility customers during the term hereof and is not a lien, charge, or liability against Loveland or against any property or funds of Loveland other than revenues to be received by Loveland from the sale of electric power and energy to its electric utility customers during the term hereof, and the obligation to pay Platte River for all electric power and energy furnished hereunder does not constitute a debt, liability, or obligation of Loveland other than from its revenues to be received from the sale of electric power and energy to its electric utility customers during the term hereof, and Loveland is not otherwise obligated to pay such obligation.

(b) The Board of Directors of Platte River at such intervals as it shall deem appropriate, but in any event not less frequently than once in each calendar year, shall review

the rates for electric power and energy furnished hereunder and under similar agreements with the other Municipalities and, if necessary, shall revise such rates to produce revenues which shall be sufficient, but only sufficient, with the revenues of Platte River from all other sources,

- (i) to meet the cost of operation and maintenance (including, without limitation, fuel, replacements, insurance, taxes, fees, and administrative and general overhead expense) of the electric generating plants, transmission system, and related facilities of Platte River;
- (ii) to meet the cost of any power and energy purchased for resale hereunder by Platte River and the cost of transmission service;
- (iii) to make payments of principal and interest on all indebtedness and revenue bonds of Platte River and provide an earnings margin adequate to enable Platte River to obtain revenue bond financing on favorable terms; and
- (iv) to provide for the establishment and maintenance of reasonable reserves.

(c) Platte River shall cause a notice in writing to be given to each Municipality to which it furnishes electric power and energy, which notice shall set out each revision of the rates with the effective date thereof, which shall be not less than thirty (30) days after the date of the notice. All rate adjustments shall apply equally to all Municipalities to which Platte River furnishes electric power and energy, unless otherwise agreed upon, and shall not be discriminatory. Loveland agrees that the rates from time to time established by the Board of Directors of Platte River shall be deemed to be substituted for the rates presently contained in the Tariff Schedules and agrees to pay for electric power and energy furnished to it hereunder after the effective date of any revisions to the Tariff Schedules at such revised rates.

### Article 3: Covenants of Platte River

(a) Platte River shall use reasonable diligence to furnish a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail, or be interrupted, or become defective through uncontrollable forces, as defined herein, Platte River shall not be liable for any claim or damages caused thereby.

(b) After first satisfying the electric power and energy requirements of all Municipalities to which it furnishes electric power and energy, Platte River may, in its sole

discretion, market and dispose of any surplus electric power and energy which it owns or produces or which Platte River is obligated by contract to purchase, under the most advantageous terms and conditions obtainable.

(c) Platte River shall carry out the planning, design, construction, and operating decisions associated with the performance of its obligations under this Agreement in an environmentally responsible manner.

#### Article 4: Covenants of Loveland

(a) Loveland agrees to maintain rates for electric power and energy furnished to its electric utility customers which will, after payment of all of Loveland's costs of operation and maintenance (including, without limitation, replacements, insurance, administrative and general overhead expense), return to Loveland sufficient revenue to meet its obligations to Platte River hereunder.

(b) Loveland shall not sell at wholesale any of the electric energy delivered to it hereunder to any of its customers for resale by that customer, unless such resale is specifically approved in writing by Platte River.

(c) Loveland acknowledges that it is familiar with the provision of Platte River's contract with the Western Area Power Administration, which requires, as a condition of the purchase of federally generated power, that the Municipalities comply with certain provisions of the "General Power Contract Provisions," which is attached hereto as Attachment A. Loveland acknowledges its compliance obligations under the General Power Contract Provisions, as that document presently exists and as it may be modified in the future.

#### Article 5: Conditions of Delivery of Power and Energy

(a) The electric power and energy to be furnished by Platte River shall be alternating current, sixty (60) hertz, three-phase, subject to conditions of delivery and measurement as hereinafter provided and in the Tariff Schedules.

(b) Responsibilities for the facilities through which electric power and energy is delivered are set forth in Attachment B of this Agreement, attached hereto and made a part hereof.



(c) Loveland shall make and pay for all final connections between its system and the system owned by, or available to, Platte River at the points of delivery agreed upon.

(d) Unless otherwise agreed, Loveland shall install, own, and maintain the necessary substation equipment at the points of delivery from the system of, or available to, Platte River and shall install, own, and maintain switching and protective equipment of adequate design and sufficient capacity beyond such points of delivery to enable Loveland to take and use the electric power and energy supplied hereunder without hazard to such system.

(e) To provide adequate service to Loveland, Platte River agrees to increase the capacity of an existing transmission point of delivery, or to establish a new transmission point of delivery at a mutually agreeable location, of a design capacity of not less than 10,000 kVa maximum nameplate rating at 55° C. rise, and in accordance with this Agreement.

(f) Loveland shall give Platte River at least two years written notice of the need to increase the capacity of an existing transmission point of delivery or the need for a new transmission point of delivery. If new transmission is required, Loveland shall give at least four years written notice. The notice shall specify the amount of additional or new capacity, the new transmission required, and the desired initial date of its operation. Platte River shall, within sixty (60) days after receipt of such notice, and on the basis of the best information available to Platte River from system plans and load projections for Loveland, inform Loveland in writing of Platte River's plans and schedules with respect to the supply of the additional capacity requested by Loveland, and shall thereafter keep Loveland informed of Platte River's progress in supplying such additional capacity. Any written notice requesting additional capacity at an existing point of delivery or the establishment of a new point of delivery shall provide to Platte River any and all authority necessary for its facilities to occupy the property of Loveland during the period in which that point of delivery is used by Platte River for the delivery of power and energy.

(g) If Loveland requires the construction of a 115 kV or 230 kV transmission line for additional service where such line is a tap or radial line over which energy can flow in only one direction, as distinguished from a system line over which energy can flow in either direction, then ownership, operation and maintenance of such 115 kV or 230 kV transmission line will be undertaken by Platte River pursuant to a separate agreement with Loveland which provides for

an appropriate sharing of the annual costs of ownership and operations of such line for as long as such energy flow and delivery conditions prevail.

#### Article 6: Consultation on System Planning

(a) At least once each year, on or before July 1, Platte River shall consult Loveland concerning its requirements for transmission facilities to effect delivery of power and energy by Platte River. The date for such annual consultation shall be set by agreement of the Parties.

(b) At least thirty (30) days prior to the date of such annual consultation, Loveland shall provide Platte River with two (2) copies of its latest estimate of requirements for delivery of power and energy covering a future period of ten (10) years. Platte River shall review Loveland's annual estimates and shall consider them in preparing Platte River's annual system plan. Following Platte River's annual consultations on delivery requirements with all Municipalities, Platte River shall prepare an annual system plan for the delivery of power and energy to all Municipalities covering a future period of ten (10) years. Decisions regarding the construction of any transmission and delivery facilities by Platte River primarily to supply Loveland, will take into account Loveland's long-range distribution requirements and costs and the long-range costs and benefits of alternative service plans. Platte River's annual system plan shall include appropriate load flow and stability studies and a copy thereof shall be furnished to Loveland if requested.

#### Article 7: Measurement of Power and Energy

(a) Metering equipment shall be furnished, installed, and maintained by Platte River at each point of delivery to Loveland at the low voltage side of the transforming equipment or at such other points as agreed upon by the Parties.

(b) Loss adjustments for low voltage side or remote metering shall be as specified in the Tariff Schedule or as otherwise agreed by the Parties.

#### Article 8: Meter Readings and Payment of Bills

(a) Platte River shall read meters and invoice Loveland for power and energy furnished hereunder at approximately monthly intervals. Such invoices shall be due and

payable to Platte River within fifteen (15) days from date of issuance and shall become delinquent thereafter.

(b) If Loveland's monthly bill becomes delinquent, late charges at the rate of a one and one-half percent (1½ %) per month of the unpaid balance shall be added, and if such bill is delinquent for a period of fifteen (15) days or longer, Platte River may discontinue delivery of electric power and energy not less than fifteen (15) days following written notice to Loveland.

#### Article 9: Meter Testing and Billing Adjustment

(a) Platte River shall test and calibrate meters by comparison with accurate standards at intervals of twelve (12) months, and shall also make special meter tests at any time at Loveland's request. The cost of all tests shall be borne by Platte River; provided, however, that if any special meter test made at Loveland's request shall disclose that the meters are recording accurately, Loveland shall reimburse Platte River for the cost of such test. Meters registering within two percent (2%) above or below normal shall be deemed to be accurate.

(b) The readings of any meter which are disclosed by test to be inaccurate shall be corrected from the beginning of the monthly billing period immediately preceding the billing period during which the test was made; provided, that no correction shall be made for a longer period than such inaccuracy is determined by Platte River to have existed. If a meter fails to register, the electric power and energy delivered during such period of failure shall, for billing purposes, be estimated by Platte River from the best information available.

(c) Platte River shall notify Loveland in advance of any meter reading or test so that Loveland's representative may be present at such meter reading or test.

#### Article 10: Right of Occupancy and Access

Both Parties shall have a revocable license to occupy the property of the other Party necessary to deliver and receive power and energy under this Agreement as described in Attachment B. Duly authorized representatives of either Party shall be permitted to enter the premises of the other Party at all reasonable times in order to carry out the provisions of this Agreement and those described in Attachment B.

Article 11: Uncontrollable Forces

Neither Party to this Agreement shall be considered to be in default in performance of any of its obligations, except the agreement to make payment, when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the Party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or inaction by, or failure to obtain the necessary authorization or approvals from, any governmental agency or authority, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force shall give prompt written notice of such fact, if reasonable to do so, to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

Article 12: Enforceability

The Parties hereto recognize that there are legal constraints imposed upon them by the constitution, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon them by their respective governing statutes, charters, ordinances, rules and regulations, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the Parties exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

Article 13: Term of Agreement

(a) This Agreement shall become effective when executed by both Parties, and shall amend and supersede the existing Contract for the Supply of Electric Power and Energy between Platte River and Loveland, dated July 1, 1998. This Agreement shall remain in effect

until December 31, 2050, and thereafter until terminated by either Party following not less than twelve (12) months written notice to the other Party of its intention to terminate.

(b) The Transmission Facilities Agreement between Platte River and Loveland dated March 18, 1980, shall be deemed terminated as of the date of this Agreement.

Article 14: Notices

Any formal notice provided for in this Agreement, and the payment of monies due, shall be deemed properly served, given or made, if delivered in person or sent by regular mail to the persons specified below:

For Platte River:

General Manager  
Platte River Power Authority  
2000 East Horsetooth Road  
Fort Collins, Colorado 80525

For Loveland:

City of Loveland, Colorado  
Water and Power Director  
200 North Wilson  
Loveland, Colorado 80537

Article 15: Severability

In the event that any of the terms, covenants, or conditions of this Agreement or their application shall be held invalid as to any person or circumstance by any Court having jurisdiction, the remainder of this Agreement and the application of its terms, covenants, or conditions to such persons or circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

PLATTE RIVER POWER AUTHORITY

ATTEST:

By: *Brian H. Moeck*  
General Manager

By: *Catherine K. Velasquez*  
Assistant Secretary



CITY OF LOVELAND

ATTEST:

By: *Erin A. Gutierrez*  
Mayor

By: *Christina H. Anderson*  
City Clerk



APPROVED AS TO FORM:

*Erin A. Gutierrez*  
Assistant City Attorney



## ATTACHMENT A

Effective September 1, 2007

WESTERN AREA POWER ADMINISTRATION  
GENERAL POWER CONTRACT PROVISIONSPage

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**WESTERN AREA POWER ADMINISTRATION  
GENERAL POWER CONTRACT PROVISIONS**

**I. APPLICABILITY.**

1. Applicability.

1.1 These General Power Contract Provisions (Provisions) shall be a part of the contract to which they are attached. In the event these Provisions differ from requirements of the contract, specific terms set forth in the contract shall prevail.

1.2 If the Contractor has member utilities which are either directly or indirectly receiving benefits from the contract, then the Contractor shall require such members to comply with Provisions 10, 17, 18, 19, 29, 30, 36, 43, 44, and 45 of these General Power Contract Provisions.

**II. DELIVERY OF SERVICE PROVISIONS.**

2. Character of Service.

Electric energy supplied or transmitted under the contract will be three-phase, alternating current, at a nominal frequency of sixty (60) hertz (cycles per second).

3. Use of Capacity or Energy in Excess of Contract Obligation.

The Contractor is not entitled to use Federal power, energy, or capacity in amounts greater than the Western contract delivery obligation in effect for each type of service provided for in the contract except with the approval of Western. Unauthorized overruns of contract delivery obligations shall be subject to charges specified in the contract or the applicable rate schedules. Overruns shall not establish any continuing right thereto and the Contractor shall cease any overruns when requested by Western, or in the case of authorized overruns, when the approval expires, whichever occurs first. Nothing in the contract shall obligate Western to increase any delivery obligation. If additional power, energy, or capacity is not available from Western, the responsibility for securing additional power, energy, or capacity shall rest wholly with the Contractor.

4. Continuity of Service.

Electric service will be supplied or transmitted continuously except for: (1) fluctuations, interruptions, or reductions due to uncontrollable forces, as defined in Provision 34 (Uncontrollable Forces) herein, (2) fluctuations, interruptions, or reductions due to operation of devices installed for power system protection; and (3) temporary fluctuations, interruptions, or reductions, which, in the opinion of the party supplying the service, are necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. The party supplying service, except in case of emergency, will give the party to whom service is being provided reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence.

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5. Multiple Points of Delivery.

When electric service is supplied at or transmitted to two or more points of delivery under the same rate schedule, said rate schedule shall apply separately to the service supplied at or transmitted to each point of delivery; Provided, That where the meter readings are considered separately, and during abnormal conditions, the Contractor's system is interconnected between points of delivery such that duplication of metered power is possible, the meter readings at each affected point of delivery will be adjusted to compensate for duplication of power demand recorded by meters at alternate points of delivery due to abnormal conditions which are beyond the Contractor's control or temporary conditions caused by scheduled outages.

6. Metering.

6.1 The total electric power and energy supplied or transmitted under the contract will be measured by metering equipment to be furnished and maintained by Western, a designated representative of Western, or where situations deem it appropriate as determined by Western, by the Contractor or its agent(s). In the event metering equipment is furnished and maintained by the Contractor or its agent(s) and the equipment is used for billing and other accounting purposes by Western, the Contractor shall ensure that the metering equipment complies with applicable metering policies established by Western.

6.2 Meters shall be secured by appropriate security measures and meters shall not be accessed except when the meters are to be inspected, tested, adjusted, or repaired. Representatives of affected parties shall be afforded reasonable opportunity to be present upon such occasions. Metering equipment shall be inspected and tested each year by the party responsible for meter maintenance, unless a different test interval is determined in accordance with good utility practices by an applicable regional metering policy, or as agreed upon by the parties. Meters shall also be tested at any reasonable time upon request by a party hereto, or by an affected supplemental power supplier, transmission agent, or control area operator. Any metering equipment found to be damaged, defective, or inaccurate shall be repaired and readjusted or replaced by the party responsible for meter maintenance as soon as practicable. Meters found with security breaches shall be tested for tampering and, if appropriate, meter readings shall be adjusted by Western pursuant to Provision 6.3 below.

6.3 Except as otherwise provided in Provision 6.4 hereof, should any meter that is used by Western for billing or other accounting purposes fail to register accurately, the electric power and energy supplied or transmitted during the period of failure to register accurately, shall, for billing purposes, be estimated by Western from the best available information.

6.4 If inspections and tests of a meter used by Western for billing or other accounting purposes disclose an error exceeding 2 percent, or a lesser range in error as agreed upon by the parties, then a correction based upon the inaccuracy found shall be made to the service records for the period of inaccuracy as determined by Western. If the period of inaccuracy cannot be determined, the inaccuracy shall be assumed to have existed during the entire monthly billing period immediately preceding the billing period in which the inspection or test was made and the resulting correction shall be made accordingly.

6.5 Any correction in billing or other accounting information that results from a correction in meter records shall be made in a subsequent monthly bill rendered by Western to the Contractor. Payment of such bill shall constitute full adjustment of any claim between the parties arising out of inaccurate metering equipment.

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7. Existence of Transmission Service Contract.

If the contract provides for Western to furnish services using the facilities of a third party, the obligation of Western shall be subject to and contingent upon the existence of a transmission service contract granting Western rights to use such facilities. If Western acquires or constructs facilities which would enable it to furnish direct service to the Contractor, Western, at its option, may furnish service over its own facilities.

8. Conditions of Transmission Service.

8.1 When the electric service under the contract is furnished by Western over the facilities of others by virtue of a transmission service arrangement, the power and energy will be furnished at the voltage available and under the conditions which exist from time to time on the transmission system over which the service is supplied.

8.2 Unless otherwise provided in the contract or applicable rate schedule, the Contractor shall maintain a power factor at each point of delivery from Western's transmission agent as required by the transmission agent.

8.3 Western will endeavor to inform the Contractor from time to time of any changes planned or proposed on the system over which the service is supplied, but the costs of any changes made necessary in the Contractor's system, because of changes or conditions on the system over which the service is supplied, shall not be a charge against or a liability of Western.

8.4 If the Contractor, because of changes or conditions on the system over which service under the contract is supplied, is required to make changes on its system at its own expense in order to continue receiving service under the contract, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to making such changes, but not thereafter.

8.5 If Western notifies the Contractor that electric service provided for under the contract cannot be delivered to the Contractor because of an insufficiency of capacity available to Western in the facilities of others over which service under the contract is supplied, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to the date on which said capacity ceases to be available to Western, but not thereafter.

9. Multiple Points of Delivery Involving Direct and Indirect Deliveries.

When Western has provided line and substation capacity under the contract for the purpose of delivering electric service directly to the Contractor at specified direct points of delivery and also has agreed to absorb transmission service allowance or discounts for deliveries of energy over other system(s) to indirect points of delivery and the Contractor shifts any of its load served under the contract from direct delivery to indirect delivery, Western will not absorb the transmission service costs on such shifted load until the unused capacity, as determined solely by Western, available at the direct delivery points affected is fully utilized.

10. Construction, Operation, and Maintenance of Contractor's Power System.

The Contractor shall, and, if applicable, shall require each of its members or transmission agents to construct, operate, and maintain its power system in a manner which, as determined by Western, will not

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interfere with the operation of the system of Western or its transmission agents over which electric services are furnished to the Contractor under the contract, and in a manner which will coordinate with the protective relaying and other protective arrangements of the system(s) of Western or Western's transmission agents. Western may reduce or discontinue furnishing services to the Contractor if, after notice by Western, the Contractor fails or refuses to make such changes as may be necessary to eliminate an unsatisfactory condition on the Contractor's power system which is determined by Western to interfere significantly under current or probable conditions with any service supplied from the power system of Western or from the power system of a transmission agent of Western. Such a reduction or discontinuance of service will not relieve the Contractor of liability for any minimum charges provided for in the contract during the time said services are reduced or discontinued. Nothing in this Provision shall be construed to render Western liable in any manner for any claims, demands, costs, losses, causes of action, damages, or liability of any kind or nature arising out of or resulting from the construction, operation, or maintenance of the Contractor's power system.

### III. RATES, BILLING, AND PAYMENT PROVISIONS.

#### 11. Change of Rates.

Rates applicable under the contract shall be subject to change by Western in accordance with appropriate rate adjustment procedures. If at any time the United States promulgates a rate changing a rate then in effect under the contract, it will promptly notify the Contractor thereof. Rates shall become effective as to the contract as of the effective date of such rate. The Contractor, by written notice to Western within ninety (90) days after the effective date of a rate change, may elect to terminate the service billed by Western under the new rate. Said termination shall be effective on the last day of the billing period requested by the Contractor not later than two (2) years after the effective date of the new rate. Service provided by Western shall be paid for at the new rate regardless of whether the Contractor exercises the option to terminate service.

#### 12. Minimum Seasonal or Annual Capacity Charge.

When the rate in effect under the contract provides for a minimum seasonal or annual capacity charge, a statement of the minimum capacity charge due, if any, shall be included in the bill rendered for service for the last billing period of the service season or contract year as appropriate, adjusted for increases or decreases in the contract rate of delivery and for the number of billing periods during the year or season in which service is not provided. Where multiple points of delivery are involved and the contract rate of delivery is stated to be a maximum aggregate rate of delivery for all points, in determining the minimum seasonal or annual capacity charge due, if any, the monthly capacity charges at the individual points of delivery shall be added together.

#### 13. Billing and Payment.

13.1 Western will normally issue bills to the Contractor for services furnished during the preceding month within ten (10) days after the end of the billing period.

13.2 If Western is unable to issue timely monthly bill(s), Western may elect to render estimated bill(s). Such estimated bill(s) shall be subject to the same payment provisions as final bill(s), and any applicable adjustments will be shown on a subsequent monthly bill.

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13.3 Payments of bills issued by Western are due and payable by the Contractor before the close of business on the twentieth (20th) calendar day after the date of issuance of each bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday. Bills shall be considered paid when payment is received by Western. Bills will be paid electronically or via the Automated Clearing House method of payment unless a written request to make payments by mail is submitted by the Contractor and approved by Western. Should Western agree to accept payments by mail, these payments will be accepted as timely and without assessment of the charge provided for in Provision 14 (Nonpayment of Bills in Full When Due) if a United States Post Office first class mail postmark indicates the payment was mailed at least three (3) calendar days before the due date.

13.4 The parties agree that net billing procedures will be used for payments due Western by the Contractor and for payments due the Contractor by Western for the sale or exchange of electric power and energy, use of transmission facilities, operation and maintenance of electric facilities, and other services. Payments due one party in any month shall be offset against payments due the other party in such month, and the resulting net balance shall be paid to the party in whose favor such balance exists. The parties shall exchange such reports and information that either party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

14. Nonpayment of Bills in Full When Due.

14.1 Bills not paid in full by the Contractor by the due date specified in Provision 13 (Billing and Payment) hereof shall bear a charge of five hundredths percent (0.05%) of the principal sum unpaid for each day payment is delinquent, to be added until the amount due is paid in full. Western will also assess a fee of twenty-five dollars (\$25.00) for processing a late payment. Payments received will first be applied to the charges for late payment assessed on the principal and then to payment of the principal.

14.2 Western shall have the right, upon not less than fifteen (15) days advance written notice, to discontinue furnishing the services specified in the contract for nonpayment of bills in full when due, and to refuse to resume such services so long as any part of the amount due remains unpaid. Such a discontinuance of service will not relieve the Contractor of liability for minimum charges during the time service is so discontinued. The rights reserved to Western herein shall be in addition to all other remedies available to Western either by law or in equity, for the breach of any of the terms hereof.

15. Adjustments for Fractional Billing Period.

The demand or capacity charge and minimum charges shall each be proportionately adjusted when fractional billing periods are applicable under this contract. A fractional billing period can occur: (1) at the beginning or end of electric service; (2) at the beginning or end of irrigation pumping service each year; (3) for a fractional billing period under a new rate schedule; or (4) for fractional periods due to withdrawals of electric services. The adjustment will be made based on the ratio of the number of hours that electric service is available to the Contractor in such fractional billing period to the total number of hours in the billing period involved. Energy billing shall not be affected by fractional billing periods.

16. Adjustments for Curtailments to Firm Service.

16.1 Billing adjustments will be made if firm electric service is interrupted or reduced because of conditions on the power system of the United States for periods of one (1) hour or longer in duration each.



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Billing adjustments will not be made when such curtailment of electric service is due to a request by the Contractor or a discontinuance of electric service by Western pursuant to Provision 14 (Nonpayment of Bills in Full When Due). For purposes of billing adjustments under this Provision, the term power system of the United States shall include transmission facilities used under contract but not owned by the United States.

16.2 The total number of hours of curtailed firm electric service in any billing period shall be determined by adding: (1) the sum of the number of hours of interrupted electric service to (2) the product, of each reduction, of: the number of hours reduced electric service and the percentage by which electric service was reduced below the delivery obligation of Western at the time of each said reduction of electric service. The demand or capacity charge and applicable minimum charges shall each be proportionately adjusted in the ratio that the total number of hours of electric service determined to have been curtailed bears to the total number of hours in the billing period involved.

16.3 The Contractor shall make written claim within thirty (30) days after receiving the monthly bill, for adjustment on account of any curtailment of firm electric service, for periods of one (1) hour or longer in duration each, alleged to have occurred that is not reflected in said bill. Failure to make such written claim, within said thirty-day (30-day) period, shall constitute a waiver of said claim. All curtailments of electric service, which are due to conditions on the power system of the United States, shall be subject to the terms of this Provision; Provided, That withdrawal of power and energy under the contract shall not be considered a curtailment of electric service.

#### IV. POWER SALES PROVISIONS.

##### 17. Resale of Firm Electric Service (Wholesale Sales for Resale).

The Contractor shall not sell any firm electric power or energy supplied under the contract to any electric utility customer of the Contractor for resale by that utility customer; Provided, That the Contractor may sell the electric power and energy supplied under the contract to its members on condition that said members not sell any of said power and energy to any customer of the member for resale by that customer.

##### 18. Distribution Principles.

The Contractor agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner. The Contractor further agrees that it will identify the costs of firm electric power or energy supplied under the contract and power from other sources to its consumers upon request. The Contractor will demonstrate compliance with the requirements of this Provision to Western upon request.

##### 19. Contract Subject to Colorado River Compact.

Where the energy sold under the contract is generated from waters of the Colorado River system, the contract is made upon the express condition and with the express covenant that all rights under the contract shall be subject to and controlled by the Colorado River Compact approved by Section 13 (a) of the Boulder Canyon Project Act of December 21, 1928, 43 U.S.C. §§ 617a-e, and the parties to the contract shall observe and be subject to and controlled by said Colorado River Compact in the construction, management, and operation of the dams, reservoirs, and powerplants from which electrical energy is to be furnished by Western to the

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Contractor under the contract, and in the storage, diversion, delivery, and use of water for the generation of electrical energy to be delivered by Western to the Contractor under the contract.

## V. FACILITIES PROVISIONS.

### 20. Design Approval.

All facilities, construction, and installation by the Contractor pursuant to the contract shall be subject to the approval of Western. Facilities interconnections shall normally conform to Western's current "General Requirements for Interconnection," in effect upon the signing of the contract document providing for each interconnection, copies of which are available from Western. At least ninety (90) days, unless otherwise agreed, prior to the date the Contractor proposes to commence construction or to incur an obligation to purchase facilities to be installed pursuant to the contract, whichever date is the earlier, the Contractor shall submit, for the approval of Western, detailed designs, drawings, and specifications of the facilities the Contractor proposes to purchase, construct, and install. The Contractor assumes all risks for construction commenced or obligations to purchase facilities incurred prior to receipt of approval from Western. Western review and approval of designs and construction work in no way implies that Western is certifying that the designs meet the Contractor's needs.

### 21. Inspection and Acceptance.

Western shall have the right to inspect the materials and work furnished by the Contractor, its agents, employees, and subcontractors pursuant to the contract. Such inspections shall be at reasonable times at the work site. Any materials or work that Western determines is defective or not in accordance with designs, drawings, and specifications, as approved by Western, shall be replaced or modified, as directed by Western, at the sole expense of the Contractor before the new facilities are energized.

### 22. As-Built Drawings.

Within a reasonable time, as determined by Western, after the completion of construction and installation of facilities pursuant to the contract, the Contractor shall submit to Western marked as-built prints of all Western drawings affected by changes made pursuant to the contract and reproducible drawings the Contractor has prepared showing facilities of Western. The Contractor's drawings of Western facilities shall use drawing title blocks, drawing numbers, and shall be prepared in accordance with drafting standards all as approved by Western. Western may prepare, revise, or complete said drawings and bill the Contractor if the Contractor fails to provide such drawings to Western within a reasonable time as determined by Western.

### 23. Equipment Ownership Markers.

23.1 The Contractor shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the United States right-of-way or in Western substations pursuant to the contract which are owned by the Contractor, by permanently affixing thereto suitable markers clearly identifying the Contractor as the owner of said equipment and facilities.

23.2 If requested by the Contractor, Western shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the Contractor's

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right-of-way or in the Contractor's substations pursuant to the contract which are owned by the United States, by permanently affixing thereto suitable markers clearly identifying the United States as the owner of said equipment and facilities.

24. Third-Party Use of Facilities.

The Contractor shall notify Western of any proposed system change relating to the facilities governed by the contract or allowing third-party use of the facilities governed by the contract. If Western notifies the Contractor that said system change will, as solely determined by Western, adversely affect the operation of Western's system the Contractor shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

25. Changes to Western Control Facilities.

If at any time during the term of the contract, Western determines that changes or additions to control, relay, or communications facilities are necessary to maintain the reliability or control of Western's transmission system, and said changes or additions are entirely or partially required because of the Contractor's equipment installed under the contract, such changes or additions shall, after consultation with the Contractor, be made by Western with all costs or a proportionate share of all costs, as determined by Western, to be paid by the Contractor. Western shall notify the Contractor in writing of the necessary changes or additions and the estimated costs to be paid by the Contractor. If the Contractor fails to pay its share of said estimated costs, Western shall have the right, after giving sixty (60) days' written notice to the Contractor, to terminate the applicable facility installation provisions to the contract and require the removal of the Contractor's facilities.

26. Modification of Western Facilities.

Western reserves the right, at any time, to modify its facilities. Western shall keep the Contractor informed of all planned modifications to Western facilities which impact the facilities installation pursuant to the contract. Western shall permit the Contractor to change or modify its facilities, in a manner satisfactory to and at no cost or expense to Western, to retain the facilities interconnection pursuant to the contract. At the Contractor's option, Western shall cooperate with the Contractor in planning alternate arrangements for service which shall be implemented at no cost or expense to Western. The Contractor and Western shall modify the contract, as necessary, to conform to the new facilities arrangements.

27. Transmission Rights.

If the contract involves an installation which sectionalizes a Western transmission line, the Contractor hereby agrees to provide a transmission path to Western across such sectionalizing facilities at no cost or expense to Western. Said transmission path shall be at least equal, in terms of capacity and reliability, to the path in the Western transmission line prior to the installation pursuant to the contract.

28. Construction and Safety Procedures.

28.1 The Contractor hereby acknowledges that it is aware of the hazards inherent in high-voltage electric lines and substations, and hereby assumes full responsibility at all times for the adoption and use of necessary safety measures required to prevent accidental harm to personnel engaged in the construction, inspection, testing, operation, maintenance, replacement, or removal activities of the Contractor pursuant to the

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contract. The Contractor and the authorized employees, agents, and subcontractors of the Contractor shall comply with all applicable safety laws and building and construction codes, including the provisions of Chapter 1 of the Power System Operations Manual, entitled Power System Switching Procedure, and the Occupational Safety and Health Administration regulations, Title 29 C.F.R. §§ 1910 and 1926, as amended or supplemented. In addition to the safety program required herein, upon request of the United States, the Contractor shall provide sufficient information to demonstrate that the Contractor's safety program is satisfactory to the United States.

28.2 The Contractor and its authorized employees, agents, and subcontractors shall familiarize themselves with the location and character of all the transmission facilities of Western and interconnections of others relating to the work performed by the Contractor under the contract. Prior to starting any construction, installation, or removal work, the Contractor shall submit a plan of procedure to Western which shall indicate the sequence and method of performing the work in a safe manner. No work shall be performed by the Contractor, its employees, agents, or subcontractors until written authorization to proceed is obtained from Western.

28.3 At all times when the Contractor, its employees, agents, or subcontractors are performing activities of any type pursuant to the contract, such activities shall be under supervision of a qualified employee, agent, or subcontractor of the Contractor who shall be authorized to represent the Contractor in all matters pertaining to the activity being performed. The Contractor and Western will keep each other informed of the names of their designated representatives at the site.

28.4 Upon completion of its work, the Contractor shall remove from the vicinity of the right-of-way of the United States all buildings, rubbish, used materials, concrete forms, and other like material belonging to the Contractor or used under the Contractor's direction, and in the event of failure to do so the same may be removed by Western at the expense of the Contractor.

28.5 In the event the Contractor, its employees, agents, or subcontractors fail to comply with any requirement of this Provision, or Provision 21 (Inspection and Acceptance) herein, Western or an authorized representative may issue an order to stop all or any part of the work until such time as the Contractor demonstrates compliance with the provision at issue. The Contractor, its employees, agents, or subcontractors shall make no claim for compensation or damages resulting from such work stoppage.

## 29. Environmental Compliance.

Facilities installed under the contract by any party shall be constructed, operated, maintained, replaced, transported, and removed subject to compliance with all applicable laws, including but not limited to the National Historic Preservation Act of 1966, 16 U.S.C. §§ 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347, the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa-470mm, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations, and executive orders.

## 30. Responsibility for Regulated Materials.

When either party owns equipment containing regulated material located on the other party's substation, switchyard, right-of-way, or other property, the equipment owner shall be responsible for all activities related to regulated materials in such equipment that are necessary to meet the requirements of the

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Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, the Oil Pollution Act of 1990, 33 U.S.C. §§ 2702-2761, the Clean Water Act, 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-j26, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, and any other existing or subsequent applicable laws, regulations, and executive orders. Each party shall label its equipment containing regulated material in accordance with appropriate laws and regulations. If the party owning the equipment does not perform activities required under appropriate laws and regulations within the time frame specified therein, the other party may perform or cause to be performed the required activities after notice to and at the sole expense of the party owning the equipment.

## VI. OTHER PROVISIONS.

### 31. Authorized Representatives of the Parties.

Each party to the contract, by written notice to the other, shall designate the representative(s) who is (are) authorized to act in its behalf with respect to those matters contained in the contract which are the functions and responsibilities of the authorized representatives of the parties. Each party may change the designation of its authorized representative(s) upon oral notice given to the other, confirmed promptly by written notice.

### 32. Effect of Section Headings.

Section headings or Provision titles appearing in the contract or these General Power Contract Provisions are inserted for convenience only and shall not be construed as interpretations of text.

### 33. Operating Guidelines and Procedures.

The parties to the contract may agree upon and put into effect from time to time, such other written guidelines and procedures as may be required in order to establish the methods of operation of the power system to be followed in the performance of the contract.

### 34. Uncontrollable Forces.

Neither party to the contract shall be considered to be in default in performance of any of its obligations under the contract, except to make payment as specified in Provision 13 (Billing and Payment) herein, when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Either party rendered unable to fulfill any of its obligations under the contract by reason of an

Effective September 1, 2007

uncontrollable force shall give prompt written notice of such fact to the other party and shall exercise due diligence to remove such inability with all reasonable dispatch.

35. Liability.

35.1 The Contractor hereby agrees to indemnify and hold harmless the United States, its employees, agents, or contractors from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the Contractors', its employees', agents', or subcontractors' construction, operation, maintenance, or replacement activities under the contract.

35.2 The United States is liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, 2674-2680, as amended or supplemented.

36. Cooperation of Contracting Parties.

If, in the operation and maintenance of their respective power systems or electrical equipment and the utilization thereof for the purposes of the contract, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance, including administrative and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance. Issuance and payment of bills for services provided by Western shall be in accordance with Provisions 13 (Billing and Payment) and 14 (Nonpayment of Bills in Full When Due) herein. Western shall pay bills issued by the Contractor for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

37. Transfer of Interest in the Contract or Change in Preference Status.

37.1 No voluntary transfer of the contract or of the rights of the Contractor under the contract shall be made without the prior written approval of the Administrator of Western. Any voluntary transfer of the contract or of the rights of the Contractor under the contract made without the prior written approval of the Administrator of Western may result in the termination of the contract; Provided, That the written approval of the Administrator shall not be unreasonably withheld; Provided further, That if the Contractor operates a project financed in whole or in part by the Rural Utilities Service, the Contractor may transfer or assign its interest in the contract to the Rural Utilities Service or any other department or agency of the Federal Government without such prior written approval; Provided further, That any successor to or assignee of the rights of the Contractor, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of the contract to the same extent as though such successor or assignee were the original Contractor under the contract; and, Provided further, That the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this Provision.



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37.2 The Contractor shall maintain its status as an entity eligible for preference in Western's sale of Federal power pursuant to Reclamation law, as amended and supplemented.

37.3 Western shall give the Contractor written notice of Western's proposed determination that the Contractor has violated Provision 37.1 and Western's proposed action in response to the violation.

37.4 The Contractor shall have 120 days after receipt of Western's notice provided under Provision 37.3 to submit a written response to Western. The Contractor may also make an oral presentation to the Administrator during this 120-day period.

37.5 At any time during this process, the Contractor and Western may agree upon corrective action to resolve Western's proposed determination that the Contractor is in violation of Provision 37.1.

37.6 Within 30 days of receipt of the Contractor's written response provided under Provision 37.4, Western will notify the Contractor in writing of its final decision. The Administrator's written notice will include the intended action, the effective date thereof, and the reasons for taking the intended action. Implementation of the Administrator's action shall take place no earlier than 60 days from the Contractor's receipt of such notice.

37.7 Any successor to Western shall be subject to all the provisions and conditions of the contract to the same extent as though such successor were an original signatory to the contract.

37.8 Nothing in this Provision shall preclude any right to judicial review available to the Contractor under Federal law.

38. Choice of Law and Forum.

Federal law shall control the obligations and procedures established by this contract and the performance and enforcement thereof. The forum for litigation arising from this contract shall exclusively be a Federal court of the United States, unless the parties agree to pursue alternative dispute resolution.

39. Waivers.

Any waivers at any time by either party to the contract of its rights with respect to a default or any other matter arising under or in connection with the contract shall not be deemed a waiver with respect to any subsequent default or matter.

40. Notices.

Any notice, demand, or request specifically required by the contract or these Provisions to be in writing shall be considered properly given when delivered in person or sent by postage prepaid registered or certified mail, commercial delivery service, facsimile, electronic, prepaid telegram, or by other means with prior agreement of the parties, to each party's authorized representative at the principal offices of the party. The designation of the person to be notified may be changed at any time by similar notice. Where facsimile or electronic means are utilized for any communication covered by this Provision, the sending party shall keep a contemporaneous record of such communications and shall verify receipt by the other party.

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41. Contingent Upon Appropriations and Authorization.

41.1 Where activities provided for in the contract extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States' obligations under the contract. In case such appropriation is not made, the Contractor hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

41.2 In order to receive and expend funds advanced from the Contractor necessary for the continued performance of the obligations of the United States under the contract, additional authorization may be required. In case such authorization is not received, the Contractor hereby releases the United States from those contractual obligations and from all liability due to the lack of such authorization.

42. Covenant Against Contingent Fees.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

43. Contract Work Hours and Safety Standards.

The contract, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 329, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 327-334, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.

44. Equal Opportunity Employment Practices.

Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the contract, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.

45. Use of Convict Labor.

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.

## Attachment B

### Substation Cost and Maintenance Responsibility

And

### Lease of 115kV Facilities

The following describes the cost and maintenance responsibilities for Loveland and Platte River at the existing East, West, Valley, Airport, Horseshoe, and Crossroads Substations. This description will also apply to any future substations that may be constructed by Loveland. If any special arrangements are required for a new substation different from the understanding described below, it will be documented in a separate letter agreement between the Loveland and Platte River and attached hereto.

Loveland will furnish, own, and maintain at its expense the following items in each substation owned by Loveland:

- The substation site with sufficient space for both the Loveland and Platte River equipment
- Grading and surfacing within the fenced or walled area
- Access right-of-way and roads
- Perimeter substation fence
- Landscaping and maintenance of any grounds outside the fenced or walled area
- The 230 or 115kV/12.47 transformers, switchgear, feeder circuits, associated foundations and oil containment structures, duct banks, conduits, and all cabling, relays, and controls required to operate such equipment
- The Loveland switchgear room in a common Loveland/Platte River switchgear/control building or separate building, whichever is appropriate
- The DC power supply system and associated equipment or ½ the cost of a DC system shared with Platte River.
- Substation site electric service
- Substation yard lighting
- Substation yard below grade grounding system

Platte River will furnish, own, and maintain at its expense the following items in each substation owned by Loveland:

- All transmission equipment required at the appropriate voltage class to deliver electric capacity and energy to Loveland's facilities including the transmission line transition structures, breakers, switches, bus system, relays, meters and associated controls
- All foundations required for the Platte River equipment listed above
- The Platte River control room in a combined Loveland/Platte River switchgear/control building, or the cost of a separate control building, whichever is appropriate

- Communication connections for use by both Loveland and Platte River
- A remote terminal unit (RTU), for shared use to transmit substation information to both Loveland and Platte River
- Weed control

Loveland and Platte River will share equally the cost of any substation security deemed by both parties to be appropriate for the location of the substation.

#### **Lease of 115kV Facilities:**

**Background:** In the Transmission Facilities Agreement dated March 11, 1980, Loveland leased multiple transmission and substation facilities to Platte River. With that lease Platte River assumed responsibility for 115kV transmission and substation facilities that served the Boyd, East, West, Horseshoe and Valley Substations. Platte River owns all 115kV facilities at Airport and Crossroads Substations and all 230 facilities at Boyd Substation as these substations were constructed after 1980.

**Continuation of Lease:** Loveland agrees to continue the lease of the facilities on the following list ("Leased Facilities") to Platte River through the term of this Agreement or until such facility is permanently removed from service or replaced. Platte River shall continue to have the right to use the Leased Facility in whatever manner it shall determine to be the most effective to meet its obligations under this Agreement and the local needs of Loveland and to make whatever modifications, improvements, repairs and replacements it shall determine to be necessary to provide reliable service. Platte River shall not permit any lien or encumbrance to attach to the Leased Facility and shall deliver them up to Loveland at the termination of this Agreement.

The following items comprise the Leased Facilities:

#### Land and Land Rights

All land, land rights and easements on which the following facilities are located:

- The portion of the Boyd Substation purchased by Loveland
- The West Tap (on the WAPA 115kV Valley-Flatiron line) to West Substation 115kV transmission line
- The 115kV transmission line from Horseshoe Substation east to 57th Street
- The 115kV transmission line from Horseshoe Substation west to West Substation

#### Substation Equipment

All 115kV breakers, busses, switches, insulators, meters, relays, control panels, structural steel, foundations, and miscellaneous 115kV support equipment at the following substations:

- Boyd

- East
- West
- Horseshoe
- Valley

#### Transmission Lines

All poles and conductors and all support equipment required for operation of the following 115kV transmission lines:

- West Tap to West Substation
- Double circuit line north from Boyd Substation to 57th Street
- Horseshoe Substation to West Substation
- Horseshoe Substation to 115kV line at 57th Street



# Attachment C



## Proposed Changes to the PRPA Organic Contract and Power Supply Agreement



Joseph J. Bernosky  
Director Water and Power  
January 16, 2019

### Current Agreements

#### Organic Contract

- Contract among the four owner communities
- Renewed in 2010 through 2050

#### Power Supply Agreements

- Individual Agreements between Platte River and each of the owner communities
- Renewed in 2010 through 2050





## Why Renew Now?

- Extend life of organization
  - Provides flexibility in future bond issuances
  - Provides flexibility in future PPA terms
- Update content relative to distributed generation and possibility of organized market
- Conform transmission facilities descriptions



## Changes Proposed for the Organic Contract

- Staff initially suggested extension through 2075
  - Brief history of terms for prior iterations
  - Staff agreeable to extending only through 2060



## Changes Proposed for the PSAs

Staff proposed three substantive changes and some language clean-up

- Substantive changes:
  - As with Organic Contract now suggesting 2060 extension
  - Expand the exceptions to the all-requirements obligation to allow third-party solar development
  - Change metering point to high side of substation transformers
- New suggested addition – routine meetings with appropriate bodies in the owner communities to discuss new technologies and business models
- Addresses changes in transmission/substation interface that has occurred in owner communities since 2010



## Timeline

- PRPA staff delivered initial changes to PRPA Board in July 2018
- PRPA staff has discussed this with individual Board members and Utility Directors
- Loveland Utility Commission – January 16, 2019
- Loveland City Council - February 19, 2019
- PRPA Staff continues to meeting with representatives of other owner cities
- Final Board approval – Summer 2019?



# QUESTIONS?




**ITEM TITLE:**

Commission & Council Report

**SUMMARY:**

Discuss events that the Loveland Utility Commission Board members attended, special topics and any City Council items related to the Water and Power Department from the past month.

 City Council Report

**RECOMMENDATION:**

Commission/Council report only.



**ITEM TITLE:**

Director's Report

**GENERAL & PREVIOUS LUC MEETING FOLLOW UP ITEMS:**

**Preparing for Future Emergencies:** In conjunction with the City's emergency management leaders, the Water and Power Department experienced a tabletop emergency exercise on November 30. This exercise provided valuable knowledge to all divisions in the department, since the "emergency" was a fire which threatened both the water treatment plant and an electric circuit. As time went on during the exercise, participants were given pieces of information about the disaster. Participants revealed what their reactions would be as more and more information became available. Evaluators from local emergency management, including the Office of Homeland Security, were on hand to help determine participants' strengths and areas of improvement. This exercise, the first of its kind in the City organization, helped strengthen our already robust readiness for future emergencies. More of these exercises will be planned as one of the tools to keep our emergency preparedness strong.

**EVENTS:**

**RMEL Introduction to the Electric Utility Workshop:** January 17, 2019, Denver Marriott South at Park Meadows in Lone Tree. This one-day course is designed to acquaint non-technical utility employees and board members with the basics of their industry from the generation to the distribution of electricity. Please contact Courtney Whittet for more information or registration.

**Colorado Water Congress 2019 Annual Convention:** January 30 – February 1, 2019 at The Westin Westminster. The Colorado Water Congress Annual Convention is the premier water industry event in the state, attracting 500+ attendees that convene for networking and collaboration on the important water issues of the day. We have one spot open, please contact Courtney Whittet for more information or registration.

**OPERATIONS:****Water Operations:**

**30" PVC Morning Drive Waterline:** Connell Resources successfully completed the installation of the new 30" Morning Drive Water Main this month. The attached photo shows the final connection to the existing 30" water main at the 29th Street Tank. With the continued growth of the City and increasing water demands, this project added a second water main to serve the 29th Street Tank and the City's largest pressure zone (P1). This new water main will also serve as a suction source for the future P2 Pump Station. During the construction of this project, the City took the opportunity to remove obsolete piping and valves near the 29th Street Pump Station that are no longer necessary with current operations. In addition, the City replaced the 50+ year-old tank drain line with new PVC pipe, and installed a new energy dissipation structure at the outfall. This project could not have been successful without the assistance of Water Operations and Tech Services Staff.



**24" Parallel Boyd Sanitary Sewer Extension:** The installation of a new 24" sanitary sewer interceptor, known as the Parallel Boyd Sanitary Sewer Project, has been completed. This sanitary sewer provides additional capacity for existing and future customers. Connell Resources completed the installation of a sewer line that started near Highway 34 and Cheyenne Avenue and ended approximately 650 feet north of the intersection of Silver Leaf Drive and Madison Avenue. The project consisted of



approximately 6,100 linear feet of 24" diameter sewer pipe, parallel installation of electrical duct bank, sidewalk, curb and gutter, storm sewer, and roadway paving along portions of the sanitary sewer project alignment. The construction concluded in mid-December with the installation of a 12-foot diameter manhole flow split



structure, the replacement of the asphalt disturbed by the sewer installation, and the reopening of Madison Avenue from Silver Leaf Drive to 27th Street.

**Waterline Leaks on Wilson Avenue:** The City has experienced numerous waterline leaks along North Wilson Avenue over the past few weeks. The existing 12" diameter ductile iron waterline began failing at an alarming rate due to external corrosion of the pipe. In instances like these, the metallic pipe reacts with the surrounding soil where small areas of rust begin and become larger, which reduces remaining pipe wall thickness until a hole forms in the wall of the pipe. City crews have been repairing the pipe when leaks arise so that water outages can be minimized. However, due to the location of the waterline and existing valving, the leaks resulted in a number of customers being out of water. Due to the failing pipe condition, increasing number and severity of the leaks, and significant inconvenience to customers and the traveling public along and around Wilson Avenue, Loveland Water and Power has decided to conduct large scale emergency repairs. Therefore, Connell Resources of Fort Collins has been contracted to repair the failing line. Replacement of the line will begin on January 2, 2019 and extend from West Eisenhower Boulevard to West 22nd Street. Included in the repairs will be waterline segments of similar vintage that cross Wilson Avenue in the project area.



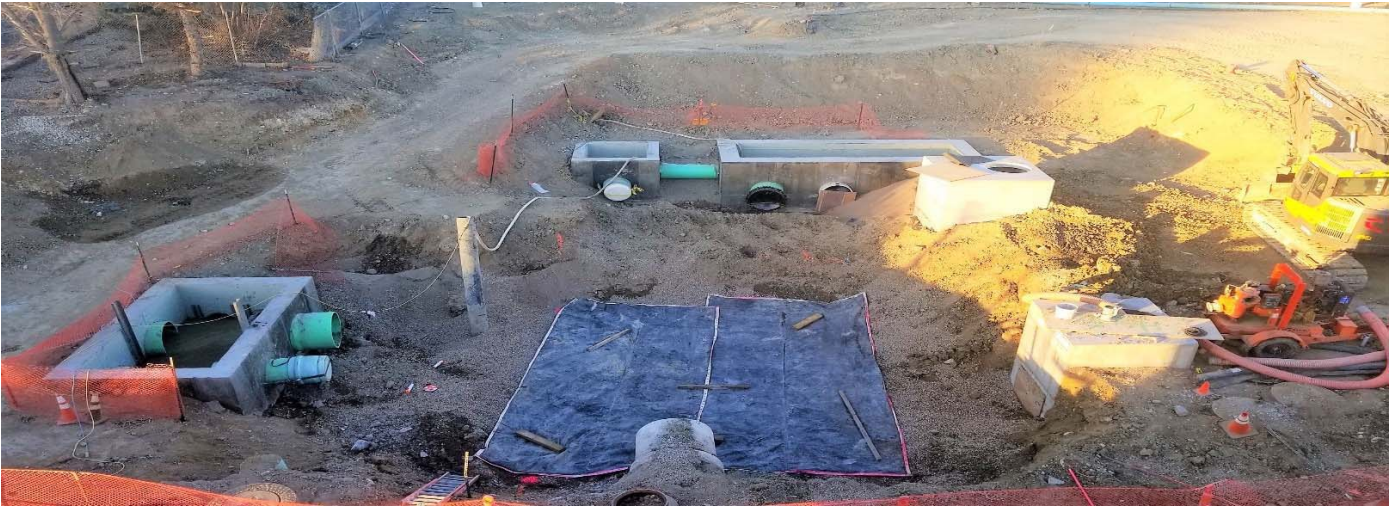
**Wastewater Treatment Plant Biological Nutrient Removal and Digester Project:** Garney and their subcontractors are entering the home stretch of this multi-year project. With just seven months of construction to go, the wastewater treatment plant is changing on a daily basis. The digester mechanical room is filling up with pumps, piping, and valves (pictured right). The motor control center is being installed which will operate all of the pumps and equipment in the new digester facility (pictured next page). In addition to the ongoing work in the digesters, Garney completed the first phase of the







manhole “A” reconstruction. Pictured below are the series of manholes and piping which are currently redirecting 100% of the City’s incoming sewer flows around the excavated area where the new manhole “A” will be constructed. By re-directing the sewer flows in this manner, it has allowed the headworks facility to be taken offline and rehabilitated at the same time. Work has begun to demolish the old influent grinders and soon the new step screens will be installed in their place. Other noteworthy construction activities include the selective demolition of pumps, piping, and valves inside the return activated sludge (RAS) pump station. This work required months of advanced planning as the RAS system must continue to operate while the rehabilitation work occurs.



Finally, with the successful startup of the return activated sludge (RAS) anoxic tank, the wastewater treatment plant is now operating, in a limited capacity, as a biological nutrient removal (BNR) facility. Plant operators are beginning to see the reduction of Nitrogen and Phosphorus values in the plant’s effluent. This is a great accomplishment as it is one of the key drivers for this project.

**Water Master Plan:** The Water Division updates the Water Master Plan every five to ten years. This guiding document drives capital projects and the needed infrastructure to be built within the water service area to ensure existing customers have reliable service and there is sufficient infrastructure to meet the demands of a growing population. The Water Master Plan is based upon analysis of the current performance of the water system including pipes, tanks, and pump station in relation to peak and average demand. Additionally, the document is built off results produced from running the hydraulic computer model, which allow staff and consultants to analyze the size and timing of infrastructure improvements. Currently, the hydraulic model has been complete for over a year, and City staff is working with engineering consultant, Jacobs, to finalize the updated Water Master Plan and prioritize capital projects that are outlined within the document.

**Loveland Water Storage State Engineer’s Report:** On October 26, 2018, the State of Colorado Dam Safety Engineer completed a dam safety inspection. Please see the included report for further information.



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

Dam Safety

Larry Howard  
City of Loveland  
200 North Wilson Avenue  
Loveland, CO 80537  
Via email: [larry.howard@cityofloveland.org](mailto:larry.howard@cityofloveland.org)

When replying, please refer to:  
**Loveland Water Storage**  
**DAMID: 040217**  
**Water Division 1, Water District 4**

December 20, 2018

**SUBJECT: 2018 Dam Inspection**

Dear Mr. Howard,

On October 26, 2018, I completed the dam safety inspection for the above referenced structure in accordance with Section 37-87-107, of the Colorado Revised Statutes (C.R.S.), which assigns the responsibility for the determination for the safe storage level for the reservoirs within Colorado to the State Engineer. The enclosed inspection report summarizes my opinion of the conditions observed during the inspection and identifies actions required to improve the condition and safety and to extend the useful life of the structures.

Please read the enclosed report and implement the recommendations listed in the section entitled, "Items Requiring Action by Owner to Improve the Safety of the Dam" on the last page of the report. **Please print, sign, date, and return one copy of the signature page of the report to this office.**

If you have any questions concerning the report or any other dam safety related item, please feel free to give me a call at (970) 352-8712.

Sincerely,

John Batka, P.E.  
Dam Safety Engineer

ec: Bill McCormick, Colorado Dam Safety Chief  
Jean Lever, WD 4 Water Commissioner



# ENGINEER'S INSPECTION REPORT

INSPECTOR: JHB

OFFICE OF THE STATE ENGINEER - DIVISION OF WATER RESOURCES - DAM SAFETY BRANCH

1313 SHERMAN STREET, ROOM 818, DENVER, CO 80203, (303) 866-3581

DAM NAME: LOVELAND WATER STORAGE T: 050N R: 0700W S: 2 COUNTY: LARIMER DATE OF INSPECTION: 10/26/2018  
DAM ID: 040217 YRComp: 1977 DAM HEIGHT(FT): 112.0 SPILLWAY WIDTH(FT): 50.6 PREVIOUS INSPECTION: 3/29/2017  
CLASS: High hazard DAM LENGTH(FT): 1748.0 SPILLWAY CAPACITY(CFS): 4000.0 NORMAL STORAGE (AF): 6836.0  
DIV: 1 WD: 4 CRESTWIDTH(FT): 25.0 FREEBOARD (FT): 11.0 SURFACE AREA(AC): 160.0  
EAP: 10/23/2018 CRESTLEV(FT): 5377.0 DRAINAGE AREA (AC.): 774.0 OUTLET INSPECTED: 3/29/2017

**CURRENT RESTRICTION: -- NONE --**

OWNER: CITY OF LOVELAND OWNER REP.: LARRY HOWARD  
ADDRESS: 200 NO. WILSON AVE. CONTACT NAME: LARRY HOWARD  
LOVELAND CO 80537-0000 CONTACT PHONE: (970) 962-3703

INSPECTION PARTY : John Batka Larry Howard, Nathan Alburn,  
REPRESENTING : State Engineer's Office Ryan Van Pelt: City of Loveland

<b>FIELD CONDITIONS OBSERVED</b>	WATER LEVEL: BELOW DAM CREST 10.5 FT. Below Spillway 1 FT. GAGE ROD READING 78
	GROUND MOISTURE CONDITION: <input checked="" type="checkbox"/> DRY <input type="checkbox"/> WET <input type="checkbox"/> SNOWCOVER OTHER

**DIRECTIONS:** MARK AN X FOR CONDITIONS FOUND AND UNDERLINE WORDS THAT APPLY

## UPSTREAM SLOPE

**PROBLEMS NOTED:**  (0) NONE  (1) RIPRAP - MISSING, SPARSE, DISPLACED, WEATHERED  (2) WAVE EROSION - WITH SCARPS  
 (3) CRACKS WITH DISPLACEMENT  (4) SINKHOLE  (5) APPEARS TOO STEEP  (6) DEPRESSIONS OR BULGES  (7) SLIDES  
 (8) CONCRETE FACING - HOLES, CRACKS, DISPLACED, UNDERMINED  (9) OTHER

**Description:**

The upstream slope is 3:1 slope and is well protected with a bedding/riprap layer.

**Observation:**

Riprap remains in like new condition, no displacement from wave action is noted.

CONDITIONS OBSERVED:  Good  Acceptable  Poor

## CREST

**PROBLEMS NOTED:**  (10) NONE  (11) RUTS OR PUDDLES  (12) EROSION  (13) CRACKS - WITH DISPLACEMENT  (14) SINKHOLES  
 (15) NOT WIDE ENOUGH  (16) LOW AREA  (17) MISALIGNMENT  (18) IMPROPER SURFACE DRAINAGE  (19) OTHER

**Description:**

The crest width is approx. 25-ft and is protected with a gravel wearing surface.

**Observation:**

The crest appears uniform in elevation and no ruts, low areas or areas where water could pond are noted.

CONDITIONS OBSERVED:  Good  Acceptable  Poor

## DOWNSTREAM SLOPE

**PROBLEMS NOTED:**  (20) NONE  (21) LIVESTOCK DAMAGE  (22) EROSION OR GULLIES  (23) CRACKS - WITH DISPLACEMENT  (24) SINKHOLE  
 (25) APPEARS TOO STEEP  (26) DEPRESSIONS OR BULGES  (27) SLIDE  (28) SOFT AREAS  (29) OTHER

**Description:**

The downstream slope is typically 2.5:1 and is protected by a good growth of native vegetation. County Rd 29 traverses the dam.

**Observation:**

Upper Embankment: No rodent holes, cracks, or irregularities are noted along this portion of the dam. The earthen drainage swale along the north side of CR 29 is protected by an articulated concrete block mat and the condition has not changed.

Lower Embankment: The lower embankment extends from CR 29 to the toe of the dam. Erosion rills on the lower embankment were repaired and a curb/gutter was installed on the inside of the bend which prevents runoff from the road from causing damage to the downstream slope. No rills have formed since last inspection and seeded areas should begin growing this spring.

CONDITIONS OBSERVED:  Good  Acceptable  Poor

### SEEPAGE

**PROBLEMS NOTED:**  (30) NONE  (31) SATURATED EMBANKMENT AREA  (32) SEEPAGE EXITS ON EMBANKMENT  
 (33) SEEPAGE EXITS AT POINT SOURCE  (34) SEEPAGE AREA AT TOE  (35) FLOW ADJACENT TO OUTLET  (36) SEEPAGE INCREASED / MUDDY  
DRAIN OUTFALLS SEEN  No  Yes Show location of drains on sketch and indicate amount and quality of discharge.  (37) FLOW INCREASED / MUDDY  (38) DRAIN DRY / OBSTRUCTED  
 (39) OTHER

**Description:**

The dam has a chimney drain/blanket drain to collect seepage through the embankment. There are drain outfalls along both the upper and lower embankments.

**Observations:**

The drain outfalls on both the upper and lower embankments continue to be dry.

(39) As noted in previous reports, a minor amount of water has been noted coming through fractures in the bedrock channel below the outlet structure. Condition has not changed.

CONDITIONS OBSERVED:  Good  Acceptable  Poor

### OUTLET

**PROBLEMS NOTED:**  (40) NONE  (41) NO OUTLET FOUND  (42) POOR OPERATING ACCESS  (43) INOPERABLE  
 (44) UPSTREAM OR DOWNSTREAM STRUCTURE DETERIORATED (45) OUTLET OPERATED DURING INSPECTION  YES  NO  
INTERIOR INSPECTED  (120) NO  (121) YES  (46) CONDUIT DETERIORATED OR COLLAPSED  (47) JOINTS DISPLACED  (48) VALVE LEAKAGE  
 (49) OTHER

**Description:**

The outlet conduit consists of a 54" steel conduit that extends from the upstream control tower to the valve house. In the valve house the conduit splits into a 42-inch line that goes into the water treatment plant and a 24-inch and 14-inch line that outfalls into the discharge channel below the structure which are used to make releases back to the river. The inlet tower in the reservoir has gates that allow water into the pipeline and could be closed to drain the conduit.

**Observation:**

The owner reported the valves operate well and are exercised annually as part of the O&M plan. Valves were exercised this year as part of the outlet inspection.

(121) An internal inspection of the outlet conduit was done as part of this inspection (See inspection memo dated May 11, 2017) Overall the outlet is in good condition with minor pitting of the interior coating noted.

CONDITIONS OBSERVED:  Good  Acceptable  Poor

### SPILLWAY

**PROBLEMS NOTED:**  (50) NONE  (51) NO EMERGENCY SPILLWAY FOUND  (52) EROSION WITH BACKCUTTING  (53) CRACK - WITH DISPLACEMENT  
 (54) APPEARS TO BE STRUCTURALLY INADEQUATE  (55) APPEARS TOO SMALL  (56) INADEQUATE FREEBOARD  (57) FLOW OBSTRUCTED  
 (58) CONCRETE DETERIORATED / UNDERMINED  (59) OTHER

**Description:**

The emergency spillway has a 50-ft wide concrete crest that outfalls into the rock/chute channel. The concrete structure is in good condition with no settlement or cracks noted. The spillway is designed to pass the PMP with 4-ft of freeboard.

**Observation:**

The rock spillway channel is free of obstructions and the condition has not changed since the last inspection.

CONDITIONS OBSERVED:  Good  Acceptable  Poor

### MONITORING

EXISTING INSTRUMENTATION FOUND  (110) NONE  (111) GAGE ROD  (112) PIEZOMETERS  (113) SEEPAGE WEIRS / FLUMES  
 (114) SURVEY MONUMENTS  (115) OTHER  
MONITORING OF INSTRUMENTATION  (116) NO  (117) YES PERIODIC INSPECTIONS BY:  (118) OWNER  (119) ENGINEER

**Description:**

There are survey monuments, piezometers, and toe drains on the dam which are being monitored in accordance with the Rules and Regulations. A monitoring report was submitted during the inspection.

(114) A monument survey was done in July 2015, the next survey is due in 2020.

CONDITIONS OBSERVED:  Good  Acceptable  Poor

### MAINTENANCE AND REPAIRS

- PROBLEMS NOTED:**  (60) NONE  (61) ACCESS ROAD NEEDS MAINTENANCE  (62) LIVESTOCK DAMAGE  
 (63) BRUSH ON UPSTREAM SLOPE, CREST, DOWNSTREAM SLOPE, TOE  (64) TREES ON UPSTREAM SLOPE, CREST, DOWNSTREAM SLOPE, TOE  
 (65) RODENT ACTIVITY ON UPSTREAM SLOPE, CREST, DOWNSTREAM SLOPE, TOE  (66) DETERIORATED CONCRETE - FACING, OUTLET SPILLWAY  
 (67) GATE AND OPERATING MECHANISM NEED MAINTENANCE  (68) OTHER

**Observations:**

The owner does a good job of maintenance. Control of weed growth has improved since the last inspection.

CONDITIONS OBSERVED:  Good  Acceptable  Poor

Go to next page for Overall Conditions and Items Requiring Actions

### OVERALL CONDITIONS

**Based on conditions observed during the inspection the dam appears to be in satisfactory condition for continued full storage. The owner does a good job of monitoring and maintenance to keep the dam in like new condition.**

Based on this Safety Inspection and recent file review, the overall condition is determined to be:

- (71) SATISFACTORY  (72) CONDITIONALLY SATISFACTORY  (73) UNSATISFACTORY

### ITEMS REQUIRING ACTION BY OWNER TO IMPROVE THE SAFETY OF THE DAM

MAINTENANCE - ORDINARY REPAIR - MONITORING

- (80) PROVIDE ADDITIONAL RIPRAP: \_\_\_\_\_
- (81) LUBRICATE AND OPERATE OUTLET GATES THROUGH FULL CYCLE **Continue annual exercising of the valves**
- (82) CLEAR TREES AND/OR BRUSH FROM: \_\_\_\_\_
- (83) INITIATE RODENT CONTROL PROGRAM AND PROPERLY BACKFILL EXISTING HOLES: \_\_\_\_\_
- (84) GRADE CREST TO A UNIFORM ELEVATION WITH DRAINAGE TO THE UPSTREAM SLOPE: \_\_\_\_\_
- (85) PROVIDE SURFACE DRAINAGE FOR: \_\_\_\_\_
- (86) MONITOR: \_\_\_\_\_
- (87) DEVELOP AND SUBMIT AN EMERGENCY ACTION PLAN: **Emergency Action Plan and Inundation Mapping are up to date.**
- (88) OTHER: \_\_\_\_\_
- (89) OTHER: \_\_\_\_\_

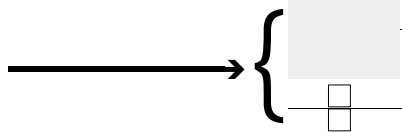
ENGINEERING - EMPLOY AN ENGINEER EXPERIENCED IN DESIGN AND CONSTRUCTION OF DAMS TO: (Plans and Specifications must be approved by State Engineer prior to construction.)

- (90) PREPARE PLANS AND SPECIFICATIONS FOR REHABILITATION OF THE DAM: \_\_\_\_\_
- (91) PREPARE AS -BUILT DRAWINGS OF: \_\_\_\_\_
- (92) PERFORM A GEOTECHNICAL INVESTIGATION TO EVALUATE THE STABILITY OF THE DAM: \_\_\_\_\_
- (93) PERFORM A HYDROLOGIC STUDY TO DETERMINE REQUIRED SPILLWAY SIZE: \_\_\_\_\_
- (94) PREPARE PLANS AND SPECIFICATIONS FOR AN ADEQUATE SPILLWAY: \_\_\_\_\_
- (95) SET UP A MONITORING SYSTEM INCLUDING WORK SHEETS, REDUCED DATA AND GRAPHED RESULTS: \_\_\_\_\_
- (96) PERFORM AN INTERNAL INSPECTION OF THE OUTLET: \_\_\_\_\_
- (97) OTHER: \_\_\_\_\_
- (98) OTHER: \_\_\_\_\_
- (99) OTHER: \_\_\_\_\_

The State Engineer, by providing this dam safety inspection report, does not assume responsibility for any unsafe condition of the subject dam. The sole responsibility for the safety of the dam remains with the owner, who should take every step necessary to prevent damages caused by leakage or overflow of water from the reservoir or floods resulting from a failure of the dam.

### SAFE STORAGE LEVEL: RECOMMENDED AS A RESULT OF THIS INSPECTION

- (101) FULL STORAGE
- (102) CONDITIONAL FULL STORAGE
- (103) RECOMMENDED RESTRICTION
- (104) CONTINUE EXISTING RESTRICTION



FT. BELOW DAM CREST  
 FT. BELOW SPILLWAY CREST  
 FT. GAGE HEIGHT  
 NO STORAGE-MAINTAIN OUTLET FULLY OPEN

REASON FOR RESTRICTION

ACTIONS REQUIRED FOR CONDITIONAL FULL STORAGE OR CONTINUED STORAGE AT THE RESTRICTED LEVEL:

Engineer's Signature: John Barth      Owner's Signature: \_\_\_\_\_      DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 INSPECTED BY      OWNER/OWNER'S REPRESENTATIVE

**GUIDELINES FOR DETERMINING CONDITIONS**

CONDITIONS OBSERVED - APPLIES TO UPSTREAM SLOPE, CREST, DOWNSTREAM SLOPE, OUTLET, SPILLWAY

<b>GOOD</b> In general, this part of the structure has a near new appearance, and conditions observed in this area do not appear to threaten the safety of the dam.	<b>ACCEPTABLE</b> Although general cross-section is maintained, surfaces may be irregular, eroded, rutted, spalled, or otherwise not in new condition. Conditions in this area do not currently appear to threaten the safety of the dam.	<b>POOR</b> Conditions observed in this area appear to threaten the safety of the dam.
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CONDITIONS OBSERVED - APPLIES TO SEEPAGE

<b>GOOD</b> No evidence of uncontrolled seepage. No unexplained increase in flows from designed drains. All seepage is clear. Seepage conditions do not appear to threaten the safety of the dam.	<b>ACCEPTABLE</b> Some seepage exists at areas other than the drain outfalls, or other designed drains. No unexplained increase in seepage. All seepage is clear. Seepage conditions observed do not currently appear to threaten the safety of the dam.	<b>POOR</b> Seepage conditions observed appear to threaten the safety of the dam. Examples: 1) Designed drain or seepage flows have increased without increase in reservoir level. 2) Drain or seepage flows contain sediment, i.e., muddy water or particles in jar samples. 3) Widespread seepage, concentrated seepage, or ponding appears to threaten the safety of the dam.
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CONDITIONS OBSERVED - APPLIES TO MONITORING

<b>GOOD</b> Monitoring includes movement surveys and leakage measurements for all dams, and piezometer readings for High hazard dams. Instrumentation is in reliable, working condition. A plan for monitoring the instrumentation and analyzing results by the owner's engineer is in effect. Periodic inspections by owner's engineer.	<b>ACCEPTABLE</b> Monitoring includes movement surveys and leakage measurements for High and Significant hazard dams; leakage measurements for Low hazard dams. Instrumentation is in serviceable condition. A plan for monitoring instrumentation is in effect by owner. Periodic inspections by owner or representative. OR, NO MONITORING REQUIRED.	<b>POOR</b> All instrumentation and monitoring described under "ACCEPTABLE" here for each class of dam, are not provided, or required periodic readings are not being made, or unexplained changes in readings are not reacted to by the owner.
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CONDITIONS OBSERVED - APPLIES TO MAINTENANCE AND REPAIR

<b>GOOD</b> Dam appears to receive effective on-going maintenance and repair, and only a few minor items may need to be addressed.	<b>ACCEPTABLE</b> Dam appears to receive maintenance, but some maintenance items need to be addressed. No major repairs are required.	<b>POOR</b> Dam does not appear to receive adequate maintenance. One or more items needing maintenance or repair has begun to threaten the safety of the dam.
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OVERALL CONDITIONS

<b>SATISFACTORY</b> The safety inspection indicates no conditions that appear to threaten the safety of the dam, and the dam is expected to perform satisfactorily under all design loading conditions. Most of the required monitoring is being performed.	<b>CONDITIONALLY SATISFACTORY</b> The safety inspection indicates symptoms of structural distress (seepage, evidence of minor displacements, etc.), which, if conditions worsen, could lead to the failure of the dam. Essential monitoring, inspection, and maintenance must be performed as a requirement for continued full storage in the reservoir.	<b>UNSATISFACTORY</b> The safety inspection indicates definite signs of structural distress (excessive seepage, cracks, slides, sinkholes, severe deterioration, etc.), which could lead to the failure of the dam if the reservoir is used to full capacity. The dam is judged unsafe for full storage of water.
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SAFE STORAGE LEVEL

<b>FULL STORAGE</b> Dam may be used to full capacity with no conditions attached.	<b>CONDITIONAL FULL STORAGE</b> Dam may be used to full storage if certain monitoring, maintenance, or operational conditions are met.	<b>RESTRICTION</b> Dam may not be used to full capacity, but must be operated at some reduced level in the interest of public safety.
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HAZARD CLASSIFICATION OF DAMS

<b>High hazard</b> Loss of human life is expected in the event of failure of the dam, while the reservoir is at the high water line.	<b>Significant hazard</b> Significant damage to improved property is expected in the event of failure of the dam while the reservoir is at the high water line, but no loss of human life is expected.	<b>Low hazard</b> Loss of human life is not expected, and damage to improved property is expected to be small, in the event of failure of the dam while the reservoir is at high water line.
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NPH hazard - No loss of life or damage to improved property, or loss of downstream resource is expected in the event of failure of the dam while the reservoir is at the high water line.



**Power Operations:**

**Line Crews:** There is a sense of satisfaction as a project that has been on the books for nearly eight years comes to what appears to be completion. Spanning the course of time, involving multiple electrical engineers, designers and line crew supervisors, this month the project task of off-loading West Substation took another step forward. Multiple circuits from West Substation have been transferred to Foothills Substation during this timeline. The overhead has been removed as underground installation of vaults, conduits and cables has been completed. With the rebuild of Wilson Avenue between 1st and 8th Streets nearing completion, crews have been able to complete the final scheduled switching of load along this route. The photos below remind us of what Wilson Avenue it looked like back in May of this year. Construction continues on the Wilson Avenue road rebuild and there are still a few new streetlights that will be installed to replace the ones removed.



*In memory of line crew supervisor Jahn Clark, who took a deep interest in this project and was instrumental in solving multiple issues that came to play as this project moved along.*

**Loveland East Switchgear Replacement:** City of Loveland and Platte River Power Authority staff went to Omaha, Nebraska, to test our new switchgear lineup for Loveland East Substation prior to shipment. This lineup presented very few punchlist items that will be resolved prior to leaving the factory. The gear was received at the substation on December 27. City of Loveland and Platte River crews, in coordination with their contractors, started the removals and installation of the new gear on January 2, 2019. The new equipment is expected to be placed in service mid-February.





**Electric Metering and Field Design Engineering - Downtown Event Power Project:** Starting with a brief history on a project that the Power Division completed recently to provide understanding about the inspiration for our event and its overall significance: For the past couple of years our linemen have been working on the installation of a new voltage system in the canyon. This required the removal and installation of a new power line and poles, as well as hundreds of hours of hard work leading to comradery amongst the crews. The significance is that these poles were what supported Loveland's electric distribution system, established in the 1920's. The power line poles at this time are unique because they are not cylindrical and were constructed of steel I-beams weighing nearly 1000 pounds. When the Chamber of Commerce asked our department to provide a source of power downtown to accommodate local events, we recognized this as a great opportunity to use the steel poles to create and build an architectural structure that not only honors our history but adds to the downtown aesthetic. The structure was welded and engineered to support a large three-hundred pound electrical panel. The metering group designed a custom panel with various plug in options providing 400amps of service specifically for local events and community gatherings. On the back side of the steel we have mounted the electric panel; on the street-facing side, we will mount a metal piece of art that pays tribute to the history of Loveland and its line crews. A plaque, art work and backlighting will be installed later in January.



## UTILITY APPLICATION SERVICES:

**Meter Data Management System (MDMS):** We are waiting final signatures and then we are off to discovery!

**Cityworks Assessment:** The week of December 3-7, we had our consultant, SSP Innovations from Denver, come perform several workshops on our asset management program. All participants felt these were successful and beneficial to the department. We have started addressing the low hanging fruit and are waiting for all the thoughts and recommendations to be delivered in January.

**Upgrade:** The GIS upgrade from 10.2.1 to 10.6.1 couldn't have been more of a success. The UAS team managed this upgrade flawlessly over a weekend in the first part of December. All associated software is up and running with little to no hiccups. Very proud of this team!

## UTILITY ACCOUNTING:

**Power Peak Demand Down Slightly in November, Energy Up:** We saw a small decrease in peak demand and a moderate increase in power usage in November compared to a year ago. Loveland's share of PRPA's peak for November was 90,342 kW, down a modest 1.0% from November of last year. The 90,342 kW peak is down 5.7% from the average of the last 5 years' peaks in November. Purchased energy was up 3.2% vs. November of 2017. Overall, in comparing the year-to-date total of the January-November monthly peak demands to the same period in 2017, this year is up 4.7%, and purchased energy is up 2.9% year-to-date.

**Water Usage Up vs. Last November:** Water usage for October and November of the past two years has followed a similar pattern: down significantly in 2017, and a bounce-back in 2018.

Water usage for November of 2017 was down 28.2% from November of 2016. Now, for November of 2018, the average usage per customer was 6,501 gallons, which is 10.0% higher than November of 2017. The 6,501 gallons does, however, represent a 9.6% decrease compared to the average usage of the past 5 Novembers. This year's YTD average usage through November is 12,450 gallons per customer. The 12,450 gallons is 2.1% higher than the November YTD average usage of the past five years. With this above-average usage, water sales are ahead of budget by \$421,000 through November.

**Broadband Budget Update:** With City Council giving the green light to establish a City Broadband Utility, work is underway to get a budget in place to carry out what needs to be accomplished in 2019. This will involve a two-pronged approach. A budget estimated at \$75-\$80 million will be brought to City Council for consideration on first reading on February 6, 2019. This budget will include multi-year engineering work by Nokia and multi-year construction work by Bear Construction. In addition, the unspent portion of the \$2.5 million special appropriation by the Power Utility that was done in the spring of 2018 to launch the initial steps of the Broadband project will be rolled into 2019 as a non-lapsing capital project budget.

## CUSTOMER RELATIONS:

**Algae Update 2018:** Customer Relations finalized their work with Shadow Play Films to release the new video "Algae – What's Happening Now?" This video highlights the great efforts of the Water Quality Team to keep taste and odor events caused by algae at bay. The summary acknowledges 2017 and 2018 as being very successful years since algae mitigation efforts began. Video available here: <https://www.youtube.com/watch?v=H4um8IBvorg>

**Customer Experience Training:** Customer Relations is working with the Customer Experience Team, a City-wide team whose mission is to improve the overall customer experience, to provide a 7-part training session to City staff on improving the customer experience. Training began this month at LWP with positive feedback from the Power team. These trainings will continue into the new year.

**Efficiency Works Business Contractor Social:** On November 29th the Efficiency Works team, along with LWP staff, shared project successes and highlights from 2018. The event was well- received, featuring a sneak peek at 2019 business program rebates and presentation of the 2018 Efficiency Works Business Service Provider Contributor Awards.

**Praxair Annual Meeting:** LWP completed the Annual Praxair Meeting on December 12th at the Budweiser Events Center. All attending parties including Praxair, LWP, Platte River, and the City Manager presented 2018 updates on the state of the City and individual developments within each organization.

**LUC Accomplishments Spotlight:** The Customer Relations team will be sharing the Loveland Utilities Commission (LUC) 2018 accomplishments with Loveland residents in the January City Update. 2018 was a very productive year for the LUC; accomplishments highlighted include completing phase two of circuit 911 and supporting the city municipal broadband effort.

**Electric Vehicle (EV) Distributed Charging Study:** Customer Relations is working with Platte River Power Authority on a new study that will encourage EV customers to enroll in an energy monitoring and load management program. This study will be utilized to gather data on customer EV charging patterns, build a direct relationship with the emerging class of EV customers, and test new EV technology that may facilitate future programs aimed at managing customers' charging. This project is anticipated to last through the end of 2019.

**Miller Heiman Group Training:** The Customer Relations team joined representatives from Platte River and our neighboring municipalities for a two day sales training. Provided by Miller Heiman Group, this training had a focus on customer-centric communication. The topic most discussed was communicating the benefits of the Efficiency Works program via a genuine and personalized approach.

**Community Outreach:** Loveland Water and Power will be attending the following upcoming events:  
Key Accounts Networking Event – January 18, 2019

**Facebook Insights** (December 2018):

- Reach (unique users) – 4,219 people
- Engagement (unique users) – 254 people
- Impressions (total count) – 7,914 people

**Media:**

- Daily Energy Insider– December 11, 2018: [Platte River Power Authority calls for 100 percent non-carbon energy mix by 2030](#)
- Reporter Herald– December 17, 2018: [Loveland poised to issue bonds for municipal broadband](#)
- Reporter Herald– December 19, 2018: [In west Loveland, 'unprecedented' water pipe leaks will close part of Wilson Avenue](#)
- Denver Post– December 20, 2018: [In west Loveland, “unprecedented” water pipe leaks to close part of Wilson Avenue](#)
- BizWest– December 26, 2018: [Loveland names new leader for broadband division](#)
- Daily Camera– December 29, 2018: [Ron Sinton: Clean energy has turned a corner in Colorado](#)
- Reporter Herald– December 31, 2018: [For Loveland area, 2018 was a year of welcome progress – and deep loss](#)
- Reporter Herald– January 2, 2019: [Loveland broadband: Briana Reed-Harmel selected as manager](#)