

CROSSING LICENSE AGREEMENT

Platte River Power Authority
and
Town of Mead, Colorado

This Crossing License Agreement (“Agreement”), effective _____, is between Platte River Power Authority, a public corporation and political subdivision of the state of Colorado located at 2000 East Horsetooth Road, Fort Collins, Colorado, 80525 (“Platte River”), and the Town of Mead, Colorado located at 441 Third Street, Mead, Colorado 80542 (“Licensee” including all of Licensee’s employees, contractors, subcontractors, and agents), (collectively, the “Parties”).

Platte River provides wholesale electric service to its owner communities (Estes Park, Fort Collins, Longmont and Loveland). Platte River owns an easement containing a 230 kilovolt transmission line and associated facilities that runs under and across the lands summarized below, a portion of which are referenced in **Attachment A** (Plan and Profile Drawing), as recorded at the Weld County Clerk and Record’s Office on September 9, 2009, at Reception No. 3647630 in the Mead Ponds Park Underground Transmission Easement Platte River Power Authority (Grantee) (the “Premises”).

Licensee has crossed the following Platte River facilities and installations and installed an underground 18” corrugated metal pipe storm sewer (“Licensed Facility”):

A 230 kilovolt transmission line located on the nonexclusive electric power line easement located across a portion of the southwest quarter of Section 8, Township 3 North, Range 68 West of the 6th P.M.

The Parties agree:

(1) *License*. Platte River grants Licensee a perpetual license to use, maintain, operate, repair, inspect, remove, and reconstruct the Licensed Facility in, across and over Platte River’s facilities, subject to the requirements of this Agreement. The Licensed Facility is located and constructed as shown on **Attachment A**.

(2) *License Fee*. In consideration for the license granted by this Agreement, Licensee will pay a one-time \$750 crossing license fee to Platte River concurrently with signing this Agreement. This fee is in addition to the \$250 application fee Licensee has already paid.

(3) *Legal Compliance*. Licensee will comply with all legal requirements, and obtain any necessary governmental permits or approvals (at Licensee’s expense), before initiating any additional construction, modification, maintenance, or repair. Licensee is responsible for compliance with applicable law and any penalties or other consequences from its use of the Premises and all activities related to the Licensed Facility.

(4) *Reservation of Rights*. Platte River retains the right to use the Premises for its own purposes, including the right to add, modify, reconstruct, remove and replace any existing or future Platte River improvements located on the Premises, and to grant any use of the Premises to others that does not unreasonably interfere with Licensee’s use.

(5) *Construction and Maintenance*. Licensee will comply with the construction and maintenance requirements specified in **Attachment B**.

(6) *Safety Advisory.* Platte River facilities that are or may be installed on the Premises may transmit electrical energy of 230,000 volts or more or may convey pressurized water or pressurized natural gas. Licensee must advise all employees, agents, contractors and other persons who may enter the Premises of the dangers involved and the precautions and safety measures to be taken to work safely, including, but not limited to, the requirement to maintain a minimum 20-foot clearance from electrical conductors at all times and to take the steps necessary to ensure that all underground utilities are located before construction activities. If there is any uncertainty about the nature of Platte River facilities on the Premises, Licensee must request clarification from Platte River in writing.

(7) *Term; Termination; Abandonment.* The license granted by this Agreement is perpetual unless terminated by written agreement of the Parties or Licensee's abandonment of the Premises. Upon the termination of this Agreement, the rights granted by this Agreement will terminate. Upon termination, Licensee must, at its expense, remove the Licensed Facility from the Premises within 30 days. If Licensee fails to remove the Licensed Facility, Platte River may remove the Licensed Facility at Licensee's expense.

(8) *Assignment.* Licensee must notify Platte River at least 90 days before abandoning or conveying the Licensed Facility, whether by sale, transfer, assignment, or otherwise. Any conveyance of all or any part of the Licensed Facility requires Platte River's prior written consent and must contain written terms incorporating the obligations of this Agreement.

(9) *Successors and Assigns.* This Agreement inures to the benefit of and binds the permitted successors and assigns of the Parties.

(10) *Indemnification.* To the extent permitted by applicable law, Licensee agrees to defend, indemnify, save, and hold harmless Platte River, its directors, officers, employees and agents from any and all liability, loss, costs, charges, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims, and demands of any kind from any third party arising from or out of any negligent act or omission or other tortious conduct of Licensee, its directors, officers, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

(11) *Governmental Immunity.* Nothing in this Agreement waives any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, et seq., or of any other defenses, immunities and limitations of liability available to Platte River or Licensee, or their respective directors, officers, employees and agents under the law.

(12) *Limitation of Liability.* Platte River is not liable for the existence, repair, maintenance, modification, operation, use or replacement of the Licensed Facility or any of the Licensee's activities, personnel or equipment on the Premises.

(13) *Condition of Premises.* Licensee accepts the portion of the Premises covered by this Agreement in an "AS IS" condition. Licensee must perform and rely upon its own independent investigation of the physical condition of the Premises. Licensee releases Platte River from all liability regarding the condition, value or utility of the Premises.

(14) *Title.* Platte River does not guarantee its title to the Premises, and Licensee may not hold Platte River liable for any claims or damages arising from any interruption of its use of the Premises should title be disputed during the term of this Agreement.

(15) *Restrictions.* This Agreement is subject to all restrictions, reservations, rights-of-way, easements, documents or agreements existing or of record in the Clerk and Recorder's office in Weld County, Colorado at the time the Licensed Facility was installed.

(16) *Landowner Approval.* It is Licensee's responsibility to obtain any necessary approval from landowners or others with jurisdiction over the Premises.

(17) *Insurance.* Licensee will comply with the insurance requirements specified in **Attachment C** and provide associated proof of required insurance before entering the Premises.

(18) *Notice.* Notices are to be delivered to the Parties as described in **Attachment D**.

(19) *Choice of Law.* This Agreement will be governed by the law of the State of Colorado, excluding conflicts of law provisions. Venue for any related litigation will be in Larimer County District Court, Colorado.

(20) *Attorneys' Fees.* In any litigation or legal action arising out of this Agreement, the prevailing party is entitled to recover its reasonable expenses of the litigation or legal action, including, without limitation, its reasonable attorneys' fees.

(21) *Waiver.* Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be made in writing and signed by an authorized representative of the waiving Party.

(22) *Survival.* The Indemnification, Governmental Immunity Act, Choice of Law, and Attorneys' Fees provisions in paragraphs 10, 11, 19 and 20 of this Agreement, and this paragraph 22, will survive the termination of this Agreement and remain in effect following any satisfaction, expiration, or termination of this Agreement until all statutes of limitation governing claims that could be made in connection with this Agreement have run.

(23) *Headings.* Paragraph headings used in this Agreement are for convenience and do not affect the meaning or interpretation of this Agreement.

(24) *No Partnership.* This Agreement does not create an agency, partnership or joint venture relationship between Platte River and Licensee or between Platte River and any other party. This Agreement does not cause Platte River to be responsible for the debts or obligations of Licensee or any other party.

(25) *Enforceability.* If a court of competent jurisdiction declares any provision of this Agreement void or unenforceable, it will not affect any other provision of this Agreement and all other provisions will remain in effect.

(26) *Integration.* This Agreement (including its attachments, which are incorporated by this reference) contains the entire agreement of the Parties, and supersedes all other offers, negotiations, agreements and understandings, whether oral or written, between the Parties, concerning its subject matter.

(27) *Amendment.* Except contact information for notices (governed by **Attachment D**), this Agreement may be amended only by a written instrument that specifically refers to this Agreement and is signed by authorized representatives of both Parties.

Signed and dated:

LICENSEE: Town of Mead, Colorado

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____.

Witness my hand and official seal.

My Commission expires: _____

Notary Public

LICENSOR: PLATTE RIVER POWER AUTHORITY

APPROVED AS TO FORM

By: _____

Associate Deputy or General Counsel or
Director of Legal Affairs

Name: _____

Title: _____

STATE OF COLORADO)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____.

Witness my hand and official seal.

My Commission expires: _____

Notary Public

CROSSING LICENSE AGREEMENT **ATTACHMENT A**
PLAN AND PROFILE DRAWING(S)

CROSSING LICENSE AGREEMENT **ATTACHMENT B**

CONSTRUCTION AND MAINTENANCE REQUIREMENTS

(1) *Notice of Excavation.* Licensee must give Platte River 14 days' written notice before any future excavation within 10 feet of any Platte River facilities, including transmission poles, gas or water pipelines, underground electrical conductors, or anytime work will occur under overhead electrical conductors.

- All excavation must have a minimum of 10 feet clearance from the foundation of any Platte River transmission pole.
- Licensee must promptly repair (at its sole expense) any damage to Platte River's facilities or the Premises caused by future construction, operation, or maintenance of the Licensed Facility.

(2) *Construction and Maintenance Schedule.* Platte River may at any time require Licensee to adjust its schedule for future construction and maintenance should Platte River determine the construction or maintenance interferes or will imminently interfere with Platte River's operation or use of the Premises or any associated Platte River facilities.

(3) *Outage Requests.* If future construction or maintenance requires an outage of Platte River facilities, Licensee must request the outage at least 14 days in advance. Platte River may determine that an outage cannot be performed as requested based on Platte River's system requirements and obligations, in which case the Parties will work cooperatively to evaluate how to best accommodate the request.

(4) *Disturbance of Platte River Facilities.* Any repair, maintenance, modification, operation, use, or replacement of the Licensed Facility must not disturb Platte River's facilities, unless Platte River grants prior express written permission to Licensee for an outage. If any repair, maintenance, modification, operation, use, or replacement interrupts Platte River's facilities without Platte River's prior written permission, Licensee must reimburse Platte River for all costs, including any lost profits, incurred due to the interruption.

(5) *Burial Depth.* Licensee has coordinated location of existing underground facilities with Platte River. The Licensed Facility was buried with at least two feet vertical separation from all Platte River underground facilities where it crosses them. The Licensed Facility was buried with at least two feet radial separation from all Platte River underground facilities where it runs parallel to them. Licensee has complied with all applicable regulations, laws and safety practices regarding the burial depth required for the Licensed Facility, and the top of the Licensed Facility is never be less than four feet below grade level.

(6) *Excavation Inspection.* Upon any future excavation involving the Licensed Facility, but before backfill, if any, Licensee must promptly notify Platte River and arrange for Platte River's inspection. Any excavated areas must be promptly backfilled following Platte River's approval.

(7) *Backfill.* All future excavations within the Premises must be backfilled and tamped to the original ground line in layers not to exceed six inches loose measure, to a compaction of 95% Standard Proctor Maximum Density. Licensee must correct trenches that settle below the original ground line within one year through additional fill and tamping to this compaction standard.

(8) *Marking Underground Facilities.* Licensee must install and maintain visible markers identifying the location of the Licensed Facility after construction for any portion of the Licensed Facility not readily visible. Licensee must comply with all applicable regulations, laws, and safety practices regarding marking the Licensed Facility, including underground markers, and must also comply with Platte River's marking requirements.

(9) *Cathodic Protection.* Licensee acknowledges that the Licensed Facility may require cathodic protection. Licensee agrees to coordinate cathodic protection with Platte River to avoid unintended interference between the Licensed Facility' cathodic protection and Platte River's. If required by Platte River, Licensee must contract with one or more competent and professional companies to (a) install cathodic protection test stations wherever Platte River gas or water pipelines are exposed during construction or maintenance of the Licensed Facility, (b) perform an AC voltage gradient survey within 30 days of the installation and energization or modification of the Licensed Facility, and (c) perform any mitigating activities recommended by the AC voltage gradient survey to prevent any adverse impact on Platte River's transmission lines, cathodic protection, and associated facilities. Licensee must provide Platte River with a copy of the survey results and documentation demonstrating completion of all mitigating activities. Potholing of Platte River pipelines is required before installing the Licensed Facility and constitutes exposure of these pipelines for purposes of this paragraph 10. Licensee will reimburse Platte River for any studies, modifications, additions, upgrades or repairs to Platte River's cathodic protection system that are needed during the term of this Agreement due to the installation, maintenance, or operation of the Licensed Facility and its associated cathodic protection.

(10) *As-Built Drawings.* Licensee will deliver to Platte River stamped record drawings of any subsequent modifications to the Licensed Facility ("As-Builts") within 60 days of the date those modifications are completed ("As-Builts Deadline"), unless the As-Builts Deadline is extended in writing by Platte River. If Licensee fails to deliver the As-Builts to Platte River within 30 days after the As-Builts Deadline, Licensee will pay Platte River an initial late fee of \$1,000, and additional late fees of \$100 per day for each day after the As-Builts Deadline until the As-Builts are delivered.

(11) *Premises Restoration.* Licensee must, at its expense, clear the Premises of all construction debris and repair all fences or other facilities or appurtenances affected by its construction or maintenance of the Licensed Facility. Licensee may not install fences; plant trees, brush or vegetation; or construct any building or structure on the Premises without Platte River's prior written permission.

(12) *Ownership and Maintenance of Licensed Facility.* Licensee owns the Licensed Facility until its rights are terminated and released. Licensee agrees to maintain, repair and replace the Licensed Facility at its sole expense. If Licensee fails to properly maintain, repair, or replace any portion of the Licensed Facility within 10 days after Platte River notifies Licensee of the need for maintenance, repair, or replacement, Platte River may, at its own option, complete necessary maintenance, repairs and replacements, and Licensee will reimburse Platte River for the cost of the work within 30 days of Platte River's delivery of an invoice for the resulting expenses. If Licensee fails to maintain, repair or replace the Licensed Facility, Licensee will be liable for any resulting loss, damage or injury to Platte River. If Platte River performs any maintenance, repairs or replacements, it does not waive the right to hold Licensee liable for damages caused by Licensee's failure to maintain, repair or replace the Licensed Facility.

(13) *Emergency Maintenance.* In an emergency, either Licensee or Platte River may maintain or repair the Licensed Facility immediately, giving notice to the other Party as soon as

possible. If Platte River performs emergency work, Licensee will reimburse Platte River for resulting expenses. Platte River is not responsible for damage to the Licensed Facility resulting from emergency maintenance or repair. The determination of whether an emergency exists will be at the sole discretion of the Party performing the emergency maintenance or repair.

(14) *Relocation of Licensed Facility.* Upon Platte River's request, Licensee will remove the Licensed Facility from the Premises or move the Licensed Facility to a new location on the Premises to avoid interference with Platte River's future operations or facilities. If, in Platte River's judgment, a location for the relocation of the Licensed Facility is available, this Agreement may be amended to reflect the new location. All costs related to the removal, modification, or relocation of the Licensed Facility will be borne by Licensee; provided, however, that Platte River may not request removal, modification, or relocation more than once within a 10-year period.

(15) *Taxes and Liens.* Licensee must promptly pay all taxes, charges and assessments levied upon or on account of the Licensed Facility and must prevent them from becoming a charge or lien on Platte River's property. Licensee will indemnify and save harmless Platte River from all third-party claims for labor and materials furnished in connection with this Agreement or the Licensed Facility. If Platte River requests, Licensee will submit satisfactory evidence that all persons, firms, or corporations that have done work or furnished materials for which Platte River may become legally liable in connection with this Agreement or the Licensed Facility have been fully paid or satisfactorily secured.

(16) *Access.* Licensee may access the Premises only in the manner and location authorized by Platte River. Licensee will provide prior written notice to Platte River before entering the Premises after the Construction Phase is complete. If, in Licensee's discretion, an emergency requires immediate access to the Premises, Licensee may access the Premises without prior authorization, but must notify Platte River as soon as possible.

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CROSSING LICENSE AGREEMENT ATTACHMENT C

INSURANCE REQUIREMENTS

Licensee must secure and maintain insurance to protect both it and Platte River against all hazards and risks of loss. The form and limits of insurance, together with the underwriter for each type of insurance, are subject to acceptance by Platte River, but Licensee must always maintain insurance coverage adequate for the hazards and risks associated with its business and operations, regardless of Platte River's acceptance and independent of the minimum requirements set forth below. The limits of any Licensee insurance do not limit Licensee's contractual responsibilities, liabilities or obligations under this Agreement.

Licensee agrees to submit a certificate for each of the insurance policies identified within 10 days of the execution of this Agreement. Platte River uses an online certificate of insurance management platform to collect certificates. Licensee will receive emailed instructions to register and upload current certificates to the online platform. Each certificate must state that 30 days' advance written notice will be given to Platte River before any policy is changed or canceled. Platte River (including its directors, officers, employees and agents) must be listed as "additional insureds" on all policies required by subsections (b) and (c) below. Licensee's insurers must waive all rights of subrogation with respect to Platte River and its insurers for all insurance policies required by this **Attachment C**.

(a) Workers' Compensation and Employer's Liability. Licensee must maintain a workers' compensation and employer's liability insurance policy. This policy must:

- Protect against claims under applicable state workers' compensation laws;
- Protect against claims for injury, disease or death of employees that for any reason may not fall within the provisions of applicable state workers' compensation laws;
- Include an "all states" endorsement; and
- Have liability limits no less than the statutory amount for workers' compensation and \$1 million each accident for employer's liability.

(b) Comprehensive Automobile Liability Insurance. Licensee must maintain an automobile liability insurance policy. This policy must:

- Be a comprehensive policy;
- Protect against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles;
- Cover on- or off-site operation of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired; and
- Have liability limits no less than \$1 million combined single limit each occurrence for bodily injury and property damage.

(c) Comprehensive General Liability. Licensee must maintain a general liability insurance policy. This policy must:

- Be a comprehensive policy;

- Protect against all claims arising from injuries to others or damage to property of others arising out of any act or omission of Licensee or its agents, employees or subcontractors;
- Include protection against claims insured by usual personal injury liability coverage, a broad-form property coverage endorsement;
- Insure Licensee's indemnification obligations to Platte River; and
- Have liability limits no less than \$1 million combined single limit each occurrence for bodily injury and property damage.

(d) **Subcontracts**. Licensee must include the insurance requirements in this **Attachment C** in all subcontracts. Licensee will be responsible if any subcontractor fails to have insurance meeting the requirements of this **Attachment C**. Platte River reserves the right to approve variations in the insurance requirements applicable to subcontractors upon joint written request of a subcontractor and Licensee if, in Platte River's opinion, the variations do not substantially impair Platte River's interests.

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CROSSING LICENSE AGREEMENT **ATTACHMENT D**

NOTICE PROVISIONS

All notices, demands and other communications under the Agreement must be written and delivered personally, by a nationally recognized overnight courier service, or mailed (by registered or certified mail, return receipt requested, postage prepaid), addressed as follows:

If to Licensee: Town of Mead, Colorado
441 Third Street
Mead, Colorado 80542
970-805-4185

If to Platte River: Platte River Power Authority

Attention: System Engineering Manager
2000 East Horsetooth Road
Fort Collins, Colorado 80525
970-226-4000

ContractAdmin@prpa.org

With a copy to: Platte River Power Authority
Attention: General Counsel
2000 East Horsetooth Road
Fort Collins, Colorado 80525
970-229-5225

Emergencies: System Dispatch Center: 970-229-5220

or any additional parties or other addresses a Party may designate in writing. Any notice is deemed to have been given, and any item permitted or required to be delivered or furnished is deemed to have been delivered or furnished, when personally delivered or furnished, or one business day after delivery to a nationally recognized and reputable courier service guaranteeing next-day delivery with delivery charges prepaid, or after delivery or first attempted delivery by the United States Post Office, after being properly addressed and with postage prepaid for delivery by United States registered or certified mail.

A Party may change or supplement its contact information under this Attachment D by delivering updated contact information to the other Party according to the requirements of this Attachment D.

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