

## **FIBER USE LICENSE AGREEMENT**

This Fiber Use License Agreement (“License Agreement”) is effective as of August 14, 2019, notwithstanding the date of execution hereof, by and between PLATTE RIVER POWER AUTHORITY, a political subdivision of the State of Colorado (“Platte River”), with headquarters at 2000 East Horsetooth Road, Fort Collins, Colorado 80525, and LONGMONT POWER AND COMMUNICATIONS whose address is 1100 South Sherman Street, Longmont, Colorado 80501 (“Licensee”) (collectively hereinafter referred to as “the Parties”).

### **RECITALS**

WHEREAS, Platte River owns certain fiber-optic facilities (“Platte River’s Facilities”). Platte River desires to license to Licensee fiber, also known as “dark fiber”, in Platte River’s Facilities as shown in **Exhibit A**, which is attached hereto and incorporated herein by this reference, (the “Licensed Fiber”); and

WHEREAS, pursuant to the terms of Resolution No. 17-98, adopted by the Board of Directors of Platte River on October 22, 1998, Platte River has authorization for the management, leasing and collection of licensing fees for available dark fiber capacity by Platte River; and

WHEREAS, pursuant to the terms and conditions of an Intergovernmental Agreement for Fiber Management (the “Fiber IGA”) between the Town of Estes Park, the City of Fort Collins, the City of Longmont, the City of Loveland (the “Municipalities”) and Platte River, adopted by the Board of Directors of Platte River by Resolution No. 27-18, Platte River is authorized to lease dark fiber on behalf of the Municipalities; and

WHEREAS, Licensee desires to use a portion of Platte River’s Facilities, and in the interests of convenience and efficiency Licensee finds that it is prudent and economical to use space and capacity in existing facilities rather than to install additional facilities; and

WHEREAS, the Parties previously executed a Fiber Use License Agreement dated August 13, 2018 (“Prior Platte River Agreement”) which expired on August 13, 2019; and

WHEREAS, Platte River and Licensee believe that the interests of the public and the Parties will be well served by Licensee’s continued use of a portion of Platte River’s unused fiber-optic capacity in accordance with the terms and conditions contained herein.

### **AGREEMENT**

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

#### **Section 1: Grant of License**

- (a) Platte River hereby grants to Licensee a license to use the Licensed Fiber in Platte River's Facilities, as shown in **Exhibit A**.
- (b) Neither Licensee's use of the Licensed Fibers nor its payment of any charges pursuant to this License Agreement shall create or vest in Licensee any easements or other ownership of property rights of any nature in the Licensed Fiber or in Platte River's Facilities.
- (c) A detailed specification describing the optimal condition of Licensed Fiber is contained in **Exhibit B** attached hereto and incorporated herein by this reference. The actual condition of the Licensed Fiber may be different from the specification set forth in **Exhibit B** and shall conform to the condition of the fiber as accepted by the Licensee.
- (d) From time to time, the Parties hereto may wish to amend **Exhibit A** to add additional fiber to be licensed in accordance with the terms and conditions of this License Agreement. In such case, and at Licensee's request, Platte River will perform acceptance tests to determine that the additional fiber meets the technical specifications described in **Exhibit B**. Licensee may then notify Platte River of its intention to use any theretofore unused fibers, and Platte River will provide Licensee with complete and accurate written results of the most recent of such acceptance tests. Licensee will review the test results and deliver a written "notice of acceptance" of such additional fibers' condition.

If the additional fibers do not meet the specifications set forth in **Exhibit B**, at the Licensee's request, Platte River may, at its option repair or substitute fiber that meet the specifications or choose to leave the fiber in its current condition. The Licensee may opt to accept the additional fiber in its current condition. If the Licensee desires to accept the fiber in its current condition, Licensee shall deliver a written "notice of acceptance" of such additional fibers to Platte River.

In the event that Licensee does not request Platte River to perform acceptance tests to determine that the Licensed Fiber meets the technical specifications described in **Exhibit B**, and desires to accept the fiber in its current condition without such testing, Licensee shall deliver a written "notice of acceptance" of such additional fibers to Platte River.

The date upon which Licensee notifies Platte River of its acceptance of the additional fiber shall be the "Acceptance Date" with respect to such fiber.

Should the Licensee begin using additional fiber prior to delivering a written "notice of acceptance" of such fibers to Platte River, the use of the fiber shall constitute acceptance of the condition of the fibers at the moment when the Licensee began using the additional fibers and the "Acceptance Date" will be the date when the Licensee began using the additional fiber.

**Exhibit A** shall be updated and signed by the Parties to reflect the inclusion of the additional fiber as set forth in Section 26. Written acceptance of the additional fiber shall be received by Platte River within five (5) working days after Platte River has provided Licensee acceptance test results, and prior to any actual use of the fiber by Licensee. If no such written acceptance is timely received by Platte River, **Exhibit A** shall not be amended to add such additional fiber.

- (e) Platte River shall make all connections to the Licensed Fiber at access points (“Access Points”) and at locations mutually agreed in writing by the Parties, which agreement will not be unreasonably withheld by either Party. If additional Access Points are required after initial installation, Licensee may request that Platte River provide additional Access Points, which request may be approved or denied by Platte River in its sole discretion. Except for emergency situations, at any time that Platte River is accessing the fiber and anticipates a cut or disconnection of Licensed Fiber(s), Platte River shall provide not less than fourteen (14) days’ notice to Licensee prior to accessing the site(s).
- (f) Licensee will be responsible for all costs of material and installation of Access Points or splice points, also known as the one-time, non-recurring installation and materials costs provided by Platte River.
- (g) Licensee shall promptly respond to any requests for locates of its lateral connections and shall be responsible for all costs to correct damage to Platte River’s Facilities that are the result of any excavation activities for which locates were requested of and were not provided by Licensee.

## **Section 2: Term**

- (a) Once executed by the Parties, the term of this License Agreement and the License granted herein shall become effective as of the date first set forth above and shall extend for a period of one (1) year thereafter. The Parties may negotiate a renewal of this License Agreement (“Renewal Term”). Provided, however, that any such renewal shall be at the sole discretion of Platte River.
- (b) Licensee shall notify Platte River in advance and in writing of its desire to renew this License Agreement at least one (1) month prior to the expiration of the initial one (1) year term.
- (c) Immediately upon termination of this License Agreement by the expiration of the term hereof or otherwise, Licensee shall peaceably quit and surrender the Licensed Fiber(s) to Platte River in their original condition, reasonable wear and tear excepted.

## **Section 3: Compensation**

- (a) Licensee shall pay Platte River for use of the Licensed Fiber an annual fee on an annual basis as provided below, and as set forth on **Exhibit A**.

- (b) The annual license fee shall be calculated at the individual fiber cost as set forth in **Exhibit A**, for fiber located in Platte River's Facilities.
- (c) The annual license fee shall be invoiced in advance and due twenty (20) days after receipt of an invoice from Platte River.
- (d) At the option of Platte River, the annual license fee for any Renewal Term may be adjusted.
- (e) A late charge of one percent (1%) per month will be invoiced for any amount in arrears.
- (f) In the event of termination of this License Agreement by the expiration of the term hereof or otherwise, Licensee shall be liable for only that prorated portion of the fees due for the calendar year until the date of such termination. Any excess fees previously paid to Platte River shall be promptly refunded to Licensee upon termination, less any set-off for damages to the Licensed Facilities or unpaid fees and charges.

#### **Section 4: Taxes, Licenses, Liens**

- (a) During the term hereof, Licensee shall pay, when due, all taxes, including premise or property taxes, sales and use taxes, or any other fees in lieu of taxes assessed on the use of the Licensed Fiber by Licensee, which are directly assessed on Licensee's activities involving the Licensed Fiber, as well as Licensee's use of Platte River's Facilities. Licensee shall keep Platte River's Facilities and the Licensed Fiber free from all liens, including but not limited to mechanics liens and encumbrances resulting from the activities of Licensee or its agents.

If Licensee fails to pay the above mentioned taxes, assessments, or other fees when due, Platte River shall have the right to pay the same and charge the amount thereof to Licensee, who shall pay the same upon demand, or Platte River shall have the right to terminate this License Agreement in accordance with Section 13(a) below. Platte River's right to pay the same does not change the fact that Licensee's failure to pay such is a breach of this License Agreement.

- (b) Should any such tax or taxes be levied and/or assessed against Platte River, Platte River shall notify Licensee accordingly as soon as is reasonably practical. Platte River shall also provide Licensee with copies of any and all notices, bills, and other pertinent documentation received by Platte River. Licensee shall, within forty-five (45) days of receipt of such written notification(s), pay all such amounts.

#### **Section 5: Maintenance**

- (a) Platte River and its contractors or subcontractors shall at all times during the term of this License Agreement, maintain the Licensed Fiber in accordance with the specifications set forth in **Exhibit B**, or to the condition of the fiber when accepted by

the Licensee and operate Platte River's Facilities associated therewith in such a manner as will best enable Platte River to fulfill Platte River's own service and other requirements, in accordance with all applicable contracts, ordinances, statutes, regulations, laws, tariffs, and codes. Platte River shall, at no cost to Licensee, supply all labor, tools and equipment necessary to maintain Platte River's Facilities; provided, however, that Licensee shall cooperate with and assist with such maintenance as may be reasonably required and requested by Platte River.

- (b) Licensee agrees to pay all costs (time and material) of repair of Platte River's Facilities if the required repair is caused by Licensee's improper maintenance of its facilities, including but not limited to, the failure to respond to requests for locates. Platte River agrees to pay all costs (time and material) of repair to Licensee's facilities and property if the required repair is caused by Platte River's improper use of Licensee's facilities or property or an improper connection to the Licensed Fiber installed or maintained by Platte River.
- (c) Platte River agrees to use reasonable efforts to perform such repair, if required, in a timely and reasonable manner, subject to Force Majeure (Section 21). Platte River shall notify Licensee of any outages at (303) 776-0011 as updated from time to time. Licensee shall notify Platte River's Dispatch Center of any outages at (970) 229-5227 as updated from time to time.
- (d) Except in emergency situations, if Platte River needs to repair or replace any of the Licensed Fiber, Platte River shall notify Licensee in writing not less than fourteen (14) days prior to the time that the work will take place if the Licensed Fiber is expected to be cut or disconnected and state the estimated duration of the work. To the extent possible, Platte River and Licensee will coordinate the times maintenance will be performed so as not to interfere with Licensee's business or customers; however, Platte River retains the right to perform maintenance on Licensed Fiber upon proper notification to Licensee, even if such interference cannot be avoided. Platte River will attempt to conduct planned maintenance outside of normal working hours, between 12:00 AM to 6:00 AM seven (7) days a week.
- (e) In the event both Platte River's electrical and telecommunications service capacity and Licensee's telecommunications capacity are interrupted, restoration of Licensee's capacity shall be at all times subordinate to restoration of Platte River's electrical and telecommunication capacity, unless otherwise agreed in advance in writing by both Parties.
- (f) Licensee agrees to configure their communications network in a redundant manner such that an outage on a single Platte River Facility link does not result in a service outage for the Licensee. Should the Licensee choose to not configure its communications network in a redundant manner, the Licensee acknowledges and accepts that its service will be interrupted while Platte River performs maintenance on Platte River Facilities. Licensee acknowledges and agrees that they are responsible for interruptions to their service due to mis-configuration of their communications

network.

#### **Section 6: Relocation**

- (a) Platte River shall make no changes in the location of the Licensed Fiber without thirty (30) days written notification to Licensee.
- (b) If for any reason, Platte River is required by any third party, including, but not limited to a government authority, to relocate any of the facilities used or required in providing the Licensed Fiber, Platte River shall give Licensee at least thirty (30) days, or as much time as Platte River reasonably can, prior written notice of any such relocation. If such relocation results in an interruption in Licensee's use of the Licensed Fiber for a period of seven (7) days, or results in Licensee being unable to use the Leased Fiber with the equipment it is presently using, or results in reduced diversity, Licensee shall be entitled to terminate this License Agreement, without penalty, by giving at least thirty (30) days prior written notice to Platte River. Platte River shall relocate the Licensed Fiber at Platte River's sole cost and expense. If Platte River desires, for any other reason, to relocate any of the facilities used or required in providing the Licensed Fiber, such relocation shall be undertaken at Platte River's sole cost and expense. Licensee's license fees will not be increased because of a relocation during the current term.
- (c) During relocation, scheduled outages may occur. Platte River shall give Licensee at least thirty (30) days, or as much time as Platte River reasonably can, prior written notice of any such outages. In the event of an outage longer than twenty-four (24) hours, at the Licensee's request, Licensee shall be entitled to a prorated abatement of its license fees hereunder to be deducted from the next payment otherwise due under this License Agreement.
- (d) Platte River agrees that any relocation of the Licensed Fiber or Access Points shall, when possible, provide diversity that is at least equivalent to the diversity before relocation.
- (e) Should the Licensee choose to not configure its communications network in a redundant manner, the Licensee acknowledges and accepts that its service will be interrupted while Platte River Facilities are relocated.

#### **Section 7: Termination – Reclamation.**

- (a) Subject to the terms, conditions and limitations set forth in this License Agreement, Platte River shall have the right to terminate from time to time the License for any or all of the Licensed Fibers on any or all segments of the network and to reclaim the Licensed Fibers for use (and solely for use) directly by Platte River.
- (b) In the event that Platte River desires to reclaim any Licensed Fiber(s), Platte River shall give notice ("Reclamation Notice") of such intent to Licensee at least six (6)

months prior to the date of reclamation. Notice shall identify each Licensed Fiber on each segment that Platte River desires to reclaim, and the intended date of reclamation.

- (c) At any time following receipt of a Reclamation Notice, Licensee may initiate negotiations with Platte River as to possible alternatives to reclamation, including, for example, (1) greater compression of Licensee's traffic on the fiber, within the network already in use by Platte River, (2) alternate or additional optoelectronic equipment, (3) alternate routes, and/or (4) installation of additional fibers along the network. The acceptance of any such possible alternatives to reclamation shall be at the sole discretion of Platte River. The exact alternative(s) to reclamation (if any have been accepted by Platte River) and the allocation of the costs thereof between the Parties shall be subject to Platte River's approval.
- (d) Unless otherwise agreed by Platte River and Licensee pursuant to paragraphs 7(b) and 7(c) above, reclamation shall be effective on the date of reclamation set forth in the Reclamation Notice. Licensee shall be entitled to a fee adjustment with respect to the Licensed Fiber based on the reclamation date and to reimbursement for Licensee's actual expenses in building and/or maintaining Access Points and other facilities with respect to such reclaimed Licensed Fiber (provided that such reimbursement will be adjusted as appropriate to reflect the depreciated value of capital expenditures and the value received by Licensee with respect to current expenditures, as determined by Platte River in its sole discretion).

#### **Section 8: Representation and Warranties**

- (a) Platte River represents and warrants that, to its knowledge, after due inquiry, it has the right and authority to enter into this License Agreement and grant the rights and licenses contained herein.
- (b) Licensee represents and warrants, that, to its knowledge, after due inquiry, it has all licenses, permits, rights, and authority to enter into this License Agreement.

#### **Section 9: Assignment and Transfer**

Licensee shall not be allowed to assign, transfer or sublet the rights, duties, or privileges described in this License Agreement without prior written consent from Platte River of which shall not be unreasonably withheld.

#### **Section 10: Indemnification and Limitation of Liability**

- (a) To the extent allowed by law, Licensee 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 Licensee'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 Licensee 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, Licensee and Platte River acknowledge and agree that all such liabilities, claims and demands shall be subject to any notice requirements, defenses, immunities and limitations to liability that Licensee 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 Licensee, and its 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 Licensee, 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, Platte River and licensee 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. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS FOR INDEMNIFICATION SET FORTH IN SUBSECTIONS (A) AND (B) ABOVE.

## **Section 11: Insurance**

- (a) Licensee agrees to execute and deliver to Platte River, prior to the execution of this License Agreement, certification that it has in force a commercial general liability insurance policy written on an occurrence basis with a combined single limit of not less than \$1,000,000 including public liability, contractual liability, premises liability and property damage, reasonably acceptable to and reasonably approved by Platte River, covering bodily injury and property damage, premises, and operations described hereunder and along with products therein. Licensee shall provide Platte River not less than thirty (30) days written notice prior to the cancellation or reduction in coverage of such insurance. Licensee shall cause its insurer for this coverage to waive its right of subrogation with respect to Platte River and its insurer.
- (b) Licensee agrees to execute and deliver to Platte River, prior to the execution of this License Agreement, a comprehensive business automobile liability coverage covering all owned, hired and non-owned vehicles utilized by Licensee covering claims for bodily injury and property damage with a combined single limit of \$1,000,000 each



occurrence. Licensee shall cause its insurer for this coverage to waive its right of subrogation with respect to Platte River and its insurer.

- (c) Licensee shall at all times maintain statutory Workers' Compensation Insurance and Employer's Liability Insurance with a limit of not less than \$1,000,000, which includes voluntary compensation. Licensee shall cause its workers' compensation insurer to waive its right of subrogation with respect to Platte River and its insurer.
- (d) Platte River shall be listed as additional insured in any required liability insurance policy (except for workers' compensation). Such policies shall state that this coverage is to function as the "primary" insurance coverage for Licensee and non-contributing with any insurance maintained by Platte River.
- (e) A valid certificate(s) of insurance on a standard ACORD form evidencing the existence thereof of the above policies shall be delivered to Platte River upon the execution of this License Agreement. The certificate(s) shall contain a valid provision or endorsement that the policy may not be revoked without prior notice thereof to Platte River's Director of Treasury Services at its Fort Collins address.
- (f) A renewal certificate shall be delivered to Platte River at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on or after the expiration date of this License Agreement.
- (g) Failure to maintain or provide proof of insurance shall constitute an immediate breach of this License Agreement and shall not be construed as a waiver of Licensee's obligation to provide the required insurance coverage. The coverage and limits of insurance required in this License Agreement will not be construed as a limitation of any liability under this License Agreement. All insurance policy deductibles, self-insured retentions and retrospective premiums will be the sole responsibility of Licensee.
- (h) At all times during the term of this License Agreement, Licensee shall maintain and shall require its contractors and subcontractors, which do any work in connection with this License Agreement, to maintain insurance coverage as described herein and will produce proof of insurance on demand by Platte River.

## **Section 12: Default**

In the event either Party shall fail to observe or perform any of the terms and provisions of this License Agreement and such failure shall continue for a period of thirty (30) days after receipt of written notice from the non-defaulting party ("Default"), then the non-defaulting party may terminate this License Agreement; provided however, that where such Default cannot reasonably be cured within such period, and the defaulting Party has proceeded promptly to cure the same and is pursuing such cure with diligence, the time for curing such Default shall be extended for an amount of time, not to exceed sixty (60) days, as may be necessary under the circumstances to complete such cure.

### **Section 13: Termination for Default**

- (a) Platte River may terminate this License Agreement and may repossess the Licensed Fiber(s) in the event that any payment or amount is not furnished to Platte River as set forth in Section 3 hereof, when due, upon giving fifteen (15) days written notice to Licensee of Platte River's intention to terminate unless full and proper payment is made to Platte River of all monies due on or before the expiration of the fifteen (15) day period indicated in the notice. In like manner, upon thirty (30) days written notice, Platte River may terminate the License Agreement in the event any of the other terms of this License Agreement have been violated, unless Licensee has fully rectified any such failure to conform to the conditions of the License Agreement within such period.
- (b) Platte River may, in its sole discretion, terminate this License Agreement, effective immediately, upon the giving of written notice of termination, in the event that Licensee engages in, or permits, the violation of any material federal, state, or city penal law or ordinance in the operation of said facility.
- (c) On the expiration of this License Agreement or any earlier termination of Licensee's rights to use any or all of the Licensed Fibers under this License Agreement, regardless of the reason for termination, Licensee shall promptly: (1) remove all of its equipment and other property from Platte River's premises; and (2) surrender the Licensed Fibers to Platte River.

### **Section 14: Confidentiality**

If either Party provides confidential information to the other which is identified as such, including **Exhibit A** hereto, 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 Platte River 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. Unless proper grounds exist to deny requests to inspect such materials Platte River may be unable to prevent such inspection. Licensee has familiarized itself with the pertinent statutory provisions in order that necessary steps may be taken to protect the confidential nature of its submissions.

### **Section 15: Costs**

Except as otherwise expressly provided above, each Party shall bear all of its own attorneys' fees and other expenses related to this License Agreement.

**Section 16: Third Party Beneficiary**

None of the terms or conditions in this License Agreement shall give or allow any claim, benefit, or right of action by any other third person or entity not a party hereto.

**Section 17: No Partnership**

The Parties acknowledge and agree that this License Agreement does not create a partnership between, or a joint venture of, Platte River and Licensee.

**Section 18: Binding Effect**

This License Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**Section 19: Governing Law**

This License Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to the principles of conflicts of laws, and venue shall be in the County of Larimer, State of Colorado.

**Section 20: Severability**

In the event any term, covenant or condition of this License Agreement, or the application of such term covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this License Agreement shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this License Agreement.

**Section 21: Force Majeure**

Neither Party shall be liable to the other for any failure of performance under this License Agreement due to causes beyond its control, including, but not limited to: acts of God, fire, flood or other catastrophes, adverse weather conditions, material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefore, lack of transportation, the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions, national emergencies, insurrections, riots, wars, or strikes, lock-outs, work stoppages or other labor difficulties.

**Section 22: Waiver**

No delay or omission by either Party to exercise any right or power occurring upon non-compliance or failure of performance by the other Party shall impair that right or power or be construed to be a waiver. A waiver by either Party or any of the covenants, conditions or

License Agreements to be performed by the other Party shall not be construed to be a general waiver.

### **Section 23: Headings**

The Section headings herein are for convenience of reference only, and shall in no way define or limit the scope and content of this License Agreement or in any way affect its provisions.

### **Section 24: Notices**

Billing invoices may be sent by first-class mail. Written notices to Licensee from Platte River that fiber is ready for use, or "notice of acceptance" of the Licensed Fiber to Platte River from Licensee, may be sent by email. All other written notices required or permitted to be given under this License Agreement by one Party to the other, shall be given effect by hand delivery, or by mailing the same by certified mail, return receipt requested, or by sending via next-business-day delivery by a nationally recognized overnight carrier to the Party to whom given. Notices shall be addressed as follows:

Longmont Power and Communications  
1100 South Sherman Street  
Longmont, CO 80501  
Attn: Jeff Grant, Broadband Network  
Operations Manager  
Email: [jeff.grant@longmontcolorado.gov](mailto:jeff.grant@longmontcolorado.gov)

Platte River Power Authority  
General Manager/CEO  
2000 East Horsetooth Road  
Fort Collins, CO 80525  
Email: [FiberContract@prpa.org](mailto:FiberContract@prpa.org)

Either Party hereto may at any time designate a different person or address for the purpose of receiving notice by so informing the other Party in writing. Notice by certified mail shall be deemed given upon actual receipt thereof or three (3) days after being deposited in the United States Mail, whichever first occurs.

### **Section 25: No Implied Representations**

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

### **Section 26: Integrated Agreement and Amendments**

This License Agreement is an integration of the entire understanding of the Parties with respect to the matters set forth herein, and hereby repeals, restates and supersedes any prior Agreement(s). The Parties shall only amend this License Agreement in writing with the proper signatures attached thereto.

From time to time, **Exhibit A** alone may be updated by the addition or deletion of Licensed Fiber. Amendment of **Exhibit A** alone may be accomplished by substituting the current version of **Exhibit A** with a revised version that has been signed and dated by the Parties.

**Section 27: Media Releases**

Neither Party shall issue any media releases or otherwise make any announcements, or do any marketing or advertising or public relations, that references the Parties' relationship without the prior review and approval of the other Party.

**Section 28: Franchise Agreement**

Notwithstanding any provisions of this License Agreement, all of the rights, privileges and obligations of Platte River and Licensee under this License Agreement shall be subject in all respects to the provisions of any Franchise and License Agreement or Right-of-way Permit between Fort Collins and Platte River concerning Platte River's right to install and maintain Platte River's Facilities in Fort Collins' rights-of-way and in the facilities of the Fort Collins Electric Utility. In the event that any provision of this License Agreement conflicts with any provision of such Franchise and License Agreement or Right-of-way Permit, the provision of the Franchise and License Agreement or such Permit shall control.

**IN WITNESS WHEREOF**, the Parties have executed this License Agreement as of the date first above written.

PLATTE RIVER POWER AUTHORITY

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

Name: \_\_\_\_\_

Title: General Manager/CEO

Attest: \_\_\_\_\_

(Seal)

Title: Secretary

Execution Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy General Counsel

CITY OF LONGMONT:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PROOFREAD

\_\_\_\_\_  
DATE

APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
DIRECTOR OF BROADBAND  
LONGMONT POWER AND COMMUNICATIONS

\_\_\_\_\_  
DATE

CA File: 20-000718

**Exhibit A**  
**Platte River Power Authority**  
**Licensed Fiber**

Platte River and Licensee agree that the following Platte River Facilities are leased under the terms of this License Agreement and that the entire lengths of which shall be licensed by Licensee and shall constitute the Licensed Fiber and shall be subject to the terms and conditions of this License Agreement upon its effective Date.

**2 strands of fiber on the Long-Haul East (Fort Collins to Longmont)** – Total fiber optic distance of Platte River Facilities described above is 38 miles (total fiber miles under this License Agreement shall be 38 miles X 2 fibers = 76 miles).

Licensee agrees to pay the following Platte River Facilities one-time procurement, installation and start-up costs that were agreed to, but not invoiced or paid under the Prior Platte River Agreement:

Billing Frequency	Unit Cost	Hours/Miles	Description	One-Time Payment
One-time	\$75.00	3	Engineering – Design, Drawings, Provisioning	\$225.00
One-time	\$0.55	76	Mobilization – Miles Roundtrip (x 3 Trips)	\$125.40
One-time	\$75.00	5	Crew Labor	\$375.00
			- Fusion Splicing	
			- Express	
			- Mid-Sheath	
			- Lateral Preparation	

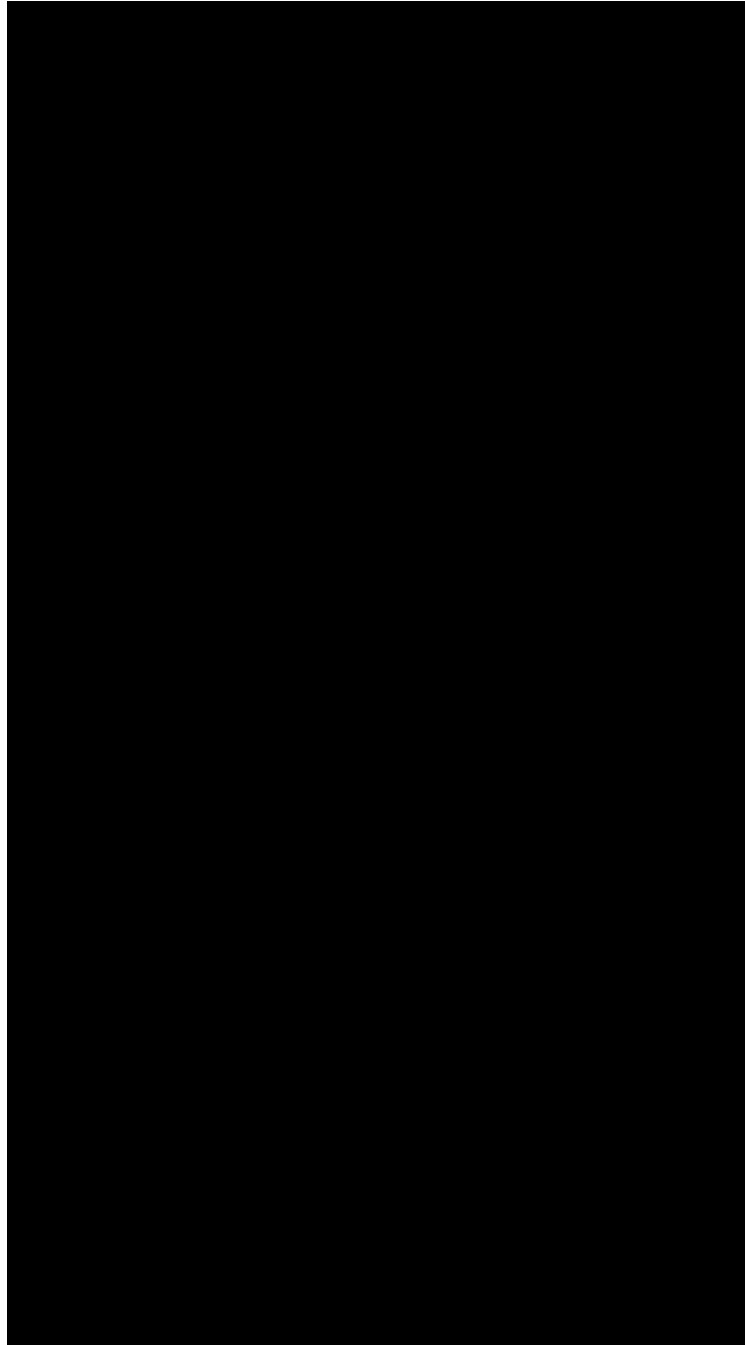
Billing Frequency	Unit Cost	Quantity	Description	One-Time Payment
One-time	\$75.00	2	Single-Mode Fiber Jumper – LC to ST	\$150.00
<b>Total One-Time Payment</b>				<b>\$875.40</b>

Licensee agrees to pay the following Platte River Facilities licensed rate:

Billing Frequency	Rate per month	Fiber Distance	# of Fibers	Description	Amount Billed Annually
Annually	\$0.00	38	2	Long-Haul East – Fort Collins to Longmont	\$0.00



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**Exhibit B**  
**Platte River Power Authority**

**Fiber Specifications**

Span Requirements:

Span documentation will be performed using the two following methods: Optical Time Domain Reflectometer (OTDR) and insertion loss (stabilized light source and power meter) measurement in each direction at 1310 and 1550 run wavelengths.

- (1) Maximum dB/km loss must not exceed 0.25 db/km at 1550 nm and 0.35 at 1310 nm.
- (2) Typical span scenario  $30.0 \text{ dB} = 120 \text{ km} \times 0.25 \text{ dB/km}$ .
- (3) The splice loss will average 0.10 dB. Splices shall be measured using bi-directional methods to average absolute splice loss. In no case shall a fiber show a single event discontinuity greater than 0.5 dB. Discontinuities (known as steps, splices, or attenuation non-uniformities) shall be measured with an OTDR to determine the loss of the localized attenuation. For fusion splices, the loss or gain of each point discontinuity shall not exceed  $-0.04 \text{ dB}$  or  $+0.08 \text{ dB}$ .
- (4) All fiber splices will be fiber-to-fiber fusion type.
- (5) Cable and pigtails will be fusion spliced.
- (6) Test data including OTDR hard copies and electronic data will be retained by Platte River Power Authority's System Maintenance Manager.

**Key Optical Performance Characteristics For Single-Mode Optical Cables:**

Attenuation Single-Mode Non-Shifted:

- 1) The attenuation must not exceed 0.25 dB/km when measured at a wavelength of 1.55 microns (1550 nm) using the two-point measurement.
- 2) The attenuation must not exceed 0.35 dB /km when measured at a wavelength of 1.30 microns (1310 nm) using the two point measurement.

Attenuation Versus Wavelength Single-Mode:

The attenuation for the wavelength region from 1525 nm to 1575 nm must not exceed the attenuation at 1550 nm by more than 0.05 dB/km.

Chromatic Dispersion Non-Dispersion Shifted (ps/nm-km):

For conventional single-mode fibers, the zero dispersion wavelength must be 1301.5 to 1321.5 nm. The maximum dispersion slope (SoMAX) must be no greater than 0.092 ps/(km-nm<sup>2</sup>). The nominal zero dispersion wavelength must be near 1310 nm zero dispersion range. The dispersion between 1530 and 1570 nm must be less than or equal to 18 ps/(nm-km).

#### Cutoff Wavelength

The cutoff wavelength of cabled fiber must be less than 1260 nm.

#### Core Diameter:

The core diameter must be typically  $8.7 \pm 1.3$   $\mu$ m.

#### Temperature:

Operating Temperature Range -40 C to +70 C (40 F to 158 F).

### **Cable Installation Requirements:**

#### Construction:

Cable will be constructed in accordance with sound commercial practices. The National Electric Safety Code shall be followed in every case except where local regulations are more stringent, in which case local regulations shall govern.