

EFFICIENCY WORKS SERVICE PROVIDER PARTICIPATION AGREEMENT

This EFFICIENCY WORKS SERVICE PROVIDER PARTICIPATION AGREEMENT (“Agreement”), is entered into this ____ day of ____, 20__, by and between Platte River Power Authority, a public corporation and political subdivision of the State of Colorado (“Platte River”); and _____, hereinafter referred to as the “Service Provider.”

RECITALS:

WHEREAS, Platte River has identified a group of select Service Providers to participate in the Efficiency Works program or offerings to support delivery of commercial and residential distributed energy resource programs including but not limited to energy efficiency, demand response, electric vehicle, distributed solar, and energy storage. These offering are achieved through services or incentives provided to program participants or service providers (“Program” or “Offerings”); and

WHEREAS, Efficiency Works is a regional collaboration that provides guidance and resources to save energy and water, and to help build strong communities through industry experts, trusted advisors and excellent customer service; and

WHEREAS, Service Provider has been identified by the Program as a qualified Service Provider to participate in one or more Program offerings; and

WHEREAS, Platte River may engage with a program administrator or other third-party to assist with the management of Program offerings.

WHEREAS, the list of selected Service Providers will be provided to participants by the Program and/or its Indemnified Parties upon request, and may be used by the participant to select a provider to bid on a Program project for which funding has been made available; and

WHEREAS, the Service Provider selected from the list by the participant for a particular project will be required to negotiate and contract directly with the building or homeowner or authorized decision maker for the Program services; and

WHEREAS, the total amount of work is unknown, and no work is guaranteed; and

WHEREAS, Service Provider desires to be included on the list of Service Providers identified herein subject to the terms and conditions of this Agreement.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the promises hereinafter contained, the Parties agree as follows:

- 1. **Participation Requirements.** Service Provider shall maintain the following minimum participation requirements:

- a. Demonstrate proof of all necessary licenses, and good standing in connection with such licenses; and
- b. Obtain and maintain any additional required certifications the Program deems necessary to possess in order to perform the proposed Scope of Work for a given Program project and to be listed as a Service Provider for a specific technology and/or qualify for incentives administered by the Program, and identify which specific technology or Program; and
- c. Provide a general liability insurance policy of not less than \$1 million each occurrence, \$2 million general aggregate, and names Platte River Power Authority as Additional Insured and Certificate Holder in accordance with Program requirements. Additionally, the certificate will contain a cancellation clause that does not allow cancellation within 30 business days, Ideally the clause will read “These policies may not be canceled, terminated, changed, or modified without thirty (30) days written notice to Platte River Power Authority”. A copy of the certificate of insurance shall be provided to Platte River; and
- d. Demonstrate compliance with the Program Code of Ethics described in paragraph 10 of this Agreement; and
- e. Demonstrate the ability to meet the requirements of the Program as outlined under applicable program guides and associated exhibits in which Service Provider participates, as these guides are amended from time to time, and the goals of the Program and the participant; and
- f. Identify which Program(s) the Service Provider will participate in and demonstrate compliance with the technical specifications or Program requirements as amended from time to time, and any applicable incentives program administered by the Program or one of Platte River’s owner Municipalities of Estes Park, Fort Collins, Longmont, and Loveland, (the “Owner Municipalities”); and
- g. If equipment has been installed by the Service Provider, provide participants with all applicable manufacturers’ warranties for equipment sold or leased. The warranty should provide a minimum one-year limited warranty for all parts and labor; and
- h. If equipment has been installed by the Service Provider, ensure that it meets the Program requirements; and
- i. Provide proof of company financial stability if requested by Platte River including; (a) permission for Platte River to conduct a credit check, and (b) provide financial information reasonably necessary to adequately establish the company’s financial capability; and
- j. Meet the minimum training requirements of the Efficiency Works Program per Program Guide; and

- k. Meet the minimum work requirement of the Efficiency Works Program, which requires the Service Provider to facilitate the participant project and may submit the rebate application(s) on the participants' behalf (See associated exhibits for specific Program work requirements).
2. **Future Requirements.** Service Provider agrees to abide by any future requirements of Platte River in connection with the Program as they are implemented.
3. **Participation Benefits.** If Service Provider meets and maintains, at all times, the program requirements set forth herein, Platte River agrees as follows:

The Program shall maintain Service Provider's business information on the Efficiency Works website as a provider of such services identified in current Program guides until (1) such Program ceases to exist, or (2) this Agreement is terminated, or (3) the Service Provider is removed from the Program as set forth herein. The list of Service Providers will be provided to participants upon request and may be used by a participant to select a Service Provider to bid on Program projects. Provided, however, that a participant is free to identify and contract with their own service provider who is not a Service Provider listed on the Efficiency Works service provider list. Participant's incentive eligibility for some Program offerings may be impacted by choosing a non-listed Service Provider. The Service Provider shall be allowed to use Program logos on professional correspondence and other pertinent promotional materials in relation to the Programs which requires pre-approval from the Program. Improper use of Program logos and materials may result in the removal from the Efficiency Works Program at the Program's discretion. The size and placement of the Logo must emphasize clearly that Licensee is an independent entity, and not a part of Licensor. Licensee shall not use the Logo in any manner that expresses or might imply Licensor's affiliation, sponsorship, endorsement, or approval other than as contemplated by this Agreement. Licensee shall not display the Logo in any manner that suggests that Licensee's products or services are Licensor products or services or suggest that the Logo is part of the name of Licensee's products or services.

An Efficiency Works Service Provider list will be posted on the official Efficiency Works website, and possibly on Owner Municipality websites. Service Provider contact information may be published in accordance with Program protocol, and Program participation information may be displayed on the Efficiency Works website. Printed materials, newsletters, display booths, and other effective media avenues will be used by the Program to educate the general public about the Efficiency Works.

Any non-identifiable photos (i.e., photos that do not identify a person or place) provided by Service Provider to the program may be used for trainings, marketing, or general use by the program without compensation.

4. **Service Provider and Participant Agreements.** The Service Provider selected by the customer for any upgrade project will be required to negotiate and contract directly with the building or homeowner or decision maker for the services. The terms and conditions of payment for work performed for a participant shall be solely between Service Provider and

the Participant. Service Providers will not be paid by the Program or its Owner Municipalities and in no event shall the Program or its Owner Municipalities be liable for payment of any kind to Service Provider for work performed under the Program.

The total amount of work is unknown, and no work is guaranteed. Participants will be solely responsible for selecting a Service Provider and there is no guarantee that Participant will select Service Providers in a manner that results in work for all Service Providers.

5. **Term.** The term of this Agreement shall be for a period of one year from the date first set forth above and shall automatically renew for an additional one-year period unless otherwise terminated pursuant to paragraph 12 of this Agreement.
6. **Third-Party Evaluations.** Upon request the Program may provide third-party evaluations of Service Provider's services and system performance to verify work performed in relationship to the Program and submitted applications, as set forth herein. This evaluation may entail conducting independent field investigations or evaluations, conducting system performance tests, investigating building performance or providing third-party evaluation requiring building science or mechanical operational performance evaluation. The Program shall determine in its sole discretion what extent evaluations will be provided, if any. Any evaluations provided at the discretion of the Program shall require the written consent of the affected property building or homeowner or decision maker, including a waiver and release of liability in favor of Platte River and its Owner Municipalities, where applicable.
7. **Agreement to Abide by Standards.** Service Provider agrees to abide by the Program participation requirements and installation standards outlined in the participating programs' Program Guides and associated exhibits, including any future amendments to these guides.
8. **Third-Party Random Performance Verification.** To ensure that participating Service Providers are consistent in adhering to Program goals, random third-party system performance evaluations may occur. Inspections may be conducted by Platte River or a third-party. While third-party inspections may occur, the Program and/or its Owner Municipalities shall have no responsibility to inspect or otherwise supervise work performed for a participant, which remains the Service Provider's obligation. Third-party evaluations will be performed to the selected "Standard" procedures for the Service Provider's specific services and/or equipment provided in accordance with the customer's copy of the documentation and the Efficiency Works Program specifications. Allowances for weather conditions, participant impacts, and instrument calibration variances will be taken into account. Evaluations will also determine whether the technical specifications, energy savings, and program requirements associated with the Programs, and any applicable monetary incentives program administered by the Program or by one of the Owner Municipalities, have been met.

Service Providers shall be responsible for taking corrective action, at its sole expense, to remedy work that is determined to be non-compliant with the Program standards outlined in the applicable Exhibits. Any failure of the Service Provider resulting in a serious health

or safety issue must be remedied immediately by the Service Provider at the Service Provider's expense. Any other failure to comply with other Program requirements must be remedied within five (5) business days of notification to the Service Provider, or at the participant's convenience.

The Program may conduct a customer satisfaction survey with Program participants. Service Provider scores may be displayed on the Efficiency Works website. The score displayed on the website may be derived from but is not limited to customer satisfaction surveys, implementation staff satisfaction surveys, participation statistics, training completion and inspection accuracy.

9. **Indemnification.** Service Provider shall be liable and responsible for any and all injuries to persons or damages to property caused by or arising out of the actions, obligations, or omissions of the Service Provider, its employees, agents, representatives or other persons acting under the Service Provider's direction or control in performing or failing to perform any work under the Efficiency Works Program or this Agreement. Service Provider will indemnify and hold harmless Platte River, its Owner Municipalities, its elected and appointed officials, its employees, agents and representatives, and any third-party program administrator(s), its officers, employees, agents and representatives (the "Indemnified Parties") from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including but not limited to attorneys' fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the actions or omissions of the Service Provider, its employees, agents or representatives, or other persons acting under the Service Provider's direction or control.
10. **Code of Ethics.** Service Provider agrees to abide by the following Code of Ethics set forth below and any additional requirements as defined in Program Guides which may be updated time to time and shall:
 - a. Ensure that quality, honesty, integrity and good faith are the hallmarks of their business practices; and
 - b. Applications and documents submitted on behalf of the participant shall accurately represent the scope of work identified and site eligibility as required by the Program; and
 - c. Maintain strict compliance with all federal, state, county, and municipal government laws, regulations, and ordinances pertaining to the provided service and business operation; and
 - d. Design, service, and repair building systems, such as, but not limited to lighting and lighting controls, Building Automated System (BAS) controls; Heating, Ventilation, Air Conditioning, and Refrigeration (HVACR); building envelope insulation and air sealing; motors; windows; domestic water systems, pumping; manufacturing processes; or other systems deemed applicable by the Program, in accordance with accepted industry standards; and

- e. Develop and maintain an understanding of proper equipment and control strategy selection to provide participants safe, dependable, and comfortable performance; and
- f. Develop high quality standards of customer service and nurture long-term relationships with participants; and
- g. Instill a high amount of respect and professional working relationships among other participating Service Providers and within their respective communities; and
- h. Make no representation to the participant, or any other third-party, that the participating Service Provider, or Service Provider employees, are subcontractors or agents of the Program and will accurately convey roles of all parties involved in the Program.

11. **Service Provider Suspension.** Service Provider’s business information shall be removed from the Efficiency Works Service Provider list for a minimum period of one full year for the following reasons, during which time Service Provider will not be eligible to participate in the Program and shall lose benefits stated in paragraph 3 of this Agreement.

- a. When a third-party random performance verification of Service Provider’s service has revealed multiple failed attempts to comply with the technical specifications of the Program, or the administrative or technical requirements associated with any applicable monetary incentives program administered by the Program or by one of the Owner Municipalities (See current Program guides); or
- b. When the Program reasonably determines, based upon the participant satisfaction survey data received in connection with the Service Provider’s work or other participant communications that Service Provider has failed to offer a high quality of customer service and dependability.
- c. Non-compliance of the code of ethics set forth in this agreement and any additional code of ethics requirements as defined in Program Guides which may be updated time to time.

See Program’s participation guide for program specific requirements and suspension policy.

12. **Termination.** This Agreement may be terminated for any reason by any party upon ten (10) days written notice to the other party. This Agreement may be terminated immediately when the Program has determined in its sole discretion that a violation of the terms and conditions of this Agreement has occurred. In the event of termination, the Program shall not have any liability to Service Provider, and Service Provider shall be liable to the Program for damages sustained by reason of any default which gave rise to the termination. Except for any required completion of jobs in progress, upon termination Service Provider shall immediately cease participation in the Program, including use of any program logos or other advertising tools. See program’s participation guide for program specific requirements and suspension policy.

13. **Payments/taxes.** Payments provided by utilities (including Platte River) to Service Provider may in some circumstances be considered as (partially) taxable income by the IRS. Service Providers receiving incentive payments totaling \$600 (or other such amounts determined by the IRS) or more during a program year and who are not organized as a corporation will receive a 1099-MISC from Platte River in January or February of the subsequent year. Service Provider acknowledges that they have been advised to consult a tax advisor to clarify any questions on this matter.

14. **Notices.** The designated representatives for each of the parties will be as follows:

Platte River:
Energy Solutions Supervisor
Platte River Power Authority
2000 East Horsetooth Road
Fort Collins, CO 80525-2942
information@efficiencyworks.org
877-981-1888

Service Provider:
Authorized Representative's name*
Authorized Representative's title*
Authorized Representative's mailing address*
Authorized representative's email*
Authorized representative's phone*

*Service provider authorized representative and company information will be found within each individual application.

Each party must notify the other in writing of any subsequent changes in appointed representative. The notice must include the contact information, along with email address, to which notices required by this Agreement must be sent. All formal notices required for this Agreement will be between the representatives identified above.

15. **Applicable Law.** This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

16. **Entire Agreement.** This Agreement contains the entire agreement of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous offers, negotiations, agreements and understandings, whether oral or written between the parties. Except as provided herein, this Agreement may only be modified or amended by written agreement of the parties.

17. **Third-party Beneficiaries.** The Parties hereby acknowledge and agree that, if applicable, Platte River's Indemnified Parties are intended third-party beneficiaries of the protections outlined in this Agreement. The parties agree that no other third-party beneficiaries are intended.

18. **Equal Employment Opportunity.** **Platte River is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by**

reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

19. **Employee Verification.** Service Provider agrees to not knowingly employ or contract with an illegal alien to perform Program work. Service Provider shall not enter into a contract with a subcontractor that fails to certify to Service Provider that the subcontractor shall not knowingly employ or contract with an illegal alien to perform Program work.
20. **Safe Work Practices.** Service Provider agrees to meet OSHA and Department of Labor requirements regarding personal protective equipment and safe work practices. Service Provider shall also follow any applicable local, state or federal requirements to ensure the safety of participants, Program staff, Indemnified Parties or any other individuals in proximity to the work being performed.
21. **Termination of Prior Agreements.** This Agreement cancels and terminates, as of its effective date, all prior agreements between Platte River and Service Provider relating to the current or prior Program(s), whether written or oral or partly written and partly oral.
22. **Limitation on Liability.** In no event shall either party be liable for any indirect, consequential, special, exemplary, punitive, or liquidated damages.
23. **Confidential Information.** In connection with the Program, the Service Provider hereby acknowledges that it has been informed that Platte River has established policies and procedures with regard to the handling of confidential information and other sensitive materials.

In consideration of access to certain information, data and material (hereinafter individually and collectively, regardless of nature, referred to as “Confidential Information”) that are the property of and/or relate to Platte River or its Owner Municipalities or its employees, directors, officers, agents, participants, customers or suppliers, which access is related to the Program, the Service Provider hereby acknowledges and agrees as follows:

That Confidential Information that has or will come into its possession or knowledge in connection with the Program may be confidential and/or proprietary. The Service Provider agrees to treat as confidential (a) all Confidential Information that is owned by Platte River or its Owner Municipalities, or that relates to the business of Platte River or its Owner Municipalities, or that is used by Platte River or its Owner Municipalities in carrying on

business, including but not limited to the names, addresses, telephone numbers and utility usage information of the municipalities' customers, software, program specific materials, spreadsheets, manuals and (b) all Confidential Information that is proprietary to a third-party (including but not limited to customers and suppliers of Platte River or its Owner Municipalities). The Service Provider shall not disclose any such information to any person not having a legitimate need-to-know for purposes authorized by Platte River or its Owner Municipalities. Further, the Service Provider shall not use such Confidential Information to obtain any economic or other benefit for itself, or any third-party, except as specifically authorized by Platte River.

The Service Provider shall implement appropriate administrative, technical and physical safeguards to protect the security, confidentiality, and integrity of the Confidential Information. Such safeguards shall be designed to ensure the security and confidentiality of the Confidential Information, protect against any anticipated threats or hazards to the security or integrity of the Confidential Information, and protect against unauthorized access to or use of the Confidential Information. The Service Provider shall immediately notify Platte River in writing upon discovery of any loss or unauthorized disclosure of Confidential Information.

The foregoing to the contrary notwithstanding, the Service Provider understands that it shall have no obligation under this Agreement with respect to information and material that (a) becomes generally known to the public by publication or some means other than a breach of duty of this Agreement, or (b) is required by law, regulation or court order to be disclosed, provided that the request for such disclosure is proper and the disclosure does not exceed that which is required, or (c) is disclosed to Service Provider by a third-party without restriction and is not directly or indirectly derived from Platte River and is not under a binder of secrecy; or (d) is already known to the Service Provider without any obligations of confidentiality prior to receipt from Platte River and was not directly or indirectly derived from Platte River and is not under a binder of secrecy; or (e) is developed by Service Provider or its affiliates independently without reference to or the benefit of the Confidential Information developed under this Agreement. In the event of any disclosure under (b) above, the Service Provider shall furnish a copy of this Agreement to anyone to whom it is required to make such disclosure and shall immediately advise Platte River in writing of each such disclosure.

Upon termination of this Agreement, or if the Service Provider ceases to participate in the Program, or Platte River so requests for any reason, the Service Provider within 30 days shall either 1) return to Platte River any and all Confidential Information described hereinabove, including all copies, notes and/or summaries (handwritten or mechanically produced) thereof, in its possession or control or as to which it otherwise has access, except archival copies maintained pursuant regular backups or 2) destroy all Confidential

Information and provide to Platte River a Certification of Destruction upon completion of destruction of any information described hereinabove.

The Service Provider understands and agrees that Platte River’s remedies at law for a breach of the Service Provider’s obligations under this Agreement may be inadequate and that Platte River shall, in the event of any such breach, be entitled to seek equitable relief (including without limitation preliminary and permanent injunctive relief and specific performance) in addition to all other remedies provided hereunder or available at law.

24. Environmental Attribute Credits. Platte River and its Owner Municipalities reserve the right to claim and own any environmental attribute credits (“Credits”) resulting from the Service Providers’ projects receiving a benefit or cash incentive from Platte River and/or its Owner Municipalities. Credits include any credits, credit certificates, efficiency credits, white tags, carbon or greenhouse gas credits, offsets, or allowances, and environmental air quality credits, offsets, allowances. Credits do not include state tax credits, investment tax credits, and any other tax credits or tax benefits that are or will be generated by or related to the Program.

AUTHORIZED REPRESENTATIVE

Signature:

Name:

Date:

Title:

Company:
