

INTERGOVERNMENTAL AGREEMENT FOR DISTRIBUTED ENERGY RESOURCE PROGRAMS AND PROJECTS

This Intergovernmental Agreement (“**Agreement**”) is made by and between the TOWN OF ESTES PARK, a Colorado municipal corporation (“**Estes Park**”), the CITY OF FORT COLLINS, a Colorado municipal corporation (“**Fort Collins**”), the CITY OF LONGMONT, a Colorado municipal corporation (“**Longmont**”), the CITY OF LOVELAND, a Colorado municipal corporation (“**Loveland**”), and PLATTE RIVER POWER AUTHORITY, a political subdivision of the State of Colorado (“**Platte River**”), each, individually, a “Party,” and collectively referred to as the “**Parties**.” When specificity is not required, the municipal corporations that are Parties will be individually referred to as a “Municipality,” and collectively as “Municipalities.”

RECITALS

- A. The Municipalities contracted with one another to establish Platte River as a separate legal entity and multi-purpose intergovernmental authority to provide the electric power and energy requirements of the Municipalities and to engage in activities related to the provision of electric power, energy, and related services. The Parties intend to define terms and conditions related to Platte River’s Distributed Energy Resource (“**DER**”) programs, related services, projects, and systems; and
- B. Periodically Platte River develops integrated resource plans that detail Platte River’s plans and programs in the areas of generation and transmission, renewable energy, and DER; and
- C. Platte River’s DER programs and projects include those offered to the Municipalities and their customers, which programs and projects are contracted for and funded by Platte River using Common Funding to provide System-Wide Benefit; and
- D. Platte River also provides DER programs that are funded by the Municipalities through Directive Funding; and
- E. The Platte River Board of Directors adopted Resolution No. 05-24 on May 30, 2024, to support developing a virtual power plant through collaboration among Platte River and the Municipalities and implementing actions, programs and systems to aggregate flexible DER to provide dispatchable capacity and grid services; and
- F. The Parties may use the scope and structure of Platte River’s programs to include Non-Electric Sustainability Services to be funded by the Municipalities using Directive Funding and desire to define certain terms and conditions related to Non-Electric Sustainability Services as set forth in this Agreement.
- G. The Parties are authorized under C.R.S. § 29-1-203 to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

THEREFORE, THE PARTIES AGREE:

AGREEMENT

1. **Definitions.** As used in this Agreement:

“Common Funding” means funding that is provided by Platte River to procure Common Programs or Projects offered by Platte River.

“Common Programs or Projects” means DER programs, related services, projects and systems that are developed by, contracted for, and funded by Platte River to provide System-Wide Benefit. Common Programs or Projects may be directly related to DER, or they may support DER integration by improving the integration and interoperability of Platte River’s and the Municipalities’ generation, transmission and distribution systems.

“Confidential Customer Information” has the meaning provided in **Section 9(b)**.

“Confidential Information” has the meaning provided in **Section 9**.

“Confidential System Information” has the meaning provided in **Section 9(a)**.

“DER Advisory Committee” has the meaning provided in **Section 5**.

“Designated Representative” has the meaning provided in **Section 5**.

“Directive Funding” means funding that is provided by a Municipality to Platte River to procure Directive Programs or Projects.

“Directive Programs or Projects” means those programs and projects proposed by a Municipality and accepted by Platte River that fall outside of the Common Programs or Projects. Directive Programs or Projects include additional DER programs or projects that may not provide System-Wide Benefit, but that provide individual Municipality benefits. They may also include Non-Electric Sustainability Services proposed by a Municipality and accepted by Platte River.

“Distributed Energy Resource” or **“DER”** means any physical or virtual devices or systems located within or adjacent to a Municipality’s electric system that can be deployed on the electric distribution system or on customer premises and that can be used to provide value to all customers through electric system optimization or individual customer benefits. Distributed Energy Resources include devices that provide energy storage, demand flexibility, distributed generation, energy efficiency, or electrification capabilities.

“Fiscal Year” means with reference to any Municipality, the applicable fiscal year for that Municipality, in accordance with its individual budget and accounting practices.

“Municipality” has the meaning provided in the Preamble.

“Non-Electric Sustainability Services” means services that are intended to help customers improve the environmental sustainability of their homes or businesses and are typically available with DER services. This may include services aimed at improving air quality, reducing natural gas energy use or water consumption or waste management, or on-bill project financing services. Platte River will provide Non-Electric Sustainability Services in its sole discretion, funded through Directive Funding.

“Party” and **“Parties”** have the meanings provided in the Preamble.

“Platte River” has the meaning provided in the Preamble.

“System-Wide Benefit” means improvements to the reliability, financial sustainability or environmental performance of the regional or local electric system that accrue to Platte River and the Municipalities.

2. **Term.** This Agreement will be effective upon signature by all Parties and will remain in effect until terminated as provided in **Section 6**.
3. **Common Programs or Projects.** Platte River may identify desired Common Programs or Projects. Platte River will fund and implement Common Programs or Projects and coordinate as necessary with the Municipalities through the DER Advisory Committee. Municipalities may also propose a desired Common Program or Project. Platte River will coordinate as necessary with the DER Advisory Committee to determine if the proposed program or project is a Common Program or Project or if it should be considered a Directive Program or Project, or if it should not be implemented under this Agreement.
4. **Directive Programs or Projects and Funding.** Platte River or a Municipality may identify desired Directive Programs or Projects; *provided, however*, that Platte River may choose not to implement any Directive Program or Project in its sole discretion. Platte River and the interested Municipality may collaborate to offer a Directive Program or Project when they determine that collaboration would result in the effective delivery of the program or project to the Municipality’s utility customers. In these cases, Platte River will work closely with the Municipality to establish a scope of work for the Directive Program or Project as well as a budget to complete the scope of work. Before Platte River undertakes any Directive Program or Project, the Municipality must issue a purchase order authorizing an expenditure from funds that have been appropriated and are available in the Municipality’s budget. Platte River will invoice the Municipality monthly, or at another agreed upon interval. The Municipality will pay Platte River within 30 days of invoice receipt.

Nothing in this Agreement precludes any Municipality from pursuing an independent DER program or project that is not a Common Program or Project or a Directive Program or Project; provided that the Municipality (a) reasonably coordinates any independent programs or projects with the other Parties to this Agreement, and (b) complies with the applicable terms of its Amended Contract for the Supply of Electric Power and Energy with Platte River, dated October 30, 2025, as it may be amended or supplemented.

5. **DER Advisory Committee.** Platte River will appoint one person and each Municipality's utility director will appoint one person (the "**Designated Representatives**") to serve on a committee that will meet annually, and more often if necessary, to coordinate and collaborate on any programs or projects contemplated under this Agreement (the "**DER Advisory Committee**"). Changes in Designated Representatives must be promptly communicated in writing to the other Parties. The DER Advisory Committee may create working groups to focus on projects or programs that require a greater degree of collaboration among subject-matter experts from each of the Parties' organizations.
6. **Termination.** A Municipality may terminate its participation in this Agreement upon 60 days' written notice to the other Parties; *provided, however*, that Platte River will complete any work Platte River has started under a purchase order issued by the withdrawing Municipality predating the written notice of termination and the withdrawing Municipality will fully reimburse Platte River for the completed work. If a Municipality terminates its participation under this Agreement, the Agreement will remain in effect as to the other Parties. The Agreement may be terminated upon written agreement of all Parties.
7. **Appropriation Required.** The financial obligations of the Municipalities and Platte River under this Agreement are from year to year only and do not constitute a multiple-fiscal year debt or other financial obligation or fiscal obligation of any kind payable in any Fiscal Year beyond the Fiscal Year for which funds are so appropriated for the payment of current expenditures.
8. **Notices.** Any notice, demand, request, consent, approval, or communication that a Municipality or Platte River chooses or is required to give must be in writing and either served personally or sent by first class mail, postage prepaid, or email, to the appropriate Designated Representatives. Platte River's Designated Representative will maintain an updated list of all Designated Representatives and will provide the list to any Municipality upon request.
9. **Confidential Information.** To the extent required by the Parties to perform the work contemplated under this Agreement, the Parties may disclose to each other and use "**Confidential Information**" in accordance with the terms of this **Section 9**. Confidential Information includes Confidential System Information and Confidential Customer Information, as defined below. Each Party will maintain all Confidential Information disclosed by another Party in confidence and will make commercially reasonable efforts to protect all Confidential Information of other Parties from inadvertent or unauthorized disclosure, using at least the same degree of care it employs with respect to its own confidential information. Each Party represents that, subject to applicable law, it has adopted reasonable procedures and data security safeguards to protect Confidential Information (its own and that of others in its possession) from unauthorized disclosure
 - a. **Confidential System Information; Disclosure and Use by the Parties.** "**Confidential System Information**" is information about a Party's electric system that the Party seeks to keep confidential and includes, but is not limited to, electric system operational data, utility metering data (including anonymized end-use data), electric network model data, or any other similar information the disclosing Party identifies as confidential. Each Party agrees to keep the other Parties' Confidential System

Information confidential; provided that a Party's Confidential System Information may be disclosed among and used by the other Parties in connection with implementation of Common Programs or Projects or Directive Programs or Projects.

- b. **Confidential Customer Information; Disclosure and Use by the Parties.** "Confidential Customer Information" is information about a Party's customers that the Party seeks to keep confidential and includes, but is not limited to, personally identifiable information (PII), non-anonymized energy consumption data, non-anonymized DER device data, and any other similar information the disclosing Party identifies as confidential. Each Party agrees to keep the other Parties' Confidential Customer Information confidential; provided that a Party's Confidential Customer Information may be disclosed among and used by the other Parties when such disclosure and use is necessary for implementation of Common Programs or Projects or Directive Programs or Projects and the Designated Representative of the Party to whom the Confidential Customer Information belongs consents in writing to the disclosure and use.
- c. **Disclosure of Confidential Information to Non-Parties.** Each Party agrees not to disclose any Party's Confidential Information to non-Parties except as permitted by this Agreement or other agreements between the applicable Parties, or as required by law.
- d. **Disclosure Required by Law.** If a Party is required by law to disclose Confidential Information of another Party, it will notify that Party, along with such Party's chief legal officer, before disclosure so that the Party may have an opportunity to take legal action to prevent the disclosure. The Parties acknowledge that all Parties are subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 et seq. ("CORA") and that disclosure may be required by law under CORA.
- e. **Return of Confidential Information upon Termination.** Promptly following the termination of this Agreement and upon request by the terminating Party, any Party in receipt of the terminating Party's Confidential Information will (a) destroy or return to the terminating Party all originals and copies of the terminating Party's Confidential Information, (b) destroy all notes, abstracts, and other documents that contain the terminating Party's Confidential Information, and (c) deliver to the terminating Party written certification, signed by the Designated Representative of the receiving Party, that it has done so. Nothing in this Agreement requires a receiving Party to identify, segregate, alter, or delete Confidential Information of another Party that may be held electronically in archive or backup systems in accordance with the receiving Party's general systems archiving or backup policies. The receiving Party may also retain copies of the disclosing Party's Confidential Information as necessary to comply with law. Any Confidential Information of a terminating Party retained by a receiving Party under this **Section 9.e** will remain subject to the receiving Party's confidentiality obligations for so long as the Confidential Information remains in the receiving Party's possession or control.

10. **Third-Party Agreements.** The Parties may determine that Common Programs or Projects or Directive Programs or Projects may benefit from the use of vendors or contractors to implement all or part of the programs or projects. Platte River will be responsible for engaging with vendors or contractors and negotiating the governing agreements to implement Common Programs or Projects or Directive Programs or Projects. The Parties agree that Confidential Information may be shared with third-party vendors or contractors by Platte River or by the applicable Municipality, provided that (a) the third party enters into a formal agreement with Platte River or the Municipality to maintain the confidentiality of the Confidential Information that is disclosed; (b) the third party has adopted procedures and data security safeguards no less stringent than the Parties have adopted under this Agreement to protect confidential information (the third party's own and that of others in its possession) from unauthorized disclosure; (c) the applicable Party or Parties' Designated Representatives approve in writing the release of their Confidential Information and any conditions associated with disclosure; (d) use of Confidential Information will be limited to that necessary for the vendor's or contractor's scope of work associated with the Common Program or Project or Directive Program or Project; and (e) the Parties and the third party comply with data restrictions contained in any applicable agreements between Platte River or a Municipality and other vendors or contractors.
11. **Liability.** Each of the Parties agrees to assume responsibility and liability associated with its own acts and the acts of its employees in the performance of this Agreement in accordance with Colorado law. By agreeing to this provision, neither Platte River nor any Municipality waives or intends to waive the limitations on liability provided to them under the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as amended, or other applicable law.
12. **Entire Agreement.** This Agreement contains the entire agreement of the Parties relating to the subject matter and may not be modified or amended except by written agreement of all Parties.
13. **No Third-Party Beneficiaries.** The Parties acknowledge and agree that this Agreement is intended to document the relative rights and obligations between the Parties to one another, and that no third-party beneficiaries are intended.
14. **Governing Law and Venue.** This Agreement will be governed by the laws of the State of Colorado, and venue for any legal action concerning this Agreement will be Larimer County, Colorado.
15. **Authority.** The Parties recognize the legal constraints imposed on them by the constitutions, statutes, and regulations of the state of Colorado and of the United States, and imposed on a Municipality by its Charter or Municipal Code, and the Parties intend to carry out the terms and conditions of this Agreement subject to these constraints. Nothing in this Agreement obligates any Party to take any action inconsistent with applicable law. This Agreement may be signed in separate counterparts, and the counterparts taken together will constitute the whole of this Agreement.

- 16. Superseded Agreements.** This Agreement supersedes and replaces the following agreement, which is terminated:

“Intergovernmental Agreement for Demand Side Management and Distributed Energy Resource Program Partnership” between the Town of Estes Park, the City of Fort Collins, the City of Longmont, the City of Loveland, and Platte River Power Authority, dated January 9, 2020.

Signed and authorized as of the date above by:

PLATTE RIVER POWER AUTHORITY

ATTEST:

By: _____

General Manager/CEO

By: _____

Secretary

Date

APPROVED AS TO FORM:

By: _____

General Counsel

TOWN OF ESTES PARK, COLORADO

ATTEST:

By: _____
Mayor

By: _____
Town Clerk

APPROVED AS TO FORM:

By: _____
Town Attorney

CITY OF FORT COLLINS, COLORADO

ATTEST:

By: _____
Mayor

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

CITY OF LOVELAND, COLORADO

ATTEST:

By: _____
City Manager

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

CITY OF LONGMONT, COLORADO

ATTEST:

By: _____
Mayor

By: _____
City Clerk

APPROVED AS TO FORM AND SUBSTANCE:

By: _____
Executive Director of Electric Services

APPROVED AS TO FORM:

By: _____
Deputy City Attorney