

RESOLUTION 2014-072
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FORT COLLINS, PLATTE RIVER POWER AUTHORITY,
THE TOWN OF ESTES PARK, THE CITY OF LONGMONT, AND THE CITY OF
LOVELAND FOR DEMAND SIDE MANAGEMENT PROGRAM COORDINATION

WHEREAS, Platte River Power Authority ("PRPA") was formed by contract among the City of Fort Collins, the Town of Estes Park, the City of Longmont, and the City of Loveland to provide electric generation and transmission services and other related functions to benefit the founding municipalities, pursuant to C.R.S. Section 29-1-204; and

WHEREAS, as one of the founding municipalities, Fort Collins operates an electric distribution system providing retail utility service to customers within the City's municipal boundaries and service territory; and

WHEREAS, since 2004, Fort Collins and PRPA have jointly funded "Demand Side Management" ("DSM") energy efficiency and conservation programs for residential and commercial customers on the Fort Collins electric system, the planning and development of which has been jointly managed by Fort Collins and PRPA, in coordination with DSM programs in the other founding municipalities; and

WHEREAS, administration of common DSM program elements offered by each founding municipality has generally been managed by PRPA, including rebate administration and issuing rebate payments to customers; and

WHEREAS, the founding municipalities have separate approved budgets for DSM, and PRPA's overall DSM budget is allocated to each founding municipality based on the municipality's annual ownership percentage (typically 47% for Fort Collins); and

WHEREAS, there are economies of scale in continuing to coordinate DSM programming among the founding municipalities and PRPA, and the parties desire to formalize these efforts by entering into an intergovernmental agreement for such purposes; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with other governmental bodies to furnish governmental services and make charges for such services or enter into cooperative or joint activities with other governmental bodies.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Mayor is hereby authorized to execute an Intergovernmental Agreement for a Demand Side Management Partnership between the City, Platte River Power Authority, the Town of Estes Park, the City of Longmont, and the City of Loveland in substantially the form attached hereto as Exhibit "A", with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purpose of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 19th day of August, A.D. 2014.

Karen Weikert
Mayor

ATTEST:

Wanda Nelson
City Clerk



**INTERGOVERNMENTAL AGREEMENT FOR DEMAND SIDE
MANAGEMENT PROGRAM PARTNERSHIP**

This Intergovernmental Agreement ("Agreement") is made this _____ day of _____, 2014 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"), collectively referred to herein as the "Parties." When specificity is not required, the municipal corporations which are parties hereto will hereinafter be individually referred to as "Municipality," and collectively as "Municipalities."

WHEREAS, 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 related business activities including demand side management ("DSM"); and

WHEREAS, 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 energy efficiency, including DSM; and

WHEREAS, Platte River's DSM programs include those offered to the utility customers of the Municipalities, which programs are contracted for and funded by Platte River; and

WHEREAS, Platte River seeks to maintain an equitable distribution of DSM funds among the Municipalities; and

WHEREAS, the Parties intend to expand the scope of Platte River's current DSM programs, and desire to define certain terms and conditions related to program management as set forth in this Agreement; and

WHEREAS, the Parties are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.**

“Common Programs” shall mean DSM programs and related services which are developed by, contracted for, and funded by Platte River. Common Programs are offered by Platte River to the utility customers of the Municipalities, up to an amount equal to each Municipality’s Equity Share of Platte River’s DSM budget.

“Directive Funding” shall mean funding that is provided by a Municipality to procure DSM services that fall outside of those DSM services provided through the Common Programs.

“Equity Share” shall mean the pro rata share that each Municipality would receive of Platte River’s assets upon dissolution as provided in Section 2.8 of the Platte River Power Authority Organic Contract.

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

“Supplemental Funding” shall mean funding that is provided by a Municipality to procure Common Programs services in excess of those provided by Platte River based upon the Municipality’s Equity Share.

2. **Supplemental Funding.** During any calendar year demand for Common Program services within a Municipality may result in the full commitment of its Equity Share of Platte River’s DSM budget. Upon the request of a Municipality whose Equity Share of the DSM budget has been fully committed, Platte River shall continue to offer Common Programs within that Municipality; provided, however, that before Platte River commits such additional funding, the Municipality must issue a purchase order authorizing Supplemental Funding in the necessary amount. Supplemental Funding shall be from funds that have been appropriated and are available in the Municipality’s budget. Platte River shall invoice the Municipality under such purchase order when expenditures have exceeded its Equity Share of Platte River’s DSM budget. The Municipality shall pay Platte River within thirty days of invoice.
3. **Directive Funding.** Platte River or a Municipality may identify additional DSM programs or services not contemplated within the scope of the Common Programs. Platte River and the interested Municipality may decide to collaborate in offering these programs or services when they determine that such collaboration would result in the effective delivery of the programs or services to the Municipality’s utility customers. In these cases, Platte River will work closely with the Municipality’s designated staff to

establish a scope of work for the program or service as well as a budget containing sufficient funding to complete the scope of work. Prior to Platte River undertaking any Directive Funding activity, the Municipality must issue a purchase order authorizing an amount of expenditure from funds that have been appropriated and are available in the Municipality's budget. Platte River shall invoice the Municipality on a monthly basis, or at another agreed upon interval. The Municipality shall pay Platte River within thirty days of invoice.

4. **Term.** This Agreement will be effective upon execution by the Parties and will remain in effect until terminated.
5. **Termination.** A Municipality or Platte River may terminate its participation in this Agreement upon sixty (60) days written notice to the other Parties; provided, however, that any work commenced by Platte River under a purchase order issued by a Municipality prior to receipt of the written notice of termination will be completed by Platte River and reimbursed by the Municipality.
6. **Appropriation Required.** The financial obligations of the Municipalities under this Agreement are from year to year only and shall 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.
7. **Designated Representatives.** The designated representatives for each of the Parties are as follows:

Platte River: Paul Davis, Customer Services Manager
Platte River Power Authority
2000 East Horsetooth Road
Fort Collins, CO 80525
970-229-5370
Davisp@prpa.org

Estes Park: Reuben Bergsten, Utility Director
Estes Park Light & Power
Estes Park Municipal Building
P.O. Box 1200
170 MacGregor Ave
Estes Park, Colorado 80517

Fort Collins: John Phelan, Energy Services Manager

Fort Collins Utilities
700 Wood St
Fort Collins, CO 80522

Longmont:

Energy Services Manager
Longmont Power & Communications
1100 S. Sherman St.
Longmont, CO 80501
303-651-8727
Anne.Lutz@ci.longmont.co.us

Loveland:

Gretchen Stanford, Customer Relations Manager
Loveland Water & Power
200 North Wilson Avenue
Loveland, CO 80537
970-962-3550
Gretchen.Stanford@cityofloveland.org

A Municipality or Platte River must notify the other Parties in writing of any subsequent changes in appointed representative.

8. **Notices.** Any notice, demand, request, consent, approval, or communication that a Municipality or Platte River is required to give shall be in writing and either served personally or sent by first class mail, postage prepaid, or by fax or email, to the designated representative of the recipient at the address designated as set forth above, or as subsequently provided in writing.
9. **Confidential Customer Information.** To the extent required by Platte River (as an agent of the Municipalities) to perform the work required under this Agreement, a Municipality may provide Platte River with confidential utility customer information. Platte River agrees to keep such information confidential and shall not disclose such information, including to the other Municipalities, except as required by law. Platte River shall notify the Municipality prior to any such disclosure so that the Municipality may have an opportunity to take such legal action as it deems necessary to prevent the disclosure.
10. **Liability.** Each of the Parties hereto 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 or the Municipalities waives or intends to waive, the limitations on liability

which are provided to them under the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as amended.

11. **Entire Agreement.** This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the Parties.
12. **No Third Party Beneficiaries.** The Parties acknowledge and agree that this Agreement is intended to only document the relative rights and obligations between the Parties to one another, and that no third party beneficiaries are intended.
13. **Governing Law and Venue.** 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.
14. **Authority.** The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and of the United States, and imposed upon the Municipalities by their Charter or Municipal Code, and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall the Parties exercise any power or take any action which shall be prohibited by applicable law. This Agreement may be executed in separate counterparts, and the counterparts taken together shall constitute the whole of this Agreement.
15. **Superseded Agreements.** This Agreement supersedes and replaces the following agreements which are hereby terminated:

“Intergovernmental Agreement for Demand Side Management Program Funding”
between the City of Loveland and Platte River, dated December 18, 2012.

“Intergovernmental Agreement between the City of Longmont and the Platte River
Power Authority Concerning Use of Longmont’s Electric Utility Customer Data,” dated
January 10, 1995.

“Intergovernmental Agreement between the City of Longmont and the Platte River
Power Authority Concerning Use of Longmont’s Electric Utility Customer Data,” dated
May 30, 2002.

“Agreement” between Platte River Power Authority and the City of Longmont, dated
April 8, 2005.

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

TOWN OF ESTES PARK, COLORADO

ATTEST:

By: _____
[Title]

By: _____
Town Clerk

CITY OF FORT COLLINS, COLORADO

ATTEST:

By: _____
Karen Weitkumat, Mayor

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

CITY OF LOVELAND, COLORADO

ATTEST:

By: _____
[Title]

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: _____
General Manager of Longmont Power & Communications

PROOFREAD:

APPROVED AS TO FORM:

Assistant City Attorney

PLATTE RIVER POWER AUTHORITY

ATTEST:

By: _____
Jackie Sargent, Chief Executive Officer

By: _____
Secretary

APPROVED AS TO FORM:

By: _____
General Counsel

PROOFREAD:
