



CONTRACTOR PARTICIPATION AGREEMENT
(GSFA Residential Energy Retrofit Program with Five Star Bank as Lender)

This Contractor Participation Agreement for the GSFA Residential Energy Retrofit Program (this "**Agreement**"), dated _____, 20____, is made by and between Golden State Finance Authority ("**GSFA**") and _____ ("**Contractor**").

- A. GSFA is the administrator of the GSFA Residential Energy Retrofit Program ("Program"). GSFA is a California Joint Powers Authority and affiliate of Regional Council of Rural Counties. For more information about GSFA and the Program, please visit www.gsfa.org.
- B. The Program offers loans (the "**Loans**," and each a "**Loan**") to eligible individual owners ("**Owners**," and each an "**Owner**") of single-family residential property located within the counties identified on the Program Term Sheet attached hereto as **Exhibit "A"**, the proceeds of which will be used for energy efficient retrofits and improvements to residential property ("**Retrofit Work**").
- C. Five Star Bank ("**BANK**") is the lender which provides Loan(s) to Program applicants ("**Applicant(s)**") who qualify for financing under the Program. The BANK Loan proceeds must be used for whole-house energy efficiency retrofit work ("**Retrofit Work**" or "**Retrofit Project**") on a residence owned by the Applicant(s). BANK will accept Credit Applications ("**Credit App(s)**") under the Program until Program funds are fully committed as specified in the Program Term Sheet.
- D. Only pre-approved contractors that satisfy GSFA's eligibility criteria ("**Eligibility Criteria**") and agree to the terms and conditions imposed by GSFA pursuant to a Contractor Participation Agreement ("**Approved Contractors**," and each an "**Approved Contractor**") will be eligible to provide information on the Program to prospective participants and be included on the Approved Master Contractor List (as defined below).
- E. Contractor's initial application has been approved by GSFA, and Contractor desires to enter into this Agreement in order to be eligible to provide information on the Program to prospective participants and be included on the Approved Master Contractor List.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, GSFA and Contractor hereby agree as follows:

1. **Acceptance as Approved Contractor.** Subject to GSFA's rights set forth in this Agreement to terminate Contractor's Approved Contractor status, Contractor shall be eligible to provide information on the Program to prospective participants, and will be included on the approved contractor master list (the "**Approved Contractor Master List**"). The Approved Contractor Master List will be made available to Owners and prospective participants. As used herein, "prospective participants" means individual owners of single-family residential property located in an Included County. Contractor acknowledges and agrees that the Approved Contractor Master List shall not be limited either in number or geographic concentration.
2. **Retrofit Work.** Contractor acknowledges and agrees that: (i) GSFA is the Program Administrator only and does not perform or contract to perform Retrofit Work; (ii) all Retrofit Work must be

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separately and independently contracted for directly with Owners; and (iii) Owners are solely responsible for determining the kind and scope of Retrofit Work to be performed and the Approved Contractor that will perform the Retrofit Work. Accordingly, GSFA makes no representation, warranty or guaranty of any kind whatsoever regarding the amount of Retrofit Work that Contractor may be engaged to perform for any Owners, or whether Contractor will be engaged to perform any Retrofit Work. CONTRACTOR UNDERSTANDS THAT CONTRACTOR IS NOT GUARANTEED ANY RETROFIT WORK, AND THAT OWNERS WILL BE SOLELY RESPONSIBLE FOR CONTRACTING FOR THE PERFORMANCE OF RETROFIT WORK.

3. **Representations.** Contractor and its representatives, employees and agents must not represent themselves as an agent, representative, contractor, subcontractor, or employee of GSFA, or claim association or affiliation with GSFA in any capacity other than as an Approved Contractor. Further, Contractor shall not make false claims about performance or savings, nor engage in fraudulent or deceitful conduct in the sale or installation of Retrofit Work.
4. **Marketing; Marketing Materials.** Contractor shall have the non-exclusive, non-assignable, non-transferable right (but not the obligation), to market the Program to Owners and prospective participants in the Included Counties in which Contractor does business. Marketing materials used by Contractor for the promotion of the Program must be GSFA approved marketing and promotional materials only. GSFA shall have the right, in its sole and absolute discretion, to approve or disapprove any and all marketing and promotional materials. For purposes of Contractor's marketing of the Program only, GSFA grants Contractor a limited, non-exclusive, non-assignable, non-transferable, right and license to use GSFA approved marketing and promotional materials related to the Program. GSFA may revoke this limited license at any time in its sole and absolute discretion. Contractor, and not GSFA, shall be responsible for ensuring that all marketing and promotional activities of Contractor, and all marketing and promotional materials used by Contractor, satisfy all laws and regulations applicable to Contractor's marketing activities and materials. GSFA makes no representation, warranty or guaranty of any kind with regard to the laws, regulations or permits that Contractor needs to satisfy or comply with in connection with marketing the Program. It is exclusively Contractor's obligation to satisfy and comply with all such laws, regulations, and permits.
5. **Contractor Procedures Manual.** Contractor shall comply with the terms and procedures set forth in the "GSFA Residential Energy Retrofit Program – Procedures Manual for Contractors" (the "**Contractor Procedures Manual**") in marketing and promoting the Program, and assisting GSFA in collecting and processing Loan documents. GSFA may, in its sole and absolute discretion, amend the Contractor Procedures Manual at any time, and from time to time. GSFA will provide notice to Contractor of such amendments.
6. **Addendum.** All energy retrofit contracts entered into by and between Contractor and an Owner that contemplate Retrofit Work to be financed out of the proceeds of a Loan obtained by the Owner shall include an addendum in the form of the Addendum to Energy Retrofit Contract attached hereto as **Exhibit "B"** (as such exhibit may be amended at any time, and from time to time, in the sole and absolute discretion of GSFA).
7. **Loan Underwriting, Approval and Funding.** Contractor shall not perform any financial underwriting or make any determinations whatsoever regarding a prospective participant's ability to qualify for a Loan. All financial underwriting shall be performed by GSFA or BANK. Contractor acknowledges and agrees that all underwriting and Loan approvals or disapprovals shall be made in the sole and absolute discretion of GSFA or BANK based on GSFA's or BANK's formal underwriting criteria (as may be amended at any time, and from time to time, in GSFA's or BANK's sole and absolute discretion) and review of title and the Owner's loan application and required document submittals. If the Owner is approved for a Loan, and if the Owner accepts the Loan terms and conditions, GSFA will notify Contractor by delivering a notice of loan approval ("**Notice of Loan Approval**") to Contractor. The Notice of Loan Approval will be in the form attached hereto as **Exhibit "C"** (as such exhibit may be amended at any time, and from time to time, in the sole and absolute discretion of GSFA) and will be subject to the conditions and disclosures set forth therein.

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8. **Program Changes.** GSFA may initiate changes to the Program at any time, and from time to time, as deemed necessary or appropriate by GSFA or BANK, in GSFA's or BANK's sole and absolute discretion. GSFA will make commercially reasonable efforts to provide Contractor reasonable notice of changes which affect financing or Retrofit Work activities; provided, however, GSFA reserves the right to make immediate changes, without notice, as deemed necessary or in the best interest of GSFA or BANK.
9. **Licensing; Business Location.**
- (a) Contractor agrees to maintain all applicable licenses, permits, insurance, and bonds required by Federal, state, and local laws, and hold and maintain an active California State Contractor's License in good standing. Without limiting the generality of the foregoing, Contractor shall maintain those licenses, permits, insurances, bonds, accreditations and certifications as are required to be maintained by Contractor pursuant to the Contractor Procedures Manual.
 - (b) Contractor shall ensure that all of Contractor's sales personnel are, if and to the extent required by Law, licensed and registered with the California Contractor State License Board as a Home Improvement Salesman.
 - (c) Contractor shall maintain an established place of business within the State of California, and provide a business phone with 24 hour answering or message service.
 - (d) Contractor agrees to notify GSFA in writing within 10 business days of any address, license or business related changes.
10. **Insurance.** Contractor shall, prior to initiating any Retrofit Work, and at all times during its activities in connection with Retrofit Work and the Program, obtain and keep in full force and effect Workers Compensation Insurance (at or above the minimum limit required by law) and as set forth in **the Contractor's Procedure Manual** for all persons whom Contractor employs in carrying out its activities in connection with the Program and/or Retrofit Work.
11. **Owner Confidential Information.** Contractor acknowledges that it will receive information and documentation about Owners which is personal and/or confidential ("**Owner Confidential Information**"). "Owner Confidential Information," as used herein, includes, but is not limited to, financial information about an Owner, the fact that an Owner has applied for and/or been approved or denied for a Loan, any information submitted to Contractor and/or GSFA with or on any application or other document in connection with a Loan, any information on any loan or credit document (whether created by GSFA or a third party), and any other Owner information reasonably deemed by GSFA and/or Owner to be personal and/or confidential. Owner Confidential Information may be in oral, written, graphic, or electronic format. Contractor agrees that at all times during and after the term of this Agreement, Contractor will keep confidential and not disclose to any third party or use Owner Confidential Information except to the extent necessary to assist Owner with the Loan application and origination process, without the express and prior written permission of Owner. Without limiting the generality of the foregoing, Contractor agrees to protect Owner Confidential Information with at least that degree of care with which it protects its own confidential information. Contractor acknowledges that it is aware that the unauthorized disclosure of Owner Confidential Information may be highly prejudicial to the Owner's interests, an invasion of privacy, and an improper disclosure of financial information in violation of state and federal law. Contractor will immediately notify GSFA, orally and in writing, of any actual or suspected misuse, misappropriation or unauthorized disclosure of Owner Confidential Information. Finally, Contractor agrees, upon written request, to return to GSFA or destroy any Owner Confidential Information obtained or received by Contractor.
12. **Indemnity.** Contractor agrees to protect, defend with counsel acceptable to GSFA, indemnify and hold harmless GSFA, and its and their members, directors, officers, employees, agents, affiliates, parents and subsidiaries, and each of them (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**"), of and from any and all claims, liabilities, demands, causes of action, losses, damages, penalties, costs, expenses and fees (including, without limitation, reasonable attorneys' fees and costs, experts fees and costs, and court fees and costs), in law or in equity, of every kind and nature whatsoever (collectively, "**Claims**") arising out of, related to or in

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connection with Contractor's acts and/or omissions, the Retrofit Work performed by Contractor, and/or the operations and/or performance of Contractor under the Program, including, but not limited to:

- (a) Personal injury, including, but not limited to, bodily injury, sickness, disease or death to any persons, and/or damage to property of anyone (including loss of use thereof), based in whole or in part by any act or omission of Contractor, anyone directly or indirectly employed by Contractor, or anyone for whose acts Contractor may be liable, except to the extent such personal injury or damage is caused by the sole and active negligence of an Indemnified Party.
- (b) Any defect in work performed or equipment installed by or on behalf of Contractor or any of its employees, officers, agents, suppliers, representatives, permittees or invitees or any other person or entity claiming under or through Contractor.
- (c) Penalties imposed as a result of a violation of any Law (defined below) applicable to Contractor and/or the Retrofit Work, caused by the act or omission of Contractor or its employees or agents.
- (d) Claims and liens for labor performed, services or materials used or furnished to be used in the work performed by Contractor, including all incidental or consequential damages resulting to the Indemnified Parties from such claims or liens.
- (e) Any breach by Contractor of the terms, requirements or covenants of this Agreement.

The obligations of Contractor set forth in this Section 12 shall survive the termination of this Agreement.

- 13. **Compliance with Laws.** Contractor shall ensure that Contractor, and its employees, officers, agents, suppliers, representatives, permittees and invitees, and anyone doing work for or on behalf of contractor, fully comply, at all times, with all laws, regulations, rules and orders applicable to the Retrofit Work and the activities (including, but not limited to, marketing activities) of Contractor in connection with the Program, whether now existing or hereafter enacted, by any federal, state or local governmental authority or agency having jurisdiction over the same (each, a "**Law**" and collectively, "**Laws**"). Contractor shall not commence or conduct any Retrofit Work and/or other activity in connection with the Program until all permits and approvals required for such Retrofit Work and/or activity by any governmental entity have been obtained, and shall strictly comply with the terms and conditions of such permits and approvals. Without limiting the generality of the foregoing, Contractor and its employees shall comply with all applicable health, safety, and environmental rules and regulations. These include, but are not limited to, the rules and regulations promulgated by OSHA, Cal OSHA, EPA, Cal DTSC, Water Quality Control Board and air quality regulators. Where the requirements of such regulatory agencies overlap, the most protective regulations will apply.
- 14. **Eligibility Criteria.** The Eligibility Criteria that must be satisfied to be accepted as an Approved Contractor, and to retain such status, will be set forth in the Contractor Procedures Manual. The Eligibility Criteria shall be determined by GSFA, in GSFA's sole and absolute discretion, and are subject to change without notice to Contractor. Contractor acknowledges and agrees that the Eligibility Criteria may contemplate varying levels or classifications of Approved Contractor, depending on location, licensing and/or Program goals and objectives established by GSFA.
- 15. **Termination of Agreement and/or Approved Contractor Status.** GSFA, at its sole option, shall have the right to terminate this Agreement and/or terminate or modify Contractor's Approved Contractor status and reclassify or remove Contractor from the Approved Contractor Master List, for the reasons set forth below in this section. If GSFA terminates this Agreement, or if Contractor's Approved Contractor status is terminated or modified by GSFA, GSFA shall notify Contractor of such determination in writing (the "**Termination Notice**"). The Termination Notice shall identify the basis for the termination or modification. If GSFA terminates this Agreement, or if Contractor's Approved Contractor status is terminated, Contractor shall immediately cease all marketing and other activities related to the Program. GSFA shall have no liability to Contractor whatsoever in connection with the termination of the Agreement and/or the modification or termination of its

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Approved Contractor status, and Contractor agrees to waive any claim for damages, including loss of anticipated profit and consequential damages, resulting from termination of the Agreement and/or the modification or termination of Contractor's Approved Contractor status.

GSFA shall have the right, in its sole and absolute discretion, to terminate this Agreement and/or modify or terminate Contractor's Approved Contractor status, for the following reasons:

- (a) GSFA determines, in its sole and absolute discretion, that the Program is no longer feasible or viable, does not have sufficient funding or a dispute has arisen in connection with or relating to the Program;
 - (b) Contractor fails to comply with, or is in breach of, the terms and/or conditions of this Agreement;
 - (c) Contractor or its employees or agents engage in unprofessional, illegal or otherwise unacceptable conduct, as determined by GSFA, in GSFA's reasonable discretion. Without limiting the generality of the foregoing, unacceptable conduct shall include, but not be limited to, the following:
 - i. Installing equipment or materials, or otherwise engaging in activity, which endanger the safety of the Owner or his/her real or personal property;
 - ii. Misrepresenting Contractor's relationship with GSFA or the Program either directly or through erroneous or misleading advertising, marketing or other promotional materials;
 - iii. Providing false information and/or engaging in acts of intimidation, harassment, or retaliation against any Owner, GSFA employee, or person who cooperates in any investigation;
 - iv. Failing to pay a supplier or a subcontractor in a timely manner which results in a mechanics lien being placed against an Owner's property or any equipment, material, or labor for an installation under the Program; and/or
 - v. Failing to repair damage to an Owner's property resulting from an installation or other Contractor action or inaction arising under or related to the Retrofit Work or The Program.
 - (d) GSFA receives complaints from one or more Owners or BANK regarding the Contractor.
 - (e) Contractor fails to satisfy the Eligibility Criteria then in effect.
16. **Termination by Contractor.** Contractor may discontinue participation in the Program upon thirty (30) days prior written notice delivered to GSFA.
17. **Contractor Documentation.** Contractor represents and warrants to GSFA that all documentation, certificates, licenses, information and data (collectively, "**Documentation**") provided to GSFA as part of Contractor's application package is/are true, accurate and complete in all respects. Contractor shall notify GSFA in writing within three (3) business days of the date that Contractor has knowledge of any inaccuracy or change in the status of any Documentation.
18. **Entire Agreement.** This Agreement, together with any and all appendices, exhibits and/or attachments attached hereto and any amendments, modifications, change orders, addendum and/or any other documents attached hereto and incorporated herein constitutes the entire agreement between the parties hereto and no changes, alterations, or modifications hereof shall be effective unless made in writing and signed by duly authorized representatives of both parties to this Agreement.
19. **Assignment.** This Agreement may not be assigned, either in whole or in part.
20. **Survival.** The waivers, releases and indemnification obligations of Contractor under this Agreement shall survive the termination of this Agreement.

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21. **Notices.** Any notice, request or other communication required or permitted under this Agreement shall be in writing and shall be deemed duly served and given when personally delivered to or actually received by the party to whom it is directed or, in lieu of such personal service or receipt:
- i. The next business day (Monday through Friday) after being deposited with an overnight air courier such as Federal Express or DHL; or
 - ii. Upon the sender's confirmation of good delivery if sent by facsimile transmission on a business day between the hours of 9:00 a.m. and 5:00 p.m., the recipient's time, otherwise, at 9:00 a.m., the recipient's time, on the next following business day, in each case addressed as follows:

GSFA:	Golden State Finance Authority	
	1215 K Street, Suite 1650	
	Sacramento, CA 95814	
	Attention:	Peter Tran
	Phone:	866-643-4968
	Fax:	916-444-3219

CONTRACTOR	NAME		
	ADDRESS		
	CITY	STATE	ZIP
	ATTENTION		
	PHONE () -		
	FAX () -		

22. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent, a partnership, joint venture or any other association between GSFA and Contractor.
23. **No Third Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, the execution and delivery of this Agreement shall not be deemed to confer any rights upon (nor obligate any of the parties hereto to) any person or entity other than the parties hereto.
24. **Interpretation.** This Agreement shall not be construed against either party, and notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty shall not be construed against either GSFA or Contractor based upon authorship of any of the provisions hereof.
25. **Days of the Week.** If any date for performance herein falls on a Saturday, Sunday or holiday, as defined in section 6700 of the California Government Code, the time for such performance shall be extended to 5:00 p.m. on the next business day. A "business day" shall mean a day that is not a Saturday, Sunday or legal holiday in the State of California.

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26. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be regarded as an original and all of which when taken together shall constitute one and the same document.
27. **Time.** Time is of the essence in this Agreement.
28. **Captions.** None of the captions of the articles, paragraphs and/or subparagraphs of this Agreement shall be construed as a limitation upon the language of the paragraphs and/or subparagraphs, said captions having been inserted as a guide and partial index and not as a complete index of the contents of such paragraph and/or subparagraph.
29. **Waiver.** The waiver by GSFA or Contractor of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of another provision of this Agreement.
30. **Governing Law.** This Agreement, and the rights and liabilities of the parties to this Agreement, shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, GSFA and Contractor have executed and delivered this Agreement as of the date first set forth above.

GSFA:	SIGNATURE OF GSFA REPRESENTATIVE	DATE
	NAME OF GSFA REPRESENTATIVE	
	TITLE OF GSFA REPRESENTATIVE	

CONTRACTOR:	SIGNATURE OF CONTRACTOR	DATE
	NAME OF SIGNING PARTY	
	TITLE OF SIGNING PARTY	

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EXHIBIT A
FSB - PROGRAM TERM SHEET
GSFA Residential Energy Retrofit Program

TO BE ATTACHED

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EXHIBIT B

Form Energy Retrofit Contract Addendum

TO BE ATTACHED

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EXHIBIT C

Form Notice of Loan Approval

TO BE ATTACHED

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