

BUILT TO LAST PROGRAM

Program Participant Agreement

This Agreement entered into as of this day of _____, 20____ (the **Agreement**) by and between ____ (Participant) an individual(s) owning a residence at ____ (the **Residence**) and [Contractor name], with its principal place of business located at [company address] (the **Contractor**).

Participant has been approved by Philadelphia Energy Authority (**PEA**) to participate in its Built to Last Program (the **Program**), which provides home repairs at no cost to improve:

- basic home systems (e.g., HVAC, plumbing, and electrical),
- health and safety conditions, and
- long-term energy performance and utility affordability.

Some repairs under the Program may have been assigned to other Built to Last team members or their subcontractors (**BTL Implementers**).

For the balance of qualified repairs, a retrofit services provider called [_____] (**Construction Manager**), acting on behalf of PEA for the Program, has been assigned Participant's project, has selected the Contractor, and has developed a detailed scope of work in consultation with Contractor for installation in the Participant's home (the **Project Scope**). Construction Manager will oversee the Contractor's construction work under Participant's Project Scope (the **Project**) and conduct a final inspection.

Philadelphia Green Capital Corp. (**PGCC**), a non-profit green bank affiliate of PEA, has agreed to fund the installation of the Project and has entered into a General Contractor Services Agreement (the **Service Agreement**) with Contractor to install Project in the Residence.

Participant and Contractor agree, intending to be legally bound, as follows:

1. THE PROJECT

- Following execution of this Agreement, PEA, acting as PGCC's agent, will deliver instructions to Contractor to install the Project. Both Participant and Contractor agree to the Project Scope, which is attached as Exhibit A.
- The Contractor has no obligation to undertake work that is not included in the Project Scope unless a change is agreed to in writing by both Participant and Contractor and approved by PGCC (such written approval, a **Change Order**).
- Contractor may not undertake work in the Residence under a separate agreement with the Participant or any third-party during the period of the Project.
- After the Project is complete, the Participant is responsible for future maintenance

and upkeep of the Residence. None of Contractor, PGCC, Construction Manager, or PEA have any obligation for continued maintenance of the Participant's Residence.

2. WARRANTY OF WORK

- a. All work performed by Contractor pursuant to the Project Scope carries a one-year workmanship and equipment warranty. Roof replacements and new, whole-roofing surfaces will carry a minimum warranty of ten years. Minor repairs and re-coats are exempt from a ten-year warranty.
- b. The warranty term will commence upon successful completion of Construction Manager's final inspection (the **Construction Completion Date**)
- c. Limitations and Exclusions.
 - i. Roof surfaces that abut a wall with siding or another form of cladding may have warranty exemptions if roof leaks are determined to be from water penetration through the siding and not due to a failure of the installed roof surface.
 - ii. The warranty does not cover issues that are attributable to misuse, or normal wear and tear.
 - iii. Warranty terms may be limited if anyone other than the Contractor alters the condition of the installed work.
 - iv. Use of Participant-supplied materials is highly discouraged and will only be considered on a case-by-case basis. In this event, such materials and tasks may be exempt from warranty coverage.
- d. Upon completion of the Project, Contractor will provide all warranty documents to the Construction Manager, who will provide the warranty documents to the Participant as part of the set of documents provided at the close of the project (**Project Close-Out Documentation.**)
- e. Manufacturer Warranties.
 - i. Contractor is responsible for providing the documentation and information necessary for the Participant to directly track and manage manufacturer warranties for any major equipment installed as a part of the Project.
- f. Roofing and Other Extended Warranties.
 - i. If Contractor employs a sub-contractor for roof replacement and/or other work that has an extended warranty, Contractor must provide Participant with the documentation and contact information necessary to track and manage their warranty.
 - ii. If the subcontractor goes out of business or is unresponsive to the Participant's request for warranty services, the warranty responsibilities will be assumed by Contractor.

- g. This Section survives termination of this agreement.

3. WARRANTY PROCEDURES

- a. Issuing a Warranty Claim:
 - i. If the Participant experiences an issue with the performance or quality of work by Contractor, the Participant may start a warranty claim by filling out and submitting the Warranty Claim Form (Exhibit B).
 - ii. The Warranty Claim Form should be submitted to both the Contractor and Construction Manager via, email, text, or USPS mail service.
 - iii. The Participant may only make warranty claims for items that are performed under the Project Scope.
- b. Responding to a Warranty Claim:
 - i. Upon receipt of the Warranty Claim Form, Contractor will:
 - 1. Investigate each claim item to determine if there are qualifying warranty issues and document the findings.
 - a. If the investigation finds a qualifying warranty issue, Contractor will promptly take corrective action to resolve the issue.
 - b. If the investigation finds that the issue is not covered by the warranty, Contractor will explain that to Participant.
 - 2. Share warranty claim status and all relevant documentation with the Construction Manager.
 - ii. The Construction Manager will oversee this process and ensure that the claim is addressed and closed.
 - iii. In the event that Participant disagrees, or is unsatisfied with the outcomes of Contractor's response to their claim, the Construction Manager will review the documents and photos to determine if further action is needed. If further action is required, the Construction Manager will work with the Contractor to facilitate this.
 - iv. Any further dispute regarding warranty issues will follow the dispute resolution process in Section 8.

4. PAYMENT FOR WORK

- a. PGCC will make all payments for Contractor's work on the Project under the terms of the Service Agreement and as provided in the project Notice to Proceed authorization.
- b. Any changes from the improvements specified in the Project Scope must be approved in advance by PGCC through a Change Order.
- c. Contractor acknowledges that PGCC is solely responsible for payment for Contractor's work and that the Participant has no payment obligation to

Contractor; and neither Contractor nor its Subcontractors are entitled to place a lien on Participant's property for amounts due from PGCC.

5. RESPONSIBILITIES OF THE PARTIES

a. Contractor Responsibilities.

Contractor will:

- i. Perform the Project Scope in a manner that:
 1. Provides a high level of quality workmanship.
 2. Is compliant with building code and other regulatory bodies such as OSHA and the EPA, and adheres to the requirements of the Service Agreement.
 3. Is respectful of the health, safety, and comfort of the occupants of the Residence as well as the residents of the surrounding community.
 4. Is expeditious and limits disruption to the Residence and community residents.
- ii. Communicate clearly with the Participant and, as needed, other household residents with relevant information regarding the Project.
- iii. Adhere to the schedule and work hours agreed to by Contractor and Participant, and give advance notice if deviating from planned activities and schedule.
- iv. Adhere to the policies on Change Orders in Section 1.b. and revisions to Project Scope. Refer the Participant to the Construction Manager for scope questions and change requests.
- v. Ensure that all workers conduct themselves in an appropriate and professional manner.

b. Participant Responsibilities

- i. Participant has a role to play in the successful completion of the work at the Residence. Participant will:
 1. Coordinate with Contractor to schedule work. Communicate clearly and promptly regarding any requested changes to an agreed upon schedule.
 2. Take steps necessary to provide access for Contractor to perform the work, including:
 - a. Moving belongings and furniture from the work area as requested by the Contractor.
 - b. Make the Residence available for work during agreed upon times.
 - c. Keep the work area clear during work hours; ensure that all

residents (especially children and pets) do not enter the work zone.

3. Create a safe work environment for all workers, as follows:
 - a. Provide a bathroom for workers.
 - b. Do not smoke around workers.
 - c. Refrain from unsafe or illegal activities while workers are in the home.
 - d. Discuss the Project with all residents; and ensure that all residents are aware of Contractor's workers and are and will adhere to the Participant Responsibilities in this Section 5.b.
4. Not engage any other contractors to perform construction work not included in the Project Scope or other Program services during the Project. Work performed by workers outside of the Program may void the warranty on any Program-related work.
5. Discuss any questions and concerns with the Construction Manager.
 - a. Do not attempt to negotiate additional or different work with Contractor, all Project Scope questions must be addressed to the Construction Manager.
 - b. Contact the Construction Manager immediately if there are concerns about the Contractor or its work.

6. ROLES OF CONSTRUCTION MANAGER, PEA, AND PGCC

None of the Construction Manager, PEA nor PGCC has any direct responsibility for the installation of the Project. Their roles in the Program and the Participant's Project are described below.

a. Construction Manager

Construction Manager is hired by PEA to provide oversight, quality control, monitoring, and inspections for the Project. The Construction Manager will:

- i. Facilitate the execution of all Project agreements and documents, including any subsequent Change Orders and Project Close-out Documentation.
- ii. Support Participant throughout the Project and act as liaison between Contractor and Participant when needed.
- iii. Answer and/or direct questions or concerns. Construction Manager must be available for a limited number of on-site meetings.
- iv. Document, investigate, and work to resolve any concerns brought forth by the Participant.
- v. Notify PEA immediately in the event of escalated disputes. Follow

Dispute Resolution protocols in Section 8.

- vi. Enforce Program guidelines, expectations, and behavior standards and ensure that the Parties are in communication regarding the schedule and progress of the Project.

b. PEA

PEA operates the Program. PEA will:

- i. Coordinate services for the Participant, including work by other BTL Implementers.
- ii. Collaborate with PGCC to approve Project Scopes, Change Orders, and invoices, including quality control related to those items.
- iii. Advise PGCC on whether Participant or Contractor have defaulted on their obligations under this Agreement, or whether Contractor has defaulted on its obligations under the Service Agreement.

c. PGCC

PGCC is providing funding to pay the Contractor for its services under the Service Agreement. PGCC will:

- i. Pay Contractor to perform the Project Scope.
- ii. With the advice of PEA, exercise its rights as a party to Service Agreement, including the ability to modify and/or terminate the Service Agreement.

7. TERMINATION

- a. Participant may terminate this Agreement at any time, as long as it gives PGCC and Contractor 30 days advance notice. If Participant terminates the Agreement, Participant must give Contractor access to the Residence so that Contractor may leave any unfinished work in a safe condition and remove all of its materials and supplies.
- b. PGCC may terminate this Agreement and the Contractor's related obligations under the Service Agreement and cease to pay for further work on the Project:
 - i. if Participant fails to perform Participant's obligations under this Agreement, including failing to provide access to Contractor, impeding Contractor's work, or failing to provide a safe working environment; or
 - ii. if other circumstances beyond the reasonable control of the Contractor or PGCC prevent completion of the work.

8. DISPUTE RESOLUTION

Participant and Contractor agree to follow the following process to resolve issues, conflicts, and disputes:

a. **Project Concerns and Disputes**

- i. For issues involving the performance and/or delivery of Contractor's Services or performance of Participant's obligations under this Agreement on a Project, the Contractor and Participant should discuss concerns with each other and attempt resolution directly. If direct resolution is not successful, the Participant or Contractor should contact the Construction Manager to discuss the issue. The Construction Manager will investigate the issue and work with all parties to establish a path to resolution consistent with the obligations of Participant and Contractor under this agreement and Contractor's obligations under the Service Agreement.
- ii. If either Participant or Contractor believes that the resolution suggested by the Construction Manager does not adequately address its concerns, the dissatisfied party (or both) may request PEA's assistance. PEA will investigate the issue, collect information from the relevant parties and advise PGCC regarding its investigation and recommendations. PGCC will then render a decision regarding the Program's position on the issue and any action PGCC or PEA is able and/or willing to take to resolve remaining concerns.

b. **Concerns Regarding Construction Manager**

- i. For issues involving concerns by either Participant or Contractor about actions of the Construction Manager, Contractor or Participant will first attempt to communicate its concerns directly with the Construction Manager. If direct resolution with the Construction Manager is not successful, the Contractor or Participant may contact PEA to discuss the issue. PEA will investigate the issue, collecting information from the relevant parties. PEA will advise PGCC on its investigation and recommendations. PGCC will then render a decision regarding the Program's position on the issue and any action PGCC or PEA is able and/or willing to take to resolve remaining concerns.

- c. **Record of Action:** PEA will coordinate and communicate with all parties involved in a dispute or grievance, will document its investigation and conclusion in the Program records, and report to the parties involved on all actions taken by PGCC and PEA.

9. PARTICIPANT RELEASE

Participant understands that that PEA is an independent governmental agency and PGCC is a non-profit charitable corporation that are operating the Program and funding repairs to the Residence without compensation or profit. In consideration of their assistance and funding,

Participant provides the following releases.

- a. **Release of Data:** Participant acknowledges that PEA and Construction Manager have obtained personal information including full name, email address, phone number; home address, household size (or the number of individuals residing at the address) and household income in the course of applying for participation in the BTL Program. Contractor and Construction Manager will obtain additional personal information in the process of preparing the Project Scope and installing and managing installation of the Project, which they will share with PEA and PGCC. In order to provide the services contemplated by this Agreement, PEA and PGCC will share some of the Participant's personal information listed above with Contractor who may share it with its subcontractors, and PEA and PGCC may also use this information for Program related purposes including reporting requirements, funder requirements, program evaluation, and other program administration needs. Participant hereby authorizes Contractor to provide this information to PGCC and PEA and that PEA and PGCC may, in turn, provide it to their funders.
- b. **Release of Liability:** THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PHILADELPHIA GREEN CAPITAL CORP., THE PHILADELPHIA ENERGY AUTHORITY AND THE CITY OF PHILADELPHIA, THEIR AGENTS, OFFICERS, EMPLOYEES AND VOLUNTEERS WORKING ON BEHALF OF BUILT TO LAST ARE NOT PARTIES TO THIS CONTRACT AND WILL NOT BE LIABLE IN ANY CIRCUMSTANCES FOR ANY DAMAGES OR LOSSES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACTOR'S PERFORMANCE OF THIS CONTRACT, THE ACTIVITIES OF THE CONSTRUCTION MANAGER IN CONNECTION WITH THE CONTRACT, THE UNINTENTIONAL RELEASE OF PERSONAL INFORMATION TO UNAUTHORIZED PARTIES, OR THE EQUIPMENT INSTALLED PURSUANT TO THIS CONTRACT. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES WAIVE ALL CLAIMS, DEMANDS, SUITS, AND LIABILITY AGAINST THE AFOREMENTIONED THAT ARISE OUT OF OR IN CONNECTION WITH CONTRACTOR'S PERFORMANCE OF THIS CONTRACT OR THE EQUIPMENT INSTALLED PURSUANT TO THIS CONTRACT.
- c. This Section survives termination of this Agreement.

10. MISCELLANEOUS PROVISIONS

- a. **Notices:**
 - i. Unless otherwise specifically provided in this Agreement, all notices, consents, waivers, authorizations and approvals given under this Agreement must be in writing and may be telecopied, delivered by hand, emailed, mailed by first class, registered mail (return receipt requested) or sent by FedEx or similar courier service and addressed as follows:

If to the Contractor:

With a copy to:

If to the Participant:

With a copy to:

- ii. Each Party may change the address to which its communications are delivered by giving notice to the other Party. Any communication given in accordance with this Section will be deemed to have been given to a Party upon its receipt thereof.
- b. **Changes in Contractor Participation:** PGCC may terminate this Agreement and the Service Agreement with Contractor if Contractor defaults on this Agreement or their Service Agreement with PGCC. In such circumstances, PEA will use reasonable efforts to assign a substitute contractor to complete the work on the Project and all parties will be subject to Section 15 (Changes in Contractor Participation) of the Service Agreement.
- c. **Enforceability and Benefit of this Agreement:** This Agreement is binding on Participant and Contractor and their legal successors.
 - i. PGCC, PEA, and Construction Manager are intended third-party beneficiaries of this Agreement and may enforce their rights specified in this Agreement against Participant and Contractor.
 - ii. This Agreement shall neither provide any benefit to or entitlement to any claim, cause of action, remedy or right of any kind to any third party, nor be construed to create a contractual relationship of any kind between any persons or entities other than the Participant and the Contractor and the intended beneficiaries.
 - iii. This Agreement shall not create any obligation on the intended third-party beneficiaries.
- d. **Amendment:** This Agreement may be amended, including Change Orders, only by a written agreement signed by both parties. The Agreement cannot be amended to affect the rights of a third-party beneficiary identified in Section 10.c.i. without the consent of the beneficiary. Any amendment is effective only in the specific instance and for the specific purpose identified in the amendment.
- e. **Governing Law:** This Contract shall be governed, interpreted, construed and determined under the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws. Each party consents to jurisdiction and venue in courts in the Commonwealth of Pennsylvania.

- f. **Further Assurances:** The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.
- g. **Merger:** This Agreement, including any attached exhibits, constitutes the entire and integrated agreement between Contractor and Participant with respect to the BTL Program and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. All prior and contemporaneous agreements between Contractor and Participant on the matters contained in this Agreement are expressly merged and superseded by this Agreement.
- h. **Electronic Signatures:** The Parties acknowledge and agree that notwithstanding any law or presumption to the contrary, a telefaxed, electronic signature or signature that is transmitted electronically by either party whether upon this Agreement or any related document shall be deemed valid and binding and admissible by either party against the other as if same were an original ink signature.

The parties hereto, intending to be legally bound, have executed this Contract as dated above.

Participant

By: _____

Name: _____

Contractor

By: _____

Name: _____

Exhibit A
Project Scope

Exhibit B

Warranty Claim Form