

## AMENDATORY AGREEMENT

**THIS AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **MILE HIGH BUSINESS ALLIANCE**, a nonprofit corporation, with its principal place of business located at 1045 Acoma Street, Suite 3, Denver, CO 80204 (the "Contractor").

### WITNESSETH:

**WHEREAS**, the City and the Contractor entered into an Agreement dated January 26, 2011, relating to the issuance of energy efficiency rebate checks (the "Agreement"); and

**WHEREAS**, the City and the Contractor wish to amend the Agreement, to extend the term, add funding, and revise the Scope of Work;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. Paragraph 3 of the Agreement, entitled "**TERM**", is hereby deleted in entirety and replaced with:

"3. **TERM**: The Agreement will commence on November 15, 2010 and will expire on May 10, 2013 (the "Term")."

2. Paragraph 4 of the Agreement, entitled "**COMPENSATION AND PAYMENT**", is hereby deleted in entirety and replaced with:

#### **4. COMPENSATION AND PAYMENT:**

a. **Fee**: The City shall pay and the Contractor shall accept as the sole compensation for services rendered, rebates issued, and rebate processing fee under the Agreement the amounts set forth in Exhibits A and A-1. Amounts billed may not exceed the rates set forth in Exhibits A and A-1.

b. **Advance**:

(1) The City shall advance to Contractor the amount of \$75,000.00 no later than 30 days after the effective date of the agreement, to start the EECBG Rebate Fund, from which Contractor will issue EECBG rebate checks in accordance with Exhibits A and A-1. City shall provide additional funds to Contractor periodically when the EECBG Rebate Fund is at or near \$25,000.00 to replenish the EECBG Rebate Fund for EECBG rebates issued during the prior month. The new and replenished EECBG Rebate Fund shall be used only for disbursement as EECBG rebates in accordance with Exhibits A and A-1. The size of the EECBG Rebate Fund shall not exceed \$75,000.00 at any time.

(2) In addition, the City shall advance to Contractor the amount of \$75,000.00 no later than 30 days after the effective date of the amendatory agreement, to

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start the BBEECBG Rebate Fund, from which Contractor will issue BBEECBG rebate checks in accordance with Exhibit A-1. City shall provide additional funds to Contractor periodically when the BBEECBG Rebate Fund is at or near \$25,000.00 to replenish the BBEECBG Rebate Fund for BBEECBG rebates issued during the prior month. The new and replenished BBEECBG Rebate Fund shall be used only for disbursement as BBEECBG rebates in accordance with Exhibit A-1. The size of the BBEECBG Rebate Fund shall not exceed \$75,000.00 at any time.

- c. **Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in the rates in Exhibits A and A-1.
- d. **Invoicing:** Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including the documentation as required by Exhibit A and all other supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.
- e. **Maximum Contract Amount:**
  - (1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **NINE HUNDRED SIXTY THOUSAND DOLLARS AND 00/cents (\$960,000.00)** (the "Maximum Contract Amount). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in Exhibits A and A-1. Any services performed beyond those in Exhibits A and A-1 are performed at Contractor's risk and without authorization under the Agreement.
  - (2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- f. This agreement is subject to and contingent upon the continuing availability of funds from the Grantor."

3. Article 53 of the Agreement, entitled **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS** is hereby added to the Agreement reading as follows:

**"53. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object

to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.”

4. The Scope of Work is modified as set forth in Exhibit A-1 Scope of Work (December 2011), attached and incorporated by reference herein. All references in the Agreement to Exhibit A shall be to “Exhibit A and Exhibit A-1” as appropriate.

5. As herein amended, the Agreement is affirmed and ratified in each and every particular.

**Contract Control Number:** ENVHL-GE02192-01

**Vendor Name:** MILE HIGH BUSINESS ALLIANCE

By: Micki Langston

Name: Micki Langston  
(please print)

Title: Executive Director  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Contract Control Number:** ENVHL-GE02192-01

**Vendor Name:** MILE HIGH BUSINESS ALLIANCE

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**SCOPE OF WORK A-1**  
**(DECEMBER 2011)**

**Energy Efficiency and Conservation Block Grant**  
**Small Business Rebate Program**

The City and County of Denver (City) has allocated up to \$460,000 of its formula Energy Efficiency and Conservation Block Grant (EECBG) funding, plus \$500,000 of its Better Buildings Energy Efficiency and Conservation Block Grant (BBEECBG) funding, for a rebate program targeting small businesses in Denver that have made energy-efficiency improvements to their facilities. Mile High Business Alliance (MHBA) will assist the Denver Department of Environmental Health (DEH) with processing these rebates and issuing rebate payments to businesses.

**PROGRAM ADMINISTRATION**

MHBA will work closely with DEH to process rebates in an efficient, timely, transparent, and well-documented fashion:

1. MHBA will continue to maintain the "City and County of Denver Small Business Rebate Program" checking account to be used solely for the purpose of receiving ECBG funds and distributing them to participating small businesses. The City will be given full access to review the balance and transaction records of this account at any time without notice.
2. DEH will receive and evaluate all rebate applications from businesses to determine eligibility and rebate amount.
3. DEH will provide to MHBA the business name, contact information, and rebate amount for all rebate checks to be issued. MHBA will issue no rebate checks unless directed in writing by DEH.
4. MHBA will write and mail rebate checks, with a cover letter, to the participating businesses in an aggregate amount not to exceed \$448,780 from formula Energy Efficiency and Conservation Block Grant (EECBG) funding and an aggregate amount not to exceed \$480,769 from Better Buildings Energy Efficiency and Conservation Block Grant (BBEECBG) funding. The ECBG funding shall be exhausted before BBEECBG funding is expended.
5. MHBA will submit monthly invoices to the City for reimbursement of the aggregate total of all rebate checks issued that month, plus a processing fee as set forth under the Payment section below. The invoice will be accompanied by a report and documentation of the account balance for each rebate fund, checks issued (including photocopies of all checks issued), and checks cleared. The report will also include the business name, contact information, rebate amount, and date of check, of all rebates issued during the month.
6. MHBA will communicate regularly to report on the status of the program and to identify and address any issues or concerns as soon as they arise.
7. Upon completion of the rebate program, MHBA will provide a complete accounting of the expenditure of all funds, including a complete attested itemization of all rebates and will remit any unspent funds to the City.

**PAYMENT**

MHBA is entitled to payment of its earned processing fee, in an amount not to exceed \$30,451, broken down as follows:

1. For the formula Energy Efficiency and Conservation Block Grant (EECBG) funding, MHBA will be paid by the City a processing fee of **2.5% of the amount of rebates issued, not to exceed \$11,220** (this is the maximum amount to be earned and retained by MHBA, assuming \$448,780 in rebates issued and \$11,220 in MHBA processing fees issued to expend the full \$460,000 ECBG allocation).
2. For the Better Buildings Energy Efficiency and Conservation Block Grant (BBEECBG) funding, MHBA will be paid by the City a processing fee of **4% of the amount of rebates issued, not to exceed \$19,231** (this is the maximum amount to be earned and retained by MHBA, assuming \$480,769 in rebates issued and \$19,231 in MHBA processing fees issued to expend the full \$500,000 BBEECBG allocation).

**TIMELINE:**

The rebate program will end on 5/10/2013, or when all funds are expended, which ever occurs first.