

AMENDATORY AGREEMENT

THIS AMENDATORY AGREEMENT is made and entered into this ____ day of _____, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **ENERGY OUTREACH COLORADO**, whose address is 225 E. 16th Street, Suite 200, Denver, Colorado 80203 (the "Contractor").

WITNESSETH:

WHEREAS, the City and the Contractor entered into an Agreement dated January 19, 2010, to provide energy audits and energy upgrades to nonprofit facilities in Denver (the "Agreement"); and

WHEREAS, the City and the Contractor wish to amend the Agreement, to extend the term, add new goals and additional services, and increase funding:

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

1. All references to "...Exhibit A..." in the Existing Agreement shall be amended to read: "...Exhibit A and A-1, as applicable...". The scope of work marked as Exhibit A-1, attached to this Amendatory Agreement is incorporated by reference and controls from the time of the execution of this amendment.

2. Paragraph 3 of the Agreement, entitled "**TERM**", is hereby amended to read as follows:

"**3. TERM:** The term of this Agreement shall commence on **January 1, 2010, and expire, unless sooner terminated, on December 31, 2011.** Subject to the Manager's prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Manager."

3. Subparagraph a of Paragraph 4 of the Agreement, entitled "**Budget**", is hereby amended to read as follows:

"a. **Budget:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement an amount not to exceed **One Million Nine Hundred Ninety Thousand Dollars and 00/100 Cents (\$1,990,000.00)** (the "Maximum Contract Amount") in accordance with the budget set forth in **Exhibit A-1.**"

10-0412-A

4. Paragraph 21 of the Agreement, entitled “**No Employment Of Illegal Aliens To Perform Work Under This Agreement**”, is hereby amended to read as follows:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. The Contractor certifies that:

i. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

ii. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Contractor also agrees and represents that:

i. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

ii. It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

iii. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

iv. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

v. If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

vi. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S. or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.”

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

6. This Amendatory Amendment may be executed in two (2) counterparts, each of which is an original and constitute the same instrument.

Balance of page left intentionally blank.

IN WITNESS WHEREOF, the parties have executed, through their respective lawfully empowered representatives, this Amendatory Agreement as of the day and year first above written.


ATTEST:

CITY AND COUNTY OF DENVER:

By: _____
STEPHANIE Y. O'MALLEY, Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

By: _____
MAYOR

RECOMMENDED AND APPROVED:

By: 
Manager

APPROVED AS TO FORM:
DAVID R. FINE
CITY ATTORNEY for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Assistant City Attorney

Contract Control No. CE01071-1

By: _____
Auditor

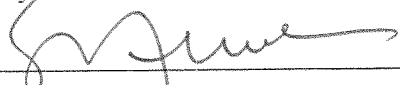
“CITY”

ATTEST: [If required by Corporate procedures]

ENERGY OUTREACH COLORADO

Taxpayer (IRS) I.D. No. 74-2543881

By: _____

By: 

Title: _____

Name: Skip Arnold
(please print)

Title: Executive Director

“CONTRACTOR”

EXHIBIT A-1 SCOPE OF WORK

Exhibit A-1 to Contract CE01071 - 01
Scope of Work
Energy Outreach Colorado and Denver Department of Human Services

I. Purpose of Agreement

Energy Outreach Colorado (EOC) ("Contractor") will conduct energy audits and energy upgrades with nonprofit organizations facilities around the Denver area. These upgrades will dramatically reduce energy costs in many of these facilities and will allow for more dollars to go to direct services. In addition to the completion of the services listed in Exhibit A of the base agreement, CE01071, the Contractor agrees to adhere to the new goals and provide the new services listed below. Contractor also agrees to the unified budget below for all services provided from 1/1/10 through 12/31/11.

II. Program Goals & Outcomes

Problem / GOAL	Description	Outcome
Goal #1 Conduct energy audits for selected nonprofit facilities	Work with Long Energy Solutions to conduct all energy audits and determine appropriate energy efficiency measures to install	Conduct at least 40 energy audits of nonprofit facilities
Goal #2 Provide energy upgrades to selected nonprofits	Work with various contractors to install energy efficiency measures and ensure that all health and safety standards are met	Implement energy upgrades in at least 30 nonprofits facilities. Facilities improved with onsite final inspection
Goal #3 Provide ongoing evaluation results on all completed projects	Track energy savings for each energy efficiency measure installed in Energy CAP software and report results Enter all data into Energy CAP software and EOC database and analyze results	Average savings of \$170,000 for organizations served with an average 8 year payback; 700,000 kWh saved; and 125,00 therms of natural gas saved
Goal #4 Provide educational opportunities to facilitate energy	Develop behavior plans with each facility and develop various workshops to educate stakeholders	Assign NEEP Educator that will help facilities create an education plan. Convene a meeting of all

efficiency behavior change with facility stakeholders	how to achieve targeted energy savings and ensure improved energy use at each facility	past and current NEEP facilities to discuss best practices
--	--	--

III. Services

Outreach

The Contractor provides outreach for this program by conducting workshops throughout the year to educate nonprofits about the Nonprofit Energy Efficiency Project (NEEP) and also educates agency partners about NEEP through a statewide tour in October. The Contractor also manages another energy efficiency program, Energy Solutions Grants Program (ESG), which provides grants to qualifying affordable housing organizations across Colorado for the installation of energy efficiency measures and for energy management education. The Contractor uses an extensive statewide outreach and application process for ESG, which has assisted us in quickly identifying eligible projects for NEEP since they meet different criteria.

Energy Audits

The first step in the Nonprofit Energy Efficiency Program (NEEP) is to schedule an energy audit by an energy “expert” or consultant to identify the most cost effective changes that can be made to the existing building to save energy. An energy audit consists of a walk through of the entire building(s); an assessment of existing insulation in walls, attics, ceiling cavities, crawlspaces and basements; an inspection of the existing heating source (i.e., furnace or boiler), water heater and cooling source (if applicable); and an assessment of the existing lighting and appliances. The auditor may run a blower door test to assess air leakages throughout the building and he/she may look at past energy bills to determine trends in energy consumption. Once an audit is completed, energy conservation measures are identified and evaluated through an optimization tool that determines which measures are the most cost effective.

Currently, The Contractor is working with Xcel Energy’s Onsite Energy Assessment Program which dramatically subsidizes the cost of a commercial grade energy audit, required for most nonprofit facilities. The Contractor has also developed a strong working relationship with several energy audit firms and will partner with the Smart Energy Living Alliance (SELA) to develop a statewide auditor network. SELA assigns energy auditors to

The Contractor's projects, which ensures consistency in audit and reporting procedures and builds local capacity for auditors across the state.

Energy Efficiency Upgrades

The Contractor has developed five steps for installing energy efficiency measures: 1) creating a client file; 2) collecting bids for each weatherization measure; 3) selecting measures; 4) safety checks; 5) installing the measures. Below is a brief description of each step The Contractor follow when conducting Energy Efficiency upgrades:

1) Client File Documentation

All NEEP applicants complete an online application which collects pertinent information about the project. The Contractors staff will review the applications quarterly, determine if they meet the eligibility requirements that were defined in RFP No. OCI/DOSP/Xcel-Non 2009_07/24, and then prioritize the projects based on need, mission, timing, etc. The Contractor creates an online electronic client file for each approved NEEP project. The client file will contain all of the required documentation forms such as the initial and final energy audits, installation records, waivers and any other documents.

2) Collecting Bids

Based on the information from the energy audit, The Contractor will work with our subcontractor, currently Sun Power, Inc., to meet the bidding requirements for installing energy efficiency measures. Product bid solicitations will include language describing the manner in which the product will be used and language stating that products offered in the bid response shall be appropriate for that use. All prices will include the cost of labor, materials, clean-up, and removal of any old materials and proper recycling of appliances containing refrigerants.

3) Selecting Measures

Once the bids are complete, The Contractor will compare the cost to install the measures with the predicted energy savings provided by the energy audit to determine the most cost effective measures to be installed at each facility. The goal is maintain an average payback of 5 to 10 years.

4) Safety Checks

The Contractor will comply with federal and state laws pertaining to health and safety risk abatement, and will assure that weatherization will not be permitted until identified health and safety risks are removed. Safety and public information protocols

identified by the Environmental Protection Agency will be strictly followed.

5) Installation

The Contractor will focus funding on projects that make significant impacts on energy savings, at the same time being considerate of each nonprofit's specific program needs. The Contractor will assure that efficiency measures are installed in accordance with the manufacturer's directions. The Contractor's staff/subcontractors will make routine site visits during installation to confirm vendor compliance and ensure that the property remains clean and attractive for clients. The Contractor's staff will take an active role during project implementation with ongoing site visits. In addition, The Contractor's staff will be responsible for final inspections at every nonprofit site. Final inspections will compare the completed project to the energy audit to ensure that all required procedures were performed. The final inspection will also verify the accuracy of the audit including measures that may have been omitted. Health and safety requirements will also be reviewed at this time.

IV. Performance Management and Reporting

A. Performance Management

Monitoring will be performed by the program area and Contracting Services. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contractual Agreement and Financial Monitoring:** Review and analysis of a) current program information to determine the extent to which contractors are achieving established contractual goals; b) financial systems and billings to ensure that contract funds are allocated and expended in accordance with the regular performance monitoring and reporting to program area management. Contracting Services, in conjunction with the DHS program area, will manage any performance issues and will develop interventions that will resolve concerns.
3. **Compliance Monitoring:** Monitoring to ensure that the requirements of the contract document, Federal, State and

City and County regulations, and the DHS annual plan and policies are being met.

B. Reporting

The following reports shall be developed and delivered to the City as stated in this section.

Report/Name	Description	Frequency
1. Quarterly Report	Report shall demonstrate achievement of the Goals and Outcomes 1 through 4 of this Statement of Work	Quarterly, by 15th of month following end of quarter.
2. Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other date will include total budget per line item, amount spent, and explanation as to unspent funds.	Contract end Report, due within 45 days after Term End of the contract.
3. Progress report	One page monthly report with brief description of work performed corresponding to invoice	Monthly

V. Invoicing

Invoice	Description	Frequency
1. Monthly Invoices	Monthly invoices with required backup documentation for payment. Where applicable, this includes time sheets that allocate an individual's time if he/she works less than 100% of time on this grant.	Due the 15 th of each month 100% of the time

The Contractor shall submit accurate and timely invoices in accordance with requirements of this Agreement. The invoice format shall follow the identical format of the contract budget appearing in Section VI. of this Scope of Work. The final invoice is due no later than 30 days after the end of the contract.

Monthly invoices shall be submitted on or before the 15th of the month following the period billed, 100% of the time, and shall include any appropriate backup documentation, and descriptions of work performed at each location, including what inspections were performed.

VI. Budget

Contractor Name: Energy Outreach Colorado		Jennifer Gremmert	
Contract Term: 1/1/10 -12/31/11			
Program Name: Nonprofit Energy Efficiency Program		OCI/DOSP/Xcel- NON 2009 7/24	
INDIRECT COSTS (not to exceed 50% of total budget):		Total Budget	Budget Narrative
ADMINISTRATION			
Staffing			
Salary - Administrator		\$120,000.00	EOC project staff
Salary - Taxes not to exceed 8%		\$7,000.00	Payroll tax
Salary -Fringe not to exceed 17%		\$16,800.00	Med/Bene. & 401K
Salary - Administrator		\$4,000.00	ADP Admin. Fee
Sub-Total		\$147,800.00	
Other Administrative Costs			
Office Expense - Supplies		\$10,200.00	Audit/off/Comp Sup.
Misc. Provider Exp.		\$3,999.00	taxes, inc. & interest
Meal Expense		\$2,000.00	Mtg/workshop meals
Mileage Expense		\$2,000.00	mileage/parking
Sub-Total (Other Costs)		\$18,199.00	
FACILITIES (not to exceed 11% of total budget)			
Gen'l Oper. & Overhead Costs			
Facilities		\$14,000.00	Admin office space & computers
Sub-Total (not to exceed 11%)		\$14,000.00	

	Total Indirect Costs (not to exceed 50%):		\$179,999.00	
	DIRECT COSTS			
	Staffing			
	Sub-Total		\$0.00	
	Client Services			
	Misc. Provider Exp.		\$78,000.00	Energy Audits & Evaluation
	Misc. Provider Exp.		\$1,732,001.00	Energy Conserv. Measures & Education
	Total (Direct Services):		\$1,810,001.00	
1/1/10 through 12/31/11	TOTAL BUDGET		\$1,990,000.00	

Energy Audits

The first step in the Nonprofit Energy Efficiency Program (NEEP) is to schedule an energy audit by an energy "expert" or consultant to identify the most cost effective changes that can be made to the existing building to save energy. Once an audit is completed, energy conservation measures are identified and evaluated through an optimization tool that determines which measures are the most cost effective.

Currently, EOC is working with Xcel Energy's Onsite Energy Assessment Program which dramatically subsidizes the cost of a commercial grade energy audit, required for most nonprofit facilities. The cost for an energy audit for each facility ranges anywhere from \$400 to \$1,000. EOC shall do over 40 individual audits.

Program Evaluation

For each NEEP project completed, EOC reviews utility bill data and tracks gas and electric consumption to determine energy savings. This piece is critical to ensure efficient use of funds and maximization of energy savings. EOC collects utility bills from NEEP recipients for up to one year after implementation and compares it to utility bills collected prior to work being completed to track actual savings as seen by the facility. Recently, EOC has acquired Energy CAP software to help improve the process for reviewing utility bills. This is an excellent tool to demonstrate to clients how energy efficiency improvements coupled

with conservation/behavior changes are really saving therms, kWh and money on their utility bills. Energy CAP is a powerful, best-in-class energy and utility bill tracking system that also produces a wide variety of energy management and utilities accounting reports, graphs, rankings, and benchmarks – 200 standard reports. EOC is working with a contractor to collect all previous and post utility bills and enter them into the Energy CAP database. This cost is anticipated to be \$500-\$1000/month.

Energy Efficiency Upgrades

This line item represents the cost for installing the Energy Efficient Measures (EEMs). It covers the labor, overhead and profit associated with installing these measures. A final inspection by a 3rd party is also covered in this cost.

Examples of these costs include:

- Labor Costs

 - Installation of upgrades

- Capital Expenses (examples of likely expenses)

 - Energy Efficient Windows

 - High Efficiency Appliances

 - High Efficiency Furnaces

 - High Efficiency Boilers

 - High Efficiency Water Heaters

 - High Efficiency Air Conditioning Units or Evaporative Coolers

 - High Efficiency Refrigerators

 - High Efficiency Freezers

 - High Efficiency Gas Clothes Dryers and Washing Machines

 - Lighting Retrofits

 - Compact Fluorescent Light Bulbs

 - Ballasts

 - Insulation and Associated Materials (Vapor Barriers)

 - Air Sealing

 - Programmable Thermostats

 - High Efficiency Showerheads, Low-flow Toilets, and Faucet

 - Aerators

The total cost of each project varies dramatically based on the information received from the energy audit. Denver Office of Strategic Partnerships (DOSPP) and their Program Committee will have a great deal of decision making authority on what exact energy efficiency measures are installed.

Education

Currently, EOC is working with all NEEP recipients to develop an energy conservation education plan that is most appropriate for their clients and specific to what is funded by NEEP. This is very important to ensure that all energy savings targets are met. This includes an initial meeting with staff to recognize the target audience for conservation education, reviewing the measures installed and identifying appropriate behavior changes to maximize the savings benefits and selecting appropriate presentations for the target audience. EOC provides Energy Conservation presentations for up to twelve months after the measures are installed to assist the organization in adopting significant behavior changes around energy usage. Workshops specifically designed to support facility managers are also being developed.