

## A G R E E M E N T

**THIS AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **ENERGY OUTREACH COLORADO**, a Colorado nonprofit corporation, with an address of 225 East 16<sup>th</sup> Avenue, Suite 200, Denver, Colorado 80203 (the "Contractor").

The parties agree as follows:

1. **COORDINATION AND LIAISON:** The Contractor will fully coordinate all services under the Agreement with the Director (the "Director") of the Denver Office of Strategic Partnerships, a unit of the Office of Economic Development (together, the "Agency") or the Director's Designee.

2. **SERVICES TO BE PERFORMED:**

A. At the direction of the Director, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A**, the **Work Statement**, to the City's satisfaction.

B. The Contractor is ready, willing, and able to provide the services required by this Agreement.

C. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. **TERM:** The Agreement will commence on January 1, 2012 and will expire on December 31, 2012 (the "Term"). Subject to the Director'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 Director.

4. **COMPENSATION AND PAYMENT:**

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 **Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00)** (the "Maximum Contract Amount") in accordance with the budget set forth in **Exhibit B**.

B. **Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in the budget in **Exhibit B**.

**C. Invoicing:** Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought as well as 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. Funds will be disbursed in appropriate monthly increments, upon receipt and approval of Contractor's monthly invoices and any City required budget documents or reports. Contractor's invoice(s) will include any and all appropriate supporting documentation, including time sheets, payroll records, receipts, and any other document which may be pertinent in light of the nature of the services performed or expenses incurred under this Agreement. Contractor's invoice(s) will reflect in detail the services performed within the period for which the payment is requested and will address all completed project outcomes. Contractor's invoices must identify costs and expenses actually incurred in accordance with the budget contained in **Exhibit B**. Budget line items may be modified by the written approval of the Manager as long as no budget line item modification causes the budget to exceed the Maximum Contract Amount. Funds payable by the City hereunder shall be distributed to the Contractor on a reimbursement basis only for work performed and expenses incurred during the prior month. Invoices submitted for payment must be received by the Agency on or before the twentieth (20th) day of the month subsequent to the month for which reimbursement is being sought. Invoices submitted for services rendered that are submitted after such deadline are considered to be untimely and must be submitted separately to be considered for payment. Payment for such late-submitted invoices shall be made only upon a showing of good cause for the late submission. Timesheets must reflect the amount of time, in hours and tenths of hours, attributable to each activity performed under this Agreement. In the event that the Contractor allocates allowable costs to more than one grant, project, or contract, then timesheets must further identify the allocation of allowable costs for each grant, project or contract.

Contractor's invoices will set forth the methodology used to determine costs for services invoiced. The City will have the right to dispute, and withhold payment for, any invoice that does not contain a sufficient statement of Contractor's methodology used to determine costs for services invoiced.

**D. MAXIMUM CONTRACT AMOUNT:**

**(1)** Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed 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 **Exhibit A**. Any services performed beyond those in **Exhibit A** 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.

**(3)** If, as a result of any audit or program review relating to the performance of the Contractor or its officers, agents or employees under this agreement, there are any irregularities or deficiencies in any audit or review, then the Contractor will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City's favor unless the Contractor obtains a resolution in its favor from the responsible official conducting the audit or review. In any event, the Contractor shall be responsible to indemnify, reimburse, and save harmless the City, its officers, agents and employees, from and against any and all disallowed costs.

**5. REPORTS/CORRESPONDENCE:**

**A. Submission Deadlines of Reports:** The Contractor shall provide the Agency with a monthly narrative summary report on activities performed with the assistance of funds provided under this Agreement no later than the twentieth (20th) business day of each month following the effective date of this Agreement, and continuing through the month following the date of termination of this Agreement. Each such report shall set forth in detail the progress of work under this Agreement and any other information reasonably requested by the City and shall be submitted in such a format as may be designated by the City. Such reports may be submitted electronically by disk or e-mail, followed by hard copy transmittal. In addition, the Contractor shall comply with any and all contract closeout procedures directed by the Director to be performed under this Agreement for final reimbursement, including but not limited to final review of payments, invoices, referrals, and required reporting documents, including close-out signature.

**B. Correspondence:** All Invoices, Reports, and other written correspondence concerning procedural or administrative contract matters, other than notices required under Article 20 of this Agreement, will be delivered by U.S. mail to:

Attn: Director, Office of Strategic Partnerships  
Office of Economic Development  
201 West Colfax Avenue, Dept. 701  
Denver, CO 80202

**6. PERFORMANCE MONITORING/INSPECTION:** The Contractor will permit the Director to monitor and review the Contractor's performance under this Agreement. The Contractor will make available to the City for inspection any and all files, records, reports, policies, minutes, materials, books, documents, papers, invoices, accounts, payrolls and other data, whether in hardcopy or electronic format, used in the performance of any of the services required hereunder or relating to any matter covered by this Agreement in order to coordinate the performance of services by the Contractor

in accordance with the terms of this Agreement. All such monitoring and inspection will be performed in a manner that will not unduly interfere with the services to be provided under this Agreement.

**7. STATUS OF CONTRACTOR:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

**8. TERMINATION:**

**A.** The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Director.

**B.** Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

**C.** Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

**D.** If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

**9. EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

**10. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

**11. INSURANCE:**

**A.** If the Contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as amended (“Act”), the Contractor shall maintain insurance, by commercial policy or self-insurance, as is necessary to meet the Contractor’s liabilities under the Act. Proof of such insurance shall be provided upon request by the City.

**B.** If the Contractor is not a “public entity” then, the following general conditions apply:

**(1) General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement stating “Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.” Additionally, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**(2) Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the

City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**(3) Additional Insureds:** For Commercial General Liability and Auto Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**(4) Waiver of Subrogation:** For all coverages, Contractor's insurer shall waive subrogation rights against the City.

**(5) Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**(6) Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**(7) Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**(8) Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**(9) Additional Provisions:**

a) For all Commercial General Liability and Excess Liability, the policies must provide the following:

- i. That this Agreement is an Insured Contract under the policy;
- ii. Defense costs in excess of policy limits;
- iii. A severability of interests, separation of insureds or cross liability provision;
- iv. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City;
- v. No exclusion for sexual abuse or molestation.

b) For claims-made coverage:

i. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

ii. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**12. DEFENSE AND INDEMNIFICATION**

**A.** Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement or that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Agreement or Exhibit D (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City. The City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted.

B. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

13. **TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

14. **ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

15. **INUREMENT:** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

16. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the



parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

17. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

18. **SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

19. **CONFLICT OF INTEREST:**

A. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Contractor shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest, which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

20. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Director, Office of Strategic Partnership  
Office of Economic Development  
201 West Colfax Avenue, Dept. 701  
Denver, CO 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**21. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

**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:

**(1)** 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.

**(2)** 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:

**(1)** It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

**(2)** It shall not enter into a contract with a sub-consultant 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.

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

**(4)** It is prohibited from using either 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.

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

(6) 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.

22. **DISPUTES**: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Director as defined in this Agreement.

23. **GOVERNING LAW; VENUE**: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

24. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

**25. COMPLIANCE WITH ALL LAWS:** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**26. LEGAL AUTHORITY:** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

**27. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

**28. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

**29. INTELLECTUAL PROPERTY RIGHTS:** The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Contractor shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

**30. SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of

limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**31. ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**32. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**33. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

**34. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments thereto will, be binding upon the parties and their successors and assigns. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement.

**35. CONFIDENTIAL INFORMATION; OPEN RECORDS:**

**A. Confidential Information:** The Contractor acknowledges and accepts that, in the performance of all work under the terms of this Agreement, the Contractor will or may have access to the following types of information: (1) City Proprietary Data or confidential information that may be owned or controlled by the City ("City Proprietary Data"); (2) confidential information pertaining to persons receiving services from the Agency ("Client Data"), or (3) confidential proprietary information owned by third parties ("Third Party Proprietary Data"). For purposes of this Agreement, City Proprietary Data, Client Data, and Third Party Proprietary Data shall be referred to collectively as "Confidential Information". The Contractor agrees that all Confidential

Information provided or otherwise disclosed by the City to the Contractor or as otherwise acquired by the Contractor during its performance under this Agreement shall be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor shall limit access to any and all Confidential Information to only those employees who have a need to know such information in order to provide services under this Agreement. The Contractor shall exercise the same standard of care to protect any and all Confidential Information as a reasonably prudent contractor or Contractor would to protect its own proprietary or confidential data. Contractor acknowledges that Confidential Information may be in hardcopy, printed, digital or electronic format. The City reserves the right to restrict at any time Contractor's access to electronic Confidential Information to "read-only" access or "limited" access as such terms are designated by the Director.

The Contractor agrees to comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all Client Data that include protected medical records or protected information. The Contractor shall establish and submit to the City, within fifteen (15) days of the City's written request thereof, copies of Contractor's policies and procedures to maintain the confidentiality of any protected medical records or protected information to which the Contractor has access.

**1. Use of Confidential Information:** Except as expressly provided by the terms of this Agreement, the Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any Confidential Information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing access to Confidential Information, the City is not granting to the Contractor any right or license to use such data except as provided in this Agreement. The Contractor further agrees not to reveal, publish, disclose, or distribute to any other party, in whole or in part, in any way whatsoever, any Confidential Information without prior written authorization from the Director.

**2. City Methods:** The Contractor agrees that any ideas, concepts, know-how, computer programs, or data processing techniques developed by the Contractor or provided by the City in connection with this Agreement shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The Contractor agrees, with respect to Confidential Information, that: (a) the Contractor shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the Director; (b) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (c) the Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

**3. Employees and Subcontractors:** The requirements of this provision shall be binding on the Contractor's employees, agents, officers and assigns.

The Contractor warrants that all of its employees, agents, and officers who designated to provide services under this Agreement will be advised of this provision. All requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement.

4. **Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing Confidential Information on an “as is” basis, without any support whatsoever, and without representation, warranty or guarantee, including, but not in any manner limited to, fitness, merchantability, accuracy and completeness of the Confidential Information. The Contractor acknowledges and understands that Confidential Information may not be completely free of errors. The City assumes no liability for any errors or omissions in any Confidential Information. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

B. **Open Records:** The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S. (2010), and that in the event of a request to the City for disclosure of such information, the City shall advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of the Contractor’s intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

36. **TIME IS OF THE ESSENCE:** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

37. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

38. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

39. **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.

**END**

**SIGNATURE PAGES AND EXHIBITS FOLLOW THIS PAGE**

**BALANCE OF PAGE INTENTIONALLY LEFT BLANK**

**EXHIBIT LIST:**

- Exhibit A – Work Statement
- Exhibit B – Budget
- Exhibit C – Proof of Insurance
- Exhibit D – Force.com Subscription Agreement



**Contract Control Number:**

**Vendor Name:**

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:

By \_\_\_\_\_

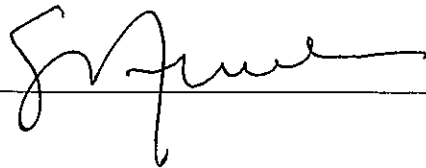
By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: 201103484

Vendor Name: ENERGY OUTREACH COLORADO

By: 

Name: Skip Arnold  
(please print)

Title: Executive Director  
(please print)

ATTEST: [if required]

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

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

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



WORK STATEMENT  
ENERGY OUTREACH COLORADO  
NONPROFIT ENERGY EFFICIENCY WORK

1.0 Scope

- 1.1 Services: *Energy Outreach Colorado* (EOC) shall provide energy efficiency services, weatherization upgrades, and resident education for nonprofit facilities in the City and County of Denver. Specific services include

1.1.1 Outreach:

- 1.1.1.1 EOC will provide outreach for this program by conducting workshops throughout the year to educate nonprofits about its Nonprofit Energy Efficiency Program (NEEP) and also educate EOC cash assistance agency partners about NEEP through a statewide tour each October. EOC will use its an extensive statewide outreach and application process to quickly identifying eligible projects for. EOC will also directly contact eligible organizations that have not participated in our program to date but meet the guidelines.

1.1.2 Program Screening and Enrollment:

- 1.1.2.1 EOC will require all NEEP applicants complete an online application which collects pertinent information about the project.
- 1.1.2.2 EOC staff and other subject matter experts will review the applications three times a year, determine if projects meet the eligibility requirements as they are defined by DOSP and other funding partners including Xcel Energy, and then prioritize the projects based on need, mission, timing, etc.
- 1.1.2.3 EOC will request that agencies participate in an orientation process and complete an internal energy use assessment prior to receiving and energy audit in order to maximize the benefits of the program.
- 1.1.2.4 Once an application is approved, EOC will to schedule an energy audit of the agency by an energy “expert” or consultant to identify the most cost effective changes that can be made to the existing building to save energy.

1.1.3 Education:

- 1.1.3.1 EOC will work 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 to ensure that all energy savings targets are met. This will include an initial meeting with staff to recognize the target audience for conservation education, to review the measures installed, to identify appropriate behavior changes to

maximize the savings benefits and to select appropriate presentations for the target audience.

1.1.3.2 EOC will provide 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.

1.1.3.3 EOC will also partner with other agencies such as Groundwork Denver to conduct a full Environmental Sustainability or "Green" Audit for nonprofits participating in the NEEP project

#### 1.1.4 Energy Audits:

1.1.4.1 Energy audits will consist of a walkthrough 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.

1.1.4.2 Once an audit is completed, energy conservation measures will be identified and evaluated to determine 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.

#### 1.1.5 Major Upgrades: \_\_\_\_\_

1.1.5.1 Based on the information from the energy audit, EOC will work with its subcontractor to determine costs 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 or lighting materials.

1.1.5.2 Once the bids are complete, EOC 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. EOC will also run an energy model to assist with determining the most cost effective measures.

1.1.5.3 In order to leverage Xcel Energy and other private funds, EOC will ensure that project information is submitted to Xcel Energy to determine the level of funding/rebates that it will assign to each project. EOC will evaluate the funding from Xcel Energy and other potential funding sources before determining the amount of investment through this contract. If there are measures that may be important but don't pass

an adequate return on investment or payback for the project, EOC will ask nonprofit organizations to financially contribute to the project.

1.1.5.4 EOC will comply with federal and state laws pertaining to health and safety risk abatement, and will assure that installation of measures will not be permitted until identified health and safety risks are removed. If necessary, health and safety repairs identified during the energy audit will be included in the scope of work for a facility. EOC will allow for electrical or structural repairs if necessary for the proper installation or maintenance of an energy efficiency measure.

1.1.5.5 EOC will focus funding on projects that make significant impacts on energy savings, at the same time being considerate of the specific program needs each nonprofit.

1.1.5.6 EOC will assure that efficiency measures are installed in accordance with the manufacturer's directions. EOC staff/subcontractors will make routine site visits during installation to confirm vendor compliance and ensure that the property remains clean and attractive for clients and will be responsible for final inspections at every site. Final inspections will compare the completed project to the energy audit to ensure that all required measures were performed.

1.1.6 Follow Up:

1.1.6.1 For each NEEP project completed, EOC will review utility bill data and track gas and electric consumption to determine energy savings to ensure efficient use of funds and maximization of energy savings. EOC will collect utility bills from NEEP recipients for up to one year after implementation and compare it to utility bills collected prior to work being completed to track actual savings as seen by the facility.

1.1.6.2 EOC will use Energy CAP software to help improve its process for reviewing utility bills.

1.1.6.3 EOC will administer a survey to NEEP recipient organizations to assess their experience with NEEP.

1.2 Projected measurable outcomes include:

	Contract goal
Total Buildings Served	14
Total Buildings Served: Outreach	14
Total Buildings Served: Education	14
Total Buildings Served: Audits	14

	Contract goal
Total Buildings Served: Minor Upgrades	0
Total Buildings Served: Major Upgrades	14
Total Energy Savings: KWh	300,000
Total Energy Savings: Therms	45,000
Total Annual Household/Buildings Dollar Savings	\$ 70,000
Total Funds Leveraged	\$ 500,000

## 2.0 Programmatic and Performance Requirements

### 2.1 Data Collection and Reporting

2.1.1 Contractor will collect and report all activities in the database system FORCE.COM (which is informally known within the City as Denver Energy Efficiency Customer Management System (CMS) no less than on a monthly basis in accordance with City policies and procedures. (Contractor will comply with and be subject to the terms and provisions contained in Exhibit D, *Force.com Subscription Agreement*, a copy of which is attached to the Agreement and incorporated herein by reference.

2.1.2 The Contractor shall ensure its data reporting systems are compatible with City systems and meet City data reporting requirements. The Contractor shall be responsible for supplying and maintaining all required equipment and software.

2.1.3 The Contractor will submit a Monthly Activities Report form to accompany each invoice. The Contractor will also submit a full report detailing progress toward project outcomes on a quarterly basis.

2.1.4 The Contractor's final program report shall be submitted to DOSP within 45 days after the end of the Contract.

## 3.0 Administrative Requirements

### 3.1 Compensation and Methods of Payment

3.1.1 The method of payment to the Contractor by OED shall be in accordance with City and County of Denver Fiscal Rule 8.3, *Procedures for Accounts Payable*. The Contractor must submit expenses and accruals to OED on or before the 20<sup>th</sup> day of each month for the previous month's activities.

3.1.2 The Contractor shall be reimbursed or paid for services provided under this agreement according to the approved cost allocation budget, attached to and made a part of this Agreement.

3.1.3 Any changes to the budget must be approved by the Project Manager.

3.1.4 The Contractor shall follow City and County of Denver Fiscal Rule 8.1, Procurement, which requires that at least three (3) documented quotations be secured for all purchases of services (including insurance), supplies, or other property that costs more than \$5,000.00 in the aggregate.

3.1.5 The Contractor shall submit the final invoice for reimbursement within forty-five (45) days after the end of the contract.

## 3.2 Communication

3.2.1 Contractors using website, radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other method to market or publicize activities funded by the Denver Office of Strategic Partnerships (DOSP) shall acknowledge DOSP as a source of funding and include the following statement in all relevant communication material: "The funding source for this activity is the Denver Office of Strategic Partnerships."

## 3.3 Close-Out

3.3.1 The Contractor shall prepare and submit the required OED contract closeout reports within sixty (60) days of the expiration date of this contract. The closeout package will be sent to the Contractor prior to the end of the contract. OED reserves the right to automatically closeout the contract after sixty (60) days if there are no disallowed costs pending. Once the contract closeout is complete, no further reimbursements will be allowed. Prior to reimbursement for the last invoice, OED will review participant files in accordance with OED Closeout Policy.

**Program Budget and Cost Allocation Plan Summary**

Contractor Name: Energy Outreach Colorado Program Year: 2012  
 Project : Nonprofit Facilities Energy Efficiency  
 Contract Dates: 1/1/12 to 12/31/12 Return to OED Project Specialist: \_\_\_\_\_

Budget Category	Agency Total (All Funding Sources)	Project Costs Nonprofit OEDEV201103484		Project Costs Residential OEDEV201103485		Total Project Costs requested from OED		Other City & County of Denver Funding		Total Federal Funding		Other Non-Federal Funding		Agency Total	
		Total	%	Total	%	Total	%	Total	%	Total	%	Amount	%	Amount	%
<b>Personnel: Name and Job Title</b>															
Jennifer Gremmert, Deputy Director	\$115,000.00	5,750	5.00%	11,500	10.00%	17,250	15.00%		0.00%	17,250	15.00%	80,500	70.00%	115,000	100%
Luke Ilderton, Director Energy Efficiency Programs	\$83,000.00	4,150	5.00%	16,600	20.00%	20,750	25.00%		0.00%	53,950	65.00%	8,300	10.00%	83,000	100%
Heather Gullen, NEEP Director	\$55,000.00	22,000	40.00%		0.00%	22,000	40.00%		0.00%		0.00%	33,000	60.00%	55,000	100%
Hilary Kushnir, NEEP Program Manager	\$42,000.00	16,800	40.00%		0.00%	16,800	40.00%		0.00%		0.00%	25,200	60.00%	42,000	100%
Rose Reed, Director of Administration	\$72,500.00	3,625	5.00%	3,625	5.00%	7,250	10.00%		0.00%	18,125	25.00%	47,125	65.00%	72,500	100%
Nicole O'Connor, Program Assistant	\$30,000.00	4,500	15.00%	-	0.00%	4,500	15.00%		0.00%		0.00%	25,500	85.00%	30,000	100%
Name, Job Title		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Name, Job Title		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Name, Job Title		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Name, Job Title		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Name, Job Title		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Name, Job Title		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
<b>Total Salary:</b>	<b>\$397,500.00</b>	<b>56,825</b>	<b>14.30%</b>	<b>31,725</b>	<b>7.98%</b>	<b>88,550</b>	<b>22.28%</b>	<b>-</b>	<b>0.00%</b>	<b>89,325</b>	<b>22.47%</b>	<b>219,625</b>	<b>55.25%</b>	<b>397,500</b>	<b>100%</b>
<b>Fringes</b>	<b>\$97,387.00</b>	<b>13,922</b>	<b>14.30%</b>	<b>7,773</b>	<b>7.98%</b>	<b>21,695</b>	<b>22.28%</b>	<b>-</b>	<b>0.00%</b>	<b>21,885</b>	<b>22.47%</b>	<b>53,807</b>	<b>55.25%</b>	<b>97,387</b>	<b>100%</b>
<b>Salary and Fringe Total:</b>	<b>\$494,887.00</b>	<b>70,747</b>	<b>14.30%</b>	<b>39,498</b>	<b>7.98%</b>	<b>110,245</b>	<b>22.28%</b>	<b>-</b>	<b>0.00%</b>	<b>111,210</b>	<b>22.47%</b>	<b>273,432</b>	<b>55.25%</b>	<b>494,887</b>	<b>100%</b>
<b>Non-Personnel:</b>	Total	Amount	%	Amount	%	Subtotal	%	Amount	%	Amount	%	Amount	%	Amount	%
Office Expenses, Supplies & Equipment	\$20,000.00	1,000	5.00%	500	2.50%	1,500	7.50%		0.00%	5,000	25.00%	13,500	67.50%	20,000	100%
Communication	\$125,000.00	1,000	0.80%	500	0.40%	1,500	1.20%		0.00%	31,250	25.00%	92,250	73.80%	125,000	100%
Insurance	\$12,500.00	625	5.00%	312	2.50%	937	7.50%		0.00%	3,125	25.00%	8,438	67.50%	12,500	100%
Travel - Staff	\$110,000.00	5,500	5.00%	2,750	2.50%	8,250	7.50%		0.00%	27,500	25.00%	74,250	67.50%	110,000	100%
Travel - Client		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Equipment rental	\$48,000.00	2,400	5.00%	1,200	2.50%	3,600	7.50%		0.00%	12,000	25.00%	32,400	67.50%	48,000	100%
Facilities	\$94,000.00	4,700	5.00%	2,350	2.50%	7,050	7.50%		0.00%	23,500	25.00%	63,450	67.50%	94,000	100%
Educational Materials - Customers		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Meetings/Events		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Professional Services - (specify; ie., Payroll)	\$10,000.00	500	5.00%	250	2.50%	750	7.50%		0.00%	2,500	25.00%	6,750	67.50%	10,000	100%
Professional Services - (Specify; ie., Legal)		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Professional Services - (Specify; ie., Accountant)	\$40,000.00	2,000	5.00%	1,000	2.50%	3,000	7.50%		0.00%	10,000	25.00%	27,000	67.50%	40,000	100%
Subcontractor (Energy efficiency materials/labor)	\$6,675,000.00	669,528	10.03%	316,640	4.74%	986,168	14.77%		0.00%	4,000,000	59.93%	1,688,832	25.30%	6,675,000	100%
Subcontractor (Audits, evaluation, modeling, education)	\$400,000.00	42,000	10.50%	35,000	8.75%	77,000	19.25%		0.00%	300,000	75.00%	23,000	5.75%	400,000	100%
Subcontractor (Specify)		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Other Direct Expense (specify)		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Other Direct Expense (specify)		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Other Direct Expense (specify)		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Other Direct Expense (specify)		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Construction Costs		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
Indirect Costs		#DIV/0!		#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!	#DIV/0!		-	#DIV/0!
<b>Total Non-Personnel</b>	<b>\$7,534,500.00</b>	<b>729,253</b>	<b>9.68%</b>	<b>360,502</b>	<b>4.78%</b>	<b>1,089,755</b>	<b>14.46%</b>	<b>-</b>	<b>0.00%</b>	<b>4,414,875</b>	<b>58.60%</b>	<b>2,029,870</b>	<b>26.94%</b>	<b>7,534,500</b>	<b>100%</b>
<b>Total Project Cost</b>	<b>\$8,029,387.00</b>	<b>800,000</b>	<b>9.96%</b>	<b>400,000</b>	<b>4.98%</b>	<b>1,200,000</b>	<b>14.95%</b>	<b>-</b>	<b>0.00%</b>	<b>4,526,085</b>	<b>56.37%</b>	<b>2,303,302</b>	<b>28.69%</b>	<b>8,029,387</b>	<b>100%</b>
<b>Program Income (through funded activities)</b>			#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!
<b>Non-Project:</b>	Total								%						
Personnel Costs:	\$800,000.00		0.00%		0.00%	-	0.00%		0.00%	200,000	25.00%	600,000	75.00%	800,000	100%
Non-Personnel Costs:	\$800,000.00		0.00%		0.00%	-	0.00%		0.00%	100,000	12.50%	700,000	87.50%	800,000	100%
Other (Other program expenses):	\$6,500,000.00		0.00%		0.00%	-	0.00%		0.00%		0.00%	6,500,000	100.00%	6,500,000	100%
<b>Total Non-Project Cost</b>	<b>\$8,100,000.00</b>	<b>-</b>	<b>0.00%</b>	<b>-</b>	<b>0.00%</b>	<b>-</b>	<b>0.00%</b>	<b>-</b>	<b>0.00%</b>	<b>300,000</b>	<b>3.70%</b>	<b>7,800,000</b>	<b>96.30%</b>	<b>8,100,000</b>	<b>100.00%</b>
<b>Grand Total</b>	<b>\$16,129,387.00</b>	<b>800,000</b>	<b>4.96%</b>	<b>400,000</b>	<b>2.48%</b>	<b>1,200,000</b>	<b>7.44%</b>	<b>-</b>	<b>0.00%</b>	<b>4,826,085</b>	<b>29.92%</b>	<b>10,103,302</b>	<b>62.64%</b>	<b>16,129,387</b>	<b>100%</b>



**Budget Narrative**  
**Energy Outreach Colorado**  
**Denver Nonprofit Facilities Energy Efficiency Services**  
**2012**

**A. Personnel**

Jennifer Gremmert, Deputy Director \$115,000 x 5% = \$5,750  
Conducts outreach on project, manages all contracts and budgets for the program, works to ensure leveraged funding with other EOC Programs

Luke Ilderton, Senior Engineer \$83,000 x 5% = \$4,150  
Provides technical expertise on all efficiency projects, oversees audit process, modeling and assessment of all efficiency measures.

Heather Gullen, Director NEEP \$55,000 x 40% = \$22,000  
Oversees the program operations and manages processes and Project Manager working on NEEP.

Hilary Kushnir, Project Manager, NEEP \$42,000 x 40% = \$16,800  
Works to ensure all projects are running smoothly and on time.

Rose Reed, Director of Administration \$72,500 x 5% = \$3,625  
Oversees all accounting functions, invoicing, payroll, and human resources.

Nicole O'Connor, Program Assistant \$30,000 x 15% = \$4,500  
Assist with education, invoicing and reporting.

**Total Personnel costs = \$56,825**

**B. Fringe Benefits**

Fringe benefits supported by this contract include but are not limited to:

Payroll Taxes, including FICA, state and local taxes, and employer contribution Social Security Insurance and Unemployment Insurance

Medical benefits, including health insurance, vision insurance, dental insurance, short and long term disability and life insurance

Employer contribution of 8% of employees' salaries to their 401K Plan.

Jennifer Gremmert

Payroll taxes	8% x \$5,750 =\$460	
Medical benefits	8.5% x \$5,750 = \$489	
401 K Plan	8% x \$5,750 =\$460	Total=\$1,409

Luke Ilderton

Payroll taxes	8% x \$4,150=\$332	
Medical benefits	8.5% x \$4,150=\$353	
401 K Plan	8% x \$4,150=\$332	Total=\$1,017

Heather Gullen

Payroll taxes	8% x \$22,000=\$1,760	
Medical benefits	8.5% x \$22,000=\$1,870	
401 K Plan	8%x \$22,000=\$1,760	Total=\$5,390

Hilary Kushnir

Payroll taxes	8% x \$16,800=\$1,344	
Medical benefits	8.5% x \$16,800=\$1,428	
401 K Plan	8%x \$16,800=\$1,344	Total=\$4,116

Rose Reed

Payroll taxes	8% x \$3,625=\$290	
Medical benefits	8.5% x \$3,625=\$308	
401 K Plan	8% x \$3,625=\$290	Total=\$888

Nicole O'Connor

Payroll taxes	8% x \$4,500=\$360	
Medical benefits	8.5% x \$4,500=\$382	
401 K Plan	8%x \$4,500=\$360	Total=\$1,102

**Total Fringe Costs = \$13,922**

### **C. Office Expenses**

EOC office expenses are calculated based on the percent of time that EOC staff spends on various programs. Since we anticipate spending 5% of staff time on the NEEP program for Denver, we budgeted 5% of the office expense to this contract.

$\$83.33 \times 12 \text{ months} = \$1,000$

**Total Office Expenses Cost = \$1,000**

**D. Communication:** Telephone Expense – includes allocated office phones. EOC communications costs are calculated based on the percent of time that EOC staff spends on various programs. Since we anticipate spending 5% of staff time on the NEEP program for Denver we budgeted 5% of the telephone expense to this contract, which represents .8% of total communication expense.

$\$83.33 \times 12 \text{ months} = \$1,000$

**Total Communications Cost: \$1,000**

**E. Insurance:** EOC Insurance costs are calculated based on the percent of time that EOC staff spends on various programs. Since we anticipate spending 5% of staff time on the NEEP program for Denver we budgeted 5% of the insurance cost to this contract.

**Total Insurance Cost = \$625**

### **F. Travel Staff**

Includes mileage [\$0.50 per mile] to travel to project sites, appropriate meals and any onsite parking expenses. Since we anticipate spending 5% of staff time on the Multi-family program for Denver we budgeted 5% of the total travel budget to this contract.

$\$458.33 \times 12 \text{ months} = \$5,500$

**Total Travel Costs = \$5,500**

**H. Equipment Rental and Maintenance:** Includes copier, postage machine and IT services for all computers and servers. EOC equipment costs are calculated based on the percent of time that EOC staff spends on various programs. Since we anticipate spending 5% of staff time on the NEEP program for Denver we budgeted 5% of the equipment rental and maintenance to this contract.

**Total Equipment Costs: \$ 2,400**

## I. Facility

EOC Office space is calculated based on the percent of time that EOC staff spends on various programs. Since we anticipate spending 5% of staff time on the NEEP program for Denver we budgeted 5% of the facility space to this contract.

$\$391.66 \times 12 \text{ months} = \$4,700$

### **Total Facility costs - \$4,700**

## L. Professional Services

Since we anticipate spending 5% of staff time on the Multi-family program for Denver we budgeted 5% of the following professional services to this contract

Payroll services  $\$41.66 \times 12 \text{ months} = \$500$

Kunding and Assoc., auditing services  $\$166.66 \times 12 \text{ months} = \$2,000$

### **Total Professional Services = \$2,500**

## M. Subcontractor

EOC will contract with various subcontractors for installation of Energy Efficiency Measures – The actual costs will depend on project, but will include the labor and materials. The anticipated expenses charged to this budget are calculated as follows:

$14 \text{ projects} \times \text{an average project cost of } \$47,823.43 = \$669,528$

EOC will contract with selected commercial auditors to provide energy audits, recommissioning services, education and evaluation of projects. The anticipated expenses charged to this budget are calculated as follows:

$14 \text{ projects (estimated)} \times \$3,000 \text{ (average)} = \$42,000$

EOC projects are selected through a competitive selection process. Since we don't know exactly which projects will be selected for 2012 the above figures are estimates. Denver funds are leveraged with other funding from Xcel Energy and other private funders. Once a project is selected and goes through an energy audit or assessment, we then collect bids to determine which energy efficiency measures are the most cost effective. The number of measures and the cost of those measures vary greatly from project to project. Our goal is to leverage Denver's funds as much as we can maximizing the number of projects served as well as the potential energy savings achieved.

**Total Subcontractor Costs = \$711,528**

**N. Construction Costs:** Included in subcontractor line item

**Q. Match Amount** = EOC anticipates leveraging \$500,000 from Xcel Energy and other funders.

**Total Amount Requested from OED for NEEP: \$800,000**



# CERTIFICATE OF LIABILITY INSURANCE

OP ID: SS

DATE (MM/DD/YYYY)  
10/12/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER First Line Insurance Services 43 Inverness Drive East Englewood, CO 80112 First Line Insurance Services	720-875-0134 720-875-0147	CONTACT NAME: PHONE (A/C, No, EX): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: <b>ENERGOU</b>	FAX (A/C, No): 3030000000
INSURED <b>Energy Outreach Colorado</b> 225 East 16th Avenue Denver, CO 80203	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : <b>ITT Hartford Insurance Group</b>		
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER	SUBJECT	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			34BAN03919	10/01/11	10/01/12	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ 10,000
A	<input checked="" type="checkbox"/> Umbrella			34BAN03919	10/01/11	10/01/12	PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/PROP AGG \$ 4,000,000 Umbrella \$ 3,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC							
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS			34SBAN3919	10/01/11	10/01/12	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	HIRED AUTOS NON-OWNED AUTOS			34SBAN3919	10/01/11	10/12/12	\$ \$ \$
A	UMBRELLA LIAB EXCESS LIAB DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000			34BAN03919	10/12/11	10/10/12	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				WC STATUTORY LIMITS   OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Commercial Applica			34BAN03919	10/01/11	10/01/12	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
The City and County of Denver, its elected and appointed officials, employees and volunteers are named as additional insured with regards to the commercial general liability policy and the business auto liability policy.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
CITYDEN  City and County of Denver Office of Economic Development 201 W Colfax Dept 1005 Denver, CO 80202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 

ACORD 25 (2009/09)

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**POLICY INFORMATION PAGE**

Policy #: 4144812  
Policy Type: ADVANCE

**ITEM 1. INSURED:**  
ENERGY OUTREACH COLORADO  
225 E 16th Avenue Suite 200  
Denver CO 80203

**AGENT:**  
MOODY INSURANCE AGENCY INC  
3773 CHERRY CREEK N DR  
SUITE 800  
DENVER, CO 80209-3804  
(303) 824-6600

SP / 15.00

**ITEM 2. POLICY PERIOD:** FROM 01/01/2011 TO 01/01/2012  
12:01 A.M. MOUNTAIN STANDARD TIME

**ITEM 3. A. Workers' Compensation Insurance:** Part One of the policy applies to the workers' compensation law of the states listed here:  
COLORADO

**B. Employers Liability Insurance:** Part Two of the policy applies to work in each state listed in Item 3 A. The limits of our liability under part two are:

BODILY INJURY BY ACCIDENT	\$1,000,000	EACH ACCIDENT
BODILY INJURY BY DISEASE	\$1,000,000	EACH EMPLOYEE
BODILY INJURY BY DISEASE	\$1,000,000	POLICY LIMIT

**C. Other States Insurance:** Part Three of the policy applies to the states, if any, listed here:

NONE

(Please contact Pinnacol Assurance for information on coverage outside the state of Colorado)

**D. This policy includes the attached endorsements and schedules:**

511	Other State Endorsement
CAT09	Catastrophe (Other than Certified Acts of Terrorism)
TER09	Terrorism Risk Insurance Program Reauthorization Act

**ITEM 4.** We will determine the premium for this policy by our manuals of rules, classifications, rates and rating plans. All information required below is subject to verification and change by audit. The statements of estimated advanced premium are also a part of this policy.



### MASTER SUBSCRIPTION AGREEMENT

Customer Full Legal Name:	Denver Department of Environmental Health
Customer Address:	200 W 14th Ave Ste 300 Denver, CO , 80204 US

This Master Subscription Agreement ("Agreement") is between salesforce.com, inc., a Delaware corporation with its principal place of business at The Landmark @ One Market, Suite 300, San Francisco, California 94105 ("SFDC") and the party named above. This Agreement is effective as of the later of the dates beneath the parties' signatures below (the "Effective Date").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"AppExchange" means the online directory of applications that interoperate with the Services, located at <http://www.salesforce.com/appexchange> or at any successor websites.

"Customer" means the customer named above and its Affiliates.

"Customer Application" means an online application that Customer (or a third party acting on Customer's behalf) creates using, and that interoperates with, the Services.

"Customer Data" means all electronic data or information submitted by Customer to the Services.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Non-SFDC Applications" means online applications and offline software products that are provided by entities or individuals other than SFDC and are clearly identified as such, and that interoperate with the Services, including but not limited to those listed on the AppExchange and those identified as Force.com Labs or by a similar designation.

"Order Forms" means the documents for placing orders hereunder that are entered into between Customer and SFDC or any of its Affiliates from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms shall be deemed incorporated herein by reference.

"Services" means the products and services that are ordered by Customer under an Order Form and made available by SFDC online via the customer login link at <http://www.salesforce.com> and/or other web pages designated by SFDC, including associated offline components, as described in the User Guide. "Services" exclude Non-SFDC Applications.

"User Guide" means the online user guide for the Services, accessible via the customer login link at <http://www.salesforce.com>, as updated from time to time.

"Users" means individuals who are authorized by Customer to use the Services, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by Customer (or by SFDC at Customer's request). Users may include but are not limited to employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

#### 2. SERVICES

- 2.1 **Provision of Services.** SFDC shall make the Services available to Customer pursuant to this Agreement and the applicable Order Forms during each subscription term. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by SFDC regarding future functionality or features.



- 2.2 User Subscriptions.** Unless otherwise specified in the applicable Order Form, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing User subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.
- 2.3 SFDC Responsibilities.** SFDC shall: (i) provide SFDC basic support for the Services to Customer at no additional charge, and/or upgraded support if purchased, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which SFDC shall give at least 8 hours notice via the Services and which SFDC shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific time), or (b) any unavailability caused by circumstances beyond SFDC's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving SFDC employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Services only in accordance with applicable laws and government regulations.
- 2.4 SFDC Protection of Customer Data.** SFDC shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. SFDC shall not (a) modify Customer Data, (b) disclose Customer Data except as compelled by law in accordance with the "Confidentiality: Compelled Disclosure" section below or as expressly permitted in writing by Customer, or (c) access Customer Data except to provide the Services and prevent or address service or technical problems, or at Customer's request in connection with customer support matters.
- 2.5 Customer Responsibilities.** Customer shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Customer Data and of the means by which it acquired Customer Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify SFDC promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the User Guide and applicable laws and government regulations. Customer shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

### **3. NON-SFDC PROVIDERS**

- 3.1 Acquisition of Non-SFDC Products and Services.** SFDC or third parties may from time to time make available to Customer (e.g., through the AppExchange) third-party products or services, including but not limited to Non-SFDC Applications and implementation, customization and other consulting services. Any acquisition by Customer of such non-SFDC products or services, and any exchange of data between Customer and any non-SFDC provider, is solely between Customer and the applicable non-SFDC provider. SFDC does not warrant or support non-SFDC products or services, whether or not they are designated by SFDC as "certified" or otherwise, except as specified in an Order Form. Subject to the "Integration with Non-SFDC Applications" section below, no purchase of non-SFDC products or services is required to use the Services except a supported computing device, operating system, web browser and Internet connection.
- 3.2 Non-SFDC Applications and Customer Data.** If Customer installs or enables Non-SFDC Applications for use with Services, Customer acknowledges that SFDC may allow providers of those Non-SFDC Applications to access Customer Data as required for the interoperation and support of such Non-SFDC Applications with the Services. SFDC shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Non-SFDC Application providers. The Services shall allow Customer to restrict such access by restricting Users from installing or enabling such Non-SFDC Applications for use with the Services.
- 3.3 Integration with Non-SFDC Applications.** The Services may contain features designed to interoperate with Non-SFDC Applications (e.g., Google, Facebook or Twitter applications). To use such features, Customer may be required to obtain access to such Non-SFDC Applications from their providers. If the provider of any such Non-SFDC Application ceases to make the Non-SFDC Application available for interoperation with the corresponding Service features on reasonable terms, SFDC may cease providing such Service features without entitling Customer to any refund, credit, or other compensation.

### **4. FEES AND PAYMENT**

- 4.1 Fees.** Customer shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. User subscription fees are based on monthly periods that begin on the subscription start date

and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

- 4.2 **Invoicing and Payment.** Fees will be invoiced in advance and otherwise in accordance with the Order Form. Unless otherwise stated in the Order Form, fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to SFDC and notifying SFDC of any changes to such information.
- 4.3 [RESERVED].
- 4.4 **Suspension of Service.** If any charge owing by Customer is 30 days or more overdue, SFDC may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full, provided SFDC has given Customer 10 or more days' prior notice that its account is overdue in accordance with the "Notices" section below.
- 4.5 **Payment Disputes.** SFDC shall not exercise its rights under the "Overdue Charges" or "Suspension of Service" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 4.6 **Taxes.** Unless otherwise stated, SFDC's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If SFDC has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides SFDC with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, SFDC is solely responsible for taxes assessable against it based on its income, property and employees.

## 5. PROPRIETARY RIGHTS

- 5.1 **Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 5.2 **Restrictions.** Customer shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services except as permitted herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own intranets or otherwise for its own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
- 5.3 **Customer Applications and Code.** If Customer, a third party acting on Customer's behalf, or a User creates applications or program code using the Services, Customer authorizes SFDC to host, copy, transmit, display and adapt such applications and program code, solely as necessary for SFDC to provide the Services in accordance with this Agreement. Subject to the above, SFDC acquires no right, title or interest from Customer or its licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein.
- 5.4 **Customer Data.** Subject to the limited rights granted by Customer hereunder, SFDC acquires no right, title or interest from Customer or its licensors under this Agreement in or to Customer Data, including any intellectual property rights therein.
- 5.5 **Suggestions.** SFDC shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Services.
- 5.6 **Federal Government End Use Provisions.** SFDC provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with SFDC to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

## 6. CONFIDENTIALITY

- 6.1 **Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer shall include Customer Data; Confidential Information of SFDC shall include the Services; and Confidential Information of each party shall include the terms and conditions of this

Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Customer Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**6.2 Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

**6.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## **7. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

**7.1 SFDC Warranties.** SFDC warrants that (i) it has validly entered into this Agreement and has the legal power to do so, (ii) the Services shall perform materially in accordance with the User Guide, (iii) subject to the "Integration with Non-SFDC Services" section above, the functionality of the Services will not be materially decreased during a subscription term, and (iv) it will not transmit Malicious Code to Customer, provided it is not a breach of this subpart (iv) if Customer or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Customer's exclusive remedy shall be as provided in the "Termination for Cause" and "Refund or Payment upon Termination" sections below.

**7.2 [RESERVED].**

**7.3 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**7.4 Non-GA Services.** From time to time SFDC may invite Customer to try, at no charge, SFDC products or services that are not generally available to SFDC customers ("Non-GA Services"). Customer may accept or decline any such trial in its sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. Non-GA Services are not considered "Services" hereunder and are provided "AS IS" with no express or implied warranty. SFDC may discontinue Non-GA Services at any time in its sole discretion and may never make them generally available.

**8. [RESERVED].**

## **9. LIMITATION OF LIABILITY**

**9.1 Limitation of Liability.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE GREATER OF \$500,000 OR THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

**9.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL,

CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 10. TERM AND TERMINATION

- 10.1 **Term of Agreement.** This Agreement commences on the Effective Date and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.
- 10.2 **Term of User Subscriptions.** User subscriptions commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term shall be the same as that during the immediately prior term unless SFDC has given Customer written notice of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 7% of the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.
- 10.3 **Termination for Cause.** A party may terminate this Agreement for cause (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 10.4 **Refund or Payment upon Termination.** Upon any termination for cause by Customer, SFDC shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by SFDC, Customer shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to SFDC for the period prior to the effective date of termination.
- 10.5 **Return of Customer Data.** Upon request by Customer made within 30 days after the effective date of termination, SFDC will make available to Customer for download a file of Customer Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, SFDC shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.
- 10.6 **Surviving Provisions.** The sections titled "Fees and Payment," "Proprietary Rights," "Confidentiality," "Warranties and Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Return of Customer Data," "Surviving Provisions" and "General Provisions" shall survive any termination or expiration of this Agreement.


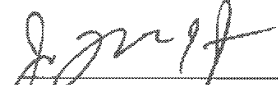
## 11. GENERAL PROVISIONS

- 11.1 **Export Compliance.** The Services, other SFDC technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each of SFDC and Customer represents that it is not named on any U.S. government denied-party list. Customer shall not permit Users to access or use Services in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.
- 11.2 **Anti-Corruption.** Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from a SFDC employee or agent in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, it will use reasonable efforts to promptly notify SFDC's Legal Department ([legalcompliance@salesforce.com](mailto:legalcompliance@salesforce.com)).
- 11.3 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 11.4 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 11.5 **Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv), except for notices of termination or an indemnifiable claim ("Legal Notices"), the first business day after sending by email. Notices to SFDC shall be addressed to the attention of its VP, Worldwide Sales Operations, with a copy to its General Counsel, at salesforce.com, inc., The Landmark at One Market, Suite 300, San Francisco, California 94105; fax (415) 901-7040. Billing-related notices to Customer shall be addressed to the

relevant billing contact designated by Customer, and Legal Notices to Customer shall be addressed to Customer and be clearly identified as Legal Notices. All other notices to Customer shall be addressed to the relevant Services system administrator designated by Customer.

- 11.6 **Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.
- 11.7 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 11.8 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, SFDC shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 11.9 **Governing Law.** This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.
- 11.10 **[RESERVED].**
- 11.11 **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Without limiting the foregoing, this Agreement supersedes the terms of any online Master Subscription Agreement electronically accepted by Customer. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- 11.12 **Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument. Customer represents that it has validly entered into this Agreement and has the legal power to do so.

The parties' authorized signatories have duly executed this Agreement as of the Effective Date:

<b>SALESFORCE.COM, INC.</b>	<b>Denver Department of Environmental Health</b>
By: 	By: 
Print Name: <u>Meredith Schmidt</u>	Print Name: <u>Jim McIntyre</u>
Title: <u>VP Sales Operations</u>	Title: <u>Director of Purchasing</u>
Date: <u>May 26, 2011</u>	Authority Level: _____
	Date: <u>5-26-11</u>



salesforce.com, Inc.  
San Francisco, CA 94105  
United States

ORDER FORM for Denver Department of Environmental Health  
Offer Valid Through: 6/30/2011  
Proposed by: Britt Bohn  
Quote Number: Q-731408

## ORDER FORM

### Address Information

Bill To:  
200 W. 14th Ave., Ste. 310  
Denver, CO 80204  
US - United States

Ship To:  
200 W. 14th Ave., Ste. 310  
Denver, CO 80204  
US - United States

Billing Company Name: Denver Department of Environmental Health  
Billing Contact Name: Tom Herrod  
Billing Email Address: thomas.herrod@denvergov.org

Billing Phone: 720-865-6386  
Billing Fax:  
Billing Language: English

### Terms and Conditions

Related Contract: 00465822  
Contract Start Date\*: 5/30/2011  
Contract End Date\*: 5/29/2013  
Billing Frequency: Annually

Payment Method: Check  
Payment Terms: Net 30  
Billing Method: Email

### Products

Product	Order Start Date*	Order End Date	Order Term (months)*	Monthly Unit Price†	Quantity	Total Price
Force.com - Enterprise Edition	6/30/2011	5/29/2013	23	USD 33.00	10	USD 7,590.00
Force.com - Enterprise Edition (Administrator)	6/30/2011	5/29/2013	23	USD 33.00	1	USD 759.00
<b>Total:</b>						<b>USD 8,349.00</b>

+ The Monthly/Unit Price shown above has been rounded to two decimal places for display purposes. As many as eight decimal places may be present in the actual price. The totals for this order were calculated using the actual price, rather than the Monthly/Unit Price displayed above, and are the true and binding totals for this order.

\* If this Order Form is executed and/or returned to salesforce.com by Customer after the Order Start Date above, salesforce.com may adjust these terms, without increasing the Total Price, based on the date salesforce.com activates the products above. Following activation, any adjustments to these terms may be confirmed by logging into Checkout, by reference to the order confirmation email sent by salesforce.com to the Billing Email Address above, and/or by contacting Customer Service.

Prices shown above do not include any taxes that may apply. Any such taxes are the responsibility of Customer. This is not an invoice.

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## Contract Special Terms

Any subscription product pricing in this Order Form that differs from that under Contract Purchase and Pricing Conditions, or that is for a product not listed under Contract Purchase and Pricing Conditions, is a one-time discount applicable to this Order only, notwithstanding anything to the contrary in the Master Subscription Agreement. Any future purchases of such subscription products (including add-on subscriptions) shall be at the pricing under Contract Purchase and Pricing Conditions, or if the product is not listed under Contract Purchase and Pricing Conditions, at SFDC's then-current list pricing for such product.

Customer wishes to replace its subscription for the Force.com One App Service with a subscription for the Force.com Enterprise Edition Service. Accordingly, 10 Force.com Enterprise Edition Users and 1 Force.com Enterprise Edition Administrator added under this Order Form are replacing 5 Force.com One App users and 1 Force.com Administrator, under the existing Order Form(s) bearing Quote No. 700402. Any credits or debits applicable to fees paid or owed in relation to such Users under such existing Order Form(s) will be applied to this Order Form.

Any obligations of the Customer to pay additional monies hereunder is subject to appropriation and encumbrance by the Customer. In the event Customer does not obtain financial approvals for additional purchases or additional subscription terms, Customer shall not be relieved of the payment obligations under this Order Form.

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## Product Specific Terms

### Salesforce for Force.com Administration

The Salesforce for Force.com Administration Product may not be accessed or used to enter, view or modify Leads, Opportunities, Products, Forecasts, Cases, Solutions or Campaigns. Customer understands that these functionality limitations are contractual in nature (i.e., the functionality itself has not been disabled as a technical matter in the application) and therefore agrees to strictly monitor Users' use of such subscriptions and enforce the applicable restrictions. SFDC may audit Customer's use of the Salesforce for Force.com Administration Product subscription licenses at any time through the Service. Should any audit reveal unauthorized use of the Salesforce Service, SFDC will so notify Customer in writing (email permitted). If a subsequent audit reveals unauthorized use of the Salesforce Service, Customer agrees it will pay, within five (5) business days of notice of the audit results, the difference between (a) SFDC's list price for Enterprise Edition, or Unlimited Edition, as applicable based upon the type of Service edition in Customer's applicable Org, in effect at the time of such notice and (b) the amount paid by Customer for the Salesforce Service subscription licenses showing unauthorized use.

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## Purchase Order Information

Is a Purchase Order (PO) required for the purchase or payment of the products on this Order Form?

Please select: (Customer to complete)

No

Yes

If yes, please complete the following:


PO Number: \_\_\_\_\_

PO Amount: \_\_\_\_\_

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Upon signature by Customer and submission to salesforce.com, this Order Form shall become legally binding and governed by the Master Subscription Agreement between salesforce.com and Customer, unless this Order Form is rejected by salesforce.com. salesforce.com may reject this Order Form if: (1) the signatory below does not have the authority to bind Customer to this Order Form, (2) changes have been made to this Order Form (other than completion of the purchase order information and the signature block), or (3) the requested purchase order information or signature is incomplete or does not match our records or the rest of this Order Form. Subscriptions are non-cancelable before their Order End Date.

Customer: Denver Department of Environmental Health

Signature   
Name James P. McIntyre  
Business Title Purchasing Director  
Date 6-15-11

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