

**STATE OF COLORADO
GOVERNOR'S ENERGY OFFICE
CONTRACT
with
City and County of Denver**

11-17-11

1. PARTIES

THIS Contract is entered into by and between City and County of Denver, a municipal corporation of the State of Colorado (hereinafter called "Denver" or the "City"), and the STATE OF COLORADO acting by and through the Governor's Energy Office (hereinafter called the "State").

2. EFFECTIVE DATE

This Contract shall be effective and enforceable when approved and signed by both the State and Denver on the date last signed (hereinafter called the "Effective Date").

3. RECITALS

A. Authority, Appropriation, And Approval

Authority for the GEO entering into this Contract arises from CRS §24-38.5-101, et seq. and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Contract.

C. The City is a recipient of a federal grant, Award DE-EE0003309, CFDA No. 81.086, Contract No. GC03040.

D. References

All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Contract

"Contract" means this contract for Services, its provisions, attached exhibits, documents incorporated by reference under the terms of this Contract and any future modifying Contracts, exhibits, attachments or references incorporated pursuant to State Fiscal Rules and Policies.

B. Customer

"Customer" means the recipient of any rebate provided by the GEO pursuant to this Contract.

C. Exhibits

The following exhibits are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work), **Exhibit B** (Rebate Parameters).

D. Parties

"Party" means the State or Denver and "Parties" means both the State and Denver.

E. Project

"Project" means the activities described in the Recitals and/or Statement of Work sections hereof.

F. Subcontractor

"Subcontractors" means third-Party vendors, if any that provide goods and/or services.

G. Work

"Work" means the tasks the State is performing in order to fulfill its obligations under this Contract.

5. TERM and EARLY TERMINATION

A. Term-Work Commencement

The Parties' respective performance under this Contract shall commence on the Effective Date. This Contract shall terminate on the earlier of December 31, 2011 or Project completion, unless sooner terminated or further extended as provided herein.

B. Early Termination

This Contract may be subject to early termination in accordance with the provisions of this Contract. Notwithstanding anything to the contrary herein, the Parties reserve the right to terminate this Contract at any time after 30 days' prior written notice.

6. SCOPE OF WORK

On or before December 31, 2011 the State shall complete the Work described in **Exhibit A, Scope of Work – Governor's Energy Office (GEO) Rebate Program.**

7. PAYMENTS TO THE STATE

The State shall be compensated as follows:

A. Payment Amount

Denver shall pay the State \$500,000.00 to be used for the administration and payment of energy efficiency rebates to eligible Customers pursuant to the provisions of **Exhibit A** and **Exhibit B.**

B. Payment

Method and Time The State shall submit a monthly invoice to Denver in the form and manner approved by Denver. The State shall submit an invoice within 30 days after the end of the period for which payment is requested, and final billings on this Contract must be received by Denver within 60 days after the end of the performance period or termination hereof. Denver shall make payment in full with respect to each invoice acceptable in accordance with Denver's prompt payment ordinance D.R.M.C. § 20-107, *et seq.*

C. Maximum Contract Amount:

i. Notwithstanding any other provision of the Contract, the City's maximum payment of obligation will not exceed **FIVE HUNDRED THOUSAND AND NO/XX(\$500,000.00)** ("Maximum Contract Amount"). The City is not obligated to execute a Contract or any amendments for any further services, including any services performed by State beyond that specifically described in **Exhibit A.** Any services performed beyond those set forth therein are performed at State's risk without authorization under the Contract.

ii. 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 Contract. The City does not by the Contract irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Contract does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

D. This Contract is subject to and contingent upon the continuing availability of funds from the Grantor.

8. CONFIDENTIAL INFORMATION-STATE RECORDS**A. Acknowledgement**

The Parties acknowledge that after the Effective Date, either Party may become privy to confidential information in connection with this Contract, including, but not limited to records, personnel records, and information concerning individuals and/or customers, ("Confidential Information").

B. Confidentiality

It shall be the Parties' responsibility to keep each other's Confidential Information confidential at all times and to comply with all laws and regulations concerning confidentiality of information to the same extent applicable to either Party. Any request or demand for information in the possession of either Party made by any third Party shall be immediately forwarded to the principal representative of the Party whose information is being requested for a resolution of the request.

C. Notification

The Parties shall notify any of its agents, employees, sub-contractors and assigns who may come into contact with Confidential Information that they are subject to the confidentiality requirements set forth

herein, and shall provide each with a written explanation of such requirements before they are permitted to access information.

D. Use, Security, and Retention

No Confidential Information shall be distributed or sold to any third Party or used by either Party or its agents in any way, except as authorized by the Contract. The Parties shall provide and maintain a secure environment that ensures confidentiality of all Confidential Information wherever located. Confidential information shall not be retained in any files or otherwise by either Party or its agents, except as set forth in this Contract.

E. Disclosure-Liability

Disclosure of Confidential Information for any reason may be cause for legal action against the disclosing Party or its agents by third parties, and defense of any such action shall be the sole responsibility of the disclosing Party.

F. Limitation on State and Denver

The State's and Denver's obligation to comply with the requirements of this Section 8 are subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., and any other laws, regulations, and policies relating to the disclosure and confidentiality of public records.

9. Legal Authority

Each Party hereto warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind such Party to its terms. The persons signing and executing this Contract on behalf of their respective Party hereby represents, warrants, and, guarantees that they have full authorization to do so.

10. DEFAULT-BREACH

In addition to any breaches or defaults specified in other sections of this Contract, the failure of either Party to perform any of its obligations hereunder entirely or partially, including, but not limited to, performing them in a timely manner, constitutes a default or breach. If proceedings are instituted under any bankruptcy, insolvency, reorganization or similar legislation, by or against either Party, or the appointment of a receiver or similar officer for either Party or any of its property, and such proceedings or appointments are not vacated or fully stayed within 20 days after the institution or occurrence thereof; shall also constitute a default.

11. TERMINATION IN THE PUBLIC INTEREST

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and Courts. Denver is entering into this Contract for the purpose of carrying out the public policy of the City and County of Denver, as determined by its Mayor, City Council, and Courts. If this Contract ceases to further the public policy of the Parties, or either of them, either Party in its sole discretion, may terminate this Contract in whole or in part. Exercise by either Party of this right shall not be deemed a breach of that Party's obligations hereunder.

12. NOTICE AND REPRESENTATIVES

A. Notice

All notices required to be given hereunder shall be sent by certified or registered mail to such Party's principal representative(s) at the address set forth below. In addition to hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

B. Representatives

The individuals listed below are the principal representatives of the respective Parties. For the purposes of this Contract, the official representative(s) and addresses of the Parties are:

i. State:

Danielle Vaughan

ii. Denver:

Renewable Energy Program Associate
Governor's Energy Office
1580 Logan Street, Suite 100
Denver, CO 80203

City and County of Denver
Greenprint Denver
Office of the Mayor
1437 Bannock Street
Denver, CO 80202
With a copy of any such notice to:
Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

13. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein constitutes a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §CRS 24-10-101, et seq., as amended (the "Act"). Liability for claims for injuries to persons or property arising from the negligence of either Party, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

14. INSURANCE.

The Parties are public entities within the meaning of the Colorado Governmental Immunity act (CGIA), section 24-10-101, et seq., C.R.S., as amended. The parties agree that each party is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Therefore, at all times during the term of this Contract, including any renewals or extensions, the State shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA including coverage for Commercial General Liability and Auto Liability. The State shall maintain Workers' Compensation and Employers' Liability policies as required by State statute.

15. MISCELLANEOUS**A. Assignment**

Except as otherwise specifically provided in **Exhibit A**, the Parties' rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted, without the prior, written consent of the other Party. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. Any transfers, assignments, and subcontracts/subcontractors shall be subject to the provisions hereof.

B. Binding Effect

Unless otherwise provided herein, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

C. Captions

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one Contract.

E. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous

addition, deletion, or other amendment hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Jurisdiction and Venue

All suits, actions, or proceedings related to this Contract shall be held in the State of Colorado and the Parties hereby agree that venue shall be in the City and County of Denver.

G. Modification

i. By the Parties

Except as specifically provided in this Contract, no modification of this Contract shall be effective unless agreed to in writing by both Parties in an amendment to this Contract, properly executed and approved in accordance with Colorado State law, State Fiscal Rules, the Denver Charter and Denver ordinances.

ii. By Operation of Law

This Contract is subject to such modifications as may be required by changes in Federal, Colorado State or local law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

H. Order of Precedence

The provisions of this Contract shall govern the relationship of the State and Denver. In the event of conflicts or inconsistencies between this Contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the main body of this Contract;
- ii. Exhibit A: Scope of Work – Governor’s Energy Office (GEO) Rebate Program;
- iii. Exhibit B: Rebate Parameters.

I. Severability

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Contract in accordance with its intent.

J. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Parties.

K. Third Party Beneficiaries

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties and not to any third Party. Any services or benefits which third Parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third Parties.

L. Waiver

Waiver of any breach of a term, provision, or requirement of this Contract or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

M. COMPLIANCE WITH LAW.

Each Party shall strictly comply with all applicable federal, State, and local laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

N. BINDING ARBITRATION PROHIBITED.

The Parties do not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

O. EMPLOYEE FINANCIAL INTEREST. .

i. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. CRS §24-18-201 and §24-50-507.

ii. No employee of the City shall have any personal or beneficial interest in the services or property described in the Contract.

P. 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 State, involving transactions related to the Contract until the latter of three (3) years after the final payment under the Contract or expiration of the applicable statute of limitations.

Q. COLORADO OPEN RECORDS ACT

The disclosure of State information shall be governed by the Colorado Open Records Act, CRS §24-72-200.1, et seq.

16. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Governor's Energy Office

By: TJ Deora, Director

Date: _____

ATTEST:

CITY AND COUNTY OF DENVER:

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

By: _____
MAYOR

RECOMMENDED AND APPROVED:

By: *Michelle W*
Office of the Mayor

APPROVED AS TO FORM:
DAVID W. BROADWELL, City Attorney
for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
City Attorney

By: _____
Manager of Finance
Contract Control No. GE11081

By: _____
Auditor

"DENVER"

17. EXHIBIT A – Scope of Work: Governor’s Energy Office (GEO) Rebate Program

A. GEO Rebate Program

The State will offer energy efficiency rebates as described herein. These rebates will be offered at rates described in **Exhibit B Rebate Parameters**. *The GEO Rebate Program component follows current state and federal guidelines for American Recovery and Reinvestment Act.* Energy efficiency rebates will be offered to all home owners that present rebate applications and meet all system requirements and eligibility, and are residents in the City and County of Denver.

i. Designation of GEO Rebate Funds for Denver Territory

The State will reserve Denver’s funds to secure rebates for home owners in the City and County of Denver. Denver’s total contribution for rebates of \$454,545 under this Contract will be encumbered under the GEO’s 3rd Party rebate processing firm’s contract and an amount not to exceed \$45,455 shall be used for administration costs. The GEO is not obligating funding to Denver under this Contract.

ii. Changing Designation of Rebate Funds

Denver may, with 30 day written notice to the State, revise the type of rebate authorized under this Contract from one rebate type to another with final written approval from the GEO.

iii. Rebate Application Processing

The State through a third party rebate processing firm will administer the rebate application processing, verification, and check distribution on behalf of the Denver at a cost of 10% of the total rebate funds issued not to exceed \$45,455 to used be for administrative costs. The State has completed a competitive solicitation process and has entered into a contract with a 3rd party rebate processing firm to administer rebate application processing, verification and check distribution.

iv. Education and Outreach

The State’s public outreach program will be working to communicate all layers of financial incentives to constituents throughout the state regardless of what offerings exist in geographic areas. In short, when a resident or business owner visits the Recharge Colorado Web site or calls the Recharge Colorado call center, he or she will be asked where he or she is located and told about ALL incentive programs available to him or her, whether it’s a State program, utility program, a local government program, a non-profit program or a combination thereof.

v. Reporting/Invoicing

The State shall provide the following in monthly reports to Denver:

- a) An itemized list of total rebates issued including the system type, size and installation address
- b) The rebate type and amount
- c) Customer’s name
- d) Customer’s address

Along with the monthly report, a Program Participation List will include the following customer information by the rebates reserved and rebates issued:

- a) Customer name
- b) Customer address
- c) Customer phone number, if available.
- d) Rebate installation address
- e) Energy efficiency measure parameters
- f) Date of installation

vi. Denver's Scope of Work

In order to ensure that the GEO Rebate Program is successful, and to allow for optimized collaboration, Denver agrees to the following minimum Program outreach requirements:

1. The program will be highlighted on the Denver Web site with the State's provided content.
2. Denver will submit a marketing plan to the GEO's Public Outreach Manager prior to any rebate program marketing activities taking place.

vii. Items to be submitted to the State

1. Definition of Territory - An Excel file containing the complete zip codes and/or addresses that define the Denver Territory must be submitted to the State within 30 days of the Effective Date of this Contract.
2. Denver Logo - An .EPS (if not available, a .JPG must be submitted electronically to the State within 30 days of the Effective Date of this Contract.

ix. Contract Amount.

Energy Efficiency Rebates

Energy Efficiency Rebates are available for residential applications only.

Local Incentive	GEO Insulation and Air Sealing Rebate Calculation
0% - 25% of the job cost	40% of the job cost, up to \$600
26% - 50% of the job cost	20% of the job cost, up to \$300
51% - 70 % of the job cost	10% of the job cost, up to \$150
71% or greater	No GEO rebate available

Insulation and Air Sealing Combined Rebate *

_____ / \$600
 \$454,545 / Funds Committed Rebate Amount

Rebate Program Administration

 \$45,455 / Total Funds Committed Admin Total Admin Budget

 \$500,000 / **TOTAL Denver Commitment of Funds**

*Or any other energy efficiency rebate as offered by the GEO at the time of Denver's written request to change designation of rebate funds.

EXHIBIT B - REBATE PARAMETERS

EXHIBIT B REBATES

GEO Contract #

Rebate Type	Basic Criteria	Rebate Calculation	GEO Rebate (max)	Participant Contribution	Maximum Rebate to Consumer	Total Budget	Total number of rebates
Energy Audits	Walkthrough qualifies. GEO to supply basic walkthrough criteria. Auditor must be RPI or RENEW certified	If customer pays < \$75, rebate = \$0 If \$76-\$124, then \$25 If \$125 to \$184, then \$50 If \$185 to \$289, then \$75 If \$290, then \$100	\$100 (see left)	Direct match-increases number of rebates, not rebate amount	\$25-\$100, depending on amount paid for service		
Insulation and Air Sealing	Contractor must have Colorado Business license and have location in state	40% of total job cost up to \$400, other local incentives applied first	20% of job cost up to \$300	20% of job cost up to \$300	up to \$400		
	do-it-yourself does not qualify						
Duct Sealing	recommended whole home air sealing should take place prior to insulation installation	40% of total job cost up to \$150 statewide, other local incentives applied first	20% of job cost up to \$75	20% of job cost up to \$75	Up to \$150		
	work must include attic, if applicable but can also include walls, basement, crawl spaces and floors making up the thermal envelope						
Furnace-Boiler Conditioning - Parturbed	Insulation requirements must meet or exceed 2008 IECC ultimate area recommended R values	40% of total job cost up to \$500 statewide, other local incentives applied first	20% of job cost up to \$250	20% of job cost up to \$250	Up to \$500		
	Contractor must have Colorado Business license and have location in state						
Energy Microloan	do-it-yourself does not qualify	40% of total job cost up to \$100 statewide, other local incentives applied first	20% of job cost up to \$50	20% of job cost up to \$50	\$100		
	recommended whole home air sealing should take place prior to insulation installation						
Energy Microloan	If any portion of ductwork is outside of the thermal envelope that ductwork must either be retrofitted to inside the thermal envelope or duct sealed	40% of total job cost up to \$100 statewide, other local incentives applied first	20% of job cost up to \$50	20% of job cost up to \$50	\$100		
	must be ENERGY STAR certified and listed with qualifying appliances on the GEO web site						
Energy Microloan	do-it-yourself does not qualify for rebate	40% of total job cost up to \$100 statewide, other local incentives applied first	20% of job cost up to \$50	20% of job cost up to \$50	\$100		
	Contractor must have Colorado Business license and have location in state						
Energy Microloan	appliance must be purchased to replace existing appliance	40% of total job cost up to \$100 statewide, other local incentives applied first	20% of job cost up to \$50	20% of job cost up to \$50	\$100		
	removal or retirement of old appliance is mandatory (self certified)						
Energy Microloan	Unit must be rebate tracer monitor that communicates with your home objective of meter (single appliance monitors do not qualify)	40% of total job cost up to \$100 statewide, other local incentives applied first	20% of job cost up to \$50	20% of job cost up to \$50	\$100		
	Maximum unit cost \$100						