

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **POPULUS, LLC**, a limited liability company with its principal place of business located at 1722 14th St., Ste. 210 Boulder, CO 80302 (the “Contractor/Consultant”), collectively “the Parties”.

R E C I T A L S

A. The City wishes to procure energy efficiency program support services from the Contractor.

B. The Contractor is ready, willing, and able to provide these services as set forth below.

C. The City is the subrecipient of a federal Energy Efficiency and Conservation Block Better Buildings Grant awarded to Boulder, GC03028, which was obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (“ARRA funds”) in the subgrant amount of \$4,853,758.00. This agreement is subject to and contingent upon the continuing availability of funds from the Grantor.

D. This is an agreement for the provision of services. Construction is not contemplated as a part of the agreed Scope of Work, nor is the purchase of products or equipment.

The Parties agree as follows:

1. COORDINATION AND LIAISON: The Contractor shall fully coordinate all services under the Agreement with the Manager of Environmental Health (“Manager”) or, the Manager’s Designee.

2. SERVICES TO BE PERFORMED:

a. As the Manager directs, the Contractor shall diligently undertake, perform, and provide the services, tasks, deliverables, and activities set forth in **Exhibit A Scope of Work and Rate Table**, attached and incorporated by reference, to the City’s satisfaction.

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

c. The personnel identified in **Exhibit B Key Personnel**, attached and incorporated by reference, shall provide and direct services under this Agreement.

12-0177

d. 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.

e. The City and County of Denver will prepare and submit the quarterly and final EECBG reports to the DOE, with Consultant supplying the following data and information:

(1) Consultant Information:

Legal Name

DBA Name

Address

City, State, Zip+4

Country

Congressional District

Sub Recipient Type (CCR)

D&B DUNS Number

(2) Primary place of performance including: Address, including Street, State, Country, Zip Code+4, Congressional District.

(3) Consultant represents that: a) it is not publically traded; b) it is not a "non-profit" organization; and c) it does not receive more than 80% of its gross revenue from federal awards.

(4) Consultant will provide information as requested by the City so as to support the City's satisfaction of its reporting requirements to the United States, including all work, budget, and schedule progress and status reporting requirements.

f. **Supplemental Requirements** are specified in the attached **Exhibit C ARRA Supplemental Provisions**, attached and incorporated by reference.

3. **TERM:** The Agreement will commence on April 1, 2012 and will expire on May 1, 2013 (the "Term").

4. **COMPENSATION AND PAYMENT:**

a. **Fee:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement the fees set forth in **Exhibit A**

Scope of Work and Rate Table, attached and incorporated by reference. Amounts billed may not exceed the rates and budget set forth in Exhibit A.

b. **Reimbursable Expenses:** There shall be no reimbursable expenses; all contractor costs are paid as a part of the rate structure provided in Exhibit A.

c. **Invoicing:** Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all 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.

d. **Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **NINE HUNDRED SEVENTY-ONE THOUSAND FOUR HUNDRED FORTY-TWO DOLLARS AND NO CENTS (\$971,442.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in Exhibit A herein 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.

5. **STATUS OF CONSULTANT:** 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.

6. **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 Manager.

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".

7. **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.

8. **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.

9. **INSURANCE:**

a. **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 requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said 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. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. 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.

b. **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 D**, 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's 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.

c. 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.

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

e. 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.

f. 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.

g. 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.

h. 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

i. Additional Provisions:

(1) For 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 are in excess of policy limits;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and

(iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) 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

(3) 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.

10. 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 (“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.

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.

11. 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 § 20-107, *et seq.* of the Denver Revised Municipal Code (D.R.M.C.). 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

12. 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 Manager'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 Manager 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be 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. A conflict of interest 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.

18. 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:

Manager, Department of Environmental Health (or Designee)
200 W. 14th Avenue, Suite 310
Denver, Colorado 80214

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock Street, Suite 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.

19. 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 the E-Verify Program.

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

(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.

20. 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 Manager as defined in this Agreement.

21. 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, Denver 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.

22. 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.

23. 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.

24. 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.

25. 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.

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

27. ORDER OF PRECEDENCE:

a. This Agreement is comprised of the Articles 1 through 36 and each of the following, which are incorporated by reference herein:

(1) Exhibits A-E;

(2) ARRA Program Regulations, if applicable;

(3) DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>; and

(4) National Policy Assurances to be incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm

b. In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

28. INTELLECTUAL PROPERTY RIGHTS:

a. 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.

b. 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.

c. Notwithstanding the provisions of the preceding subparagraph b, the Parties acknowledge that the documents listed below are not a "work made for hire" and Contractor dos

not sell, assign or transfer any right, title and interest in and to the Materials to the City even though Contractor may use them in performance of the Scope of Work under this Agreement:

- (1) Introduction to Building Science, taught by David Neiger
- (2) Introduction to Retrofits, taught by Kyle Brown (training aka "BPI Lite")
- (3) Energy Advisor Sales Training - developed by and taught by Bill Leblanc, Boulder Energy Group
- (4) Energy Advisor Academy - taught by Laura Hutchings & Andy Mazal

29. 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.

30. 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 Manager. 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 Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

31. 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.

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. 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, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. 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.

34. 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.

35. REPORTING SOFTWARE AND LICENSE AGREEMENT: Contractor shall make reports to the City as required by the Agreement, specifically by Exhibit A Scope of Work and Rate Table, using Salesforce software provided to Contractor by the City. Contractor acknowledges and agrees to be bound by the terms of the City's Master Subscription Agreement with SALESFORCE.COM INC. in Purchase Order ENVHL-000000903, copy of which is attached as Exhibit E and incorporated by reference.

36. COUNTERPARTS OF THE AGREEMENT: The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

[Signatures appear on the following pages.]

Exhibit A Scope of Work and Rate Table
Exhibit B Key Personnel
Exhibit C ARRA Supplemental Provisions
Exhibit D Certificate of Insurance
Exhibit E Salesforce Master Subscription Agreement

Contract Control Number: ENVHL-201204731-00

Contractor Name: Populus, llc

By: Laura A Hutchings

Name: LAURA A HUTCHINGS
(please print)

Title: CEO, PRINCIPAL
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number: ENVHL-201204731-00

Contractor Name: Populus, llc

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

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

By _____

By _____

By _____



Exhibit A
Scope of Work and Rate Table
Contract Control Number ENVHL-201204731-00
Energy Efficiency Program Support Services

Populus, LLC (“Contractor” or “Populus”) is contracted to perform Tasks #1 and #2 of the residential and commercial energy efficiency program of the City and County of Denver (“Denver”), the Denver Energy Challenge, as described below.

1. Task 1 - Customer Support

Contractor shall operate and staff a professionally-staffed customer support center. The customer support center will take customer calls, answer program questions and facilitate the customer intake process, coordinate with the Denver staff, Denver’s energy advisors, Symbiotic and Recharge Colorado program personnel, and other energy efficiency program partners and contractors; track all program data and manage data exchange; and, facilitate ongoing customer engagement. Each of these functions includes interacting or overlapping service needs and will require close coordination, both internally and externally. Specific functions/subtasks are discussed in greater detail below.

1.1 Call Center

A program dedicated telephone number will be set up to direct customers to a program call center staffed with knowledgeable professionals. The primary goals of the call center are to explain the program process and expectations and answer customers’ questions; guide customers into the most appropriate program track given their personal, business and/or housing characteristics; and schedule initial customer audit or advisor visit. Call center staff must also be able to respond to all customer questions at all stages of the program and help guide customers to appropriate support.

The call center’s primary responsibility is customer intake. Call center staff will walk each potential customer through a series of pre-screening questions to help establish the correct program track for that customer, based on the likely potential for energy and greenhouse gas savings, and gather key data for the energy audit. The call center will also be equipped to do phone only energy advising (energy advisor hotline) for homeowners who sign up for the finance program or who do not wish to have in-home assessments or advising.

The call center shall have capacity for 4,800 annual new enrollments (residential or commercial) as well as energy advisor hotline services, including data and form collection, for up to 2,400 homes annually.

The Contractor shall develop a decision tree to guide customer pre-screening questions. Thus, customers’ responses to initial questions may lead to follow-on questions to help identify more detailed assistance needed. For example, a condo tenant may be asked for details about heating equipment or restrictions in an HOA contract.

Contractor shall request a utility waiver from customers for the program to access their utility bills from Xcel Energy.

Following the above intake steps, call center staff will assign an audit firm and/or energy advisor to the scheduled appointment.

As part of the call center sub-task, the Contractor shall:

1. Operate the center with call center representatives and supervisors available from 8 AM – 6 PM, Monday through Saturday.
2. Employ trained call center representatives to respond to customers at a minimum in both English and Spanish. The call center may choose to use a language line to respond to customers in other languages.
3. Respond to every call with personal interaction with no customer on hold for more than three minutes.
4. Develop a training manual for the program call center.
5. Develop a decision tree to guide customer pre screening questions.
6. Train call center representatives to provide detailed information on the program and participant expectations, to be able to discern, through screening questions, whether the caller's home is likely to offer significant greenhouse gas emission reductions, answer a wide variety of customer questions and provide a level of support and facilitation as needed and desired by each customer.
7. Input customer data, completely and accurately, into the Salesforce database.
8. Obtain customer utility waivers.
9. Respond to customer questions and handle customer complaints.
10. Coordinate with third party entities to follow up with customers interested in their programs (e.g., transfer low-income participant leads to Veterans Green Jobs or Mile High Youth Corps).
11. Coordinate with energy advisors to respond to customer questions and provide support as needed.

1.2 Workflow Management

The Contractor shall be responsible for coordinating with multiple program stakeholders, including Denver staff, Denver's energy advisors, Symbiotic and Recharge Colorado program personnel, and other energy efficiency program partners and contractors, to ensure customers' participation in the program seamlessly moves from intake to audit and/or advising to action to ongoing engagement, with consistent support and in a timely manner.

Contractor shall dedicate a full-time-equivalent (1 FTE) project manager to coordinate with all program stakeholders and coordinate the delivery of the call center and energy advising services.

As part of the workflow management sub-task, the Contractor shall:

1. Coordinate with Xcel energy and/or contractors to refer clients to their audit program.
2. Assign leads to energy advisors.
3. Coordinate and meet the needs of historic preservation requirements.
4. Coordinate with Elevations Credit Union regarding collection of loan data for DOE reporting and tracking.
5. Assist customers seeking to install Solar PV systems through the Elevations loan product with meeting the 15% DOE energy efficiency upgrade requirement.

6. Coordinate with Symbiotic regarding updates to DOE reporting requirements as necessary.
7. Provide detailed quarterly ARRA reporting on jobs created by Populus and its subcontractors.
8. Provide monthly reporting in a format acceptable to Denver to ensure program accountability and transparency.
9. Other related needs as directed by Project Manager.

1.3 Data Management and Tracking and Customer Management System

The Contractor shall use Salesforce to:

- Facilitate collection, tracking and reporting of detailed customer, building and program activity data, including incentives and measure adoption.
- Provide a platform for both telephone and on-line customer intake.
- Support both residential and commercial buildings.
- Give program staff and designated others access to authorized data.
- Provide a robust but simple-to-use customer relations management function.
- Generate regular reports to facilitate customer follow up actions (e.g., all customers whose furnace is expected to reach the end of its useful life during a specific period).
- Allow for data uploads and downloads using standard file formats.

The Contractor shall facilitate the transfer of data and program information among multiple program stakeholders and participants, including but not necessarily limited to Denver staff, Denver's energy advisors, Symbiotic and Recharge Colorado program personnel, and other energy efficiency program partners and contractors, and customers.

Contractor shall capture and track data that includes, but is not necessarily limited to, customer data (e.g., address, contact info), building information (e.g., type of home, square footage), energy usage data (e.g., type of heating and cooling systems), electric and natural gas utilities and account numbers, energy usage, participation phase and activities, appliance portfolio, number of occupants, contractors assigned to jobs, each customer interaction, equipment specifications, audit report/results and recommendations, follow-up activities, rebate eligibility and application progress, financing expectations, schedule and completion dates, and activity and performance of direct installation, equipment and retrofit measures installed.

2. Task Two - Energy Advising

The energy advisor provides education and support to homeowners who enroll in the Denver Energy Challenge. The Contractor shall provide in-home energy advising services from start to finish for up to 1,400 homes. The Contractor shall:

- 1) Provide technical facilitation during walkthrough audits
 - Walkthrough Audit: A walkthrough audit is a visual inspection of building components, envelope characteristics, mechanical systems and household appliances provided by the energy concierge. This model will include a visual inspection of insulation levels, mechanical systems and typical trouble spots to identify major deficiencies and "low hanging fruit" conservation opportunities. Walkthrough audits may be provided for particular single family homes,

individual units in multifamily housing, mobile homes or common areas in multifamily housing as appropriate (determined through customer pre-screening).

- 2) Educate consumers on the efficient uses of energy, strategies for reducing greenhouse gas emissions, options for reducing energy use, and other issues including but not limited to:
 - Walkthrough the customer's home to point out and discuss behavioral and low-cost retrofit actions they can take, such as demonstrating how to program a thermostat or looking at furnace filters and discussing how frequently they should be changed.
 - Review educational materials on behavioral actions and complementary GHG reduction programs (e.g., transportation, waste reduction, etc.), described in greater detail below.
 - Review audit reports to ensure customers fully understand the results and recommendations.
 - Follow-up and be available after the audit to answer customer questions via phone and/or email.
 - Present technical and educational information to housing associations and/or multiple tenants and associated owners in applicable multifamily buildings.
- 3) Facilitate customer investment in energy efficiency measure installation:
 - Discuss all available rebates and incentives and assist customer to fill out and submit applicable rebate applications.
 - Explain available financing options, facilitate application process, and possibly originate financing, if applicable.
 - Design an ongoing action plan for interested customers wishing to install comprehensive upgrades over time.
- 4) Coordinate multifamily participation. In cases where residents of individual multifamily housing units, Home Owner Associations, property managers, or multifamily apartment building owners are interested in participating in the program, the energy concierge will coordinate, to the extent possible, with various actors to schedule audits, identify common installation recommendations and install direct measures within multiple units and/or common areas. Where appropriate, given building conditions, technical and equipment characteristics and cooperation by participating customers, the energy concierge may recommend one of the program's multifamily auditors to evaluate building characteristics and opportunities for deeper retrofits.
- 5) Provide ongoing measure installation support and facilitation, as requested by customers.

2.1 Energy Advisor Training

Provide a series of 4 trainings to improve the sales and advising skills of energy advisors throughout the Denver Energy Challenge program. Create a knowledgebase in Salesforce that contains program information regarding rebates, tax credits, answers to commonly asked questions, including building science questions, in a keyword searchable format.

2.2 Special Projects

Upon written authorization from the City, Contractor shall provide additional energy efficiency program related tasks on an as needed basis not to exceed the budgeted amount of \$72,572.00, in accordance with the unit rates specified in Table 1 or as negotiated by agreement of the Parties.

Table 1. Energy Efficiency Program Support Rates/Budget

Task	Unit	Rate	Not to exceed Budgeted Amount
1. Customer Support			
1.1 Call Center	Monthly cost	\$37,537.50	\$450,450.00
1.2 Workflow management	Monthly cost	\$8,341.67	\$100,100.04
1.3 Data Management and Tracking	N/A	Included	Included
2. Energy Advising	Monthly cost	\$26,693.33	\$320,319.96
2.1 Energy Advisor Training	Per Training	\$7,000	\$ 28,000.00
2.2 Special Projects as directed	TBD	TBD	\$ 72,572.00
Total			\$971,442.00

Part Four: Key Personnel

Laura Hutchings, *Principal, CEO*

Interim Program Management

- J.D., Boston University School Law
- B.A., University of Pittsburgh

At Populus, Laura Hutchings has overseen the development of cutting-edge energy efficiency codes for municipalities and the implementation of large-scale community energy efficiency programs, including the development of the nation's first energy code for rental housing and implementing Boulder County's EnergySmart service which serves over 3,000 homes per year. Laura currently serves on the Board of Directors for the Energy Efficiency Business Coalition ("EEBC").

Prior to joining Populus, Ms. Hutchings practiced as a litigation attorney in the Boulder office of an international law firm where she was a member of the firm's Sustainability Working Group and Renewable Energy Group.

Ms. Hutchings will be responsible for program management during the month-long ramp-up. She will collaborate with Andy Mazal of Populus who serves as Program Manager of Boulder County's EnergySmart, and work closely with Project Manager Sally Lambert to facilitate a seamless transition of responsibilities after the initial month. Ms. Hutchings will continue her involvement by overseeing the key personnel throughout the duration of the program, and monitor workflow to ensure continued program success.

Andy Mazal, *Principal & Director of Existing Homes*

- M.B.A., Thunderbird School of Global Management
- B.B.A., Finance, Southern Methodist University
- LEED Accredited Professional
- RESNET Certified Home Energy Rater
- BPI Certified Building Analyst

Andy Mazal is a Principal and the Director of Existing Homes at Populus and serves as the Program Manager for Boulder County's EnergySmart Service. Mr. Mazal is responsible for managing all facets of the EnergySmart program, including maintaining and optimizing CMS functionality, overseeing the call center, energy advising team, and third party auditors and contractors, as well as handling reporting for the DOE and Boulder County. He coordinates heavily with the key players at Boulder County and the encompassed municipalities, and other funding partners to maximize program health.

Andy Mazal will bring his experience managing a successful energy efficiency program to the growth of the Denver Energy Challenge. With the firsthand knowledge of administering all aspects of a large-scale energy efficiency program, Mr. Mazal will oversee Dave Penzkover to ensure successful energy advisor management and training

and exercise collaboration on workflow and best practices with Project Manager Sally Lambert, offering lessons learned to guide programmatic decisions.

David Neiger, Founder & Principal

Advisor Training / Technical Consulting and Training

- B.S. Architecture, Penn State University
- LEED for Homes Accredited Professional & LEED for Homes Green Rater
- RESNET Certified Home Energy Rater
- RESNET Provider Quality Assurance Designee
- BPI Certified Building Analyst
- City of Boulder Green Points Certified

For years, David Neiger has been at the forefront of the high performance home industry, providing energy modeling and consulting to architects and builders who seek to achieve zero energy homes, above-code energy performance and green building certifications. As a principal at Populus, Mr. Neiger has consulted on hundreds of projects throughout Colorado, all of which targeted above-code energy performance. As an expert on residential energy efficiency, he has been engaged by municipalities throughout the West to provide consultation and training to assist in the implementation of performance-based energy codes and energy efficiency programs. Mr. Neiger has served as an Advisor on the City of Boulder's Climate Action Plan Residential Technical Team and has served as a subject matter expert to USGBC in connection with its LEED for Homes program and as the Chair of the Boulder Green Building Guild's Legislative and Public Policy Committee.

Mr. Neiger's role in the Denver Energy Challenge will be to deliver building science training to existing energy advisors in the program and provide as-needed technical consulting and training to align key players within the program. Such training will encompass everything from the basics of insulation and air-sealing retrofits to advanced building systems integration. Mr. Neiger's expertise can be utilized to calculate projected energy savings for individual or packaged measures and his depth of experience in modeling and analysis can be integrated into program and strategic rebate design.

Sally Lambert, Energy Advisor

Project Management

Sally Lambert has garnered a wealth of experience as an Energy Advisor for Boulder County's EnergySmart. Ms. Lambert has a thorough knowledge base in building science and energy efficiency, a passion for education, and strong interpersonal skills. She maintains the leading conversion rate amongst the energy advisors at Populus: 63% of the nearly 400 homeowners Sally has guided through the program have made energy upgrades to their homes. Ms. Lambert's extensive teaching and leadership experience in the realm of sustainability, her patience and desire to help homeowners, and her diligent work ethic culminate into her integral role in driving programmatic success. Examples of Ms. Lambert's leadership experience in EnergySmart include:

- Facilitate discussion among the State Historic Board, the City of Boulder

Planning Department, and the EnergySmart Manager to write a workflow for the historic preservation process as it pertains to historic properties or properties over 50 years old whose owners would like to pursue energy efficiency upgrades through EnergySmart.

- Manage the Ripple Map outreach project in coordination with the EnergySmart Manager and Larkspur Energy Group. Devise workflow for outreach efforts; oversee advisor outreach to homeowners; facilitate communication between interested homeowners and representatives from the Larkspur Energy Group; manage data pertaining to outreach efforts.
- Create resources, templates and workflows to streamline the advising process for SmartRegs. Collaborated with other members of the SmartRegs team to update the Salesforce processes, organization schemes, and data fields for SmartRegs accounts. Assisted in the SmartRegs training for other EnergySmart advisors.

Ms. Lambert will serve a project management role, coordinating workflow, reporting, and integrating with Denver staff. Ms. Lambert will work closely with Ms. Hutchings and Mr. Mazal, as well as the Denver staff and key project partners during the ramp-up phase to establish program organization and processes.

Dave Penzkover, Lead Energy Advisor

Advisor Management

- Masters of the Built Environment, Sustainable Development, University of New South Wales, Australia
- B.S. Architectural Studies, University of Wisconsin
- LEED Accredited Professional

Dave Penzkover is the Lead Energy Advisor at Populus. In his role, Mr. Penzkover leads the Boulder County Energy Advisor team and maintains an exemplary conversion rate of 60% among over 400 clients. In addition, Mr. Penzkover's leadership experience includes:

- Attend weekly stakeholder meetings with Boulder County, City of Boulder and City of Longmont
- Disseminate programmatic information to energy advisors
- Provide in-office support for advisor team
- Provide energy advisor training, including ride along visits

Mr. Penzkover will transition into a full-time Advisor Management role for both Boulder County's and Denver's energy efficiency programs. In this position, Mr. Penzkover will be responsible for training the Populus pool of Advisors in program logistics and best practices, and will oversee their day-to-day performances.

Kyle Brown, Director of Residential Energy Services

Technical Consulting and Training

- M.S. Environmental Science, Ohio University

- B.S. Economics and Environmental Science, Ohio University
- RESNET Certified Home Energy Rater
- BPI Certified Building Analyst

As the Director of Residential Energy Services at Populus, Kyle Brown has comprehensive experience certifying homes through numerous national green building certifications and has taught dozens of Building Performance Institute, Residential Energy Services Network Home Energy Rating certification, and building science classes across the country. Mr. Brown will work with Mr. Neiger to provide as-needed energy consulting and energy advisor training.

Exhibit C
American Recovery and Reinvestment Act
SUPPLEMENTAL REQUIREMENTS

1. General Provisions.

- A. For purposes of this Agreement, Consultant is a non-federal employer and the City's Contractor (alternatively, City's Vendor) to be compensated by ARRA funds.
- B. Consultant shall provide information to City in a timely manner and as necessary for City to comply with "Reporting and Registration Requirements under Section 1512 of the Recovery Act, Federal Assistance Reporting Checklist, DOE F 4600.2, and as otherwise required by the U.S. Department of Energy ("DOE").
- C. Consultant shall acknowledge DOE support and express a disclaimer in the publication of any material, whether copyrighted or not, based on or developed under this Agreement, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

- D. DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Consultant shall provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.
- E. Consultant shall not expend federal funds paid under this Agreement, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as

described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

F. Consultant shall maintain current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during this Agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

2. **Flow Down Requirements.** Consultant shall comply with the following special terms and conditions:

A. (Reserved.)

B. Segregation of Costs

Consultant must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by Consultant or any private entity for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect

such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to

conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Reserved

H. False Claims Act

Consultant shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting

Consultant may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Consultant shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Consultant shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.



EXHIBIT D

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/27/2012

PRODUCER Phone: (720) 457-3800 Fax: (303) 223-9274
BOULDER INSURANCE SOLUTIONS, LLC
 4941 10TH STREET
 BOULDER CO 80304

INSURED
POPULUS, LLC
 1722 14th St. #210
 Boulder CO 80302

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

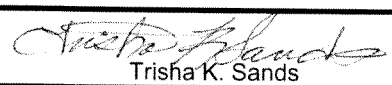
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Sentinel Insurance Company, LTD	11000
INSURER B:	Travelers Casualty Insurance Company of America	19046
INSURER C:	Hartford Accident and Indemnity Company	22357
INSURER D:	Philadelphia Insurance Company	
INSURER E:		

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	34SBAIR6310	03/11/12	03/11/13	EACH OCCURRENCE	\$ 2,000,000
		DAMAGE TO RENTED PREMISES (Ea occurrence)				\$ 1,000,000	
						MED. EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 2,000,000
						GENERAL AGGREGATE	\$ 4,000,000
						PRODUCTS - COMP/OP AGG	\$ 4,000,000
							\$
B		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS _____	BA-341M9019-10-SEL	10/28/11	10/28/12	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
		BODILY INJURY (Per person)				\$	
		BODILY INJURY (Per accident)				\$	
		PROPERTY DAMAGE (Per accident)				\$	
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
		OTHER THAN AUTO ONLY: _____ EA ACC AGG				\$	
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE _____ <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	\$
		AGGREGATE				\$	
						\$	
						\$	
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below Y/N <input type="checkbox"/>	34WECJZ8448	10/30/11	10/30/12	WC STATU-TORY LIMITS	OTHER
		E.L. EACH ACCIDENT				\$ 100,000	
		E.L. DISEASE-EA EMPLOYEE				\$ 100,000	
		E.L. DISEASE-POLICY LIMIT				\$ 500,000	
D		OTHER Professional Liability	PHSD703405	02/28/12	02/28/13	\$1,000,000 occ/agg limit \$2,500 ded	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/ SPECIAL PROVISIONS
 The City and County of Denver, including its elected and appointed officials, employees and volunteers are deemed an additional insureds with regards to the commercial general liability and business auto liability.

CERTIFICATE HOLDER	CANCELLATION
City & County of Denver Department of Environmental Health Division of Environmental Quality 200 West Fourteenth Avenue #310 Denver CO 80204 Attention: elizabeth.babcock@denvergov.org	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE  Trisha K. Sands



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 interoperability 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 interoperability 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).
- 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:

SALESFORCE.COM, INC.	Denver Department of Environmental Health
By: <u><i>Meredith Schmidt</i></u> <small>18F000744286477</small>	By: <u><i>[Signature]</i></u>
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>