AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Consent 10 - Second Amendment to Memorandum of Understanding among Eagle County, Gunnison County and Pitkin County Concerning the Energy Smart Program

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
Please see the attached cover letter and contract that we received from Eagle County.

Fiscal Impact:

Submitted by: Katherine Haase **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

There is no fiscal impact to Gunnison County.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 2/11/2015

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\atrezise Discharge Date: 2/12/2015 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:
The new entity formed by the merger of ORE and Cold Harbor (retaining the ORE name) will continue to be our Valley's representative to this effort.

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 2/12/2015

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 2/17/2015 Follow Up Agenda Date:

Revised April 2013

DEPARTMENT OF
ENVIRONMENTAL HEALTH
(970) 328-8755
Fax: (970) 328-8788
TOLL FREE: 800-225-6136
www.eaglecounty.us

Raymond P. Merry, REHS, Director

To: Matthew Birnie, Gunnison County Manager
From: Adam Palmer, Environmental Policy Planner, Eagle County
Date: December 31, 2014
Re: Second Amendment to the Energy Smart Colorado Memorandum of Understanding

Matthew,

Thank you for all of your assistance as an integral partner of the Energy Smart Colorado program. You may recall that a mission of the grant to the three counties from the Department of Energy was to develop a program for energy efficient improvements that could be sustained over the long term. To that end, Eagle County staff has been working closely with the Energy Smart Colorado, Inc. Board of Directors on the transition of the program including the transfer of day-to-day operations and management of program assets. The culmination of that effort is the preparation of the following documents:

1. A Transition Agreement between Eagle County and new non-profit, Energy Smart Colorado, Inc. a 501-c-3 non-profit organization made up of representatives from the various non-profit partners involved in the program, along with representatives from the Colorado Energy Office and Boulder County. This document is referred to as the Transition Agreement and governs on-going operation and administration of the Energy Smart Program and provides for certain access to and drawdown of the Revolving Loan Fund ("RLF").

2. Second Amendment to RLF Agreement between Eagle County and Energy Smart Partners, LLC. This document amends the existing RLF Agreement to reflect the commitments made in the Transition Agreement including expansion of the RLF to other jurisdictions and drawdown of the RLF.

3. Second Amendment to Memorandum of Understanding among Eagle County, Gunnison County and Pitkin County. This document confirms that each of the counties is aware of and agrees with the transition plan as set forth in the Transition Agreement and Second Amendment to the RLF.

The Second Amendment to the Memorandum of Understanding among Eagle County, Gunnison County and Pitkin County is meant to be in keeping with the intent of the previous MOUs among the same parties to support energy efficiency improvements to new and existing buildings. Eagle County is respectfully requesting that Gunnison County and Pitkin County approve the Second Amendment so the transition can occur. As a bit of history:

August 12, 2010 – The Department of Energy ("DOE") awards a grant to Eagle County, Gunnison County and Pitkin County. Eagle County is the "lead agency" on the Grant.

April 11, 2012 – The counties entered into a Memorandum of Understanding to establish the relationship of the counties concerning the Energy Smart Program and the RLF. This MOU authorized Eagle County to sign agreements with Energy Smart Partners, LLC; a subsidiary of Funding Partners, a Colorado non-profit Community Development Financing Institution, to create and administer the $985,000 Revolving Loan Fund (RLF), which has lent $304,000 in loans to date to enable energy improvements in participating residents' homes.

January 7, 2014 – The Counties enter into an amendment to the MOU (the "Lake County Amendment") that allowed the extension of up to $50,000 of the RLF to Lake County residents participating in the Energy Smart Program, and authorized Eagle County to sign the First Amendment to the RLF agreement thereby allowing for this change in the administration.

As noted above, the purpose of the Second Amendment to the Memorandum of Understanding is to seek approval from Pitkin County and Gunnison County for the transfer of the program assets to Energy Smart Colorado, Inc., a 501-c-3 non-profit organization made up of representatives from the various non-profit partners involved in the program, along with representatives from the Colorado Energy Office and Boulder County as the program continues to evolve and expand to provide services statewide. Expansion of the program is one of the stated goals of the grant.

I have attached for your consideration and signature the Second Amendment to Memorandum of Understanding among Eagle County, Gunnison County and Pitkin County Concerning the Energy Smart Program. The document includes two exhibits. Exhibit 1 is the Transition Agreement between Eagle County and Energy Smart Colorado, Inc. and contains multiple exhibits. Exhibit 2 is the Second Amendment to the RLF Agreement between Eagle County and Energy Smart Partners LLC and related exhibits. I have also attached a table of contents that outlines the various exhibits.

It is important to note that DOE staff has reviewed and approved the Transition Agreement and that Eagle County will remain responsible for on-going reporting to DOE concerning the RLF while it remains in existence.

We thank you for your review of the attached documents, and feel free to provide any comments, feedback, questions, I'd be happy to provide any additional information as desired.

Thank you,

Adam Palmer, AICP
Environmental Policy Planner, Eagle County
adam.palmer@eaglecounty.us
970-328-8734

Enclosures

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FOR
SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING

SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING AMONG EAGLE COUNTY, GUNNISON COUNTY AND PITKIN COUNTY CONCERNING THE ENERGY SMART PROGRAM

Exhibit 1 to the Second Amendment is the Transition Agreement between Eagle County, Colorado and Energy Smart Colorado, Inc. Exhibit 1, the Transition Agreement, includes Exhibits A through G.

Exhibit A to Transition Agreement: Assets

Exhibit B to Transition Agreement: Revolving Loan Fund (RLF) Agreement with EnergySmart Partners LLC and amendments. NOTE: THIS EXHIBIT IS NOT INCLUDED AS IT IS VOLUMINOUS AND WAS PREVIOUSLY PROVIDED TO AND APPROVED BY THE COUNTIES*

Exhibit C to Transition Agreement: RLF Accounting as of December 31, 2014

Exhibit D to Transition Agreement: Grant Agreement with DOE. NOTE: THIS EXHIBIT IS NOT INCLUDED AS IT IS VOLUMINOUS AND WAS PREVIOUSLY PROVIDED TO AND APPROVED BY THE COUNTIES*

Exhibit E to Transition Agreement: Notice of Expansion of RLF

Exhibit F to Transition Agreement: Notice of Withdrawal of Jurisdiction from RLF

Exhibit G to Transition Agreement: Notice of Drawdown of RLF

Exhibit 2 to the Second Amendment is the Second Amendment to RLF Agreement between Eagle County and EnergySmart Partners, LLC. Exhibit 2 contains the following exhibits:

Exhibit L: Notice of Drawdown of RLF

Exhibit M: Notice of Expansion of RLF

Exhibit N: Notice of Withdrawal of Jurisdiction from RLF

Exhibit A-1: Energy Smart Partner's Compliance and Loan Servicing Standards

Exhibit B-1: RLF Contractor Agreement

Exhibit C-1: Homeowner Statement

12/30/14

SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING AMONG EAGLE COUNTY, GUNNISON COUNTY AND PITKIN COUNTY CONCERNING THE ENERGY SMART PROGRAM

THIS SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING ("Second Amendment") is entered into on the ___ day of _____,2014, by and between Eagle County, Colorado, Pitkin County, Colorado and Gunnison County, Colorado (collectively, the Counties).

WHEREAS, Eagle County, Gunnison County and Pitkin County (hereinafter collectively the "Counties") were awarded an Energy Efficiency and Conservation Block Grant also known as Better Building Grant funded by the United States Department of Energy ("DOE") through the American Recovery and Reinvestment Act of 2009 which is documented by notice of award dated June 14, 2010 with an effective date of August 12, 2010 from DOE to Counties (collectively the "Grant"); and

WHEREAS, Eagle County was designated as the lead agency in the Grant; and

WHEREAS, to fulfill the terms of the Grant, the Counties collaborated with Community Office for Resource Efficiency ("CORE") a non-profit corporation in Pitkin County, Office of Resource Efficiency ("ORE") a non-profit corporation in Gunnison County and Walking Mountains Science Center ("Walking Mountains") a nonprofit corporation in Eagle County to establish the Energy Smart Program. These entities shall collectively be referred to as the "Non-profits"; and

WHEREAS, the Energy Smart Program is comprised of certain assets which include website, tracking software, education and advisory services (hereinafter the "Assets") and access to a revolving loan fund ("RLF") to provide financing for energy efficiency home improvements which was funded by the Grant; and

WHEREAS, the RLF was established using Grant funds and through an agreement by and between EnergySmart Partners, LLC ("ESP"), a Colorado limited liability company, a wholly owned subsidiary of Funding Partners for Housing Solutions, Inc., a non-profit organization certified by the United States Department of Treasury CDFI as a community development financial institution as Loan Fund Administrator and Eagle County ("RLF Agreement"); and

WHEREAS, one of the goals of the Grant is to create a program which can be utilized by other entities and jurisdictions in achieving common energy efficiency goals; and

WHEREAS, the Grant concludes on November 1, 2014, but the Counties desire to fulfill the Grant objectives and goals by planning for the continuation and expansion of the Energy Smart Program; and

WHEREAS, the Counties entered into a Memorandum of Understanding dated on or about April 11, 2012 ("MOU") to establish the relationship of the Counties concerning the Energy Smart Program and the RLF; and

WHEREAS, the Counties entered into an Amendment to the MOU entitled the "Lake County Amendment" to allow Cloud City Conservation Center ("C4") and Lake County Access to the Assets and RLF; and

WHEREAS, the Counties and Non-profits have been working to establish a plan for the transition and on-going operation and growth of the Energy Smart Program, its Assets and the RLF; and

WHEREAS, Energy Smart Colorado, Inc., a Colorado non-profit corporation has been formed by CORE, Walking Mountains and HC3 (a Colorado-non-profit corporation located in and supported in part by Summit County) with collaboration from ORE; and

WHEREAS, the Counties now desire to further amend their MOU to allow for the transfer of the Assets to Energy Smart Colorado, Inc. and for certain administration and access of the RLF by Energy Smart Colorado, Inc. and Eagle County in an effort to close out the Counties obligations under the Grant.

NOW THEREFORE, the Counties agree as follows:

1. The proposed agreement for transition of the Assets and on-going operation and access to the RLF between Eagle County and Energy Smart Colorado, Inc. is attached hereto as Exhibit 1 the ("Transition Agreement"). The Transition Agreement contains Exhibits A through G. In an effort to simplify this Second Amendment, Exhibit B and Exhibit D to the Transition Agreement have been omitted from Exhibit 1 as those documents have been previously supplied to and approved by the Counties. For clarity, Exhibit B to the Transition Agreement is the Revolving Loan Fund Agreement and amendments thereto and Exhibit D is the Grant agreement with DOE. Exhibit B and Exhibit D to the Transition Agreement will be made available by Eagle County upon request.

2. The Counties hereby approve the proposed form of the Transition Agreement and authorize Eagle County to enter into the Transition Agreement in a form the same as or substantially similar to the draft attached as Exhibit 1.

3. The Counties hereby consent to and approve the transfer and conveyance of the Assets to Energy Smart Colorado, Inc. as set forth in the Transition Agreement and Pitkin County and Gunnison County hereby waive any ongoing claim to or in such Assets.

4. The Counties hereby consent to access to and on-going operation of the RLF by Eagle County and Energy Smart Colorado, Inc. as set forth in the Transition

Agreement. Pitkin County and Gunnison County hereby waive any claims against Eagle County or Energy Smart Colorado, Inc. associated with the right to approve of any access to the RLF by residents of other jurisdictions. Pitkin County and Gunnison County further waive any claims against Eagle County concerning its right to approve any partial or complete draw down or termination of the RLF by Energy Smart Colorado, Inc. or Eagle County and distribution of RLF funds as approved by DOE from time to time.

5. The limitation of fifty thousand dollars ($50,000) set forth in the Lake County Amendment is hereby eliminated.

6. The proposed Second Amendment to the RLF Agreement is attached hereto as Exhibit B. The Counties hereby approve the form of the Second Amendment to the RLF Agreement and authorize Eagle County to enter into the Second Amendment to the RLF Agreement in a form the same as or substantially similar to the draft attached as Exhibit B.

7. Without further approval or action by the Counties, Eagle County is hereby authorized to take such action it deems necessary concerning the RLF and Energy Smart Program. Eagle County may enter into such other or future amendments to the Transition Agreement and Revolving Loan Fund Agreement as may be necessary including termination of the same.

8. To the extent required by the Grant, Eagle County and Energy Smart Colorado, Inc. shall be responsible for on-going reporting to DOE.

9. This Second Amendment supersedes and replaces all earlier MOU's, amendments and agreements concerning the Grant and Energy Smart Program among the Counties.

EAGLE COUNTY, COLORADO
By and through its Board of County Commissioners

By:_____
Jillian H. Ryan, Chairman

Attest:

_____
Teak Simonton, Clerk to the Board

[PITKIN AND GUNNISON COUNTY SIGNATURE BLOCKS ON FOLLOWING PAGES]

12/30/14

PITKIN COUNTY, COLORADO
By and through its Board of County
Commissioners

By: _____
, Chairman

Attest:

_____
, Clerk to the Board

12/30/14

GUNNISON COUNTY, COLORAD
By and through its Board of County
Commissioners

By:_____
, Chairman

Attest:

_____
, Clerk to the Board

EXHIBIT 1

TRANSITION AGREEMENT

AGREEMENT
BETWEEN EAGLE COUNTY, COLORADO
AND
ENERGY SMART COLORADO, INC.
(Transition Agreement)

THIS AGREEMENT ("**Agreement**") is entered into by and between Eagle County, Colorado, a body corporate and politic, ("**Eagle County**") and Energy Smart Colorado, Inc., a Colorado nonprofit corporation ("**ESC"**) on the ___ day of _____, 2015 (the "**Effective Date**"). Eagle County and ESC shall collectively be referred to as the "**Parties**".

RECITALS

WHEREAS, Eagle County, Gunnison County and Pitkin County (hereinafter collectively the "**Counties**") were awarded an Energy Efficiency and Conservation Block Grant also known as a Better Buildings Grant funded by the United States Department of Energy ("**DOE**") through the American Recovery and Reinvestment Act of 2009 which is documented by a notice of award dated June 14, 2010 with an effective date of August 12, 2010 from DOE to Counties (collectively the "**Grant**"); and

WHEREAS, Eagle County was designated as the lead agency in the Grant; and

WHEREAS, the Grant was awarded to allow the Counties to improve energy efficiency in approximately 5200 homes in the Counties by utilizing energy audits, resource centers, innovative financing options and workforce training; and

WHEREAS, Pitkin County designated Community Office for Resource Efficiency ("**CORE**"), a nonprofit corporation located in Pitkin County, to assist with implementation of Grant efforts in Pitkin County; and

WHEREAS, Gunnison County designated Office for Resource Efficiency ("**ORE**"), a nonprofit corporation located in Gunnison County, to assist with implementation of Grant efforts in Gunnison County; and

WHEREAS, Eagle County contracted with Eagle Valley Alliance for Sustainability, a nonprofit corporation, which is now known as Walking Mountains Science Center (hereinafter "**Walking Mountains**"), to assist with implementation of Grant efforts in Eagle County; and

WHEREAS, CORE, ORE and Walking Mountains are collectively referred to as the "**Nonprofits**"; and

WHEREAS, ESC was established by CORE, Walking Mountains and HC3 (defined below); and

WHEREAS, ESC desires to acquire, operate and administer the Energy Smart Program (defined below) as set forth herein; and

WHEREAS, through the efforts of the Counties and the Nonprofits the Energy Smart Program was created, and includes but is not limited to, a website, tracking software, education and advisory services, low cost home energy assessments and access to rebates (the "**Energy Smart Program**"); and

WHEREAS with consent of the Counties and approval of DOE, Eagle County entered into an agreement with EnergySmart Partners LLC, a wholly owned subsidiary of Funding Partners for Housing Solutions, Inc., a non-profit organization certified by the United States Department of the Treasury as a community development financial institution ("**ESP**"), for the implementation of a Revolving Loan Fund (defined below) to facilitate energy efficiency residential construction projects within the Counties to make borrowers' homes more energy efficient; and

WHEREAS, other goals of the Grant are to expand the Energy Smart Program to other communities, jurisdictions and entities and to establish an entity that can manage and implement the expanded Energy Smart Program; and

WHEREAS, ESC has developed a business plan and intends, among other things, to expand and permit access to the Energy Smart Program and Assets (defined below) by allowing participating entities and jurisdictions to pay a fee for participation, access to and use of the Assets; and

WHEREAS, the Grant concludes on November 1, 2014, but certain on-going reporting requirements and continued restrictions established by DOE concerning the use of the Revolving Loan Fund will remain; and

WHEREAS, the purpose of this Agreement is to transition operation of the Energy Smart Program from the Counties to a non-profit entity after closure of the Grant in November, 2014 and to allow ESC access to the Revolving Loan Fund in accordance with the terms and conditions set forth herein; and

WHEREAS, High Country Conservation Center ("**HC3**") is a non-profit corporation located in and supported in part by Summit County; and

WHEREAS, HC3, while not one of the original Nonprofits, desires to participate in the Energy Smart Program and has resources and expertise in the area of energy efficiency; and

WHEREAS, the Counties have or will enter into a Second Amendment to Memorandum of Understanding concerning the Energy Smart Program authorizing Eagle County to enter into this Agreement; and

WHEREAS, ESC has the experience, expertise and vision to operate a sustainable Energy Smart Program.

AGREEMENT

NOW THEREFORE, based upon the representations set forth in the foregoing recitals, for good and valuable consideration, including the promises set forth herein, the Parties agree to the following:

ARTICLE I
DISPOSITION OF ASSETS

1.1 The assets identified on Exhibit A (hereinafter the "**Assets**") were developed by the Counties and paid for through the Grant. Exhibit A is attached hereto and incorporated herein by reference.

1.2 As of the Effective Date, Eagle County, with consent and approval of DOE and the Counties, and subject to the terms and conditions set forth in this Agreement, hereby assigns, transfers, conveys and grants any and all right, title and any interest and obligations of the Counties in the Assets.

1.3. As of the Effective Date and subject to the terms and conditions set forth in this Agreement, ESC hereby assumes all right, title and any and all interest and obligations associated with the Assets. ESC shall be responsible for all liability associated with its use and operation of the Assets arising on or after the Effective Date.

1.4 ESC is accepting the Assets in their "AS IS" "WHERE IS" "WITH ALL FAULTS" condition and without reliance on any representation or warranty other than those expressly set forth in this Agreement. Further, ESC, its affiliates, subsidiaries, related or participating entities, jurisdictions, employees, agents, contractors and subcontractors hereby waive any and all claims whether known or unknown against the Counties in connection with the transfer, use, operation, maintenance or in any way associated with the Assets.

1.5. As consideration for the conveyance of the Assets, ESC agrees to utilize the Assets and operate the Energy Smart Program on a continuous basis as follows:

a. ESC shall be responsible for continued community education and outreach.

b. ESC shall be responsible for training contractors regarding the Energy Smart Program and the conduct of home energy assessments. ESC shall ensure that existing contractors continue to receive current information and training on the Energy Smart Program.

c. ESC shall require new entities and jurisdictions participating in the Energy Smart Program to attend necessary training and adhere to Energy Smart Program

standards and guidelines as may be amended by ESC from time to time. ESC will act as and will ensure that any new participants act as ambassadors for the Energy Smart Program both to the public and other Colorado communities.

d. ESC shall promote and operate the Energy Smart Program in a skillful, professional and competent manner in accordance with all applicable laws, rules and regulations.

e. ESC shall not convey, assign or transfer title, in whole or in part, to the Assets to any third party without the prior written consent of Eagle County and consent of DOE.

f. ESC shall be responsible for the professional quality, technical accuracy and the coordination of the Energy Smart Program and services furnished by or on behalf of ESC. ESC shall correct at its sole cost and expense any errors in its operation of the Energy Smart Program whether by itself, its affiliates, subsidiaries, Nonprofits, or related or participating entities, jurisdictions, employees, agents, contractors or subcontractors. This paragraph shall survive any termination or expiration of this Agreement.

g. ESC has established and may modify from time to time, license fee(s) and/or annual dues which must be paid by entities and jurisdictions which participate in, have access to and use of the Assets. ESC agrees that each of the Counties may, but shall not be obligated, to pay fees or dues to have access to and use of the Assets or RLF (defined below). Nothing herein shall preclude ESC from establishing fees or charges for access to and use of new programs or services beyond the Assets and RLF.

ARTICLE 2
ACCESS TO AND ONGOING OPERATION OF REVOLVING LOAN FUND

2.1 Eagle County with authorization from Gunnison County and Pitkin County entered into an agreement dated June 11, 2012 with ESP for the administration of an Energy Efficiency and Renewable Energy Revolving Loan Fund (hereinafter the "**Revolving Loan Fund**" or "**RLF**"). A copy of that agreement and any amendments thereto is attached hereto as Exhibit B (hereinafter the "**Revolving Loan Fund Agreement**").

2.2 The RLF was funded through the Grant and a detailed accounting as of the Effective Date is attached hereto and incorporated herein as Exhibit C.

2.3 The Grant between the Counties and DOE closed on November 1, 2014. The Parties acknowledge and agree that despite such closure, Eagle County, as the lead agency under the Grant, continues to have responsibility for and an ongoing obligation to DOE, to report on the status of the RLF and ensure it is used in accordance with Grant and DOE requirements. The Grant is attached hereto and incorporated herein as Exhibit D.

2.4 In light of the on-going requirements associated with the RLF, the Parties agree that ESC may have access to the RLF but only in accordance with the terms and conditions set forth herein. Eagle County shall remain responsible for on-going reporting to DOE with assistance from ESC.

2.5 Any loans or expenditures made from the RLF during the term of this Agreement shall be in accordance with this Agreement, the Revolving Loan Fund Agreement, Grant, Federal law including but not limited to 42 USCA 17154 and 10 CFR Ch. II, Subch. H, Pt. 600 and State law, DOE rules, regulations and any guidance that may be issued or amended from time to time. The most recent guidance appears at http://www.energy.gov/eere/wipo/articles/energy-efficiency-and-conservation-block-grant-financing-programs-after-grant and ESC acknowledges that it has read and understands that guidance. ESC's failure to comply with the terms of this paragraph 2.5 shall be default under the terms of this Agreement.

2.6 The funds within the RLF are not and shall not be restricted for use by citizens or residents of a single community or jurisdiction.

2.7 ESC may not expand the purposes or types of properties for which loans are available through the RLF without prior written approval of DOE and Eagle County. Any such expansion will require an amendment to the Revolving Loan Fund Agreement in a form satisfactory to Eagle County and ESP as determined by Eagle County and ESP in their sole discretion.

2.8 ESC acknowledges that compliance with or exemption or exclusion from NEPA, Davis Bacon Act, Historical Preservation reporting and Buy American Act are requirements of the Grant.

2.9 The RLF cannot be commingled with other or different funds. In the event ESC establishes other sources of capital, then such funds shall be segregated and separately accounted for.

2.10 ESC shall be responsible for any non-compliance by ESC, its affiliates, subsidiaries, related or participating entities or jurisdictions, employees, agents, contractors or subcontractors in connection with expansion or withdrawal of participating entities or jurisdictions and access by their citizens or residents to and use of the RLF after the Effective Date. Any breach of this Agreement, Revolving Loan Fund Agreement, Grant and related guidance, rules and regulations shall be immediately corrected by ESC and ESC shall be solely responsible for any costs and expenses associated with such breach.

2.11 ESC agrees that no funds received through the Grant may be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.

2.12 Loans that have been made from the RLF as of the date of this Agreement shall remain in place in accordance with their terms and interest or payment of principle thereon, if any, shall be reinvested in the RLF.

2.13 As of the Effective Date, the RLF is available to citizens and residents of the Counties and Lake County all in accordance with the terms of the RLF. ESC may expand access to the RLF to citizens and residents of eligible jurisdictions that independently or through another entity are participating in the Energy Smart Program on a first come, first served basis in accordance with the terms of this Agreement, Revolving Loan Fund Agreement, Grant and related rules, regulations and guidance, which may be amended from time to time, and:

a. ESC acknowledges and agrees that because of the Grant requirements, citizens and residents of certain communities or jurisdictions may not be eligible to access the RLF but may otherwise participate in the Energy Smart Program. It shall be the sole responsibility of ESC to determine whether the citizens and residents of a jurisdiction are eligible to access the RLF in accordance with DOE requirements. As such, ESC shall obtain approval from DOE before expanding access to the RLF to a new jurisdiction.

b. At such time as ESC desires to expand access to the RLF to a new jurisdiction, the same shall be accomplished by ESC providing notice to ESP and Eagle County in the form attached as Exhibit E.

c. ESC shall be responsible for ensuring that new contractors are trained and that any necessary contractor agreements, homeowner disclosures, disclaimers or the like are appropriate for the each new jurisdiction. ESC shall be responsible for ensuring on-going compliance with NEPA, Davis Bacon Act, Historic Preservation requirements and Buy American Act as new jurisdictions are added.

d. Nothing contained herein shall be deemed to create any contractual relationship between any participant in the Energy Smart Program and/or RLF and Eagle County.

e. In the event a jurisdiction or entity participating in the Energy Smart Program and RLF no longer desires or is prohibited from participating, then ESC may provide notice to ESP and Eagle County in the form attached as Exhibit F of that fact and no additional loans will be made to the residents or citizens of that jurisdiction. In no event may ESC eliminate or reduce access to the RLF by residents of the Counties. Loans that have been made from the RLF as of the date of the notice shall remain in place in accordance with their terms and interest or payment of principle thereon, if any, shall be reinvested in the RLF.

2.14 **Drawdown of RLF by ESC.**

a. ESC may request a reduction in the balance of the RLF, if funds are

available, to support ESC and/or the Nonprofits and to fund energy efficiency grants and programs. The process for seeking a reduction in the balance of the RLF shall be as follows:

i. Use of remaining RLF funds for another or different activity than authorized under the Revolving Loan Fund Agreement requires approval from DOE at EECBG@ee.doe.gov at least thirty (30) days prior to taking any action. Information required to be included in the request to DOE is set forth in DOE guidance. ESC shall be responsible for ensuring new activities are eligible under the Grant and 42 U.S.C. 17154 and that the new activity does not exceed minimum administrative cost thresholds. ESC will simultaneously provide the information and request submitted to DOE to Eagle County.

ii. Upon approval of DOE, ESC will then request that Eagle County consider the request to use remaining RLF funds. Eagle County may request that ESC make a presentation to the Board of County Commissioners concerning any draw down request. In the event a draw down request is approved, then Eagle County will promptly deliver to ESP a drawdown request in the form attached hereto as Exhibit G and ESP shall be authorized to provide RLF funds to ESC for use by ESC in accordance with conditions of any approvals granted in connection with the draw down request and the Grant.

iii. In the event RLF funds are converted to other eligible activities, the originating funds retain their federal character and there remains a continuing responsibility to report and comply with DOE requirements. Thus, ESC shall be solely responsible for accounting, tracking and ensuring that any funds withdrawn from the RLF are used for approved eligible activities and accounted for as may be required by DOE. ESC will within five (5) days of a request from Eagle County provide required reporting information to Eagle County for submission to DOE for such new activities. If funds are not used by ESC for an eligible purpose then ESC shall be solely responsible for immediately returning such funds to the Federal government.

b. It is anticipated that ESC will seek reductions to the balance of the RLF for support of the Nonprofits and/or ESC in an amount not to exceed a total of two hundred thousand dollars ($200,000) during the two year period commencing on the Effective Date of this Agreement. Approval by Eagle County for this request or series of requests shall not be unreasonably withheld.

c. In addition to the anticipated reduction(s) set forth in 2.14(b) above, ESC may seek other or further reductions to the balance of the RLF (whether during the two year period commencing on the Effective Date or otherwise) with advance approval of DOE and Eagle County. Eagle County may request that ESC make a presentation to the Board of County Commissioners in connection with such additional request(s) and Eagle County may consider and approve or deny such request(s) in its sole discretion.

2.15 The Revolving Loan Fund Agreement currently expires on June 11, 2017. Eagle County agrees that it will not dissolve the RLF or independently reduce the available funds in the RLF without prior written agreement of ESC and DOE during the current term of the RLF Agreement unless there has been a breach of the terms of this Agreement by ESC in which event Eagle County may take such action as it deems necessary in its sole discretion with respect to the RLF and RLF Agreement.

2.16 If this Agreement has not been earlier terminated and the RLF remains in effect then ESC and Eagle County agree to meet no later than December, 2016, to discuss and determine the status and best future use of the RLF. Notwithstanding the foregoing, the Parties agree that Eagle County may extend the RLF to allow outstanding loans to be administered by ESP.

2.17 The Parties acknowledge that the RLF may be terminated by ESP in accordance with the terms of the Revolving Loan Fund Agreement. In such event further access to the RLF shall cease and available RLF funds shall be distributed as requested by Eagle County and in accordance with the Revolving Loan Fund Agreement. In such event ESC agrees to execute and deliver such documents and instruments and undertake such further actions as may be necessary.

2.18 Notwithstanding anything herein to the contrary, Eagle County reserves the right to sell the existing loans to ESP or other third party in a manner acceptable to DOE. In such event ESC agrees to execute and deliver such documents and instruments and undertake such further actions as may reasonably be necessary to effectuate the transaction contemplated in this paragraph.

2.19 In the event the RLF is drawn down, loans are sold as set forth in paragraph 2.18 or terminated, then Eagle County shall arrange for the completion of administration of any existing or outstanding loans, and any balance in the RLF and interest shall be distributed as requested by Eagle County for a use approved by DOE. Ongoing reporting requirements shall apply until such time funds are fully expended or otherwise notified in writing by DOE.

ARTICLE III
MARKETING, TRADEMARKS AND INTELLECUTAL PROPERTY

3.1 Certain logos, advertising and marketing materials were developed in connection with the Energy Smart Program. Eagle County subject to Article I above has transferred any rights or obligations to the logos, advertising and marketing materials. Notwithstanding anything herein to the contrary, the Counties make no representations or warranties as to whether such logos, marks and marketing are properly registered or infringe on the rights of any third party. ESC hereby waives any claims against the Counties in connection with the use of such logos, advertising and marketing and possible infringement on rights of third parties.

3.2 ESC hereby acknowledges that any advertising, marketing or other materials to be published, distributed or shared in connection with the RLF shall be subject to prior written approval from ESP.

3.3 To the extent RLF proceeds are ultimately used for any marketing or advertising, ESC shall comply with the intellectual property provisions of the Grant.

ARTICLE IV
INSURANCE AND INDEMNIFICATION

4.1 ESC shall indemnify and hold harmless Eagle County, and its boards, the individual members thereof, their departments, officers, agents, employees, servants and successors ("**Indemnified Parties**") from any and all demands, losses, liabilities, claims or judgments, for which the Indemnified Parties may become subject to, insofar as any such demands, losses, liabilities, claims or judgments, together with all costs and expenses, including but not limited to attorney fees, incident thereto which may accrue against, be charges to or be recoverable from the Indemnified Parties as a result of the acts or omissions of ESC, its affiliates, subsidiaries, Nonprofits, related or participating entities or jurisdictions, its employees, sub-consultants or subcontractors and successors, arising directly or indirectly out of ESC's exercise of its privileges or performance of its obligations under this Agreement. This indemnification shall survive termination of this Agreement. Nothing herein shall be deemed to be a waiver of defenses or immunities available to Eagle County under the Governmental Immunity Act.

4.2 ESC shall maintain in full force and effect commercial general liability insurance, in a comprehensive form, in the amount of at least $1,000,000 per occurrence and $2,000,000 general aggregate at its own expense during the life of this Agreement, which shall afford coverage for all claims for bodily injury, including death, and all claims for destruction or damage to property and personal injury arising out of or in connection with any performance under this Agreement. ESC shall also maintain in connection with its access to the RLF, fiduciary insurance coverage in an amount not less than $1,000,000 under the terms and conditions set forth hereafter. Eagle County shall be an additional insured under these policies and ESC shall furnish Eagle County with certificates of insurance giving evidence of such coverages and containing a provision that Eagle County shall be given thirty (30) days written notice of cancellation or material chance of coverage. These certificates shall be delivered to Eagle County upon execution of this Agreement. Additionally, Eagle County, upon its written request, shall be given copies of these policies within five (5) days of such requests.

4.3 ESC shall maintain in full force and effect workers compensation and unemployment compensation insurance as required by law.

ARTICLE V

DEFAULT, CURE AND REMEDIES

5.1 If, any party fails to timely perform any of its obligations under this Agreement, then the non-breaching party shall deliver to the breaching party written notice detailing the failure of performance. The breaching party shall then have thirty (30) days from the receipt of such notice (or such shorter period as may be dictated by DOE) within which to remedy the failure of performance, or if such failure of performance cannot be cured within such thirty (30) days, then the breaching party shall have a reasonable amount of time (or such shorter period as may be dictated by DOE) under the circumstances to cure such failure of performance provided the breaching party commences to cure such failure of performance within thirty (30) days and diligently prosecutes such cure thereafter.

If, at the expiration of the curative period, the breach or failure of performance has not been cured, then the non-breaching party may seek specific performance, injunctive, or other appropriate relief available under the law, including damages. In the event of a breach or failure of performance by ESC, that has not been cured by ESC, as set forth herein, then, in addition to the remedies set forth above, Eagle County may provide written notice to ESC and immediately terminate this Agreement including access to the RLF by (i) ESC; or (ii) its participating entities; or (iii) citizens or residents of jurisdictions with access to the RLF.

ARTICLE VI
TERM AND TERMINATION

6.1 This Agreement shall remain in effect during the term of the Revolving Loan Fund Agreement unless earlier terminated. The term of this Agreement may be extended by the Parties upon their written agreement.

6.2 As to Assets conveyed to ESC, in the event ESC dissolves during the term of this Agreement or fails to timely cure a breach of this Agreement as set forth in Article V hereof which results in a termination of this Agreement, then Eagle County shall have the right, but not the obligation, to obtain all or a portion of ESC's right, title and interest to the Assets. ESC shall remain responsible for any liability created by ESC or arising during its ownership of the Assets. This paragraph shall survive termination of this Agreement.

6.3 As to Assets conveyed to ESC, in the event this Agreement expires and is not extended by written agreement of the Parties then ESC shall retain the Assets and provide for the protection of any confidential information. This paragraph shall survive termination of this Agreement.

6.4 In the event ESC is dissolved, ESC shall ensure it properly winds up its business including providing for the protection of any confidential information. This paragraph shall survive termination of this Agreement.

6.5 As to the RLF, in the event this Agreement expires and is not extended by written agreement of the Parties, ESC dissolves or fails to timely cure a breach of this Agreement as set forth in Article V hereof which results in termination of this Agreement or the RLF Agreement is otherwise terminated, then ESC's and any of its participant's or citizens or residents of jurisdictions with access to the RLF shall immediately cease. Eagle County shall retain access to and shall determine the future use of the RLF all in its sole discretion and in accordance with Grant.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

7.1 Eagle County represents and warrants that as of the Effective Date:

a. County is a political subdivision of the State of Colorado;

b. The Assets are not subject to any lien or encumbrance of which County is aware;

c. Eagle County is not aware of any default of any material obligation affecting the Grant or Energy Smart Program as of the Effective Date;

d. As of the Effective Date and without any duty of independent investigation, there are no known claims pending in a court of competent jurisdiction nor is Eagle County aware of any circumstances that may give rise thereto.

7.2 ESC represents and warrants that as of the Effective Date and during the term of this Agreement:

a. ESC is a nonprofit corporation validly organized and existing under the laws of the State of Colorado and is in good standing to do business in the State of Colorado;

b. ESC has taken all actions necessary to acquire the Assets and assume any obligations associated therewith;

c. As of the Effective Date and without any duty of independent investigation, there are no known claims pending in a court of competent jurisdiction nor is ESC aware of any circumstances that may give rise thereto.

ARTICLE VIII
NOTICE

8.1 **Notice**: Any notice required under this Agreement shall be given in writing by personal delivery, fax, email or mail which shall be addressed as follows:

Eagle County
Attn: Adam Palmer
500 Broadway
Post Office Box 850
Eagle, CO 81631
Phone: 970-328-8734
Fax: 970-328-7185
Email: Adam.Palmer@eaglecounty.us

With a copy to:

Eagle County Attorney
500 Broadway
Post Office Box 850
Eagle, CO 81631
Phone: 970-328-8685
Fax: 970-328-8699
Email: atty@eaglecounty.us

Energy Smart Colorado, Inc.
Attn: Mona Louise Newton
111 AABC, Suite 11
Post Office Box 9707
Aspen, CO 81611
Phone: 970-925-9775
Fax: 970-925-9776
Email: mona@aspencore.org

Notice shall be deemed given upon the date of delivery or three (3) days after the postmarked date of deposit, first class postage prepaid, in the an official depository of the U.S. Postal Service.

ARTICLE IX
MISCELLANEOUS

9.1 **Third Party Beneficiaries.** Enforcement of this Agreement and all rights and obligations hereunder are reserved solely for the Parties and not to any third party.

9.2 **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Colorado. Jurisdiction and venue for any suit, right or cause of action arising under, or in connection with this Agreement shall be exclusively in Eagle County, Colorado.

9.3 **Assignment**. ESC shall not transfer, assign or subcontract its obligations under this Agreement without Eagle County's written consent which may be granted or withheld in Eagle County's sole discretion. Eagle County's consent to any assignment shall not release ESC from liability or any obligation set forth in this Agreement unless specifically agreed to in writing. Any attempt to assign this Agreement without such consent shall be void.

9.4 **Federal Debarment.** ESC shall immediately notify Eagle County of any suspension or debarment or other action that excludes ESC or its subcontractors or sub-consultants, if any, from participation in Federal contracts. ESC shall verify that all subcontractors or sub-consultants intended and/or used by ESC in connection with this Agreement are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. ESC shall maintain proof of such verification.

9.5 **Modification**. Any revision, amendment or modification of this Agreement shall be valid only if in writing and signed by all Parties.

9.6 **Independent Contractor**. The relationship of ESC to Eagle County is that of independent contractor. No agent, employee or volunteer of ESC shall be deemed to be an agent, employee or volunteer of Eagle County.

9.7 **Invalidity.** Invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed as if such invalid or unenforceable provision was omitted.

9.8 **Waiver.** No failure or delay by any party in the exercise of any right hereunder shall constitute a waiver thereof. No waiver of any breach shall be deemed a waiver of any preceding or succeeding breach.

9.9 **Compliance with Grant, RLF Agreement, Local, State and Federal Law.** ESC specifically agrees to perform its obligations as set forth herein in accordance with all local, state and federal laws governing the activities described in this Agreement. Likewise, it agrees that it shall at all times, perform in compliance with the Grant any related guidance and the RLF Agreement and ESC affirmatively states it has reviewed the same and has the capability to comply.

9.9 **Order of Precedence.** In the event of conflicts or inconsistencies such conflicts shall be resolved in the following order of priority: (a) Grant; (b) RLF Agreement and (c) this Agreement.

9.10 **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements or understanding between the Parties with respect thereto.

9.11 **Performance Reports, Records and Audit**. ESC shall prepare and submit to Eagle County a quarterly performance report no later than fifteen (15) days after the end

of each quarter. The contents of the report shall include an update on the current status of ESC and its participating entities or jurisdictions, completed activities and energy savings projects realized, RLF account balance and portfolio summary. Failure to submit the reports shall constitute a material breach of this Agreement. Upon request by Eagle County, ESC shall present an update on the current status of ESC to the Eagle County Board of County Commissioners.

ESC must maintain an established accounting system that complies with generally accepted accounting principles. Records related to disputes arising out of this Agreement shall be maintained and made available until such disputes have been resolved.

ESC shall make, keep, maintain and allow inspection, audit and monitoring by Eagle County and DOE, a complete file of all books, records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Agreement and ESC's access to and use of the Grant, RLF and operation of the Energy Smart Program. ESC shall maintain such records until the last to occur of the following: (i) a period of six years after the date of this Agreement is completed or terminated, or (ii) for such further period as may be necessary to resolve any pending matters, or (iii) if an audit is occurring, or if ESC has received notice that an audit is pending, then until such audit has been complete and its findings have been resolved. Such inspection and audit shall occur in Eagle County, Colorado or other reasonable location that the County or DOE selects. ESC shall supply or permit Eagle County and DOE to copy such books and records. ESC shall insure that inspection, audit and copying rights of Eagle County and DOE is a condition of any subcontract or participation in the Energy Smart Program.

ESC shall comply with 10 CFR 600.316 if applicable, and will provide Eagle County with a copy of its annual report with audited financial statement within thirty (30) days after it is completed.

ESC shall provide Eagle County with such reports as required by DOE and the Grant to be submitted by Eagle County to maintain its compliance with the terms and conditions of the Grant. Such information may include, but not be limited to, status and development of energy efficiency and conservation strategy and gains. Annual reports are due to DOE at the end of October for the previous year.

9.12 **On-going Financial Participation from Eagle County.** ESC shall be solely responsible for all costs and liabilities of ESC, its operations and implementation of the Energy Smart Program as set forth herein. The Parties acknowledge and agree that Eagle County shall have no obligation, financial or otherwise to provide for on-going support to ESC. Notwithstanding the foregoing, nothing herein shall preclude ESC from seeking support from Eagle County through its community grant programs or otherwise.

9.13 **Confidentiality.** ESC shall be responsible for maintaining the confidentiality of any information supplied to ESC by any individual, entity or participant in connection

with the Energy Smart Program. Any personal information or data maintained by ESC in connection with utility account information shall be maintained in accordance with applicable state and federal law and in accordance with any information or assurance of confidentiality provided on the Energy Smart Program website or materials. ESC shall not disclose any confidential or personal information that may be part of the Assets nor shall it provide any confidential or personal information concerning the RLF or a specific loan under the RLF to any third party. Notwithstanding the foregoing ESC shall supply Eagle County and DOE with information necessary for complying with on-going reporting under the Grant. ESC acknowledges that information supplied to Eagle County and DOE may be public.

9.14 **Survival.** Any provisions of this Agreement which require observance or performance after the date of termination or expiration hereof shall survive and continue in full force and effect.

ARTICLE X
PUBLIC CONTRACTS

10.1. Eagle County is a governmental entity and all obligations beyond the current fiscal year, if any, are subject to funds being budgeted and appropriated. Specifically, notwithstanding anything to the contrary contained in this Agreement, Eagle County shall have no obligations under this Agreement, nor shall any payment be made in respect of any period after December 31 of each calendar year during the term of this Agreement, without an appropriation therefore by Eagle County in accordance with a budget adopted by the Board of County Commissioners in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Statutes, the Local Government Budget Law (C.R.S. §29-1-101 *et. seq.*), and the TABOR Amendment (Constitution, Article X, Sec. 20).

10.2. As used in this paragraph 10.2, the term undocumented individual will refer to those individuals from foreign countries not legally in the United States as set forth in C.R.S. 8-17.5-101 et. seq. If ESC has any employees or subcontractors, ESC shall comply with C.R.S. § 8-17.5-101, et. seq. and this Contract. By execution of this Contract, ESC certifies that it does not knowingly employ or contract with an undocumented individual who will perform under this Contract and that ESC will participate in the E-verify Program or other Department of Labor and Employment program ("Department Program") in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Contract.

(a) ESC shall not:

(i) Knowingly employ or contract with an undocumented individual to perform work under this contract for services; or

(ii) Enter into a contract with a subcontractor that fails to certify to ESC that the subcontractor shall not knowingly employ or contract with an undocumented individual to perform work under the public contract for services.

(b) ESC has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in the E-verify Program or Department Program, as administered by the United States Department of Homeland Security. Information on applying for the E-verify program can be found at:

http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm

(c) ESC shall use either the E-verify program or other Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

(d) If ESC obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an undocumented individual, ESC shall be required to:

(i) Notify the subcontractor and Eagle County within three (3) days that ESC has actual knowledge that the subcontractor is employing or contracting with an undocumented individual; and

(ii) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (i) of paragraph (d) the subcontractor does not stop employing or contracting with the undocumented individual; except that ESC shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an undocumented individual.

(e) ESC shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to its authority established in C.R.S. § 8-17.5-102(5).

(f) If ESC violates these prohibitions, Eagle County may terminate the contract for a breach of the contract. If the contract is so terminated specifically for a breach of this provision of this Contract, ESC shall be liable for actual and consequential damages to Eagle County as required by law.

(g) Eagle County will notify the office of the Colorado Secretary of State if ESC violates this provision of this Contract and Eagle County will terminate the Contract for such breach.

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed on the date set forth above.

Eagle County, Colorado
By and through its Board of County Commissioners

By: _____
Jillian H. Ryan, Chair

Attest:

_____
Teak J. Simonton, Clerk

Energy Smart Colorado, Inc.

By:_____

Its:_____

STATE OF COLORADO)
)ss:
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me by _____ as _____of Energy Smart Colorado, Inc.

this____ day of _____, 2014.

My commission expires**:** _____

_____
Notary Public

EXHIBIT A
Assets

a. Central Website and creative/marketing materials.

b. Customer Relationship Management System also known as CRM.

c. Energy Smart Home Energy Assessment.

d. Energy Smart Program files in drop box.

e. Energy Smart Program Salesforce database, materials and training programs.

f. All Energy Smart Program logos/branding and marks developed or created by the County. The marketing materials are located in Dropbox. The Parties acknowledge and agree that Counties have not obtained registered marks or other protection for the logos, marketing and branding developed in connection with the Energy Smart Program.

g. Diagnostic Equipment consisting of gas detectors, infrared cameras, blower door kits and other equipment.

EXHIBIT C
RLF ACCOUNTING AS OF DECEMBER 31, 2014

RLF Balance upon creation of RLF	$985,000
Accumulated Interest	$13,527
Current Balance available	$753,110
Current Loan Portfolio	$245,417
Total loaned through Energy Smart Program	$304,688

EXHIBIT E

NOTICE OF EXPANSION OF RLF TO NEW JURISDICTION

EXHIBIT E

NOTICE NUMBER _____OF EXPANSION OF RLF

TO: EnergySmart Partners LLC
Attn: Joe Rowan
330 S. College Avenue #400
Fort Collins, CO 80524

Eagle County, Colorado
Attn: Adam Palmer
Post Office Box 850
Eagle, CO 81631

Please accept this notice that as of _____, 20____residents of _____ are permitted access to the Revolving Loan Fund in accordance with the terms of the Agreement between the County of Eagle, State of Colorado and EnergySmart Partners LLC dated June 11, 2012 and amendments thereto (hereinafter the "RLF Agreement") and terms of the grant from the United States Department of Energy to Eagle County, Pitkin County and Gunnison County with an effective date of August 12, 2010 ("Grant"). Revolving Loan Funds are to be available on a first come, first served basis for eligible projects/improvements as authorized under the Grant and RLF Agreement.

Energy Smart Colorado, Inc. by signing below confirms that it has obtained any necessary consent from DOE and the residents of _____are eligible to participate in the RLF.

Energy Smart Colorado, Inc. by signing below acknowledges that it is responsible for ensuring new contractors are trained and that any necessary contractor agreements, homeowner disclosures, disclaimers are prepared and revised as may be necessary. Energy Smart Colorado, Inc. further acknowledges that it has reviewed NEPA, Davis Bacon Act, Historic Preservation requirements and Buy American Act and will comply with the same as access to the Revolving Loan Fund is expanded as set forth herein.

ENERGY SMART COLORADO, INC.

By:_____
Its:_____
Dated:_____

EXHIBIT F
NOTICE OF WITHDRAWL OF JURISDICTION FROM RLF

EXHIBIT F

NOTICE NUMBER _____OF WITHDRAWAL OF JURISDICTION FROM RLF

TO: EnergySmart Partners LLC
Attn: Joe Rowan
330 S. College Avenue #400
Fort Collins, CO 80524

Eagle County, Colorado
Attn: Adam Palmer
Post Office Box 850
Eagle, CO 81631

Please accept this notice that as of _____, 20____residents of _____ are no longer permitted access to the Revolving Loan Fund in accordance with the terms of the Agreement between the County of Eagle, State of Colorado and EnergySmart Partners LLC dated June 11, 2012 and amendments thereto (hereinafter the "RLF Agreement") and terms of the grant from the United States Department of Energy to Eagle County, Pitkin County and Gunnison County with an effective date of August 12, 2010 ("Grant").

Energy Smart Colorado, Inc. by signing below confirms that is has notified _____that its residents will no longer be eligible for loans from the Revolving Loan Fund.

ENERGY SMART COLORADO, INC.

By:_____
Its:_____
Dated:_____

EXHIBIT G
NOTICE OF DRAW DOWN OF REVOLVING LOAN FUND

EXHIBIT G

NOTICE NUMBER _____OF DRAW DOWN

TO: EnergySmart Partners LLC
Attn: Joe Rowan
330 S. College Avenue #400
Fort Collins, CO 80524

Notice is hereby given that the existing balance of Revolving Loan Fund ("RLF") established by Agreement between the County of Eagle, State of Colorado and EnergySmart Partners LLC dated June 11, 2012 and amendments thereto (collectively the "RLF Agreement") is to be reduced as set forth herein. Please draw down the existing and available balance in the RLF in the amount of $_____and wire the funds to:

Energy Smart Colorado, Inc.
Attn:_____
Insert Address

Eagle County, Colorado

By:_____
Title:_____
Dated:_____

cc: Department of Energy, Attn:_____
Energy Smart Colorado, Inc.

EXHIBIT 2

SECOND AMENDMENT TO RLF AGREEMENT BETWEEN EAGLE COUNTY AND ENERGYSMART PARTNERS, LLC

SECOND AMENDMENT TO AGREEMENT BETWEEN THE COUNTY OF EAGLE, STATE OF COLORADO AND ENERGYSMART PARTNERS, LLC FOR ADMINISTERING AN ENERGY EFFICIENCY AND RENEWABLE ENERGY REVOLVING LOAN FUND PROGRAM

THIS SECOND AMENDMENT (this "Second Amendment") is entered into on the ___ day of 2014, by and between EnergySmart Partners, LLC ("ESP"), a Colorado limited liability company, a wholly owned subsidiary of Funding Partners for Housing Solutions, Inc., a non-profit organization certified by the United States Department of Treasury CDFI as a community development financial institution ("CDFI") as Loan Fund Administrator, and the County of Eagle, State of Colorado ("County"), a body corporate and politic by and through its Board of County Commissioners.

WHEREAS, ESP and County are parties to an Agreement for Administering an Energy Efficiency and Renewable Energy Revolving Loan Fund Program dated June 11, 2012 ("Agreement"); and

WHEREAS, ESP and County entered into a First Amendment to the Agreement for the purpose of expanding the program to allow residents of Lake County, Colorado to access up to fifty thousand dollars of loan funds ("First Amendment"); and

WHEREAS, Eagle County, Gunnison County and Pitkin County (hereinafter collectively the "Counties") were awarded an Energy Efficiency and Conservation Block Grant also known as Better Building Grant funded by the United States Department of Energy ("DOE") through the American Recovery and Reinvestment Act of 2009 which is documented by notice of award dated June 14, 2010 with an effective date of August 12, 2010 from DOE to Counties (collectively the "Grant"); and

WHEREAS, Eagle County was designated as the lead agency in the Grant; and

WHEREAS, the energy efficiency and renewable energy revolving loan fund program ("RLF") established in the Agreement was funded by the Grant; and

WHEREAS, the Counties collaborated with various non-profit entities to establish the Energy Smart Program to provide among other things education and access to energy efficiency improvements; and

WHEREAS, one of the goals of the Grant is to create a program which can be utilized by residents of other jurisdictions in achieving common energy efficiency goals; and

WHEREAS, various non-profit entities have established Energy Smart Colorado, Inc. ("ESC") for the purpose of expanding the Energy Smart Program; and

Exhibit B

WHEREAS, Eagle County with approval from Gunnison County and Pitkin County has or will enter into an Agreement for the transfer of assets to allow for the on-going operation of the Energy Smart Program by ESC and for certain access to and administration of the RLF by ESC. The Agreement between Eagle County and ESC is hereinafter referred to as the "Transition Agreement"; and

WHEREAS, the Counties have or will enter into a Second Amendment to the Memorandum of Understanding authorizing Eagle County to enter into this Second Amendment and the Transition Agreement and to take such future action in connection with the RLF as Eagle County deems necessary without further approval from the Counties so long as such actions are in accordance with DOE requirements; and

WHEREAS, the Grant concluded on November 1, 2014, but Grant obligations associated with the RLF remain in effect; and

WHEREAS, Eagle County desires to amend the Agreement to allow ESC to access and administer the RLF on the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, based upon the representations set forth in the foregoing recitals and for good and valuable consideration as set forth in the Agreement, including the promises set forth herein, the Parties agree to the following:

1. Paragraph 11 of the Agreement, PERFORMANCE REPORTS AND RECORDS is hereby replaced with the following:

   a. "ESP shall prepare and submit to County monthly a detailed Performance Report no later than fifteen (15) days after the end of each month. Said report shall be referenced in Exhibit H or in a format approved by County and shall be directly related to the Scope of Services. The contents of the report shall provide data and information to County and ESC to be used for coordinating, monitoring and evaluating the Scope of Services to its completion. Failure to submit these reports shall constitute a material breach of the Agreement.

   b. ESP, or its parent organization, shall provide County and ESC a copy of its annual report with its audited financial statement compliant with 10CFR 600.316 within thirty (30) days after it is completed.

   c. ESP shall maintain records of funds received and disbursed, correspondence, loan applications, loans funded, promissory notes, security instruments, payment histories and such other records for the duration of this Agreement, and for such

longer time as may be required by the County. In no event shall such records be destroyed or discarded prior to their being tendered to County upon the termination of this Agreement or as may be agreed otherwise, in writing, between the parties. County, and if applicable, state and federal auditors, shall have access to those records, with or without notice, in accordance with the award, contracts and other agreements and in accordance with laws, rules and regulations applicable to them.

d. ESP shall provide County and ESC with such reports as required by the DOE award to be submitted by the County to maintain compliance with the terms and conditions of that award. Notwithstanding anything herein to the contrary, ESP is not required to submit any reports directly to DOE"

2. Paragraph 12f of the Agreement TRANSFER OF FUNDS is hereby amended by the addition of the following:

"From time to time, ESC may seek to reduce the balance of the RLF, if funds are available, for purposes permitted by DOE. Such reductions are subject to prior approval of DOE and Eagle County. Upon such approval, Eagle County shall provide a Notice of Draw Down to ESP in the form attached hereto as Exhibit L and ESP shall within two (2) business days transfer funds as directed by Eagle County. Notwithstanding the foregoing, Eagle County may continue to access and draw down the RLF in accordance with the terms of this Agreement and DOE requirements."

3. The Agreement shall be amended by the addition of paragraph 23:

"23. EXPANSION/WITHDRAWAL.

a. Notwithstanding anything to the contrary herein, the RLF shall no longer be restricted for use by residents of the Counties alone. At such time as ESC desires to expand access to the RLF to residents of an eligible, new jurisdiction, the same shall be accomplished by ESC providing notice to ESP and Eagle County in the form attached hereto as Exhibit M. ESP shall not accept a Notice of Expansion unless it strictly complies with the form set forth in Exhibit M. If the Notice of Expansion form has been modified then ESP shall obtain Eagle County's written consent prior to authorizing loans to residents of the new jurisdiction.

b. In the event a jurisdiction or entity participating in the Energy Smart Program and RLF no longer desires or is prohibited from participating in the Energy Smart Program or RLF, then ESC may provide notice to ESP and Eagle County in the form attached as Exhibit N and no additional loans will be made to the residents of that jurisdiction. Loans that have been made from the RLF as of the date of the

notice shall remain in place in accordance with their terms. In no event may ESC eliminate or reduce access to the RLF by residents of the Counties and any notice from ESC to that effect shall be null and void.

c. Access to the RLF shall be on a first come, first served basis in accordance with the terms of this Agreement, the Grant, related rules, regulations and guidance which may be amended from time to time.

d. ESC may not expand the purposes or types of properties for which the RLF was established without prior written approval of DOE and Eagle County and execution of an amendment to this Agreement by and in a form satisfactory to Eagle County and ESP.

e. In the event ESC establishes other sources of capital with ESP then such funds shall be segregated and separately accounted for and not commingled with the RLF."

5. Exhibit K to the Agreement is hereby deleted and ESP acknowledges and agrees that residents of Lake County may access the RLF on a first come, first served basis in accordance with the terms of the Agreement.

6. Exhibit A to the Agreement is hereby deleted and replaced with Exhibit A-1 which is attached hereto and incorporated herein by reference.

7. Exhibit B to the Agreement is hereby deleted and replaced with Exhibit B-1 which is attached hereto and incorporated herein by reference.

8. Exhibit C to the Agreement is hereby deleted and replaced with Exhibit C-1 which is attached hereto and incorporated herein by reference.

9. Capitalized terms in this Second Amendment will have the same meaning as in the Agreement. To the extent that the terms and provisions of the Second Amendment conflict with, modify or supplement portions of the Agreement, the terms and provisions contained in this Second Amendment shall govern and control the rights and obligations of the parties.

10. Except as expressly altered, modified and changed in this Second Amendment, all terms and provisions of the Agreement shall remain in full force and effect, and are hereby ratified and confirmed in all respects as of the date hereof.

11. This Second Amendment shall be binding on the parties hereto, their heirs, executors, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement the day and year first above written.

ENERGYSMART PARTNERS, LLC,
a Colorado limited liability company

By: _____
Joe Rowan, Executive Director
Funding Partners for Housing Solutions, Inc. as
its Member/Manager

STATE OF COLORADO)
)ss.
COUNTY OF LARIMER)

On this ___ day of _____, 2014, Joe Rowan, Executive Director Funding Partners for Housing Solutions, Inc. as Member/Manager of EnergySmart Partners, LLC, a Colorado limited liability executed the foregoing Second Amendment.

WITNESS my hand and official seal.

My Commission expires: _____

_____
Notary Public

COUNTY OF EAGLE, STATE OF COLORADO,
By and Through Its BOARD OF COUNTY
COMMISSIONERS

By: _____
Jillian H. Ryan, Chairman

Attest:

By: _____
Teak J. Simonton, Clerk to the Board

EXHIBIT L

NOTICE NUMBER _____OF DRAW DOWN

TO: EnergySmart Partners LLC
Attn: Joe Rowan
330 S. College Avenue #400
Fort Collins, CO 80524

Notice is hereby given that the existing balance of Revolving Loan Fund ("RLF") established by Agreement between the County of Eagle, State of Colorado and Energy Smart Partners LLC dated June 11, 2012 and amendments thereto (collectively the "RLF Agreement") is to be reduced as set forth herein. Please draw down the existing and available balance in the RLF in the amount of $_____and wire the funds to:

Energy Smart Colorado, Inc.
Attn:_____
Insert Address

Eagle County, Colorado

By:_____
Title:_____
Dated:_____

cc: Department of Energy, Attn:_____
Energy Smart Colorado, Inc.

EXHIBIT M

NOTICE NUMBER _____OF EXPANSION OF RLF

TO: EnergySmart Partners LLC
Attn: Joe Rowan
330 S. College Avenue #400
Fort Collins, CO 80524

Eagle County, Colorado
Attn: Adam Palmer
Post Office Box 850
Eagle, CO 81631

Please accept this notice that as of _____, 20____residents of _____ are permitted access to the Revolving Loan Fund in accordance with the terms of the Agreement between the County of Eagle, State of Colorado and EnergySmart Partners LLC dated June 11, 2012 and amendments thereto (hereinafter the "RLF Agreement") and terms of the grant from the United States Department of Energy to Eagle County, Pitkin County and Gunnison County with an effective date of August 12, 2010 ("Grant"). Revolving Loan Funds are to be available on a first come, first served basis for eligible projects/improvements as authorized under the Grant and RLF Agreement.

Energy Smart Colorado, Inc. by signing below confirms that it has obtained any necessary consent from DOE and the residents of _____are eligible to participate in the RLF.

Energy Smart Colorado, Inc. by signing below acknowledges that it is responsible for ensuring new contractors are trained and that any necessary contractor agreements, homeowner disclosures, disclaimers are prepared and revised as may be necessary. Energy Smart Colorado, Inc. further acknowledges that it has reviewed NEPA, Davis Bacon Act, Historic Preservation requirements and Buy American Act and will comply with the same as access to the Revolving Loan Fund is expanded as set forth herein.

ENERGY SMART COLORADO, INC.

By:_____
Its:_____
Dated:_____

EXHIBIT N

NOTICE NUMBER _____OF WITHDRAWAL OF JURISDICTION FROM RLF

TO: EnergySmart Partners LLC
Attn: Joe Rowan
330 S. College Avenue #400
Fort Collins, CO 80524

Eagle County, Colorado
Attn: Adam Palmer
Post Office Box 850
Eagle, CO 81631

Please accept this notice that as of _____, 20____residents of _____ are no longer permitted access to the Revolving Loan Fund in accordance with the terms of the Agreement between the County of Eagle, State of Colorado and EnergySmart Partners LLC dated June 11, 2012 and amendments thereto (hereinafter the "RLF Agreement") and terms of the grant from the United States Department of Energy to Eagle County, Pitkin County and Gunnison County with an effective date of August 12, 2010 ("Grant").

Energy Smart Colorado, Inc. by signing below confirms that is has notified _____that its residents will no longer be eligible for loans from the Revolving Loan Fund.

ENERGY SMART COLORADO, INC.

By:_____
Its:_____
Dated:_____

EXHIBIT A-1: ENERGY SMART PARTNER'S COMPLIANCE& LOAN SERVICING STANDARDS

I. DOCUMENTATION AND UNDERWRITING CRITERIA

A. CONTRACTUAL LOAN SERVICES

1. Documentation Requirements –The loan applicant is required to provide sufficient documentation to verify eligibility under the Program guidelines approved by Eagle County. Such verifications may include, but are not limited to, financial capacity standards, income limitations, credit assessments, collateral quality and funds availability.

Loan referral sources shall forward copies of all necessary documentation to ESP within a reasonable period prior to the scheduled closing date. ESP reserves the right to deny applications that lack sufficient documentation to render verification of eligibility or where sufficient time has not been afforded it to perform all duties required of it with available staff or capital resources. ESP Staff shall review documentation and either: approve the application, request further information, or decline the application. Staff shall issue a final determination in writing to the applicant within a reasonable period of time, specifying the approved loan amount, all terms and provisions of the credit offer and any documentation requirements prior to loan funding. The letter may be sent to the referral source and shared with the applicant to expedite the loan closing sequence. A complete loan file must include:

a. Application – Applicants shall complete, sign and date an application form provided by ESP, which form shall require sufficient detail to determine eligibility and adequately assess relevant characteristics of the credit request. Applicants shall acknowledge the right of ESP to verify as accurate and complete all information provided within the application and supporting documentation. Such right extends to third-party verifications, as deemed appropriate by ESP according to the Program and nature of the credit request.

b. Income Verification – Applicants shall provide income and/or financial statements consistent with prevailing ESP standards. Analysis of such information will remain consistent with ESP programs unless otherwise specified within the relevant provisions of the Program.

   In all cases, income measurements shall be defined using prevailing median income statistics provided by the U.S. Department of Housing and Urban Development, as released annually for the market area served by the proposed project and as adjusted for household size.

c. Supplemental Documentation – ESP shall collect additional documentation according to prevailing standards of similar ESP programs or as dictated by the Program pursuant to Exhibit 1 of the Agreement. Collection and consideration of all supplemental documentation shall conform to fair credit statutes and ethical business standards.

2. Underwriting Analysis – Qualification for the Program shall be evaluated for reasonable debt capacity, adequacy of collateral and the provisions of Exhibit 1. Underwriting third-party programs will typically entail:

a. Income/Revenue Determination – Applicants will be screened against minimum standards identified under the Program, utilizing techniques and formulas prevalent under similar ESP programs. At a minimum, applicants shall provide sufficient documentation to determine current income through internally-prepared financial statements, federal tax returns, payroll

statements and/or contractual agreements. ESP reserves the right to require any and all income documentation deemed appropriate to the credit request.

Financial Capacity – As a result of the proposed financing applicants will be screened for reasonable capacity to hold and service the debt according to all terms described within the Program. ESP shall utilize techniques and formulas prevalent to similar ESP programs. In addition to the proposed debt, all other contractual obligations of the applicant shall be considered, including those disclosed by the applicant, verified through third-parties, public records and companion credit terms and conditions relevant to the proposed transaction. Single-payment items, taxes and discretionary obligations need not be considered unless otherwise noted under the Program.

b. Collateral – The Program may require a grant of interest in real property owned or controlled by the applicant. ESP shall identify and assess the proposed collateral as compliant to established standards under the Program while taking reasonable caution to insure the collateral is not unduly burdened by prior claims that diminish the security interest taken in the Applicant's real property or evidence credit terms detrimental to the applicant's financial capacity.

d. Loan Amount – Maximum loan amount standards shall be established by the Program as set forth in Exhibit 1.

e. Borrower – All parties holding an ownership interest in the subject collateral property, as applicable, *must* be obligated on the Promissory Note and Security Interest assignment. Residential loans shall be issued to natural persons only. All signatories to the Program's loans must be of legal age and provide a valid Social Security Number (SSN).

f. Consistency – All documentation used to underwrite a loan file shall be accurate and consistent with all other documentation within the file.

3. Loan Approval – ESP shall have authorization to approve applications that meet all eligibility criteria established for the Program and as set forth in Exhibit 1. Loan applications that are declined or withdrawn shall be retained on file for period of two (2) years from the application date.

ESP reserves the right to deny funding under any program where the borrower or their agent is unable to clearly demonstrate a valid purpose for the requested loan, or when elements of fraudulent activity are discovered. Where applications are not compliant to the stated purpose or use of the requested program, ESP retains the right to refer applicants to alternate financing sources.

4. Loan Funding – At such point that all underwriting conditions have been satisfied and in accordance with timing requirements of performance contracts, ESP will provide a written detail of any conditions or documents necessary prior to executing the promissory note and related documents. To the extent practical, all loan documents utilized by ESP shall adequately protect the interests of the organization while conforming to all applicable federal, state and local statutes. At a minimum, loan documents shall be reviewed for enforceability and compliance by qualified counsel at least annually.

To the extent possible, the application referral source and/or borrower shall be provided copies of all documents to be executed in advance of loan closing. The agent presenting the final loan documents shall assume responsibility for satisfying such requirements prior to issuing loan funds to *any* party. All multi-page documents shall bear the initial(s) of all borrowers at the bottom of each page of the document, except where signature(s) are required. **All persons holding title to the subject collateral property, as listed on the Warranty Deed or transfer of ownership document, must also be obligated on the Promissory Note and pledge their interest in the security through a deed of trust or applicable assignment.** However, persons not taking ownership to the subject property may be added as additional guarantors on the promissory Note. The loan package must include the following:

a. Settlement Statement – Prepared by ESP, dependent upon the loan to be made under the terms of the Program. ESP shall review the statement in advance of closing to verify completeness and accuracy of all entries. ESP shall be listed as a lender for the full and correct loan amount, with all applicable loan fees listed by category. The file copy shall carry signatures of all parties to the transaction.

b. Promissory Note – ESP shall prepare and review for accuracy a Promissory Note (Note) to be executed by borrower(s) at loan closing. The terms of the approved loan shall be accurately reflected on the appropriate Note form.

c. Deed of Trust or Collateral Assignment – ESP shall prepare and review for accuracy a Deed of Trust or applicable assignment form that reflects exact terms and titles shown on the Promissory Note. ESP or an approved Notary Public shall be employed to notarize and record the executed document with the appropriate public office. If applicable, all necessary riders to the Deed of Trust will be prepared and executed in a similar manner.

d. Federal Truth In Lending Notice and Other Applicable Disclosures – ESP shall prepare applicable disclosures of loan terms, sample calculations and other relevant conditions or provisions of the loan program, submitted as part of the final loan package.

e. Loan Proceeds – Within a reasonable timeframe prior to the scheduled loan closing, ESP shall set up a wire transfer to the bank account of the Contractor or Borrower in the amount of loan, less any fees to be collected from borrower and payable to ESP. Where an ESP Staff representative is present at loan closing, a cashier's check may be drawn for the amount of the loan and made payable to the Contractor or borrower.

5. Post Closing Procedures – Within a reasonable time period of loan closing, ESP must conduct a complete review of the loan file to insure all documents are correct, complete, and compliant with all ESP underwriting standards and secured in the permanent loan file. The live note shall be placed in safe deposit with a financial institution, while the recorded Deed of Trust or collateral assignment shall be securely maintained in the file. Additionally, ESP will assume responsibility for monitoring:

a. Receipt of recorded documents – Within 60 days of loan closing, ESP should be in receipt of all recorded documents. If not received, ESP will contact the appropriate public office to determine if the instrument has been received, recorded, or subject to processing delays. If recording has been delayed, an appropriate follow up period will be established. If recorded more than 15 business days prior, ESP shall request the public office perform a document search and report their findings within 10 days of such request. If not received within such time, ESP shall request a certified copy of the document and forwarded by registered delivery from escrow agent of record. If the document has not been received by the public office within 60 days, ESP shall contact the escrow agent to request a document search. Escrow agent shall be instructed to provide gap coverage under the title insurance policy, obtain new signatures on replacement documents, if necessary, and record the document at the earliest possibility.

b. Receipt of post closing verifications, compliance reports, work completion notices or similar documentation associated with the loan program.

c. Loan Registration – Upon execution of the loan, ESP shall enter the new loan into the tracking system and establish follow-up dates for annual review, hazard insurance renewal and maturity notification.

d. Document Retention – All documentation used to evaluate and/or service individual loan files will be retained in electronic and hard copy format for minimum of 4 years from the date of final disposition. For loans that are denied or withdrawn for whatever reason, the date of disposition will be the date upon which the file was officially classified as cancelled. For loans that are originated, the date of final disposition will be the date of final and full repayment.

Loans that are charged off as uncollectable shall be retained for the minimum period from the date the file is returned from collection services as uncollectible. The maximum retention period for all loan files shall be 5 years from the date of final disposition.

II. PORTFOLIO MANAGEMENT

A. CONTRACT LOAN SERVICES

1. Reporting, Risk and Compliance Review – Staff shall conduct ongoing review of outstanding loans to establish compliance with loan provisions, which may include periodic written or telephone contacts, review of public records, insurance or other notices and dialogue with other parties to the transaction. ESP reserves the right to accelerate payment or prescribe other reasonable measures should the borrower fail to comply with any such requirements.

ESP shall prepare and present to Eagle County and Energy Smart Colorado, Inc. the following reports at least quarterly, more frequently as circumstances or contractual terms may dictate.

a. Comprehensive Report – A complete accounting of all outstanding loans, sorted by jurisdiction and dedicated investment source, which details borrower name, family size, AMI percentage, loan amount, parental status and date of the loan. Total loans funded and available capital, if appropriate, shall also appear according to jurisdiction and dedicated investment source.

b. Summary Report – A composite accounting of total program capital, funds invested, principal and interest recapture, loan loss, and aggregate loan characteristics.

c. Compliance Report – A separate report shall be compiled by staff, independent auditors or the Executive Director to detail any incidence of non-compliance as such items are identified. The report shall contain detail of the issue of suspected non-compliance, any corrective actions taken or recommended and delivered to ESP management, as appropriate. ESP management is authorized to take further action or refer the matter to the Board of Trustees of its' parent organization for formal determination and further notice to affected parties. ESP management is required to provide a report to its parent Board of Trustees which identifies any issues of non-compliance, or attest to the absence of non-compliance, at least monthly.

2. Risk Rating and Loan Loss Reserves – Finance activity undertaken through contractual relationships do not present capital exposure to ESP, by definition.

While ESP does not assume direct capital exposure under contractual finance activities, indirect exposure is present in the form of errors, omissions and breach of fiduciary responsibility in performing duties detailed within the service agreement. Within the service agreement or as a matter of practice in the event such provision is not clearly established, ESP shall maintain minimum general liability insurance coverage in the amount of $1,000,000 per incident or $2,000,000 aggregate. Such amounts may be modified upward by action of ESP management. As deemed necessary, ESP may seek coverage under a performance bond to further protect the interests of both the organization and Eagle County, though insurance remains the preferred risk mitigation vehicle.

3. Loan Repayment – According to all terms and provisions of the Program, Staff shall deliver an invoice to the borrower sufficiently prior to the payment due date to allow timely response. All payments received shall be applied to accrued interest, late fees then principal. Payments in excess of the invoice amount shall be applied as principal reduction. Should ESP determine the borrower is non-compliant with any of conditions or provisions expressed within the loan documents, borrower shall be instructed in writing to submit payment in full of outstanding principal and interest within thirty (30) days of the notice.

4. Loan Maturity Procedure – ESP shall deliver a final payment request and maturity notice to the borrower for an amount sufficient to retire all outstanding principal, interest and applicable fees prior

to the scheduled maturity date. Upon final settlement, ESP shall extinguish the loan according to procedure noted as set forth herein after expiration of a reasonable payment hold period.

5. Delinquency – In all cases, payment of principal and interest are due no later than the close of business on payment date(s) specified within the loan documents, or by the date shown on the demand for payment noted in Par. 3. After such time, the loan shall be considered in default, with appropriate action taken to remedy the loan. Until the point when payment is sixty (60) days past due, ESP shall retain the ability to make all satisfactory arrangements for payment, including waiver of any penalties where appropriate.

The following procedures shall be taken in cases of default:

A. 10 days past due – A late payment notice is mailed to the borrower, reflecting the amount due, date of default and request for immediate payment.

b. 30 days past due – A second notice shall be mailed to borrower and mandatory direct contact shall be performed.

c. 60 days past due – ESP shall complete a full report that details the nature of all contact with borrower, any outstanding concerns of the borrower, and results of all discussions with borrower, its representatives and/or counsel. The report shall be submitted to Eagle County and Energy Smart Colorado, Inc. for informational purposes.

d. 90 days past due – ESP management shall determine whether further collection activity is warranted based upon the nature of borrower representations, or lack thereof. If it is determined that further negotiation, loan modification, or other curative efforts are warranted ESP shall continue to hold the account in collection status and recognize an impairment of the asset for accounting purposes. In the event ESP management determines further action by ESP is unlikely to resolve the delinquency, ESP shall cease loan service activity on the account and refer the item to a licensed professional agency in good standing with the State of Colorado for further collection action. Upon referral of the item, ESP shall recognize full impairment of the asset

7. Bankruptcy – Upon receipt of a notice of bankruptcy petition, all direct collection efforts with the borrower will cease.

EXHIBIT B-1: ENERGY SMART RESIDENTIAL ENERGY EFFICIENCY REVOLVING LOAN FUND CONTRACTOR AGREEMENT

Now, on this ____ day of _____, EnergySmart Partners LLC, a Colorado limited liability company ("ESP"), and_____, a contractor desiring to participate in the Energy Smart Residential Energy Efficiency Revolving Loan Fund Program ("Contractor"), state the following:

WHEREAS, EnergySmart Partners LLC, a Colorado limited liability company, is administrator of the Energy Smart Residential Energy Efficiency Revolving Loan Fund Program (the "Program");

WHEREAS, the purpose of the Program is to assist in the funding of construction projects which make the borrower's homes more energy efficient and to create "green" construction jobs;

WHEREAS, as a condition of participation in the Program, the contractor has agreed to conduct a project to be funded by the Program;

AGREEMENT

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Tasks to be performed: As a participant in the Program, the Contractor shall: 1) submit their customer's loan application to ESP with an executed copy of the construction project contract, contingent upon financing, setting forth the work to be performed, the price for such work and the date by which the work will be completed. The sum of $25.00 serving as a loan application fee shall also be delivered to ESP at the time of the submission of the loan application; 2) deliver to their customer the loan documents prepared for that customer's signature by ESP; 3) obtain from the customer the customer's executed loan documentation; and 4) deliver that loan documentation to ESP. Upon receipt of the loan proceeds, Contractor shall provide its executed lien waiver affidavit wherein the Contractors customer (Customer) now ESP's borrower (Borrower) shall acknowledge the amount paid to the contractor upon the loan settlement. The Contractor shall verify that all suppliers and/or subcontractors for the project are paid in full with no further recourse to the customer, and furnish lien waivers to that effect.

2. Representations: Contractor represents it shall perform all of its work for the customers according to local standards and in a good and workmanlike fashion within the agreed time frame and, at its own cost and expense, furnish all items, articles, operations mentioned or herein specified, related labor services, tools, equipment, transportation and incidentals necessary and required for satisfactory, acceptable completion of the agreed work or delivery of materials for or to Customers as specified in the loan application documents and this agreement.

Contractor shall do all things necessary in its sole discretion to perform work for Customers in the most diligent, expeditious and economical manner consistent with good workmanship, all applicable building codes, sound business practice, and reasonable precautions for

safety.

All work to be performed for Customers under this Agreement shall be coordinated in advance with the Customers and shall be performed only during such time periods as approved by such Customers.

Contractor represents and warrants that it possesses the training, education, experience, skill, competence, licensing, certifications, and resources needed to properly perform the work for Customers as described in the loan application documents and related agreements. **Contractor further acknowledges and understands that ESP will not oversee any aspect of the construction work and that this agreement is only for the benefit of Contractor's Customer.**

Contractor shall maintain complete and accurate records of all work performed through the Program.

2. Term of Agreement: This Agreement shall begin and become effective on the date of execution by the Contractor, as specified on the signature page.

3. Payment for Work Performed: The terms and conditions of payment for work performed for a Customer shall be solely between the Contractor and the Customer. Contractor shall not be paid by ESP without the express authorization of Customer and in no event shall ESP be liable for payment of any kind to Contractor for work performed pursuant to this Agreement.

4. Insurance Requirements: The Contractor shall procure and maintain at its own expense, the following kinds and minimum amounts of insurance for purposes of insuring the liability risks which the Contractor has assumed until this Agreement has expired or is terminated. The Contractor will be responsible for providing evidence of continued insurance when extending/renewing this Agreement:

a. Commercial General Liability. This coverage should be provided on an ISO 1998 Form or most current with minimum limits of $600,000.00 combined single limit for each occurrence.

b. Workers' Compensation and Employer's Liability. Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of $100,000.00 Each Accident/$500,000.00 Disease-Policy Limit/$100,000.00 Disease-Each Employee.

c. Vehicle Insurance. Contractor shall at all times carry insurance on Contractor's vehicles in an amount not less than $300,000 per occurrence and $1,000,000 in the aggregate.

The Contractor shall provide Certificates of Insurance for Contractor's Commercial General Liability Coverage and Workers' Compensation and Employer's Liability Coverage to the Customer.

These Certificates of Insurance shall also contain a valid provision or endorsement that

these policies may not be canceled, terminated, changed or modified without **thirty (30) days** written notice to the Borrower.

5. Training: Contractor agrees to maintain all permits, licensing, certifications required by any governmental agency with jurisdiction over the construction project. Contractor agrees to participate in any training program required for participation in the Program initially and from time to time.

6. Quality Assurance: ESP shall have no responsibility to inspect or otherwise supervise work performed for a Borrower, which remains Contractor's obligation.

7. Remedy of Failure: Contractor shall, at its sole expense, immediately correct and remedy all defective work, damage or loss, caused in whole or in part by the direct or indirect act or omission of Contractor, its subcontractors, employees or agents, or for which Contractor is otherwise responsible. Contractor agrees to immediately remedy, at the Contractor's expense, any failure by the Contractor resulting in a serious health and safety issue. Any failure to comply with other program requirements discovered during a quality assurance check must be remedied by the Contractor, at the Contractor's expense, within three (3) business days of reported failure.

8. Warranties: All materials and equipment furnished to Customers by Contractor shall be new and of first-class quality. Contractor agrees to warrant all work to the Customer to be free from defects for a minimum of one (1) year after the date such work is completed and accepted by the Customers (or such longer period as is industry custom or practice), and agrees to promptly correct, at Contractor's sole cost and expense, any defect discovered during such period. If an item of work for a Customer is defective or otherwise requires repair or correction, the aforesaid warranty shall not commence to run with respect to such item until after it is satisfactorily repaired, remedied and corrected.

Contractor will also transfer and assign to Customers all warranties of subcontractors, materialmen, and manufacturers and suppliers of equipment used or installed in connection with any work for Customers, and will cooperate with Customers in the enforcement of such warranties; but the assignment of such warranties shall not relieve Contractor of its obligations under this Agreement.

9. Nondiscrimination: The Contractor agrees to comply with the letter and spirit of the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, state and federal laws regarding discrimination and unfair employment practices.

10. Nondiscrimination Provisions Binding on Subcontractors: In all solicitations by the Contractor for any work related to this Agreement to be performed under a subcontract, either by competitive bidding or negotiation, the Contractor shall notify each potential subcontractor of the Contractor's obligations under this Agreement, and of all pertinent regulations relative to nondiscrimination and unfair employment practices.

11. Termination of Agreement: ESP may terminate this Agreement:

a. for cause (including, but not limited to: Contractor's failure to comply with the Program requirements; Contractor's failure to perform any work for Customers with reasonable promptness and diligence; the bankruptcy, financial insecurity or insolvency of Contractor; or for any other breach of this Agreement); or

b. at any time without cause, by giving thirty (30)-days' prior written notice to Contractor.

12. Indemnity: The Contractor shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations, or omissions of the Contractor, its employees, agents, representatives or other persons acting under the Contractor's direction or control in performing or failing to perform any work under the Program or this Agreement. The Contractor will indemnify and hold harmless, ESP, its members, officers, employees, agents representatives, and its contract parties in the Program (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including but not limited to attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of the Contractor, its employees, agents or representatives, or other persons acting under the Contractor's direction or control.

13. LIMITATION OF DAMAGES: IN NO EVENT SHALL ESP, ALONG WITH THEIR AGENTS AND EMPLOYEES (OR ANY OF THE OFFICERS, TRUSTEES, DIRECTORS, PARTNERS, BENEFICIARIES, JOINT VENTURES, MEMBERS, STOCKHOLDERS OR OTHER PRINCIPALS OR REPRESENTATIVES, AND THE LIKE, DISCLOSED OR UNDISCLOSED AND ITS CONTRACT PARTIES IN THE PROGRAM), EVER BE LIABLE TO CONTRACTOR, BORROWER, OR ANY OTHER THIRD PARTY, FOR ANY DIRECT, INCIDENTAL, SPECIAL, INDIRECT, GENERAL OR CONSEQUENTIAL DAMAGES OR LOSS OF ANY NATURE (SUCH AS DAMAGE TO PROPERTY, DAMAGES RESULTING FROM DELAY, CLAIMS OF THIRD PARTIES, LOSS OF PROFITS, OR INJURY TO PERSON) WHICH MAY ARISE IN CONNECTION WITH THIS AGREEMENT. THIS CLAUSE SHALL SURVIVE EXPIRATION OF THIS AGREEMENT.

14. Employee verification: The Contractor agrees to not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

15. Criminal history: Contractor assures that all existing and every new staff member working on site do not have a criminal history background that could indicate that they might present a threat to residents or staff. Acceptable criminal background is no felony arrests or convictions within five years and no pattern of misdemeanors (three or more) within five years.

16. Safe Work Practices: Contractor agrees to meet OSHA and Department of Labor Requirements regarding personal protective equipment and safe work practices. Contractor agrees to comply with

EPA requirements to become a Certified Lead Based Paint Renovation "Firm", if applicable.

17. Independent Contractor: Contractor recognizes and agrees that Contractor is an independent contractor for all purposes, both legal and practical, in performing services under the Program, and that Contractor and its agents and employees are not agents or employees of ESP for any purpose. As an independent contractor, Contractor shall be responsible for employing and directing such personnel and agents as it requires to perform work for Customers under this the Program, shall exercise complete authority over its personnel and agents, and shall be fully responsible for their actions. Contractor acknowledges that it is not entitled to unemployment insurance benefits or workers' compensation benefits from ESP. Contractor is obligated to pay federal and state income tax on any monies earned pursuant to the Program or this Agreement.

18. Recovery Act Compliance: Contractor acknowledges that the Program is funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (the "Act") and that therefore ESP has certain reporting and compliance obligations. Contractor hereby agrees to take whatever actions are necessary to comply with, and to ensure ESP's compliance with, the requirements of the Act. ESP agrees to provide notice to Contractor of such requirements within a reasonable period of time, as necessary to allow Contractor to report compliance.

19. Governing Law: The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement. Any litigation that may arise between the parties involving the interpretation or enforcement of the terms of this Agreement shall be initiated and pursued by the parties in the district courts of the State of Colorado and the applicable Colorado Appellate Courts.

20. Termination of Prior Agreements: This Agreement cancels and terminates, as of its effective date, all prior agreements between the Parties relating to the services covered by this Agreement, whether written or oral or partly written and partly oral.

21. Severability: If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22. Representation of Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Contractor represents and warrants to ESP that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the Contractor and enforceable in accordance with its terms.

23. Contractor departure from Service: If Contractor wishes to leave the Program, Contractor agrees to provide written notice to ESP.

IN WITNESS WHEREOF, the Contractor has set its hand and seal this _____ day of _____, 20__.

CONTRACTOR:

_____

Email Address: _____

ENERGYSMART PARTNERS, LLC

By:_____

Its: _____

Email Address: _____

EXHIBIT C-1: ENERGYSMART RESIDENTIAL ENERGY EFFICIENCY PROGRAM HOMEOWNER STATEMENT OF UNDERSTANDING

I have elected to participate in the Energy Smart Energy Efficiency Loan Program ("the Program") administered by EnergySmart Partners, LLC ("Lender").

As a part of my participation in the Program, I may receive a list of contractors who have expressed a desire to undertake energy efficient residential home improvement projects in participating Program areas. I understand that neither the Lender nor the Program are affiliated with or have considered and approved the capabilities of the contractors on this list.

I acknowledge that I have not been required by the Lender or the Program to utilize any of the contractors on the list as a prerequisite to my participation in the Program and that I may select the contractor or contractors of my own choosing, so long as that contractor is willing to comply with the Program requirements for my project.

I acknowledge that the contractors on the contractor list are independent contractors and that my relationship with them is separate and in no manner related to my relationship with Lender. I further state that in my selection of a contractor, I have not relied upon any representation, express or implied by the Lender or the Program.

I UNDERSTAND THAT NEITHER LENDER NOR ENERGY SMART COLORADO, INC. OR ANY THIRD PARTY WITH OBLIGATIONS UNDER THE GRANT WHICH FUNDED THE LOAN PROGRAM PROVIDE ANY GUARANTEE OR WARRANTY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND HABITALITY, WITH RESPECT TO MY HOME IMPROVEMENT PROJECT AND, WITHOUT LIMITATION, ANY GUARANTEE OR WARRANTY THAT THE PREMISES WILL MEET MY GOALS TO ACHIEVE ENERGY SAVINGS.

I EXPRESSLY STATE THAT MY DECISION TO UNDERTAKE MY ENERGY EFFICIENCY PROJECT IS MY SOLE DECISION AND THAT I HAVE NOT RELIED UPON ENERGY SMART COLORADO, INC.'S ENERGY EFFICIENCY CALCULATORS OR ANY OTHER INFORMATION FURNISHED BY OR THROUGH THE ENERGYSMART RESIDENTIAL ENERGY EFFECIENCY PROGRAM.

I AGREE THAT IN NO EVENT SHALL LENDER, ENERGY SMART COLORADO, INC., OR THIRD PARTIES WITH OBLIGATIONS UNDER THE TERMS OF THE GRANT WHICH FUNDED THE LOAN PROGRAM, THE PROGRAM, THEIR AGENTS, EMPLOYEES, MEMBERS, MANAGERS OR OFFICERS, BE LIABLE FOR ANY ACTUAL, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES ARISING FROM THE WORK PERFORMED BY MY CONTRACTOR. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THE PROVISIONS OF THESE TERMS ARE WAIVED.

I acknowledge that pursuant to the terms of the grant funding the Program, the Lender may have certain reporting and compliance obligations. I agree to provide, in a timely manner, such information regarding my project and its energy efficiency outcomes as the Lender may reasonably request. Further, I authorize the Lender to provide such financial information as it deems necessary to meet these reporting and compliance obligation requirements to Energy Smart Colorado, Inc. and those third parties with obligations under terms of the Grant as well as the United States' Department of Energy. Providing past and future utility usage data is an example of the information that might be requested of me.

I acknowledge that because the Program is funded in whole or in part by a grant from the United States' Department of Energy, the requirements of Section 106 of the Historic Preservation Act are applicable to the Program. If my property is more than fifty years old or is currently listed on the State of Colorado or National Register of Historic Places, approval to proceed by the Colorado Office of Archeology and Historic Places (OAHP) may be required for any upgrades. Furthermore, I consent to the submission of all documentation, including photographs, to OAHP by the Service for the purpose of determining the property's historic preservation significance.

☐ My property is more than fifty years old, or is currently listed on the Colorado State or National Register of Historic Places.

☐ My property is located in a Historic District.

By signing below, you indicate your understanding of the above stated terms.

_____	_____	_____
Name (Printed)	Signature	Date