

State of Colorado Colorado Industrial Tax Credit Offering (“CITCO”) Tax Credit Agreement

Cover Page

State Agency

Colorado Energy Office

Owner Name

855400 LLC

**Tax Credit Agreement Reservation
Amount**

Credit Years 2027 - 2029

Tax Credit Amount equal to [Redacted]
Qualified Expenditures not to exceed the
Total Tax Credit Reservation Amount

Tax Credit Agreement Expiration Date
January 31, 2033**Tax Credit Agreement Number**

[Insert CMS number or Other Tax Credit
Agreement Number]

Credit Period Beginning Date

[Insert Month Day, Year]

Credit Period Expiration Date

December 31, 2029

Commented [1]: to be filled out by the CEO
procurement team

Tax Credit Agreement Authority

This Agreement is pursuant to Colorado
Revised Statutes (C.R.S.) § 39-22-551 and
the Colorado Energy Office.

Total Tax Credit Reservation Amount for All Credit Years \$7,248,760.50

Tax Credit Agreement Purpose

Pursuant to CRS §39-22-551, the Colorado Energy Office (“CEO”) through its Colorado
Industrial Tax Credit Offering (CITCO) has reserved for the benefit of Owner CITCO Tax
Credits, which Owner may earn and claim if it meets the conditions further defined in this Tax
Credit Agreement and as required by the statute in effect or hereafter amended.

Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Agreement:

1. C.R.S. § 39-22-551
2. Exhibit A – Owner’s Obligation

3. Exhibit B – Colorado Industrial Tax Credit Offering Tax Year 2026 Agreed Upon Procedures.

In the event of a conflict or inconsistency between this Tax Credit Agreement and any Exhibit(s) or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. C.R.S. § 39-22-551
2. Colorado Special Provisions in §13 of the main body of this Tax Credit Agreement.
3. The provisions of the other sections of the main body of this Tax Credit Agreement.
4. Exhibit A, Owner Obligations.
5. Exhibit B, CITCO Tax Year 2026 Agreed Upon Procedures
 - a. Addendum 1: Agreed Upon Procedures: CPA Report
 - b. Addendum 2: Expectations and Procedures for CPA Review of Geothermal Energy Tax Credit
 - c. Addendum 3: Agreed Upon Procedures: Statement of Work

Principal Representatives

For the State: Colorado Energy Office

For Owner:

Name, Title: Lille Haecker, CEO Program
Manager

Name, Title:

Owner Name:

Department Name: Strategic Initiatives and
Finance

Address:

City, State Zip:

Address: 1600 Broadway, Suite 1960
Denver, CO 80202

Email:

Email: lille.haecker@state.co.us

Signature Page

The Parties hereto have executed this Tax Credit Agreement:

Each person signing this Tax Credit Agreement represents and warrants that he or she is duly authorized to execute this Tax Credit Agreement and to bind the Party authorizing his or her signature.

Owner

State of Colorado

855400 LLC

Jared S. Polis, Governor

Colorado Energy Office

[Insert Signature]

Will Toor, Executive Director

By: [Insert Name & Title]

Date: [Insert Date]

[Insert Signature]

By: Will Toor, Executive Director

Date: [Insert Date]

In accordance with §24-30-202, C.R.S., this Tax Credit Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

State Controller

Robert Jaros, CPA, MBA, JD

By: [Insert Signature]

Effective Date: [Insert Date]

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Parties

This Tax Credit Agreement is entered into by and between the Owner, named on the Cover Page for this Tax Credit Agreement (the “Owner”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Tax Credit Agreement (the “State”). By signing this agreement, Owner and the State agree to the terms and conditions in this Tax Credit Agreement.

Term and Effective Date

A. Effective Date

This Tax Credit Agreement shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Tax Credit Agreement before the Effective Date, and shall have no obligation to issue a Tax Credit Cost Certificate with respect to expenditures made before the Effective Date or after the Notification of Project Completion or sooner termination of this Tax Credit Agreement.

B. Credit Period

The Owner shall complete the study or project and its other obligations within the Credit Period. The relevant Credit Period dates (Effective Date to Expiration Date) and performance timelines are listed on the Cover Page. Owner may request an extension of the Credit Period from CEO, which CEO may approve or deny upon review of the request. If the extension is denied, the Owner will have an opportunity to reapply.

C. Termination

This Tax Credit Agreement shall be void if Owner fails to meet the terms of this Tax Credit Agreement and the attached Exhibits. The Tax Credit Agreement shall be void if the Owner knowingly claims the credit for which they are not eligible. This can include but is not limited to willfully attempting to evade the tax, making a false statement in connection with a refund claim, and willingly signing a document that the signer does not believe to be true and correct (§39-21-118, C.R.S). The State may cancel its reservation of tax credits if the project is canceled, or Owner fails to meet any of the obligations set forth herein. Cancellations shall only be at the sole discretion of the state and effective in the issuance of a formal letter from the State or Owner.

D. Early Termination in the Public Interest

The State is entering into this Tax Credit Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Tax Credit Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Tax Credit Agreement in whole or in part. A determination that this Tax Credit Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience.

a. Method and Content

The State shall notify the Owner of such termination in accordance with § 11. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Tax Credit Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

Definitions

The following terms shall be construed and interpreted as follows:

- A. **“Air pollutant”** has the meaning set forth in Section 25-7-103 (1.5) and includes air toxics, particulates, ozone precursors, and Greenhouse Gases.
- B. **“Breach of Tax Credit Agreement”** means the failure of a Party to perform any of its obligations in accordance with this Tax Credit Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Owner, or the appointment of a receiver or similar officer for Owner or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Owner is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- C. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- D. **“Certified Public Accountant (CPA)”** means a licensed accounting professional who has met all of the requirements of a state board of accountancy.
- E. **“Co-benefits”** mean health benefits, job creation, environmental justice, or other environmental benefits, with such benefits to the community prioritized.
- F. **“CPA Report”** means the audited Tax Credit Cost Certificate Request Report.
- G. **Colorado Energy Office or ‘Office’** is created in section 24-38.5-101.
- H. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- I. **“Department of Revenue (DOR)”** means the Colorado Department of Revenue created in section 24-35-101, C.R.S..
- J. **“Disallowed Expenditures”** means any CITCO related expenditure that the CEO has determined to be beyond the scope of the purpose of the tax credit, excessive or otherwise unallowable. A full list of disallowed costs can be found in the General Standards and Guidelines and project/study specific Standards and Guidelines. A full list of disallowed expenditures will be listed in the Statement of Work.

- K. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement.
- L. **“Energy & Emissions Audit”** means an energy consumption, energy efficiency, and greenhouse gas emissions assessment of an Owner, comparable to American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Level II, III, or Investment Grade Audits.
- M. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- N. **“Feasibility Study”** is a formal analysis of critical aspects of a proposed project to determine its viability. Such an analysis will include a project description, project economics, technical capabilities, and other project-pertinent items (e.g. utility requirements)
- O. **“Fossil fuel efficiency”** means reducing the overall consumption of fossil fuels on an annual basis to produce the same amount of goods (i.e. a demonstrated reduction in the carbon intensity of a combustion process) via capital improvements.
- P. **“Front End Engineering Design (FEED) Study”** refers to the engineering phase that follows the completion of the conceptual design and/or feasibility study and occurs before the initiation of procurement and construction. The primary objective is to define the technical requirements and parameters necessary for the project's successful execution.
- Q. **“Greenhouse Gas (GHG)”** means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride.
- R. **“North American Industry Classification System (NAICS) code(s)”** means the six-digit code(s) that represents the product(s)/activity(s)/service(s) at a Owner or supplier as listed in the Federal Register and defined in “North American Industrial Classification System Manual 2007,” available from the U.S. Department of Commerce, National Technical Information Service, Alexandria, VA 22312 (as published August 2021).
- S. **“Notification of Project Completion”** means the Report due 90 days after project scope completion date. Unless, if the Project scope end date falls within the Q4 of the calendar year, the Owner should submit the Project Completion Report with the final Tax Credit Cost Certificate Request.
- T. **“Party”** means the State or Owner, and **“Parties”** means both the State and Owner.
- U. **“Pre-Front End Engineering and Design (Pre-Feed) Study”** means the study and conceptual design of a project, focusing on the development of detailed blueprints, layouts, and key engineering parameters to refine the project’s conceptual framework and provide a basis for more precise cost estimation, risk assessment, detailed design, and technical specification.

- V. **“Project”** means improvements that help to measurably reduce greenhouse gas emissions. Eligible types of improvements are defined in C.R.S § 39-22-551(2)(e).
- W. **“Project End Date”** means the Day, Month, Year that the study or project is intended to conclude.
- X. **“Owner”** means a person or developer of a project to be implemented at a qualified industrial facility subject to tax under article 22 who applies for and claims the Colorado Industrial Tax Credit.
- Y. **“Owner Tax Year”** means the owner’s taxable year determined pursuant to article 22 of title 39, C.R.S.
- Z. **“Qualified Expenditures”** means the total monetary cost approved by the Office and expended during the Credit Period by the Owner in connection with the Project. Eligible costs can be found in the respective CITCO Standards and Guidelines. **“Qualified Expenditure”** means all eligible project costs must directly support the implementation of an eligible project or industrial study. Eligible costs include any capitalized costs incurred to complete the project in question. These eligible costs may include, but are not limited to:
- i. Capital costs for purchase of GHG emissions reduction improvements
 - ii. Capital costs associated with GHG emissions reduction equipment installation (wiring, concrete, conduit, etc.)
 - iii. Installing or upgrading to utility service feed equipment owned by the Applicant to directly support the implementation of an of the eligible electrification improvements described in Section II.C
 - a. Applicants must provide a description of proposed utility service feed equipment in their application, along with details related to the schedule and budget for such improvements.
 - iv. Shipping costs associated with GHG emissions reduction equipment
 - v. Labor associated with the decommissioning and removal of equipment to be replaced by the CITCO project(s), excluding the disposal costs of the removed/replaced equipment
 - vi. Labor associated with the installation of the proposed CITCO project(s)
 - vii. Labor associated with conducting one of the following eligible Industrial
 - viii. Studies:
 - a. Energy and Emissions Audits
 - b. Feasibility studies
 - c. PRE-FEED Study

d. FEED Study

- ix. Any allowed/eligible costs as outlined in the technology-specific Standards & Guidelines document(s) applicable to CITCO project in question.

A comprehensive list of Qualified Expenditures will be included in the Statement of Work.

- AA. **“Study”** means an Energy and Emissions Audit, a Feasibility Study, a Pre-Front End Engineering Design Study, or a Front-End Engineering Design Study that meets or exceeds the standards established by the Office.
- BB. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- CC. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- DD. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- EE. **“Subcontractor”** means any third party engaged by Owner to aid in the performance of the work.
- FF. **“Tax Credit Agreement”** means this Tax Credit Agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- GG. **“Tax Credit Agreement Expiration Date”** means the date shown on the Cover Page for this Agreement. The date comes after the Credit Period Expiration Date and encompasses the term in which all the annual performance project reporting obligations are due under this Agreement.
- HH. **“Tax Credit Cost Certificate Request”** means the annual report that the Owner will be submitting within 60 days after the end of their Federal Income Tax Year (after the study or project is complete) to be issued a Tax Credit Cost Certificate. This report includes both financial and programmatic information updates.
- II. **“Tax Credit Amount”** means the amount of credit the Owner may claim as a credit against tax pursuant to section 39-22-551, C.R.S., as certified by the Office in the Tax Credit Cost Certificate.
- JJ. **“Tax Credit Cost Certificate”** means the certificate issued by the Office pursuant to section 39-22-551 C.R.S..

KK. **“Tax Credit Reservation Amount”** means the amount reserved for the benefit of Owner pursuant to section 39-22-551, C.R.S., as set forth on the Cover Page of this Tax Credit Agreement.

LL. **“Tax Credit Year”** will be defined in the Statement of Work. This year begins on the first day of the Owner’s income tax year, and ends on the last day of the Owner’s income tax year.

MM. **“Utility Service Feed Equipment”** means customer-sited electrical infrastructure, equipment, controls, and components that serve a project site, are owned by the CITCO applicant, and are located on the customer’s side of the utility service point. This definition explicitly excludes any electrical infrastructure, equipment, controls, or components owned by the utility, including but not limited to transmission and distribution infrastructure, that serves the CITCO applicant's project site.

Any other term used in this Tax Credit Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

Owner Obligations

Owner shall complete the Project or Study and its obligations as described in this Tax Credit Agreement and in accordance with the provisions of Exhibit A, Owner Obligations and Exhibit B, Tax Year 2026 CITCO Agreed Upon Procedures. The State shall have no liability to issue a Tax Credit Cost Certificate except as specifically set forth in this Agreement.

Tax Credit Reservation

Subject to section 39-22-551, C.R.S., and the provisions set further herein, CEO hereby approves the Project or Study and reserves for the benefit of Owner the Tax Credit Reservation Amount listed on the Cover Page of this Tax Credit Agreement. This reservation does not entitle Owner to the issuance of a Tax Credit Cost Certificate, or to the Tax Credit Amount, unless and until Owner completes the Project or Study and its obligations as described in this Tax Credit Agreement and within the Credit Period.

Reporting

Owner shall submit reports pursuant to Exhibit B, Agreed Upon Procedures in addition to any reports required pursuant to Exhibit A, Owner Obligations.

Owner Records

A. Maintenance

Owner shall maintain for a minimum of four years after Project or Study completion, a file of all documents, records, communications, notes and other materials relating to the Project or Study (the "Owner Records"). Owner Records shall include all documents, records, communications, notes and other materials maintained by Owner that relate to any Project, and Owner shall maintain all records related to the Project to ensure proper performance of that Project. Owner shall maintain Owner Records until the last to occur of: **(i)** the date four years after the due date of Owner's income tax return in the year this incentive is claimed **(ii)** the Tax Credit Cost Certificate under this Tax Credit Agreement is issued, **(iii)** the resolution of any pending Tax Credit Agreement, or **(iv)** if an audit is occurring, or Owner has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Owner shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Owner Records during the Record Retention Period. Owner shall make Owner Records available during normal business hours at Owner's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Owner's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Owner's performance in a manner that does not unduly interfere with Owner's performance of the project.

Conflict of Interest

A. Actual Conflicts of Interest

Owner shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Owner under this Agreement. Such a conflict of interest would arise when a Owner or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Owner acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Owner shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Owner's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Owner is uncertain whether a conflict or the appearance of a conflict has arisen, Owner shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a Breach of Agreement.

- D.** Owner acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Owner further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Agreement.

Insurance

Owner shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as is common in its industry, trade, or profession at all times during the term of this Tax Credit Agreement. CEO reserves the right to ask and review evidence of insurance certificates.

Dispute Resolution

A. Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Owner for resolution.

Notices and Representatives

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a

formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice and acceptance by the other party.

General Provisions

A. Assignment

Owner's rights and obligations under this Tax Credit Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Owner's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Binding Effect

Except as otherwise provided in §12.A, all provisions of this Tax Credit Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

C. Authority

Each Party represents and warrants to the other that the execution and delivery of this Tax Credit Agreement and the performance of such Party's obligations have been duly authorized.

D. Captions and References

The captions and headings in this Tax Credit Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Tax Credit Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

E. Counterparts

This Tax Credit Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

F. Entire Understanding

This Tax Credit Agreement represents the complete integration of all understandings between the Parties related to the CITCO Tax Credit, and all prior representations and understandings related to the CITCO Tax Credit, oral or written, are merged into this Tax Credit Agreement. Prior or contemporaneous additions, deletions, or other changes to this Tax Credit Agreement shall not have any force or effect whatsoever, unless embodied herein.

G. Digital Signatures

If any signatory signs this Tax Credit Agreement using a digital signature in accordance with the Colorado State Controller Agreement, Contracts, Grant and Purchase Order Policies regarding

the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Tax Credit Agreement by reference.

H. Modification

Except as otherwise provided in this Tax Credit Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Tax Credit Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Tax Credit Agreement, other than Tax Credit Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

I. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Tax Credit Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Tax Credit Agreement.

J. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Owner's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Tax Credit Agreement.

K. Severability

The invalidity or unenforceability of any provision of this Tax Credit Agreement shall not affect the validity or enforceability of any other provision of this Tax Credit Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Tax Credit Agreement in accordance with the intent of this Tax Credit Agreement.

L. Survival of Certain Tax Credit Agreement Terms

Any provision of this Tax Credit Agreement that imposes an obligation on a Party after termination or expiration of this Tax Credit Agreement shall survive the termination or expiration of this Tax Credit Agreement and shall be enforceable by the other Party.

M. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in § 12.A, this Tax Credit Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Tax Credit Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Tax Credit Agreement are incidental to this Tax Credit Agreement, and do not create any rights for such third parties.

N. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Tax Credit Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

O. CORA Disclosure

To the extent not prohibited by federal law, this Tax Credit Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

P. Standard and Manner of Performance

Owner shall perform its obligations under this Tax Credit Agreement in accordance with the highest standards of care, skill and diligence in Owner's industry, trade, or profession.

Q. Licenses, Permits, and Other Authorizations

Owner or a third party acting on behalf of Owner shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

R. Indemnification

i. General Indemnification

Owner shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Owner, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Owner in violation of §8 may be cause for legal action by third parties against Owner, the State, or their respective agents. Owner shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Owner, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Owner shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and

costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Owner under this Agreement (collectively, “IP Deliverables”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Owner’s obligations hereunder shall not extend to the combination of any IP Deliverables provided by Owner with any other product, system, or method, unless the other product, system, or method is (a) provided by Owner or Owner’s subsidiaries or affiliates; (b) specified by Owner to work with the IP Deliverables; (c) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (d) is reasonably expected to be used in combination with the IP Deliverables.

iv. Accessibility Indemnification

Owner shall indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to Owner’s failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

S. Accessibility

- i. Owner shall comply with the Accessibility Standards for Individuals with a Disability, as adopted by the Office of Information Technology pursuant to §24-85-103 C.R.S.

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- ii. The State may require Owner’s compliance with the Accessibility Standards for Individuals with a Disability adopted by the Office of Information Technology pursuant to §24-85-103 C.R.S. is determined and tested by a qualified third party selected by the State. The State may ask the Owner to review the selection of the third party. Owner shall be responsible for all costs associated with the third-party vendor’s assessment. If Owner is not in compliance as determined by the third-party vendor, at the State’s request and at the State’s direction, Owner shall promptly take all necessary actions to come into compliance using a State-approved vendor, at no additional cost to the State.

Redacted

Redacted

Redacted

Colorado Special Provisions

These Special Provisions apply to all Agreements except where noted in italics.

A. Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

B. Compliance with Law

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

C. Choice of Law, Jurisdiction, and Venue

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

D. Prohibited Terms

Any term included in this Agreement that requires the State to indemnify or hold Owner harmless; requires the State to agree to binding arbitration; limits Owner's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

E. Employee Financial Interest/Conflict of Interest §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Owner has

no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Owner's services and Owner shall not employ any person having such known interests.

F. Vendor Offset and Erroneous Payments §§24-30-202(1) and 24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Owner in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Owner by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Owner, or by any other appropriate method for collecting debts owed to the State.

Exhibit A

Project Description

Parties:

State:

Lille Haecker, CEO Program Manager

lille.haecker@state.co.us

Colorado Energy Office

1600 Broadway, Suite 1960

Denver, CO 80202

Owner:

Owner Name: 855400 LLC

Contact: [Insert Contact Name]

Email: [Insert Contact Email]

Telephone: [Insert Contact Telephone Number]

Address: [Insert Contact Address]

The Colorado Energy Office has decided that Owner is eligible to receive CITCO tax credits if it meets the conditions further defined herein in this Tax Credit Agreement and as required by the statute currently in effect or hereafter amended.

This Project or Study is aligned with CEO's vision and mission, and CITCO's department-specific goals in accordance with the tax credit statute (§39-22-551), which provides for this office to administer the tax credit incentive for decarbonization of the industrial sector in Colorado. Further explanation of the specific Project is captured in Exhibit B, Addendum 3: Statement of Work.

Obligations and Timeline

Owner qualifies as a Colorado Owner for a Tax Credit Amount equal to of 30% of Qualified Expenditures not to exceed the Tax Credit Reservation Amount \$7,248,760.50 on Cover Page for making Qualified Expenditures in connection with the Project or Study. The Owner shall not claim more than the lesser of 30% or \$7,248,760.50 of the Qualified Expenditures on the Tax Credit Reservation

All Qualified Expenditures must be made during Credit Period Start Date and Credit Period End Date.

All Qualified Expenditures and reporting must adhere to the CITCO Agreed Upon Procedures, attached and incorporated herein by reference as Exhibit A and B. Any work done outside of the Credit Period is not eligible to be included as a Qualified Expenditure. The reporting requirement eligible as a Qualified Expenditure are the Semi-Annual Project Development Reports, and the Project Completion Report if work is done within the Credit Period.

Ownership

Owner retains the exclusive rights, title, and ownership to any and all equipment, materials, or studies owned by the Owner. The State has no ownership rights in any of Owner's equipment, materials, or studies.

Acceptance Criteria

The Tax Credit Cost Certificate will only be issued if the requirements of section 39-22-551, C.R.S., and this Tax Credit Agreement, are met. Specifically, with respect to a Project, a Tax Credit Cost Certificate will not be issued until the Project is completed and the GHG reduction / avoidance improvements are placed in service. Owner may not claim the Tax Credit Amount until a Tax Credit Cost Certificate is issued. Owner that claims a tax credit under this Tax Credit Agreement cannot, for the same greenhouse gas emission reduction improvements: (I) Claim the credit allowed by section 39-30-104; or (II) Receive grant money under the industrial and manufacturing operations clean air grant program (CAP). If Owner does, the credit in this Tax Credit Agreement must be returned to the Department of Revenue.

Owner is required to submit a CPA Report, by a Colorado-based and CEO-approved CPA, upon completion of the Project or Study verifying all Qualified Expenditures taking place prior to Tax Credit Agreement Expiration Date.

Owner shall provide information on the Certified Public Accountant to the CEO 90 days before the Notification of Project Complete. Owner shall provide CPA credentials, and CEO will either approve or deny acceptance of the Owner's CPA.

The Owner must submit the CPA Report requirements no later than 60 days after December 31 of the tax year in which they are claiming the credit. If the Owner's Tax Year is not a calendar year, required deadlines for submitting reports to be issued a Tax Credit Cost Certificate shall be outlined in the Statement of Work. Owner may request a 30 day extension for submitting the Tax Credit Cost Certificate Report within 45 days of the 60 day due date. Approval of the extension request is at the Office's discretion.

Program Manager or authorized agent of the State will monitor Project work performance per the outlined schedule of deliverables and timeline set forth in this Tax Credit Agreement and all Exhibits.

Reporting

A. Semi-Annual Project Development Progress Reports

After being awarded a Tax Credit Reservation and until the Tax Credit Reservation is claimed, the Owner is required to submit a Semi-Annual Project Development Progress Reports to the CEO summarizing progress made towards Project or Study goals and objectives. Owner is required to submit Semi-Annual Project Progress Reports by January 31st and July 31st of each year until the CEO receives a Notification of Project or Study Completion for the approved Project or Study. If the Owner's Tax Year differs from the calendar year, then due dates for the deadlines for these Reports will be outlined in the Statement of Work.

CEO acknowledges that the Project or Study details may evolve between the CITCO application period and the tax year for which a CITCO Tax Credit is reserved. CEO requires written approval between the Owner and CEO for significant changes made to the Project or Study, and encourages applicants to limit such changes to the greatest extent feasible. A formal executed amendment to Exhibit B Addendum 3 may be required as well which will be communicated to Owner upon CEO learning of proposed changes to Project or Study. Any proposed changes to the Project will be further explained in the Semi-Annual Project Development Progress Reports.

Furthermore, Semi-Annual Progress Reports will include the total accumulated Qualified Expenditures for the current tax year, progress towards Project or Study goals and objectives, any new or updates on previously identified risks and risk mitigation strategies, and any other objectives outlined in the Statement of Work.

B. Billing and Procedures: Notification of Project or Study Completion and Tax Credit Cost Certificate Request

CITCO recipients are required to notify CEO once the Project or Study is completed, Qualified Expenditures have been incurred, and the Owner is prepared to submit the Tax Credit Cost Certificate Request and claim the tax credit on their income tax return. The Owner is required to submit a Notification of Project or Study Completion. The Owner is required to submit this Notification between January 1st and December 31st in the tax year for which the Tax Credit Reservation for the Project or Study is eligible to be claimed.

The Owner must submit a Tax Credit Cost Certificate Request within 60 days after the end of the income tax year in which the project completed. If the Owner submits the Notification of Project Completion on December 31st, and the Owner's income tax year differs from the calendar year, the deadline for the Tax Credit Cost Certificate Request and other reporting requirements will be outlined in the Statement of Work.

The Tax Credit Cost Certificate Request shall include the total dollar amount of the accumulated Qualified Expenditures, the 30% request of the Qualified Expenditures, the CPA Report, a

formal request for the issuance of a Cost Certificate, and a signed Required Declaration, stated below. In addition, the Owner must include a justification or explanation of the specific costs associated with the Qualified Expenditure and timing of completed Qualified Expenditure related costs between the Effective Date and Notification of Project Completion. Other additional information required by the Owner pertaining to the Project or Study will be outlined in the Statement of Work. The Tax Credit Cost Certificate Request report will include, but is not limited to the following:

- i. **Financial/Expenditure** – Tracking of Qualified Expenditures for each tax year. Owner will only receive a Tax Credit Cost Certificate for Qualified Expenditures made during the Credit Period.
- ii. **Programmatic** –
 - A. For Projects: A technical account of all Project-related work performed, Project objectives, results initially estimated and achieved (including but not limited to the total CITCO investment realized and to the extent available, effects of the Project on gas use, electricity use, emissions and energy costs), technology implemented, successes/challenges/lessons learned, changes to original Project scope, operational summary. The report also includes accomplishments, work products developed, Project participants and other collaborating organizations, Project impacts, and any changes or problems. The report should account for compliance with applicable Project-related codes and requirements, whether local, state, or federal.
 - B. For Studies: The Study or equivalent summarized information with all confidential information redacted.
- iii. **Compliance with all applicable project-related codes and requirements, whether local, state, or federal.**

Please note, prior to submission to CEO, all reporting and requests must be audited by a licensed Certified Public Accountant that is not affiliated with the applicant. Find requirements for the information needed in Exhibit B.

After submission of the CPA-audited Tax Credit Cost Certificate Request, CEO will review the submitted documents, and verify that it satisfies the information provided by the Owner in their application. If CEO determines that the scope of the Project or Study and all reporting requirements are complete, CEO will issue a Tax Credit Cost Certificate for no more than 30% of the Qualified Expenditures for the tax year in which the Owner requests to claim the credit. The total dollar amount of 30% of the Qualified Expenditures over the Credit Period shall not exceed the Tax Credit Reservation Amount. Recipients will claim the credit by filing the Tax Credit Cost Certificate with their State income tax returns with the Colorado Department of Revenue.

C. CPA Annual Report

Owner shall retain a Certified Public Accountant to review and report in writing, and in accordance with professional standards, regarding the accuracy of the financial documents that detail the Qualified Expenditures made in connection with the Project or Study at the expense of the Owner. The Certified Public Accountant's written report shall include documentation of the Owner's actual expenditures, including its actual Qualified Expenditures. When the Owner provides a copy of the Certified Public Accountant's written report, and the Owner certifies in writing to the Office that the amount of the Owner's actual Qualified Expenditures is accurate and the correct percentage of Qualified Expenditures is being asked for in the Cost Certificate. The Office shall conduct a review of the Certified Public Accountant's written report to ensure the requirements are met.

The Certified Public Accountant described above must be licensed to practice in the state of Colorado and must be both paid for by the Owner and approved by CEO. Certified Public Accountant reviews and written reports that do not comply with the statutory requirements above, or the CITCO policies as specified in Exhibit B, will not be accepted, thus preventing the issuance of a Tax Credit Cost Certificate to the Owner.

- i. **Required Declaration** – Every report required to be submitted by Owner to the Office pursuant to this Tax Credit Agreement shall be signed by Owner (or by a duly authorized officer, partner, or member of Owner) and shall include the following declaration:

"I understand this report is being made in connection with a return or claim for refund for a tax administered by the Colorado Department of Revenue. Under penalty of perjury, I declare that this report is true and correct as to every material matter to the best of my knowledge and belief."

Tax Credit Cost Certificate Issuance

Satisfactory performance under the terms of this Tax Credit Agreement shall be a condition precedent to CEO's obligation to issue a Tax Credit Cost Certificate to Owner. The Owner shall not request more than 30% of the Qualified Expenditure made during the Credit Period, not to exceed the Tax Credit Reservation Amount. The Tax Credit Cost Certificate will be issued within 3 weeks of approval of the CPA-audited Tax Credit Cost Certificate Request. The Owner is required to submit the Tax Credit Cost Certificate with their annual income taxes. If the request is disallowed, in whole or in part, the Office will notify the Owner in writing of the amount of and reasons for the disallowance.

NOTE: If Tax Credit Cost Certificate credit amount exceeds the income tax owed by the applicant for the taxable year, any excess credit cannot be carried forward and will be refunded to the Owner. CEO will not issue a Tax Credit Cost Certificate exceeding the approved tax credit reservation amount. If the owner's incurred costs would result in an excess tax credit amount beyond the reserved amount, the applicant can apply for the issuance of additional tax credits equal to the excess.

Continued Reporting Requirements

A. Notification of Project or Study Completion Report

As stated above, the Project or Study will be subject to Notification of Project or Study Completion Report due between January 1st and December 31st of the tax year in which the Project or Study Tax Reservation is intended to be claimed.

B. Annual Performance Project Reports

Projects and Studies are subject to annual performance reporting requirements up to four (4) years after the Credit Period has been completed and Tax Credit has been claimed. The Owner is required to submit Annual Reports to CEO affirming continued ownership, operational status, and GHG avoidance/reduction contributions of the awarded CITCO project. The Owner is required to submit Annual Reports by January 31st after the end of any income tax year in which the Owner received a tax credit, and for three (3) years thereafter, for a total of four (4) annual reports. Industrial Studies are not required to submit Annual Project Reports after completion of said study.

Furthermore, projects receiving a tax credit reservation for an amount of \$1 million or more may be subject to additional annual performance reporting requirements up to four years after equipment installation has occurred. Applicants will be notified of additional reporting requirements upon receiving notification of an awarded tax credit reservation. Such reporting requirements may include, but are not limited to:

- Energy reduction verification via an IPMVP-compliant report (option to be determined & utility bill analysis and production records)
- Annual emission reduction verification via emissions monitoring and measurement equipment installation
- Third-party verification via a qualified entity
- Others as deemed necessary

If the awarded Project fails to demonstrate that the greenhouse gas emissions reduction improvements are being used at the specified location or are owned by the applicant during any of the three (3) taxable years after the improvements are placed in service, CEO and the Department of Revenue (DOR) will disallow the credit for that applicant. The applicant must then add the amount of the disallowed credit to its tax return as a recaptured credit for the year in which the credit is disallowed.

C. Additional Reporting

Owner may be subject to additional reporting requirements outlined in the Statement of Work.

Commissioning and Operation Verification

If applicable to the project, the Tax Credit Owner shall undertake a process to ensure all completed systems & equipment are designed, installed, tested, operated, and maintained according to the design and specifications to ensure proper installation and operation. Assurance

will be provided via the submission of a commissioning logbook for the equipment & systems purchased & installed under this Agreement.

Deliverables may include (as applicable to the project):

- i. Documentation including a commissioning logbook and any supporting data to be provided by the Tax Credit Owner
- ii. Additional supporting documentation including, but not limited to, functional testing reports/logs, system operations and maintenance guides

Project Documentation and Records Retention

The Owner must maintain for a minimum of four years after project completion (CEO review and agreement regarding “com[plete]” status) full and accurate records relating to the project(s) credited by CITCO and must ensure adequate control over related parties in the project. The CEO shall be afforded access to such records, and be granted the ability to inspect all work, invoices, materials, and other relevant records at reasonable times and places. Upon CEO's request, the Owner must furnish all data, reports, contracts, documents, and other information relevant to the project within a reasonable timeframe.

Site Visits and Program Evaluation

Project sites are subject to obligations outlined under **§7.B & §7.C**. Additionally, outlined in the Standards and Guidelines, CEO staff, State of Colorado employees, and other CITCO representatives may require access to the site of a CITCO credited project, before, during &/or within three calendar years of project implementation (i.e. On-site Monitoring Visit). Awarded applicants shall provide such access upon request. Additionally, the CEO may perform program evaluation(s) to aid in continuous program improvement which may take the form of a questionnaire or a more detailed interview with approved tax credit recipients. The CEO may engage with Owner to discuss the possibility of creating a success story/case study of a project upon project completion, with participation in such an activity voluntary.

Exhibit B, Colorado Energy Office's CITCO Agreed Upon Procedures

Purpose/Statutory Requirement:

In accordance with Colorado Revised Statutes §39-22-551, and CITCO policy, a Certified Public Accountant is necessary to review and report in writing the accuracy of the financial documents submitted by the Owner. Said Certified Public Accountant must be licensed to practice in the state of Colorado and must be both paid for by the Owner and approved by CEO. Certified public accountant reviews and written reports that do not comply with the statutory requirements above or the CITCO policies listed below will not be accepted, thus preventing the issuance of a Tax Credit Cost Certificate to Owner.

Following is a *draft* report, an outline of the minimum necessary procedures and reporting to be performed by the Certified Public Accountant.

Owner cannot claim more than the total Tax Credit Reservation Amount which is valid for the Credit Period. Owner cannot claim more than 30% reimbursement of the Qualified Expenditures. Owner may request an extension of the Credit Period from CEO, which CEO may approve or deny upon review of the request. If the extension is denied, the Recipient will have an opportunity to reapply. While CEO understands Project timelines may shift, adequate justification, as determined by CEO, is required for CEO to consider such request.

Every report required to be submitted by Owner to the Office pursuant to this Tax Credit Agreement shall be signed by Owner (or by a duly authorized officer, partner, or member of Owner) and shall include the following declaration:

“I understand this report is being made in connection with a return or claim for refund for a tax administered by the Colorado Department of Revenue. Under penalty of perjury, I declare that this report is true and correct as to every material matter to the best of my knowledge and belief.”

Exhibit B Addendum 1

DRAFT CPA REPORT

[CPA Firm Street Address]

[CPA Firm City, State, Zip]

INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

[Entity]

[Entity]

[Entity City, State]

Colorado Energy Office

In accordance with Colorado Revised Statutes §39-22-551, [CPA name or CPA firm name] (“[Abbreviated CPA name or CPA firm name]” or “we”) has performed the procedures enumerated below, which were agreed to by [Entity] (the “Owner”) and the Colorado Energy Office’s Colorado Industrial Tax Credit Offering (“CITCO”), in order to report compliance with Colorado Revised Statutes §39-22-551 and the CITCO “Agreed Upon Procedures” document regarding actual Qualified Expenditures for the period from [CEO Effective Date](Calculation Start Date) through [End Date of Agreement], as specified in [Agreement Name/#]. The Owner’s management is solely responsible for its compliance with the specified requirements. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are as follows:

1. [Abbreviated CPA name or CPA firm name] obtained the Vendor Spend Report as prepared and provided to us by [Owner] and presented as exhibit B. We performed the following procedures:

- a. Verify that expenses reported were paid by the Owner

[This procedure was performed without exception. (or list exceptions)]

- b. Verify that expenses occurred within the Effective Date and Agreement End Date

[This procedure was performed without exception. (or list exceptions)]

- c. Verify that vendor spend is for a qualified expenses as defined by CITCO

[This procedure was performed without exception. (or list exceptions)]

- d. [Include written statement of the Total Qualified Expenditure, the % tax credit, and the dollar value of the tax credit that the Owner was awarded]

[This procedure was performed without exception. (or list exceptions)]

- e. [Include a written statement of total project costs incurred]

[This procedure was performed without exception. (or list exceptions)]

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on compliance with the specified requirements. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. Because standard audit, review, and examination procedures were deemed insufficient by the Colorado Energy Office vendor expenditure verification it requires to qualify CITCO projects, we instead performed the procedures enumerated above, in compliance with the Agreed Upon Procedures document produced by the Colorado Energy Office and Colorado Revised Statutes § 39-22-551.

This report is intended solely for the use of the management of the Owner and CITCO and is not intended to be, and should not be, used by anyone other than the specified parties.

[CPA Signature]

[CPA Printed Name]

[Report Date]

Exhibit B Addendum 2

Expectations and Procedures for CPA Review of Colorado Industrial Tax Credit

NOTE: This document is subject to change pursuant to § 39-22-551, C.R.S.

Introduction:

A licensed Colorado and CEO approved CPA must certify both the total dollar amount of Qualified Expenditures, the Tax Credit Cost Certificate Request, and all required backup documentation provided by the production Owner. For reporting purposes, Qualified Expenditure means the total monetary cost approved by the Colorado Energy Office and expended during the income tax year by an eligible taxpayer (as defined in § 39-22-551, C.R.S.) in connection with an approved industrial project (as defined in § 39-22-551, C.R.S.). In order to certify the total dollar amount of Qualified Expenditures, Vendor Spend Report, and all other required backup documentation, the CPA must verify:

1. TAX CREDIT COST CERTIFICATE REQUEST REPORT:

The Annual Tax Credit Cost Certificate Request Report contains all of the data required by the CITCO for reporting and verification of Qualified Expenditures, as defined below. The CPA must review this report, ensure completeness of the data, and verify the data using the backup documentation submitted by the Owner. The Report should contain each distinct, qualified transaction made during the course of the Project.

The following fields on the Tax Credit Cost Certificate Request Report must be completed by the Owner and verified by the CPA. Following each field name is a description of the field and what must be entered:

- **Vendor Name:** Enter the name of the vendor
- **Address:** Enter the address of the Vendor
- **City:** Enter the city of the vendor
- **State:** Enter the state of the vendor
- **Zip Code:** Enter the zip code of the vendor
- **Contact:** Enter the contact name of the vendor
- **Category:** Enter the corresponding category of the purchase
- **Description of Expense:** Enter a description of the purchase
- **Date of Expenditure:** Enter the date the purchase was made
- **Spend:** Enter the amount spent on the item from the vendor

Below are the relevant definitions, calculations, verifications, and required documents needed in order to complete the Vendor Spend Report.

i. Qualified Expenditures

a. Definitions of Qualified Expenses

Qualified Expenses are defined above, and include only payments made to companies for goods and services within the Credit Period and Agreement Expiration Date in connection with Project or Study activities in Colorado. Refer to the appropriate section in the Standards and Guidelines of the General Application and corresponding sub-application(s) for a complete list of Qualified and Disallowed Expenditures under CITCO. The following is a sample list and includes but is not limited to all the categories of expenses that would count toward a Qualified Expenditure.

- Capital costs associated with purchase of GHG emissions reduction equipment
- Capital costs associated with GHG emissions reduction equipment installation
- (wiring, concrete, conduit, etc.)
- Installing or upgrading to utility service feed equipment owned by the applicant to directly support the implementation of an of the eligible electrification improvements
- Shipping costs associated with GHG emissions reduction equipment
- Labor associated with the installation of the proposed project(s)
- Labor associated with conducting Studies
- Reference the associated Statement or Work for a comprehensive list of Project or Study specific expenses

ii. Verification of Vendor Expenses

- Verify that expenses reported were paid by the Owner
- Vendor invoice showing:
 - Vendor name (the contractor that does the work)
 - Vendor invoice #
 - CITCO Tax Credit owner name (the entity we awarded a tax credit to)
 - Description of goods & services received
 - Cost per unit an extended cost of goods and services
 - Total amount of invoice
 - PO or contract number for goods and services between vendor and Tax Credit owner
- Verify that expenses occurred within the appropriate tax year within the Credit Period
- Verify that vendor spend is for a qualified vendor category (see “Qualifying Vendor Spend” list)

iii. Exclusions from Qualified Vendor Expenses

- Projects with a TRL of five or lower

- Traditional lease-to-own projects
 - Administrative costs incurred by the Applicant to apply for CITCO
 - Labor & materials associated with CITCO project management & compliance
 - Labor and materials associated with auditing of the CITCO cost certification by a licensed certified public accountant
 - Labor associated with the operation or management of the proposed project
 - Project contingency costs
 - Fees associated with securing financing
 - Insurance fees
 - Costs associated with other studies, auditing, surveys, testing, etc. not outlined in the Industrial Study Standards document.
 - Legal fees
 - Interest on borrowed funds
 - Operation, repair & maintenance costs
 - Plant closure projects
 - Taxes & royalties
 - Project in-service & performance verification
 - Any disallowed/ineligible costs as outlined in the technology-specific Standards & Guidelines document(s) applicable to the Applicant's proposed project.
- iv. **Important Cases & Considerations for Vendor Expenses**
- Materials/Equipment Purchases – CITCO cannot qualify equipment purchases in which an Owner pays themselves for their own equipment. Exemptions to this clause can be made by providing justification and receiving prior approval from CEO.
- v. **Documentation Needed for Vender Expense Verification**
- Original Receipts, Invoices and/or time and effort report with:
 - Dates
 - Vendor Name
 - For Projects
 - Equipment/materials purchased
 - Number of units purchased
 - Per unit and extended cost
 - Eligible Installation costs and number of labor hours spent
 - For Studies

- Tasks performed
- Unit price or hours of labor spent on study
- Copy of deliverables provided with confidential business information redacted
- Full vendor list from Owner

2. REPORTING:

CITCO requires that certain reports/metrics are contained within the CPA review, separate from the completed Vendor Spend Report. CITCO requires that the following metrics and data are included in the written CPA report:

i. Total Budget (entire Project or Study, including non-qualified expenditures) as reported by the Owner

- a. NOTE: This amount is usually reported in the initial Proof of Performance. This number should not require any review by the CPA

ii. Statement of Expenditures and Findings

- a. Total Amount of Qualified Expenditure as reported by the Owner
- b. Total Amount of Qualified Expenditure (the sum of a and b) as found in CPA review
- i. Qualified Vendor Expenses
1. Qualified Vendor Spend
 2. Non-Qualified Vendor Expenses
- ii. Total Amount of Tax Credit (award amount was determined by CEO)

iii. Signed Declaration:

Every Report required to be submitted by Owner to the Office pursuant to this Tax Credit Agreement shall be signed by Owner (or by a duly authorized officer, partner, or member of Owner) and shall include the following declaration:

“I understand this report is being made in connection with a return or claim for refund for a tax administered by the Colorado Department of Revenue. Under penalty of perjury, I declare that this report is true and correct as to every material matter to the best of my knowledge and belief.”

Exhibit B Addendum 3

Expectations and Procedures for Owner

This section is subject to the agreed upon Statement of Work between the awardee and the Colorado Energy Office. The Owner agrees to adhering to and providing all necessary documents and procedures outlined under Exhibit A: Owner Obligations and all Addendums under Exhibit B.

Additionally, the Owner shall comply with the Project's Statement of Work. A copy of the Statement of Work will be attached here: