

PRICE AGREEMENT SOLICITATION TERMS AND CONDITIONS

01/31/07 (modified)

1. General

1.1 Effect of Price Agreements. The State of Colorado is issuing this solicitation through the procuring agency to select vendors with which to execute State price agreements. The State Purchasing Office will administer the Price Agreement(s) after award. These instructions are intended to summarize the State's procurement process and provide instructions to offerors, but they are not intended to modify procurement statutes and implementing rules. These instructions supplement the BIDS Solicitation Instructions and Terms and Conditions and solicitation instructions in the procuring agency's solicitation.

1.1.1 If a State price agreement is designated as "mandatory," the State agencies and institutions by regulation must satisfy requirements through the price agreement. Exceptions may be granted by the State Purchasing Director on application by the agency or institution involved.

1.1.2 If a State price agreement is designated as "permissive," State agencies and institutions may satisfy their requirements through the price agreement without using Procurement Code procedures (e.g. invitations for bids) to solicit competitive bids or proposals. State agencies or institutions may, however, satisfy requirements without using the State price agreement so long as applicable procurement statutes and rules are followed.

1.1.3 While political subdivisions may order from State price agreements, their use is discretionary with the political subdivision.

1.2 Effect of Estimates/Minimum Orders. Estimates of historical usage are provided for information purposes only. The State does not warrant the accuracy of the estimates or that future usage will be the same. Unless stated otherwise in the award in order to take advantage of price reductions proposed by the vendor, there is no minimum order required in any resulting award.

1.3 Definitions.

"Contract" includes a State contract executed pursuant to State Fiscal Rules, any purchase order, and any other informal agreement permitted by State Fiscal Rules, unless the context clearly requires another meaning.

"Ordering entity" means a State agency or institution or political subdivision which may issue orders against this price agreement.

"Vendor" refers to any person or entity executing a price agreement as a result of an award, and has the same meaning as "contractor" or "offeror."

2. State Price Agreements

2.1 Price Increases/Decreases.

2.1.1 Unless otherwise limited in the solicitation, requests for price increases, substantiated by verifiable manufacturer cost increases, will be allowed only on the basis of prior

approval by the State Purchasing Office, and no more than one request in a 12-month period will be honored. However if price increases for any item exceed what the State Purchasing Office considers to be normal or expected the State reserves the right to seek additional competition and/or buy those products from other sources. Failure to notify the State of price increases shall result in the vendor furnishing products at the original bid price.

2.1.2 Price agreement prices represent ceiling prices for the supplies and services priced in this price agreement. The vendor shall report to the State Purchasing Office any price reduction or discount, or other more favorable terms, offered to any ordering entity (State agency, institution, or political subdivision), and the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future awards. Price reductions attributable to other than volume discounts or "spot" promotional discounts will be made available to other ordering agencies via this price agreement, and such pricing shall be automatically extended to this price agreement.

2.1.3 Ordering entities (State agencies, institutions or political subdivisions) may consolidate purchases in order to take advantage of any volume discount or other, more favorable terms extended by vendor for minimum orders (if any is specified in the bid), so long as a single delivery location at the discretion of the ordering entity is specified. Where no volume discount is priced in this agreement for minimum order quantities, ordering entities may negotiate special pricing and additional discounts with the awarded vendor.

2.2 Additional Vendor Responsibilities.

2.2.1 The awarded Vendor will be required to provide fax price quotes as requested by individual agencies.

2.2.2 The awarded Vendor must notify the State Purchasing Office immediately of any change of vendor name or address, back order problems, price changes, etc.

2.2.3 The awarded Vendor will maintain registration on the BIDS system throughout the term of the price agreement.

2.3 Product Changes/Substitutions. In the event of product deletion or modification the State Purchasing Office must be notified immediately. In such cases, vendor shall include specifications of the suggested product replacing the item, and a price offering for the replacement item. No substitutions will be allowed without prior approval of the State Purchasing Office. On substitution items, the State reserves the right not to procure the substituted items, and additionally retains the right to procure substitutions outside this Price Agreement. Throughout the term of this agreement, items may be added or deleted according to requests of the using agencies and/or usage reports.

2.4 Internet Home Page/Electronic File pricing format. Vendor will either need to maintain current pricing information, names of primary sales person and technicians on an electronic World Wide web homepage, or furnish a Word Perfect or Microsoft compatible electronic file using a format specified by the State Purchasing Office, that contains the product list with published list prices from which discount will be deducted.

2.4.1 If the Vendor elects to maintain its own web homepage with product descriptions and pricing, Vendors will provide the URL (Uniform Resource Locator) of their

homepage to the State Purchasing Office for inclusion in the State of Colorado World Wide Web site. The URL must only show the products and pricing for the particular price agreement category and/or products described in this document. Content must be pre-approved by the State Purchasing Office. The electronic file or URL must be functional within three weeks after vendor is notified of award. All prices and product lists (whether the vendor chooses an electronic format or URL) must be kept current by the vendor.

2.4.2 The State Purchasing Office reserves the right to post on the web the vendor's pricing with product descriptions (or a URL link to this information) on the Internet. (Website is: www.gssa.state.co.us).

2.4.3 Vendor must provide a complete price list in machine readable format to any State agency or institution upon their request

2.5 Volume Reports

2.5.1 Quarterly Volume Reports. Quarterly reports are due 15 calendar days after the end of each calendar quarter. This is a mandatory requirement. Failure to provide these reports may result in the cancellation of the agreement. In addition, failure to submit volume reports as required may impact future eligibility to compete for state price agreements. These reports must be submitted to the State Purchasing Office and must contain the following information:

- a. The total dollars spent by State of Colorado agencies and institutions in conjunction with the price agreement,
- b. The total estimated dollars saved by State agencies and institutions on the price agreement for that period,
- c. The total dollars spent by State institutions of higher education (State universities and State colleges) in conjunction with the price agreement,
- d. The total estimated dollars saved by State institutions of higher education on the price agreement for that period,
- e. The total dollars spent by political subdivisions in conjunction with the price agreement,
- f. The total estimated dollars saved by political subdivisions on the price agreement, and
- g. The volume of purchase paid for with procurement card as opposed to traditional methods of payment.

2.5.2 The contractor must also provide detailed reports to any state agency requesting usage for their agency against this state price agreement

2.5.3 Comprehensive Sales History Reports. In addition, Vendor(s) receiving resulting award(s) must furnish comprehensive sales history reports to the State Purchasing Office approximately once per year or at any time within 15 days notice from the State Purchasing Office. Comprehensive reports must contain the following information for the particular time period (normally 10 to 12 months) requested:

- a. The name of each State agency or institution, State institution of higher education and political subdivision that has made purchases and the dollar amount purchased by each agency/ subdivision in conjunction with the price agreement,
- b. The dollar amount purchased for each category listed in this bid and on resulting award, and
- c. The quantity sold of each individual product purchased on the price agreement. Failure to provide these reports may result in the cancellation of the agreement.

2.6 Price Agreement Termination.

2.6.1 Unless the Price Agreement is designated “mandatory” or specifies minimum orders that the State is required to execute, either party may terminate the price agreement upon sixty (60) days prior written notice. The vendor remains responsible for providing the reports specified in this subsection. This termination shall not affect orders placed before date of the written notice. Unless approved by the State Purchasing Office, after the date of written notice, the vendor shall not accept any new orders having performance periods extending beyond the effective date of the termination.

2.6.2 Either party may terminate the Price Agreement for default upon ten (10) days written notice. Such written shall provide the other party with a written description of the grounds for the default.

2.6.3 In the event the agreement is terminated, the State reserves the right to negotiate a replacement Price Agreement as it deems to be in the best interests of the State to provide suitable replacement availability at fair and reasonable pricing for the remaining term of the terminated Price Agreement, including any options.

2.7 Addition of Vendors

2.7.1 The State of Colorado intends to award Price Agreement(s) to vendor(s) capable of fulfilling the anticipated volume needs for the commodities and/or services specified. However, should the State determine at any time during the term of the resulting Price Agreement(s) that the number of awarded vendors is not adequate to properly fill these needs, the State reserves the right to make awards to vendors who submitted responses to the original solicitation but were not awarded, or to re-issue the solicitation and make additional awards as necessary. If the solicitation is re-issued, vendors who have Price Agreement Awards in good standing will not be required to respond.

2.8 Software Piracy Prohibition

2.8.1 No State or other public funds payable under the Price Agreement shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Vendor shall, for the term of the Price Agreement and any extensions, have in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Vendor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under the Price Agreement, including, without limitation, immediate termination of the Price Agreement and any remedy consistent with United States copyright laws or applicable licensing restrictions.

3. Audit and Recordkeeping. The Vendor shall permit the State or any other duly authorized agent of the State to audit, inspect, examine, excerpt, copy and/or transcribe contractor's records during the term of this contract and for a period of one (1) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof. The Vendor shall retain records concerning orders and pricing for a sufficient period of time to permit the State to exercise its audit right under this paragraph.

4. Pricing and Credits

4.1 Unless otherwise specified in the solicitation, price agreement prices will be proposed at the same F.O.B. destination price throughout the State of Colorado.

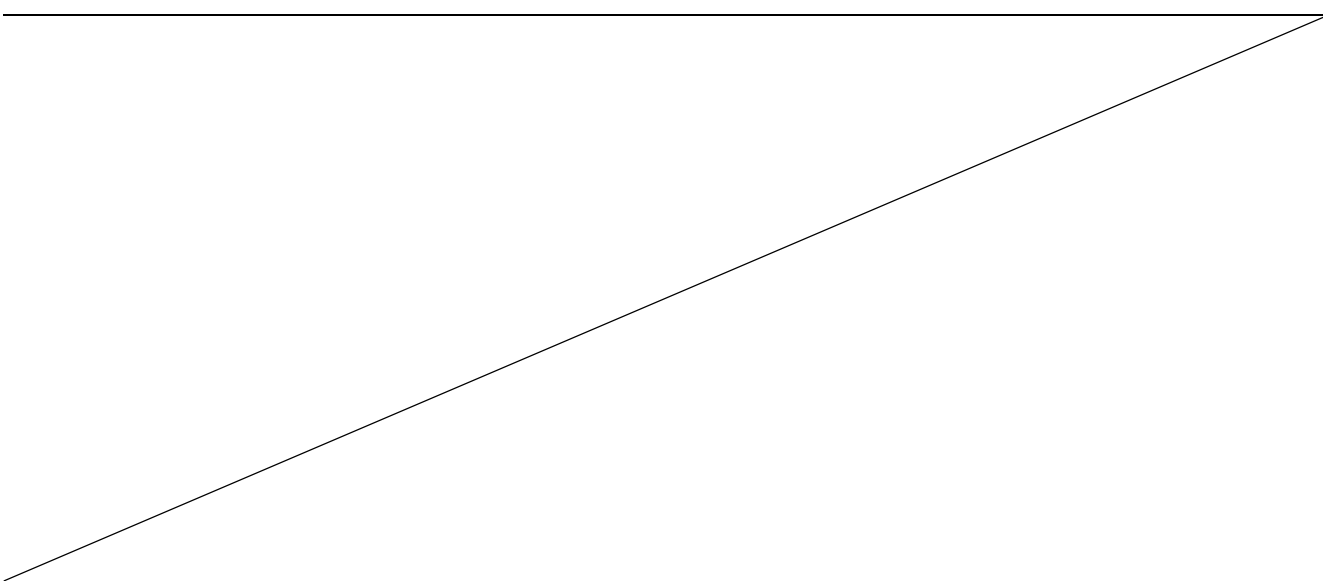
4.2 Unless otherwise specified in the solicitation, supplies ordered under this price agreement may be returned in the original packaging by the ordering entity within thirty (30) days of delivery without assessment of a restocking or other.

5. Price Agreement/Orders Terms and Conditions.

5.1 Except as replaced, modified, or supplemented by the terms of this solicitation and the order, orders for supplies and commodities by State agencies and institutions will be governed by the Purchase Order and insurance terms and conditions in sections 4.1 through 4.5 of the BIDS State of Colorado Solicitation Instructions/Terms and Conditions.

5.2 The State reserves the right to negotiate and clarify the terms and conditions where there is only a negligible affect on price/cost, quality, delivery, or other performance.

5.3 Price Agreement Terms and Conditions (Services). The following price agreement terms and conditions apply to price agreements for services priced at more than \$100,000, or contracts for supplies and products exceeding \$100,000 in value and including unpriced services not incidental to the transaction.



PRICE AGREEMENT TERMS AND CONDITIONS (SERVICES)

THIS Price Agreement is made this _____ day of _____, 20__ the STATE OF COLORADO, acting by and through the State Purchasing Office, Department of Personnel & Administration, for the use and benefit of the state agencies and institutions and political subdivisions, each of whom are referred to herein as "State", or "Customer", or "Ordering Entity" as defined herein, and _____, a Corporation with offices at _____, hereinafter referred to as "contractor" or "vendor."

1. **SCOPE.**

1.1 General. This Price Agreement defines the unit prices or rates for services and products, supplies, or equipment ordered pursuant to the terms of this Price Agreement. Except with respect to orders place by it under this agreement, the Department of Personnel & Administration shall not be liable to contractor as a signatory to this price agreement for any breach by a State agency or other ordering entity of any payment or other obligation herein or under a purchase order or contract that orders services from this State Price Agreement.

1.2 Definitions.

"Order" shall refer to any purchase order, contract, or other authorized agreement used to order the services or products priced in this Price Agreement. An order amended consistent with the requirements of any state agency, department, institution, or political subdivision shall also be governed by the same terms and conditions.

"Ordering Entity" means the State agency, department, institution, or political subdivision that places an order.

"This contract" or "the contract" shall refer to the integrated agreement consisting of the "order" and the terms of this Price Agreement, the solicitation, and the bid or proposal.

"Products" refers to any hardware, software, or other products shown on the Price Agreement. Products has the same meaning as "commodities," "supplies," or "equipment."

"Services" shall refer to the services other than products, supplies, and equipment priced in the contractor's proposal which can be ordered by State agencies and political subdivisions.

"State agency" shall mean any department, agency, or institution of higher education of the State of Colorado, not including political subdivisions of the State of Colorado.

"Unless otherwise agreed" or "unless otherwise specified" shall mean those terms specified in the order.

1.3 Purchase Order Requirements. Whenever any order by an eligible State agency, department, institution, or political subdivision refers to this Price Agreement, the agreement between the parties shall consist of the terms of such order and this Price Agreement (including the solicitation and the contractor's bid or proposal), except as modified consistent with this Price Agreement. The contractor shall insure that orders for services or products pursuant to this Price Agreement as a minimum specify:

- a. The supplies or equipment being delivered, if any;
- b. The place and time of delivery;
- c. A billing address: and
- d. The name, phone number, and address of the ordering entity's representative;
- e. The price, or in the case of services ordered on an hourly or other unit basis, the cost per hour or unit and the ceiling amount of the order for services being ordered.
- f. Any facilities or other property of the ordering entity to be furnished or otherwise used by the contractor during the course of performance.

1.4 Delivery. Unless otherwise agreed, any products or services ordered pursuant to the terms of this agreement shall be performed at or delivered F.O.B. destination to its designation location.

1.5 Order of Precedence. Except as otherwise specified in this agreement, the terms of this Price Agreement may not be modified or contradicted in any order by a State agency, department or institution without approval by the State Purchasing Office. Any conflict or inconsistency between the terms of an order and this Price Agreement shall be resolved by giving effect first to the terms of this Price Agreement, next to the terms of the solicitation, next to the terms of the contractor's proposal or bid, and finally to the terms of the ordering instrument (i.e. contract or purchase order).

2. PERFORMANCE PERIOD.

2.1 Total Period. This Price Agreement shall be effective from _____ through _____. The State has the option to renew the terms of this Price Agreement for _____ additional one year terms.

2.2 Placing Orders. Orders may be placed consistent with the terms of this Price Agreement during the period specified above. Orders must be placed pursuant to this Price Agreement prior to the expiration date (as amended through option exercise) but may have a delivery date or performance period up to 120 days past the then-current expiration date of this Price Agreement. The contractor is reminded that financial obligations of the State of Colorado and political subdivisions payable after the current applicable fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

2.3 Order Terms. Notwithstanding the expiration or termination of this Price Agreement, the contractor agrees to perform in accordance with the terms of any orders then outstanding at such expiration or termination. The contractor shall not honor any orders placed after the expiration or notice of termination of this Price Agreement, or otherwise inconsistent with its terms. Orders from any indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Price Agreement may not be placed after the expiration or notice of termination of this Price Agreement, notwithstanding the term of any such indefinite delivery order agreement.

3. PAYMENT.

3.1 Rates. The ordering entity shall pay the contractor the contract price (for products), at the order price for services priced as a firm, fixed price using Price Agreement rates, or at the hourly rates (not-to-exceed the ceiling amount) for services ordered on an hourly basis. Unless otherwise specified in the order, payments will be made based on the monthly submission of statements detailing the dates, quantity, and description of services performed and/or products

delivered. Incorrect payments to the contractor due to omission, error, fraud, or defalcation may be recovered from the contractor by deduction from subsequent payments under orders or other contracts between the ordering entity and the contractor.

3.2 Renewal of Agreement. In the event of renewal of this Price Agreement, or any amendment of its terms (including prices), unless otherwise specified in the order, the contractor shall perform services in accordance with the terms of the Price Agreement current at the time of the order, and invoice at the rates in the Price Agreement in effect at the time services are performed under the order. If the parties have agreed to completion of a deliverable within an agreed not-to-exceed ceiling amount, unless otherwise agreed the contractor shall be paid at the rates in the Price Agreement in effect at the time the order was placed.

3.3 Discount/Delinquency Period. Any applicable cash discount period or delinquency period will start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable products or services at the specified destination by an authorized agency representative, whichever is later.

3.4 Delinquent Payments. State law and regulations provide that vendors will be paid by State agencies within forty-five days after receipt of products or services and a correct notice of amount due, unless otherwise agreed to by special conditions specified in the order. A State liability not paid within forty-five days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth day at the rate of one percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. Vendors shall invoice State ordering entities for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid, and the applicable interest date. (Section 24-30-202(24), C.R.S., as amended)

4. INSPECTION AND ACCEPTANCE. The ordering entity reserves the right to inspect services performed or products delivered under this Contract at all reasonable times and places during the term of the Contract. If any of the services or products do not conform with Contract requirements, the ordering entity may reject nonconforming products or require the contractor to perform the services again in conformity with Contract requirements, with no additional payment. If the ordering entity elects to accept nonconforming tender, or when defects in quality or quantity of service cannot be corrected by re-performance, the ordering entity may (1) require the contractor to take necessary action to insure that the future performance conforms with the contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed or product delivered. These remedies in no way limit the remedies otherwise available to the ordering entity in this Contract or remedies otherwise available at law or equity.

5. WARRANTIES. Contractor warrants that all products or services furnished under this Contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturer's recommendations or other industry standards, and will function in a failure-free manner for a period of one year from the date of acceptance of installation. Contractor shall, at its option, repair or replace any supplies or reperform any services that fail to satisfy this warranty during the warranty period. Additionally, contractor agrees to assign to the ordering entity all written manufacturer's warranties relating to the supplies and to deliver such written warranties to the customer. The existence of this or any other express warranty in this

Contract shall not impair or limit the remedies otherwise granted under this Contract or available to the ordering entity at law or equity.

6. TAX EXEMPT STATUS.

6.1 State Entity. State agencies generally are tax-exempt and are not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. The State's FEIN # is 84-730123K. The State's tax exemption number is 98-02565. The State is also not liable for any franchise taxes or taxes related to the income of the contractor. No taxes of any kind shall be charged to the State. Contractor is hereby notified that when materials are purchased for the benefit of State ordering entities, some political subdivisions require the vendor to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the ordering entity, nor will any prices or rates in this Price Agreement be adjusted on account of such taxes.

6.2 Political Subdivision. Contractor will accord the same tax free treatment to any Colorado political subdivision to the extent that they establish like exemption from taxes.

7. REPORTING. Contractor will submit quarterly volume reports as specified in the solicitation.

8. COMMUNICATIONS. With respect to orders placed by State ordering entities, all communications, including reports, notices, and advice of any nature, concerning administration of orders placed under this Price Agreement, must be furnished solely to the purchasing agent within the ordering entity's purchasing office, or to such other individual identified in writing in the order.

9. CONFIDENTIALITY. In the event the contractor or its employees shall obtain access to any confidential information, records or files of the ordering entity in connection with the performance of its obligations under this agreement or any order placed pursuant to this agreement, the contractor shall keep such records, files, and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the ordering entity. "Confidential information, records or files" shall not mean information which the ordering entity has denominated in writing as not confidential; or information which at the time of disclosure is in the public domain by having been printed and published and widely available to the public, e.g., information in public libraries or repositories. The contractor shall notify its employees in writing that they are subject to the confidentiality requirements set forth above.

10. FACILITIES AND/OR PROPERTY FURNISHED BY THE ORDERING ENTITY.

10.1 The ordering entity shall deliver to the contractor, for use in connection with and under the terms of the contract, the facilities or property described in the order together with any related data and information that the contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "government-furnished property").

10.2 The ordering entity and its designees shall have access at all reasonable times to the premises in which any government-furnished property is located for the purpose of inspecting the property. The contractor shall maintain an inventory and accountability system acceptable to the ordering entity, and mark or tag the property in accordance with reasonable procedures of the ordering entity.

10.3 Risk of loss. Unless otherwise provided in the order, the contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, government-furnished property or facilities upon its delivery to or use by the contractor. However, the contractor is not responsible for reasonable wear and tear to property of the ordering entity or for government-furnished property properly consumed in performing the order.

10.4 Upon completing the order, or at such earlier dates as may be fixed by the ordering entity, the contractor shall submit, in a form acceptable to the ordering entity, inventory schedules covering all items of government-furnished property not consumed in performing the contract or delivered to the ordering entity. The contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the government-furnished property as may be directed or authorized by the ordering entity. The net proceeds of any such disposal shall be credited to payment due under the order or shall be paid to the ordering entity as it may direct.

11. INTELLECTUAL PROPERTY RIGHTS OF ORDERING ENTITY. Any products delivered under this contract will be owned by the ordering entity. Any software, reports, data, manuals, or other documents, drawings or materials (“works”) delivered by contractor in the performance of its obligations under this contract shall be subject to an irrevocable, nonexclusive, perpetual, paid-up, transferable license to use, and permit others to use for ordering entity purposes, the software, reports, data, or other documents, drawings, or materials. The use rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

12. DATA AND DOCUMENT DELIVERABLES.

12.1 Unless otherwise specified, the contractor shall deliver by the dates specified in the order the data or documents required by the solicitation, as well as any proposed by the contractor.

12.2 It is the intent of the parties that documentation be written so persons reasonably proficient in the use of the program language or generally familiar with the type of product involved can efficiently use the documentation to understand the equipment functions, troubleshoot problems, and in the case of software, understand program structure, iterative and other control techniques, and decipher error messages should they occur. The contractor warrants that the delivered documentation will be sufficiently descriptive to enable maintenance and modification of the product consistent with their intended uses.

13. REMEDIES. Unless otherwise agreed, in addition to any other remedies provided for in the solicitation, this agreement or the order, and without limiting its remedies otherwise available at law, the ordering entity may exercise the following remedial actions if the contractor substantially fails to satisfy or perform the duties and obligations in the contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by contractor. These remedial actions are as follows:

13.1 Suspend Performance. Suspend contractor's performance pending necessary corrective action as specified by the ordering entity without contractor's entitlement to adjustment in price/cost or schedule; and/or

13.2 Withhold Payment. Withhold payment to contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

13.3 Removal of Contractor Employee/Agent. Request the removal from work on the contract of employees or agents of contractor whom the ordering entity justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract is contrary to the public interest; and/or

13.4 Deny Payment. Deny payment for those services or obligation which have not been performed and which due to circumstances caused by contractor cannot be performed or if performed would be of no value to the ordering entity. Denial of the amount of payment must be reasonably related to the amount of work or performances lost to the ordering entity.

13.5 Contract Termination. Terminate the contract for default.

The above remedies are cumulative and the ordering entity, in its sole discretion, may exercise any or all of them individually or simultaneously.

14. TERMINATION FOR CONVENIENCE.

14.1 Subject to the terms of any minimum quantity guarantee specified in the award, this Price Agreement may be terminated by either the State or the contractor upon sixty (60) days written notice. Upon notice of termination, no orders may be accepted by the contractor with performance periods extending beyond the effective date of termination. However, subject to the right of the ordering entity to terminate, or as otherwise agreed between the parties, the contractor will perform obligations consistent with this agreement for orders in effect on the effective date of the termination.

14.2 Unless otherwise agreed, the procurement officer may, when the interests of the ordering entity (also known as "purchasing agency") so require, terminate any order, in whole or in part, for the convenience of the ordering entity. The procurement officer shall give at least twenty (20) days written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the ordering entity has breached the contract by exercise of the Termination for Convenience Clause.

14.2.1 Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor must still complete and deliver to the ordering entity the work not terminated by the Notice of Termination.

14.2.2 Compensation.

(i) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph c(iii) in this paragraph.

(ii) The procurement officer and the Contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.

(iii) Absent complete agreement under subparagraph c(ii) of this subparagraph, the procurement officer shall pay the Contractor the following amounts, provided payments agreed to under subparagraph c(ii) shall not duplicate payments under this subparagraph:

(a) contract prices or rates for products delivered and accepted or services performed and accepted under the contract, and to the extent that the contractor has specified cancellation or termination charges, those charges, but to the extent that it has not, the costs in subparagraphs (b) and (c);

(b) costs incurred in performing services at the agreed unit price where work has been priced as a not-to-exceed to lump sum price for a completion deliverable;

(c) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of the termination claims and supporting data with respect to the terminated portion of the contract, together with reasonable storage, transportation, and other costs incurred in connection products shipped and not accepted by the ordering entity. The total sum to be paid the contractor under these subparagraphs (a), (b), and (c) shall not exceed the total contract price reduced by the amount of payments otherwise made, and the contract price of work not terminated.

(iv) Costs claimed or agreed to under this section shall be in accordance with applicable sections of the Colorado State Procurement Code.

15. TERMINATION FOR DEFAULT. The State Purchasing Office (with respect to this Price Agreement) or the ordering entity (also referred to as “purchasing agency”) through its designated procurement officer (or other authorized representative) may terminate (with respect to any order) the contract for default, and such termination shall be governed by this provision.

15.1 Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the non-performance, and if not corrected with ten (10) days of receipt of such notice, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

15.2 Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

15.3 Compensation. Payment for completed supplies delivered and accepted by the purchasing agency and for acceptable services performed and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due to the contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

15.4 Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

15.5 Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

16. INSURANCE.

16.1 Standard Insurance Requirements.

16.1.1 The contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

(i) Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.

(ii) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

(iii) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

(iv) Professional liability insurance with minimum limits of liability of not less than \$_____. (To be specified in the solicitation.)

16.1.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

16.1.3 The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

16.1.4 The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

16.1.5 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

16.1.6 The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

16.1.7 Notwithstanding subsection A of this section, if the contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended (“Act”), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

17. LICENSES, PERMITS, AND RESPONSIBILITIES. Contractor certifies that, at the time of entering into this agreement, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform the services and/or deliver the supplies covered by this agreement. Contractor warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform this agreement and orders under this agreement, without reimbursement by the ordering entity or other adjustment in contract price. Additionally, all employees of contractor performing services shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor further certifies that, if a foreign corporation or other entity, it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or nonrenewal of necessary licenses, certifications, approvals, insurance, permits, etc. required for contractor to properly perform this agreement or orders under this agreement, shall be grounds for termination of the contract for default.

18. GOVERNMENTAL IMMUNITY. Notwithstanding any other provision of the contract to the contrary, no term or condition of the contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, section 24-10-101, *et.seq.*, C.R.S., as now or hereafter amended.

19. ASSIGNMENT AND SUCCESSORS. The contractor agrees not to assign rights or delegate duties under this agreement or orders placed under this agreement, or subcontract any part of the performance required under the agreement or orders (other than subcontractors identified in the contractor's bid or proposal response), without the express, written consent of the State, in the case of this Price Agreement, and the ordering entity, in the case of orders placed under this Price Agreement. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, C.R.S., provided that, in the case of ordering entities who are State agencies, written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this contract. Such assignment shall not be deemed valid until receipt by such controller -- as distinguished from the State Controller -- and the contractor assumes the risk that such written notice of assignment is received by the controller for the State agency, department, or institution involved.

20. SOFTWARE PIRACY PROHIBITION. No State or other public funds payable under the Price Agreement shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Vendor shall, for the term of the Price Agreement and any extensions, have in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Vendor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under the Price Agreement, including, without limitation, immediate termination of the Price Agreement and any remedy consistent with United States copyright laws or applicable licensing restrictions.

21. AUDIT AND RECORDKEEPING. The Vendor shall permit the State or any other duly authorized agent of the State to audit, inspect, examine, excerpt, copy and/or transcribe contractor's records during the term of this contract and for a period of one (1) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof. The Vendor shall retain records concerning orders and pricing for a sufficient period of time to permit the State to exercise its audit right under this paragraph.

22. SEVERABILITY. To the extent that the contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of the contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. Any order placed by any enrolled entity pursuant to this Price Agreement shall be severable, and the State Purchasing Office shall not be a party to any such purchase order or contract.

23. WAIVER. The waiver of any breach of a term, provision, or requirement of the contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

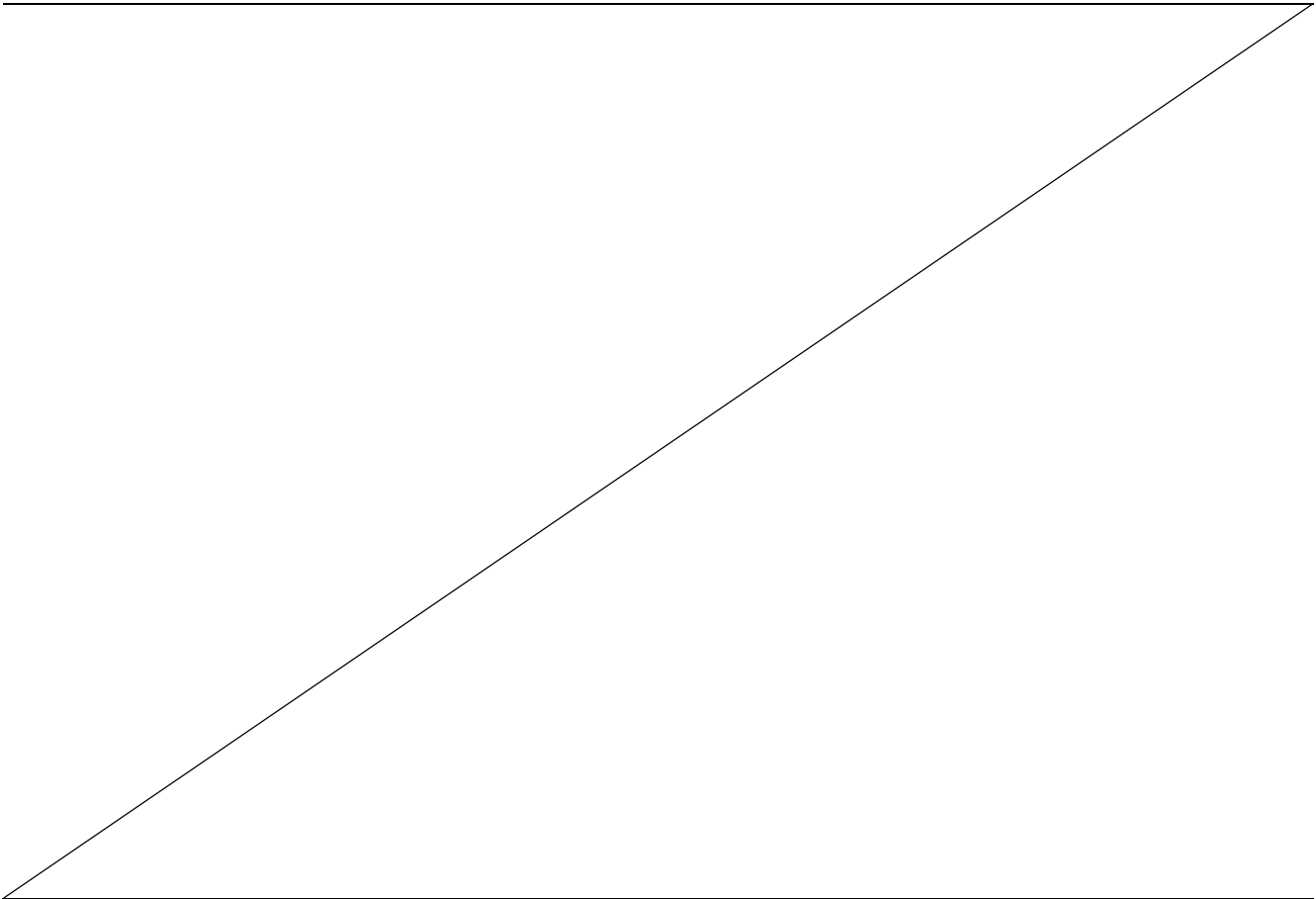
24. ENTIRE UNDERSTANDING. This agreement and orders placed hereunder are intended as the complete integration of all understandings between the parties. No prior or contemporaneous

addition, deletion, or other amendment thereto shall have any force or effect whatsoever, unless embodied herein in writing.

25. SURVIVAL OF CERTAIN CONTRACT TERMS. Notwithstanding anything herein to the contrary, the parties understand and agree that there are terms and conditions of the contract which may require continued performance, compliance, or effect beyond the termination date of the Price Agreement and order, and such terms and conditions shall survive such expiration or termination of the orders and this Price Agreement and shall be enforceable by the ordering entity in the event of such failure to perform or comply by the contractor.

26. GOVERNING LAW AND VENUE. The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this Price Agreement and orders under it. Unless otherwise agreed, venue for any action related to performance of this contract where the ordering entity is a State agency shall be the City and County of Denver.

27. COLORADO SPECIAL PROVISIONS. The following Colorado Special Provisions, required by Fiscal Rule 3-1, 1 CCR 101-1, shall be applicable to any order placed by an agency, department, or institution of the State of Colorado and shall govern in the event of any conflict or inconsistency between the terms of any order and this Price Agreement. With respect to paragraph 1 of the Special Provisions, State Controller or designee approval is not required for State purchase orders issued against this Price Agreement by State purchasing agents.



SPECIAL PROVISIONS

The Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY. CRS 24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

[Applicable Only to Intergovernmental Contracts] No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

4. **INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. **[Not Applicable to Intergovernmental Contracts] VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.

10. **[Not Applicable to Intergovernmental Contracts]. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.** Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

Revised October 25, 2006

Effective Date of Special Provisions: August 7, 2006

Effective Date: August 7, 2006

SPECIAL PROVISIONS

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:

BILL RITTER, JR. GOVERNOR

Legal Name of Contracting Entity

By _____
Executive Director or University / College President

Social Security Number or FEIN

Department / Agency or Higher Education Institution

Date _____

Signature of Authorized Officer

(Print) Name & Title of Authorized Officer

LEGAL REVIEW:
Attorney General, John W. Suthers

Date _____

By _____

CORPORATIONS:

(A corporate attestation is required.)

Attest (Seal) By _____ (Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER
Leslie M. Shenefelt

By _____
Date _____