

PRICE AGREEMENT AMENDMENT

Amendment #1	Original Price Agreement CMS # 83796	Amendment CMS # 164111
---------------------	---	-------------------------------

1. PARTIES

This Amendment to the above-referenced Price Agreement (hereinafter called "Agreement") is entered into by and between **Desert Mountain Distributing, Inc. dba Desert Mountain Coldfire, Inc.** (hereinafter called "Contractor"), and the State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing & Contracts Office, (hereinafter called the "State").

2. EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. FACTUAL RECITALS

- A. The Parties entered into a Price Agreement, effective October 27, 2015, which authorizes the utilization of Fire Protection Services as set forth in the State of Colorado's Price Agreement, number 2016-0000-0000-0000-0136.
- B. Desert Mountain Distributing, Inc. dba Desert Mountain Coldfire was renewed via a unilateral Option Letter #1 (CMS # 94669), on September 23, 2016, for an additional twelve (12) month term, which expired on September 30, 2017.
- C. Desert Mountain Distributing, Inc. dba Desert Mountain Coldfire was renewed via a unilateral Option Letter #2 (CMS # 104424), on September 8, 2017, for an additional twelve (12) month term, which expired on September 30, 2018.
- D. Desert Mountain Distributing, Inc. dba Desert Mountain Coldfire was renewed via a unilateral Option Letter #3 (CMS # 113436), on September 6, 2018, for an additional twelve (12) month term, which expired on September 30, 2019.
- E. Desert Mountain Distributing, Inc. dba Desert Mountain Coldfire was renewed via a unilateral Option Letter #4 (CMS # 141456), on September 17, 2019, for an additional twelve (12) month term, which expires on September 30, 2020.

By this Amendment No.1, the parties desire to extend the Contract until September 30, 2021, and to update the Contract with the new State Special Provisions. The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment.

4. LIMITS OF EFFECT

This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior Amendments thereto, if any, remain in full force and effect except as specifically modified herein.

5. MODIFICATIONS

- A. This Amendment shall extend the current term through September 30, 2021.
- B. Section 21, Colorado Special Provisions, of the Price Agreement shall be deleted in its entirety and replaced by the following:

"Section 21, Colorado Special Provisions (Colorado Fiscal Rule 3-3)

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

1. **STATUTORY APPROVAL.** §24-30-202(1) C.R.S. This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.
2. **FUND AVAILABILITY.** §24-30-202(5.5) C.R.S. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated,

Effective 11/1/2018

Page 57 of 109

budgeted, and otherwise made available.

3. **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 Contract 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.
4. **INDEPENDENT CONTRACTOR.** 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 deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor 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.
6. **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 Contract. 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 Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.
7. **PROHIBITED TERMS.** Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor'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 Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.
8. **SOFTWARE PIRACY PROHIBITION.** State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain 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 provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal Effective 11/1/2018 Page 58 of 109 copyright laws or applicable licensing restrictions.
9. **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 Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

- 10. VENDOR OFFSET AND ERRONEOUS PAYMENTS.** §§24-30-202 (1) and 24-30-202.4C.R.S. [Not Applicable to intergovernmental agreements] The State Controller may withhold payment under the State's vendor offset intercept system for debts owed to state agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in §39-21-101, et seq. C.R.S.; (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 as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.
- 11. PUBLIC CONTRACTS FOR SERVICES.** §8-17.5-101 C.R.S. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to §8-17.5-102(5)(c), C.R.S. 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 (a) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting state agency or institution of higher education within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5) C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting state agency, institution of higher education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §8-17.5-101 et seq., C.R.S., the contracting state agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.
- 12. PUBLIC CONTRACTS WITH NATURAL PERSONS.** §24-76.5-101 C.R.S. Contractor, if a Effective 11/1/2018 Page 59 of 109 natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of §24-76.5-101, et seq., C.R.S., and (c) has produced one form of identification

