

STATE OF COLORADO
Department of Personnel & Administration, Division of Finance and Procurement,
State Purchasing Office
Contract
(hereinafter “Price Agreement”)
with
Frankie Friend & Associates, Inc.

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1. PARTIES

This Contract (hereinafter called “Price Agreement”) is entered into by and between Frankie Friend & Associates, Inc. (hereinafter called “Contractor”), and the STATE OF COLORADO acting by and through the Department of Personnel & Administration, Division of Finance and Procurement, State Purchasing Office (hereinafter called the “State” or “SPO”). Contractor and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Price Agreement 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. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this State Price Agreement exists in R-24-102-202-01. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Price Agreement.

C. Purpose and Scope

Contractor is authorized to provide Temporary Personnel Services under this Price Agreement. This Price Agreement authorizes the purchase of Temporary Personnel Services, in accordance with the terms of awards issued as a result of Solicitation #IFB-CW-00001-12, by eligible entities within the State of Colorado.

The State Purchasing Office is issuing this Price Agreement for rates for Temporary Personnel Services between the Contractor and the State of Colorado, on behalf of State agencies, institutions of higher education, political subdivisions, non-profits and other entities (including cooperatives), pursuant to the terms of this Price Agreement.

Except with respect to orders placed 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 an Ordering Entity of any payment or other obligation herein or under a purchase order or contract that orders services from this Price Agreement.

D. Participation

Use of this Price Agreement by State Agencies, institutions of higher education, political subdivisions, and non-profits and other entities (including cooperatives) authorized by Colorado statutes to use state contracts are subject to the approval of the State Purchasing Office. Issues of interpretation and eligibility for participation are solely within the authority of the State Purchasing Office.

E. References

All references in this Price 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.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Contract

“Contract”, “Price Agreement”, or “State Price Agreement” means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies. The State Purchasing Office administers Price Agreements on behalf of State Agencies and other Ordering Entities.

B. Evaluation

“Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in §6 and **Exhibit D**.

C. Exhibits

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Rates), **Exhibit B** (Option Letter), **Exhibit C** (Volume detail report), and **Exhibit D** (State of Colorado Contract Management Information FINAL Contractor Performance Evaluation).

D. Institution of Higher Education

“Institution of Higher Education” means a Colorado university or college which is supported by the State.

E. MBE/WBE/SBE/DBE/VBE

“MBE/WBE/SBE/DBE/VBE” means minority-owned, woman-owned, small, disadvantaged, and veteran-owned business enterprises.

F. Non-Profit

“Non-Profit” means entities that have 501(c)(3) status under the Internal Revenue Code are recognized as “in good standing” with the Colorado Secretary of State office, and receive funding from federal, state, or local governmental sources to have access and make purchases from State Price Agreement vendors. Non-

Profits are approved by the State Purchasing Office to make purchases from State Price Agreement vendors.

G. Order

"Order" means 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 of higher education, political subdivision, or non-profit shall also be governed by the same terms and conditions.

H. Ordering Entity

"Ordering Entity" means the State agency, department, institution of higher education, political subdivision, non-profits and other entities (including cooperatives) that place(s) an order.

I. Party or Parties

"Party" means the State or Contractor, and "Parties" means both the State and Contractor.

J. Political Subdivision

"Political Subdivision" means any Colorado governmental entity such as cities, towns, counties, libraries, etc.

K. Review

"Review" means examining Contractor's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and Exhibit D.

L. Services

"Services" means the required services to be performed by Contractor pursuant to this Price Agreement.

M. State agency

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

N. State Purchasing Office

"State Purchasing Office" or "SPO" means the State of Colorado State Purchasing Office, Colorado Department of Personnel & Administration, Division of Finance and Procurement.

O. Subcontractor

"Subcontractor" means third-parties, if any, engaged by Contractor to aid in performance of its obligations.

P. Temporary Leased Worker

"Temporary Leased Worker" means Contractor's employee provided to requesting Ordering Entities to supplement existing State staff.

Q. Unless otherwise agreed or unless otherwise specified

"Unless otherwise agreed" or "unless otherwise specified" means those terms specified in an Order.

R. Work

"Work" means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract and Exhibit A (Rates), including the performance of the Services.

S. Work Product

"Work Product" means the tangible or intangible results of Contractor's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM

A. Initial Term-Work Commencement

The Parties' respective performances under this Contract shall commence on the later of either the Effective Date or April 16, 2012. This Contract shall terminate on April 30, 2014 unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Contractor as provided in §16, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties are negotiating a replacement Contract (and not merely seeking a term extension) at or near the end of any initial term or renewal term. The provisions of this Contract in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two-month extension. The two

month extension shall immediately terminate when and if a replacement Contract is approved and signed by the Colorado State Controller.

C. State's Option to Extend

The State may require continued performance for a period of four (4) two-year renewals at the same rates and same terms specified in the Contract. If the State exercises its option(s), it shall provide written notice to Contractor at least 30 days prior to the end of the current contract term in form substantially equivalent to **Exhibit B** (Option Letter). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed 10 years, unless authorized in writing by the State Purchasing Director.

6. STATEMENT OF WORK

A. Completion

Contractor shall complete the Work and its other obligations as described herein and in accordance with any Order issued by an Ordering Entity. The State shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination of this Price Agreement.

B. Employees

All persons employed by Contractor or Subcontractors to perform Work under this Price Agreement shall be Contractor's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Price Agreement.

C. Orders

i. Orders will be placed with Contractor for Temporary Personnel Services by Ordering Entities on an "as-needed" basis. Each Ordering Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Ordering Entity's rules, policies, and procedures, as identified by the Ordering Entity, regarding Temporary Personnel Services.

ii. Contractor shall not begin work without a valid Purchase Order number. State Agencies shall ensure that no work begins before a valid Purchase Order is issued.

iii. Orders may be placed consistent with the terms of this contract during the period specified in §5.

All Orders for services pursuant to this Price Agreement, at a minimum, shall include:

- a. The services being delivered;
- b. The place and requested time of delivery;
- c. A billing address;
- d. The name, phone number, and address of the Ordering Entity representative;
- e. The price per hour and the ceiling amount of the Order for Services being ordered;
- f. The State of Colorado Price Agreement Number: 96478YYY03P.

This Contract is subject to a fiscal rule waiver to allow State agencies to use a purchase order in lieu of a contract to purchase Services over \$100,000. All State agencies must obtain prior written approval from the Office of Attorney General before contracting for paralegals and/or legal assistants to perform legal work requiring the supervision of a licensed attorney.

All communications concerning administration of Orders placed shall 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.

iv. Orders must be placed pursuant to this Price Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Price Agreement. Contractor is reminded that financial obligations of State Agencies payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

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

termination of this Price Agreement, notwithstanding the term of any such indefinite delivery order agreement.

D. Placements of Temporary Leased Workers

i. Turnaround Time. Agency requests for placements of temporary leased workers shall be filled within a minimum of 4 business hours, unless otherwise determined by the Ordering Entity.

ii. Dress Codes. Dress for all temporary leased workers placed under this Price Agreement is "business casual", defined as no shorts, halter tops or other revealing attire, athletic attire, or sweat pants, unless otherwise specified by the Ordering Entity. Specific dress codes may be identified by the Ordering Entity.

iii. Absences, Dismissals, and Lack of Qualifications. Contractor shall provide a properly qualified substitute temporary leased worker within two (2) business hours for any contracted worker who has reported absent at the beginning of the shift.

a. If a temporary leased worker works less than four (4) hours and voluntarily leaves or is dismissed by the Ordering Entity because of unsatisfactory performance, the State shall not be obligated to pay for such time worked.

b. If a Ordering Entity determines that the temporary leased worker does not meet the qualifications of the Position Description placed, the State reserves the right to reimburse the current Federal minimum wage to the vendor for the time that the temporary leased worker has been on the job, or to refuse payment altogether, depending on the circumstances and in the best interest of the State.

iv. Inability to fill positions. If an Ordering Entity notifies the State Purchasing Office that Contractor cannot fill a request for a contracted Position Description three consecutive times, the Price Agreement may be cancelled, subject to proper notice for breach under §14. The following reasons are not acceptable justifications for Contractor to be unable to fill a request, or for Contractor changing the requested Position Description to a higher paid Position Description.

a. The temporary leased worker is required to pay for parking at the job site.

b. Suggesting a higher skilled worker.

c. Inability to locate a worker at the awarded rates.

v. Background Screening Services. Prior to being placed with the Ordering Entity, all temporary leased workers shall undergo a basic criminal background screening provided at **no additional cost** by Contractor. The basic background screening shall cover all state residences of the temporary leased worker for the preceding five (5) years.

a. If an Ordering Entity provides criminal background check criteria, only temporary leased workers who meet such criteria shall be provided under this Price Agreement.

b. If no criteria are provided, then the successful offeror must notify the Ordering Entity of any confirmed felony convictions associated with the temporary employee prior to providing temporary leased workers to the Ordering Entity.

c. Ordering Entities have the option of obtaining further background screening services provided by the Colorado Bureau of Investigations www.cbi.gov or services provided under other Statewide Price Agreements.

d. All temporary leased workers placed at the Department of Revenue are required to pass a background check and are also subject to a State tax background check to ensure they have paid their State of Colorado taxes.

vi. Timekeeping. No modifications may be made to approved Contractor timesheets and approved Contractor timekeeping process without advance written approval by the State's principal representative identified in §16 or named successor.

E. Performance

i. Subcontracting will be allowed. The Price Agreement contractor is the Prime Contractor and shall be fully accountable to the State for assuring that its Subcontractors comply with the terms of this Price Agreement between the State and the Prime Contractor.

ii. The State of Colorado will assume no liability should a temporary leased worker seek or be granted permanent employment in the State Personnel system. No fees will be considered or paid.

iii. The use of any resulting Price Agreement shall be consistent with Department of Personnel Rules, including:

10-3(E). A department shall not use a succession of alternating temporary employment and personal services contracts in order to avoid either the timely creation or filling permanent positions. This does not preclude a person from working under contract for longer than six months if otherwise authorized by law. Persons that have worked as a state temporary may be retained subsequently as a contract worker in a different department.

10-4(F). A personal services contract shall not create an employment relationship.

iv. The State of Colorado, the State Purchasing Office is a Colorado PERA affiliated employer. Pursuant to Colorado SB06-235 and C.R.S. 24-51-1101(2), the Contractor shall notify the SPO's Accounting Office at 303-866-3348 within fifteen (15) calendar days from the date of any purchase order if the services provided are being performed or are planned to be performed by a PERA retiree.

v. Contractor shall become familiar with individual Ordering Entity rules and regulations, as identified by the Ordering Entity, regarding Personnel, Procurement, and Fiscal Rules, as well as comply with any Executive Orders or other decisions regarding the State of Colorado and use of Temporary Personnel Services.

vi. Ordering Entities have the authority and discretion to resolve agency performance issues with Contractor. Contractor is required to first meet with the Ordering Entity to resolve issues. If resolution cannot be reached, then the State Purchasing Office should be notified to assist in reaching resolution to the satisfaction of all parties involved. Failure to maintain satisfactory performance after notice will be sufficient cause for notice of breach to Contractor.

vii. Contractor is required to provide a local or toll-free number and email address for statewide use. Contractor shall notify the State's principal representative identified in §16 or named successor of any change to contractor's name, address or Primary Point of Contact.

viii. All Contractor marketing notices and literature for distribution to Ordering Entities must be submitted to SPO for advance approval. Maintenance of mailing lists and the production and distribution of pre-approved marketing notices and literature is the responsibility of the contractor at its expense.

ix. Contractor shall maintain registration on Colorado BIDS or the State's current bidding system throughout the term of this Price Agreement.

x. Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104-191 governs the exchange of certain health data and the privacy and security of certain health information. Any work performed must be in compliance with the Health Insurance Portability and Accountability Act of 1996. HIPAA Standards/Final Rules are posted on the Department of Health and Human Services (DHHS) website: <http://www.os.dhhs.gov/ocr/hipaa/>

7. PAYMENTS TO CONTRACTOR

The State shall, in accordance with the provisions of this §7, pay Contractor in the amounts and using the methods set forth below:

A. Maximum Amount

Ordering Entities shall place Orders with the Contractor with a purchase order. The maximum amount payable under the contract shall be determined by the amount of these purchase orders. No funds will be encumbered by DPA against this Price Agreement.

B. Payment

All Ordering Entities issuing valid Orders will be bound by the terms and conditions of the Contract, including, without limitation, the obligation to pay Contractor for Services.

i. Rates.

The Ordering Entity shall pay Contractor at the hourly rates (not-to-exceed the ceiling amount) for services ordered on an hourly basis, as set forth in **Exhibit A Rates**. Unless otherwise specified in the order, payments will be made based on the monthly submission of statements to the Ordering Entity detailing the dates, quantity, and description of services performed and Position Descriptions placed, bill rate, and Purchase Order number. Incorrect payments to 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. The State Purchasing Office reserves the right to post on the State Price Agreement website www.gssa.state.co.us **Exhibit A Rates** for use by Ordering Entities.

Overtime is any time worked by a temporary leased worker that is more than 40 hours per week and shall be paid at time and a half. Overtime must be approved in writing in advance by the Ordering Entity and is permitted in extenuating circumstances on a case by case basis.

Temporary leased workers are not eligible for holiday pay, unless the Ordering Entity purchase order specifically authorizes such pay.

Contractor shall have an accounting and billing system and the ability to provide Ordering Entities with employee identifier numbers on invoices, if requested, along with a toll free or local phone number for agency inquiries on billing problems.

The terms and conditions on any invoices, Contractor time sheets, or other forms, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the State of Colorado or any of its employees. The Contractor's and State's rights and obligations shall be solely governed by the terms and conditions of this Price Agreement. Any employee's signature on Contractor's forms shall be effective only to establish receipt of services.

ii. Rate Changes

Pricing must remain firm for the first 12 months of the contract. Any price increase requested shall be made in writing to the State Purchasing Office 30 days prior to the anticipated increase and shall be substantiated by verifiable Contractor cost increases. Such requests shall contain complete documentation and cost justification for the requested increase. If such increase is accepted by the State Purchasing Office, the State Purchasing Office shall modify the electronic version of the Contractor's rate sheet published on the Colorado State Purchasing Office's Price Agreement webpage and such rate changes shall be effective upon such publication.

If price increases exceed what the State Purchasing Office considers to be normal or expected, the State reserves the right to seek additional competition and/or purchase from other sources.

Failure to notify the State Purchasing Office of price increases shall result in Contractor providing services at the original bid price and the Price Agreement may be cancelled, subject to proper notice for breach under §14.

iii. 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.

iv. Discounts.

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 Services at the specified destination by an authorized representative of the Ordering Entity, whichever is later.

v. 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 services at the specified destination by an authorized agency representative, whichever is later.

vi. Interest.

Payments shall be submitted to Contractor at the address shown on the invoice, as long as Contractor has exercised due diligence in notifying the State Purchasing Office of any changes to that address. 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 separately for accrued 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)

vii. Remittance.

Payments from Ordering Entities will be remitted by mail or via the State "Purchasing Card," or as otherwise agreed by Contractor and such Ordering Entity.

viii. Advance, Interim and Final Payments

Any advance payment allowed under any Order issued by a State Agency against this Price Agreement shall comply with State Fiscal Rules and be made in accordance with the provisions of this Price Agreement or such Exhibit. Contractor shall initiate any payment requests by submitting invoices to the State Agency in the form and manner set forth and approved by the State Agency. Other Ordering Entities may have their own fiscal procedures regarding advance payments.

ix. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund work engaged by Ordering Entities under this Price Agreement, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to work engaged by Ordering Entities under this Price Agreement shall be made only from available agency funds encumbered for work engaged by Ordering Entities under this Price Agreement, and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund any work engaged by Ordering Entities under this Price Agreement, the State Purchasing Office may terminate this Price Agreement immediately, in whole or in part, without further liability in accordance with the provisions hereof.

x. Erroneous Payments

At the State's sole 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, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

xi. Tax Exempt Status

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 taxes of

Contractor for franchise or related to the income of the Contractor. No taxes of any kind shall be charged to the State.

Contractor is hereby notified that when services are purchased for the benefit of State Agencies, some Political Subdivisions require Contractor to pay sales or use taxes even though the ultimate product or service is provided to the State or a State Agency. These sales or use taxes will not be reimbursed by the State Agency, nor will any prices or rates in this Price Agreement be adjusted on account of such taxes. Contractor will accord the same tax free treatment to Political Subdivisions to the extent that they establish like exemption from taxes.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

Contractor shall submit a report to the Ordering Entity upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder. In addition, Contractor shall comply with all reporting requirements, if any, set forth in **Exhibit D**.

B. Volume Reports

Contractor shall furnish sales reports to the State's principal representative identified in §16 or named successor 15 days after the end of each calendar quarter. The quarter periods are January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31 of any given year. Contractor shall provide a report to the State's principal representative identified in §16 or named successor detailing the total sales to all Ordering Entities in conjunction with this Price Agreement. Specifically, the reports shall include:

- a. The total dollars spent by State Agencies;
 - b. The total estimated dollars saved by State Agencies for that period;
 - c. The total dollars spent by Institutions of Higher Education;
 - d. The total estimated dollars saved by Institutions of Higher Education for that period;
 - e. The total dollars spent by Political Subdivisions and non-profit entities;
 - f. The total estimated dollars saved by Political Subdivisions and non-profit entities for that period;
 - g. The dollar value of purchases paid for with the State's Purchasing Card as opposed to traditional methods of payment; and
 - h. The total dollars spent by each of these aforementioned entities on Environmentally Preferable services, including applicable discount savings, as such services are defined in the State's Environmentally Preferable Purchasing Policy.
- i. Contractor shall be required to provide Colorado specific reporting in the form set forth on the website of the State Purchasing Office: <https://www.gssa.state.co.us/PriceAwd.nsf/Forms+Info+Pages?OpenView> .
 - ii. Any modifications made to the volume report requirements will be a collaborative effort between the State Purchasing Office and the Contractor. The needs of the State, however, shall be the primary factor considered in determining reporting requirements.
 - iii. Contractor also shall be required to provide a comprehensive sales history to the State's principal representative identified in §16 or named successor in the form set forth as **Exhibit C** Volume detail report at the end of each calendar quarter. The Volume detail report shall identify the Ordering Entity name, Position Descriptions placed, quantity of services sold at the number of hours charged, minimum and maximum hourly contract rates, actual hourly rate charged, extended dollar amount, and overall total spend for that period, including all Ordering Entity spend with MBE/WBE/SBE/DBE/VBE temporary leased workers or subcontractors. Failure to provide these reports shall constitute cause for cancellation of this Price Agreement and may disqualify Contractor from the award of future price agreements by the State.
 - iv. If requested, Contractor also shall provide detailed reports to any Ordering Entity under this Price Agreement.

C. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State Purchasing Office of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of Department of Personnel & Administration.

D. Noncompliance

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Contract.

E. Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the Ordering Entity of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of three years after the date this Contract expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

Contractor shall permit the Ordering Entity, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period for a period of three years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform to the requirements of this Contract, the State may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

Contractor shall permit the Ordering Entity, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

D. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION-ORDERING ENTITY RECORDS

Contractor shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to,

any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

A. Confidentiality

Contractor shall keep all Ordering Entity records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for Ordering Entity records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.

B. Notification

Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with Ordering Entity records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Price Agreement or approved in writing by the Ordering Entity. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Price Agreement or approved in writing by the Ordering Entity.

D. Disclosure-Liability

Disclosure of Ordering Entity records or other confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the Ordering Entity, 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 this §10.

11. CONFLICTS OF INTEREST

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor 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 apparent conflict constitutes a breach of this Contract.

12. REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

A. Standard and Manner of Performance

Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this Contract.

B. Legal Authority – Contractor Signatory

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Contract within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance,

permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

13. INSURANCE

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

A. Contractor

i. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

ii. Non-Public Entities

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Contract insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to Subcontractors that are not "public entities".

B. Contractors - Subcontractors

Contractor shall require each contract with Subcontractors other than those that are public entities, providing Goods or Services in connection with this Contract, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

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, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

iii. Automobile Liability

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

iv. Additional Insured

The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for

completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any Subcontractors hereunder.

v. Primacy of Coverage

Coverage required of Contractor and Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Contractor's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Contract and secured and maintained by Contractor or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Contract. No later than 15 days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any subcontract, Contractor and each Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Price Agreement, the failure of either Party to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Contractor is in breach under any provision of this Price Agreement, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

The State may terminate this entire Price Agreement or any part of this Price Agreement. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Price Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver

to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall become the State's property.

ii. Payments

The State shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Contract by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

ii. Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Contract is terminated by the State pursuant to this §15(B), Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the State may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

C. Termination of an Order

An Ordering Entity through its designated procurement officer or other authorized representative may terminate an Order for default, and such termination shall be governed by this provision.

i. Default

If Contractor refuses or fails to timely perform any of its obligations under the provisions of an Order, with such diligence as will ensure its completion within the time specified in the Order, the procurement officer may notify Contractor in writing of the non-performance, and if not corrected within

thirty (30) days of issuance of such notice, such officer may terminate Contractor's right to proceed with the Order or such part of the Order as to which there has been such delay or a failure to properly perform. Contractor shall continue performance of the Order to the extent it is not terminated.

ii. Contractor's Duties

Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the Ordering Entity has an interest (if any).

iii. Compensation

Payment for acceptable Services performed and accepted by the Ordering Entity shall be at the Contract price. The Ordering Entity may withhold amounts due to Contractor as the procurement officer deems to be necessary to protect the Ordering Entity against loss because of outstanding liens or claims of former lien holders and to reimburse the Ordering Entity for the excess costs incurred in procuring similar services.

iv. Erroneous Termination for Default

If after notice of termination of Contractor's right to proceed under the provisions of this paragraph, it is determined for any reason that Contractor was not in default under the provisions of this paragraph, 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 the public interest section.

v. Terminate an Order for the Public Interest

Unless otherwise agreed, the Procurement Officer, when the interests of the Ordering Entity so require, may terminate any Order, in whole or in part, for the public interest of the Ordering Entity, provided only that such termination will not relieve such Ordering Entity from its obligations with respect to any Services already delivered to or used by such Ordering Entity. The procurement officer shall give at least thirty (30) days prior written notice of the termination to Contractor specifying the part of the Order terminated and when termination becomes effective. Termination for the public interest of all or any portion of an Order shall not constitute a breach of this Contract by the Ordering Entity.

(a) Contractor's Obligations Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination. Contractor will stop work to the extent specified. Contract must still complete and deliver to the Ordering Entity the work not terminated (if any) by the notice of termination.

(b) Compensation Contractor shall be entitled to compensation as follows:

Contractor shall submit a termination claim specifying the amounts due because of the termination for the public interest together with cost or pricing data bearing on such claim.

D. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the State's best interest.

v. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the State's option **(a)** obtain for the State or Contractor the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative or named successor at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Christine Weber, C.P.M., CPPB
Department of Personnel & Administration
Division of Finance and Procurement State Purchasing Office
633 17 th Street, Suite 1520
Denver, CO 80202
303-866-6146
christine.weber@state.co.us

B. Contractor:

Michael Lebofsky, Managing Director
Frankie Friend & Associates, Inc.
2305 West Arapahoe Road
Centennial, CO 80122
303-768-8577
mlebofsky@frankiefriend.com

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and

inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the State Purchasing Office, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and Subcontracts

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. 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; however, the provisions hereof shall not 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.

G. Jurisdiction and Venue

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.

H. Modification

i. By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by the Parties in an amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Contract shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104-191
- iii. The provisions of the main body of this Contract,
- iv. **Exhibit A. Rates**
- v. **Exhibit B. Option Letter**
- vi. **Exhibit C. Volume detail report**
- vii. **Exhibit D. State of Colorado Contract Management Information Final Contractor Performance Evaluation**

Any conflict or inconsistency between the terms of an Order and this Price Agreement shall be resolved by giving effect first to the Order of Precedence above and finally to the terms of the ordering document.

J. Severability

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Contract in accordance with its intent.

K. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Ordering Entity if Contractor fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

M. Third Party Beneficiaries

Enforcement of this Contract 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 Contract are incidental to the Contract, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach under a term, provision, or requirement of this Contract, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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21. COLORADO SPECIAL PROVISIONS

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

A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

B. 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.

C. 3. GOVERNMENTAL IMMUNITY.

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, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. 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 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. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. 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 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.

E. 5. COMPLIANCE WITH LAW.

Contractor shall strictly 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.

F. 6. CHOICE OF LAW.

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. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not 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 shall not invalidate the remainder of this Contract, to the extent capable of execution.

G. 7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

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 copyright laws or applicable licensing restrictions.

I. 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF 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. 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.

J. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), 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 CRS §39-21-101, et seq.; (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.

K. 11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[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 State program established pursuant to CRS §8-17.5-102(5)(c), 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 State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the Subcontractor and the contracting State agency 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 CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State 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 State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., 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.

L. 12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

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

SPs Effective 1/1/09

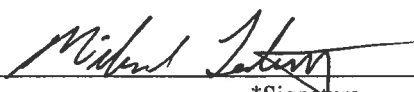
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22. SIGNATURE PAGE

Contract Routing Number 42668

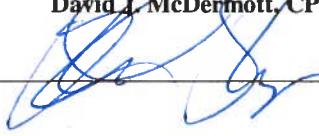
THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

CONTRACTOR Frankie Friend & Associates, Inc. By: Michael Lebofsky Title: Managing Director  _____ *Signature Date: <u>4-3-12</u>	STATE OF COLORADO John W. Hickenlooper, Governor Department of Personnel & Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director  _____ By: Carol Pfarr, Division Director Signatory avers to the State Controller or delegate that Contractor has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules Date: <u>4.10.12</u>
2nd Contractor Signature if Needed By: _____ Title: _____ _____ *Signature Date: _____	LEGAL REVIEW John W. Suthers, Attorney General By: _____ Signature - Assistant Attorney General Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER David J. McDermott, CPA By:  _____ Date: <u>6-26-2012</u>
