

A G R E E M E N T

THIS AGREEMENT is made _____, 20__, between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "City") and THE STATE OF COLORADO, acting by and through the Department of Personnel and Administration (the "State"). The parties are jointly referred to as "the parties".

The parties agree as follows:

1. **COORDINATION AND LIAISON:** The State shall fully coordinate all services under the Agreement with the Manager of General Services, ("Manager") or, the Manager's Designee.

2. **SERVICES TO BE PERFORMED:**

a. As the Manager directs, the State shall diligently undertake, perform, and complete all of the services and produce all the deliverables generally described as print shop and mail delivery services, and more particularly set forth on *Exhibit A*, the Scope of Work, to the City's satisfaction.

b. The State is ready, willing, and able to provide the services required by this Agreement.

c. The State shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

d. The City shall initiate a request for services by an order form to be mutually approved by the parties. For special services provided, as described in Exhibit A, the State shall provide the City any back up documentation requested by the City regarding cost or pricing of services requested. This Agreement is non-exclusive, and the City may use other vendors for the same or similar services described herein.

e. The State shall provide monthly reports to the Manager or his Designee to document the services provided. The monthly report shall include, at a minimum: description of monthly usage, including City agency name, contact person, type and amount of printing and mailing jobs, City agency BPO number, job submission and job delivery dates. The State shall also include in the report postage/permit usage with detail information. The State shall modify this report at the request of the Manager or his Designee.

f. The parties shall meet quarterly to review the services provided under this Agreement to address any concerns, insure quality of work product, review responsiveness to the City's needs under the Agreement, and address any other issues of note for the City regarding the performance of this Agreement. The City may include representatives of any City agency or department as appropriate in such meetings.

2. **TERM:** The Agreement will commence on November 1, 2010 and will expire on December 31, 2015 (the "Term").

3. **COMPENSATION AND PAYMENT:**

a. **Fee:** The State shall bill the City for services rendered and costs incurred at the rates set forth in the attached *Exhibit A*. The State may annually adjust the rates for services by notice to the City by May 15 of each year to go into effect July 1 of the same year. The City shall have 30 days from receipt of the notice to give notice of the City's intent terminate the Agreement effective December 31 of the same year, if the City does not agree to the rate adjustment. In the event the City does not object to any rate increase, the rate adjustment shall go into effect without further amendment of this Agreement. Amounts billed may not exceed the rates set forth in *Exhibit B*, or in any adjusted rate schedule provided by the State, pursuant to this Agreement.

b. **Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the State's expenses are contained in the rates provided.

c. **Invoicing:** State shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

d. **Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **THIRTY MILLION AND NO/100 DOLLARS (\$30,000,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by State beyond that specifically described in *Exhibit A*. Any services performed beyond those in *Exhibit A* are performed at State's risk and without authorization under the Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

4. **STATUS OF STATE:** The State is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the State nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

5. **TERMINATION:**

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the State. State shall complete all work in progress or initiated by the City as of the date of notification of the Agreement. However, nothing gives the State the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the State or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with State's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement, with or without cause, the State shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the State shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City, including product samples, material samples and all graphic

designs that are the property of the City. These documents and materials are the property of the City. The State shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

6. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the State, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

7. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the State. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

8. **INSURANCE:** The parties understand and agree that both are "public entities" within the meaning of the Colorado Governmental Immunity Act, Section 24-10-101 et seq., as amended, C.R.S. (the "Act") and that to the extent required or permitted by the Act both parties will at all times during the term of this Agreement maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act.

9. **TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The State shall promptly pay when due, all applicable taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property

10. **ASSIGNMENT; SUBCONTRACTING:** The State shall not voluntarily or involuntarily assign any of its rights or obligations under this Agreement without obtaining the Manager's prior written consent. The State will notify the City in advance of any subcontractors contracted with to perform services under this Agreement, and the City may advise the State of any objections it has regarding any subcontractor.

11. **INUREMENT**: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

12. **NO THIRD PARTY BENEFICIARY**: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the State receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

13. **NO AUTHORITY TO BIND CITY TO CONTRACTS**: The State lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

14. **SEVERABILITY**: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

15. **CONFLICT OF INTEREST**:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The State shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The State shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The State represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the State by placing the State's own interests, or the interests of any party with whom the State has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the State written notice describing the conflict.

16. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, as follows:

If to the State:

John P. Weber, CPPO, C.P.M.
Contracts Manager
Colorado Dept. of Personnel & Administration
State Purchasing Office
633 17th St. Suite 1600
Denver, CO 80202

Bill Taylor
Deputy Division Director
Department of Personnel & Administration
Division of Central Services
1001 E. 62nd Avenue, Room A-31
Denver, Colorado 80216

If to the City:

Manager of General Services or Designee
201 West Colfax Avenue, Dept. 1110
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
Municipal Operations Section
201 W. Colfax Ave. Dept. 1207
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

17. DISPUTES: All disputes between the City and State arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.

18. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

19. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the State may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The State shall insert the foregoing provision in all subcontracts.

20. COMPLIANCE WITH ALL LAWS: State shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

21. LEGAL AUTHORITY: State represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of State represents and warrants that he has been fully authorized by State to execute the Agreement on behalf of State and to validly and legally bind State to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either State or the person signing the Agreement to enter into the Agreement.

22. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

23. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

24. INTELLECTUAL PROPERTY RIGHTS: The City and State intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the State and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. The State shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the State (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

25. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the State's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

26. ADVERTISING AND PUBLIC DISCLOSURE: The State shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the State's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The State shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

27. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

28. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

29. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The State shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

30. COUNTERPARTS OF THE AGREEMENT: The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

THE PARTIES have executed this Agreement as of the date first written above.

ATTEST:

CITY AND COUNTY OF DENVER:

By: _____
STEPHANIE Y. O'MALLEY, Clerk and
Recorder, Ex-Officio Clerk of the City and
County of Denver

By: _____
MAYOR

RECOMMENDED AND APPROVED:

By: [Signature]
Manager of General Services

APPROVED AS TO FORM:
DAVID R. FINE
CITY ATTORNEY for the City and County of
Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Assistant City Attorney

Contract Control No. CE06021

By: _____
Auditor

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.

"CITY"

STATE CONTROLLER
David J. McDermott, CPA

STATE OF COLORADO
Bill Ritter, Jr. GOVERNOR
Department of Personnel and Administration
Rich Gonzales, Executive Director

By: _____

- Robert Jaros or Kevin Edwards or RaLea Sulga
- Barbara Sohlen or Tanya Olsen

Date: _____

By: By: Rich Gonzales

Date: _____

"STATE"

EXHIBIT A

SCOPE OF WORK

**Division of Central Services (DCS)
Integrated Document Solutions (IDS)
Services and Rates
for the effective period of
July 1, 2010 through June 30, 2011**

Print

Each job will be individual priced based on standardized component rate for such factors as: volumes, stock, weight and finish of paper number of distinct images, black and white versus color, number of colors, special colors, single or double sided, turnaround time, finishing and bindery requirements, etc.

Quick Copy (per impression based on 8 ½ x11 standard)

B&W 25, 000 impressions or less	\$0.028
Over 25, 000 impressions	\$0.020
Color (per Impression)	\$0.280
Mainframe Print (per Impression)	\$0.036
Tape Binding (per Set)	\$0.500
Staple (per Set)	\$0.005

Note: All jobs \$24.99 or less are subject to \$25.00 minimum.

Design Center

Design and Layout (per hour)	\$85.00*
Business Cards (basic –per Box)	\$26.00

*Billed in 15 minute increments 30 minutes minimum. Customers providing design files for reproduction may be subject to design services if the files have not been properly constructed.

Mail Processing

Rates are based on the most common type of document or service. Each specific job is unique and the actual cost will be based on a detailed evaluation of the requirements and prices based on standardized internal unit rates. Every job should be carefully evaluated and priced by DCS service unit specialists before a bid decision is made by a customer.

Metering

Letters (First Class)	\$0.107
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Letters (With Presort)	\$0.057
Flats	\$0.483
Accountable	\$4.14
Insert 1 oz. (1-4)	\$0.056
Insert 2 oz. (5-8)	\$0.091
Insert 3 oz. (9-10)	\$0.145
Moore	\$0.036

Mail Operations Machine Work

Fold	\$0.041
Tab	\$0.041

Automated Sorting

PTI	\$0.024
Flat Manifesting	\$0.370

Address Quality Program

USPS regulations require that any mail that utilizes any type of discount to have their addresses cleansed every ninety days. The following tier rate structure is based on the number of addresses that need to be reviewed.

200-999	\$.00500
1,000-2,499	\$.00450
2,500 – 9,999	\$.00400
10,000 – 24,999	\$.00350
25,000 – 49,000	\$.00300
50,000 – 99,000	\$.00250
100,000 – 249,000	\$.00200
250,000 – 499,000	\$.00150
500,000 – 999,999	\$.00100
1,000,000 – 2,499,999	\$.00080
2,500,000 – 4,999,999	\$.00065
Greater than 5,000,000	\$.00050

Set up Fee Per Job or File \$10.00

Note: Customers that currently use an address quality program must provide certification that address have been "cleansed" throughout the USPS NCOA data base when requesting discounted postage.

Mail Delivery

Delivery rates are monthly charges based on location and type of stop. Locations are broken down between Core and Outlying. Core is primarily the downtown Capitol Complex area. There are typically two stops and therefore two monthly charges per location. Please contact a IDS service unit specialist with any questions concerning delivery rates, scheduling, or alternatives to reduce costs.

Scheduled Delivery (one stop per day Monday – Friday)

Core Stops	\$370.00
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IDS Courier Services (on demand delivery)

Core	\$50.00 (\$1.25 per box)
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Warehouse Storage

Pallet	\$22 per month/pallet
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Imaging, Microfilm and Document Conversion

Rates are based on the most common type of document. Each specific job is unique and the actual cost will be based on a detailed evaluation of the requirements and priced based on standardized internal unit rates. Every job should be carefully evaluated and priced by an IDS service unit specialists before a bid decision is made by a customer.

Data Entry (Per 1000 Keystrokes)

	\$4.28
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EDW (Electronic Data Warehouse)

Monthly using less than 200 GM	\$5.80
Monthly using more than 200 GM	\$5.30

Microfilm Processing (+ Prep based on complexity)

16 mm 110 Ft. rotary (per image)	\$0.078
35 mm Planetary	\$0.359

Imaging (plus Prep based on complexity)

Less than 1 million per project per year	\$0.040
More than 1 million per project per year	\$0.026

Other services not specifically noted may be negotiated on an as-needed basis.