

MEMORANDUM OF AGREEMENT

Between

THE COMPANY Z

And

XXXXXXXXXXXX

I. Purpose.

This Memorandum of Agreement (MOA) is entered by and between the Company z (hereinafter referred to as "COMPANY Z"), and XXXXX, (hereinafter referred to as "Contractor"), for the purpose of XXXX. This MOA establishes the terms conditions, and responsibilities between the parties for deployment, management, and maintenance of this privately owned asset. This MOA is subject to the provisions of all applicable Federal and State laws, regulations, policies and standards.

II. Parties.

The Administrator for the Division will be:

XXXX, XXXX, XXXX Section, XXXX Division, at the Company z (COMPANY Z) with the physical address at 1234 Elm St., Denver, Colorado 80246-1530. The mailing address is the same. Business phone is 303-692-XXXX and the fax number is 303-692-XXXX.

The Administrator for the Contractor will be:

XXXX

III. Effective Date, Modification, and Termination

This Agreement shall become effective upon the signature of both parties for a XXXX month period commencing XXXX, 2005, and terminating XXXX, 2005. This MOA may be amended if mutually agreed upon, to change scope and terms of the MOA. Such changes shall be incorporated as a written Amendment to this MOA. This Agreement may be terminated by either party at any time; however, the terminating party shall provide written notice to the other party at least thirty (30) days in advance of the effective date of termination unless there is a critical failure to perform. In the event of termination, XXXX,

IV. State Responsibilities.

The COMPANY Z agrees to fulfill the terms and conditions executed between XXXX and the Company z in the Memorandum of Agreement as follows:

XXXX

V. Contractor Responsibilities.

The Contractor agrees to:

XXXX

VI. Financial Considerations.

Except where otherwise detailed in this MOA, each party is responsible for its own costs. Any assistance provided by the Company z under this MOA and any assistance provided by the XXXX is subject to the availability of appropriations. Any and all financial assistance provided by the state will be done pursuant to in compliance with the Company z fiscal rules and procurement code (e.g., a separate written agreement that complies with the state fiscal rules).

VII. General Provisions.

A. Inspection. The XXXX reserves the right to review the services provided hereunder by Contractor at all reasonable times and places during the term of this MOU. If any services do not conform to the Scope of Work, the XXXX may require the Contractor to perform the services again in conformity to the Scope of Work with no additional compensation. When defects in the services cannot be corrected by re-performance, then the XXXX may require the Contractor to take all necessary actions to ensure that future performance conforms to the Scope of Work, and equitably reduce the payments due to the Contractor to reflect the reduced value of the services. In addition, the XXXX shall have all other remedies available pursuant to law.

B. Waivers. The waiver of any breach of a term or provision of this MOU shall not be construed as a waiver of breach of any other term or as a waiver of any subsequent breach of the same or any other term or provision.

C. Choice of Law and Venue. This Agreement shall be governed by the law of the Company z. Venue for any action related to this MOU shall be in the Denver District Court.

D. Attachments. All attachments (i.e., exhibits) to this MOU are incorporated herein by this reference and made a part hereof as if set forth fully herein. In the event of any conflict or inconsistency between the terms of this MOU and the attachment, the terms of this MOU shall control.

E. Complete Agreement. This MOU is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a MOU duly executed and approved.

F. No Interest. The signatories aver that to their knowledge, no XXXXX employee or agent has any personal or beneficial interest whatsoever in the services described herein.

G. Non-Discrimination. The contractor shall comply with all applicable state and federal laws, rules and regulations involving non-discrimination on the basis of race, color, religion, national origin, age or sex.

H. Independent Contractor. The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be or shall be deemed to be an agent or employee of the Authority or the Company z. Contractor shall pay, when due, all required employment taxes and income tax withholding, shall provide and keep in force worker's compensation (and show proof of such insurance) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees and agents.

I. Indemnification. The Contractor shall indemnify, save and hold harmless the Authority and the Company z, and their employees and agents, against any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred as a result of any intentional or negligent act or omission by the contractor or its employees, agents, subcontractors, or assignees pursuant to the terms of this MOU.

J. Insurance. Contractor shall obtain, and maintain at all times during the terms of this MOU, insurance in the following kinds and amounts:

1. Standard Workers' Compensation and Employer Liability as required by state statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment;
2. General and/or Personal Injury and/or Professional and/or Automobile Liability (including bodily injury, personal injury and property damage) with the following coverage, depending on the policy format:
 - a. Occurrence Basis Policy - combined single limit of \$600,000.
 - b. Annual Aggregate Limit Policy - not less than \$1 million plus agreement that vendor will purchase additional insurance to replenish the limit to \$1 million if claims reduce the annual aggregate below \$600,000.

- c. Claims-Made Policy - combined single limit of \$600,000 plus an endorsement that extends coverage 2 years beyond the policy expiration date.
- 3. The insurance shall include a provision preventing cancellation without thirty (30) calendar days prior written notice to the **XXXX** by certified mail. Contractor shall provide the following documentation to the **XXXX** within seven (7) working days of a request therefore, unless otherwise provided:
 - a. Certificate/s of adequate insurance coverage, each with a reference to the Authority and the State being named as an additional insured, or
 - b. Certificate/s of adequate insurance coverage and an endorsement/s of additional insured coverage.

K. Conflicts of Interest. The holding of public office or employment is a public trust. A public officer or employee whose conduct departs from his fiduciary duty is liable to the people of the State in accordance with statute.

VIII. Licenses.

XXXX

IX. Confidentiality.

The parties hereto understand and agree that the information in this Agreement is confidential and not subject to disclosure under the Colorado Open Records Act. The material is protected under §24-72-204 **XXXX** C.R.S., which states in part:

XXXX

X. Liability.

Unless otherwise provided for in this Agreement, no term or condition, of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act (CGIA), §24-10-101, et seq., C.R.S., as amended. Liability for claims for injuries to persons or property arising out of the alleged negligence of the company z, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provision of §24-10-101 et seq., C.R.S., as amended.

XI. Effect on Procedures and Laws.

All assistance provided under this MOA must comply with applicable laws, regulations, and agency policies.

XII. No Private Right Created.

This document is an internal agreement between the Company z and the entity with ownership or control of XXXX and does not create or confer any right or benefit on any other person or party, private or public. Nothing in this agreement is intended to restrict the authority of either signatory to act as provided by law or regulation, or to restrict any agency from enforcing any laws within its authority or jurisdiction.

XIII. Settlement of Disputes.

The parties agree to good faith consultation with one another to resolve disagreements that may arise under or relating to this MOA before referring the matter to any other person or entity for settlement.

XIII. Capacity to Enter Into Agreement.

The persons executing this Memorandum of Agreement on behalf of their respective entities hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into this agreement on behalf of the entity for which they sign.

XIV. Permitted Uses and Disclosures.

The parties may use or disclose Confidential Health Information (CHI) as permitted or required by federal or state law or as authorized and permitted in accordance with this Agreement.

The parties agree that uses and disclosures of CHI are permitted for the proper management and administration of governmental operations, to carry out the legal responsibilities of state business within each respective agency, or as required or permitted by federal or state law. Disclosures will be limited to the amount reasonably necessary to meet the purpose for which the CHI is to be used or disclosed.

This MOA shall begin on _____ and end on _____.

XXXX

Witness

BY: _____

TITLE: _____

DATE: _____

COMPANY Z

BY: _____

TITLE: _____

DATE: _____

PROGRAM APPROVAL:

BY: _____

TITLE: _____

DATE: _____