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MEMORANDUM OF AGREEMENT
BETWEEN THE DEPARTMENT OF HOMELAND SECURITY,
AND
COLORADO SECRETARY OF STATE
STATE OR LOCAL GOVERNMENT AGENCY

I. PARTIES.

The parties to this Memorandum of Agreement (MOA) are the Department of Homeland Security, U.S. Citizenship and Immigration Services/Immigration and Customs Enforcement (DHS-USCIS/ICE), and the Colorado Secretary of State (User Agency).

II. AUTHORITY.

A. The authorities governing this MOA include, but are not limited to, the following:

1. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, as amended.
2. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L.No. 104-208, 110 Stat. 3009, as amended.
3. National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg-1 et seq., Pub. L. No. 103-31, as amended.
4. Help America Vote Act of 2002 (HAVA), 42 U.S.C. § 15201, et seq., Pub. L. No. 107-252, as amended.
5. Privacy Act, 5 U.S.C. § 552a, as amended.
6. The Inter-Governmental Cooperation Act, 31 U.S.C. § 1535, as amended.
7. Colo. Rev. Stat. § 1-1-101, et seq. (2012)
8. Colo. Rev. Stat. § 1-2-101, et seq. (2012)
9. Colo. Rev. Stat. § 1-13-701, et seq. (2012)

Pursuant to the requirements of OMB Circular A-97, which establishes the President's guidelines for implementing the Intergovernmental Cooperation Act, 31 U.S.C. Section 6501, et seq., as amended, the User Agency certifies that it cannot procure the immigration status verification services requested pursuant to this MOA reasonably and expeditiously through ordinary business channels.

III. PURPOSE.

The purpose of this MOA is to establish the terms and conditions governing the participation of the User Agency to provide the specified benefit in the DHS-USCIS/ICE Systematic Alien Verification for Entitlements and/or Law Enforcement Support Center (SAVE/LESC) Programs for the purpose of verifying citizenship and immigration status information of non-citizen and naturalized or derived U.S. citizen voter registrant (registrant) to vote in Colorado elections. The limited data will be provided to the User Agency by an:

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- A. Initial response (initial verification) by SAVE/LESC to an on-line inquiry by the User Agency; and
- B. Additional verification procedures where applicable; or
- C. A response to a properly submitted Form G-845.

IV. RESPONSIBILITIES.

- A. DHS-USCIS/ICE agrees to:
 - 1. Maintain and make available to the User Agency in limited part and manner determined by DHS-USCIS/ICE after consultation with the User Agency, an immigration and naturalized or derived citizenship status information verification system under the SAVE/LESC Program;
 - 2. Respond to properly submitted verification requests from the User Agency by providing the limited information noted in point (1) of PURPOSE immediately above;
 - 3. Process and respond to properly submitted additional verification requests submitted by the User Agency. Response time may vary, depending on DHS-USCIS/ICE workload, resources available to process additional verification requests, and the registrant's specific circumstances;
 - 4. Provide to the User Agency operating necessary instructions to User Agency so that the User Agency can designate Users within the agency;
 - 5. Provide to the User Agency SAVE/LESC Program point of contact information for questions or problems regarding the User Agency's participation in SAVE/LESC;
 - 6. Provide access to training and information regarding the laws, policies, and procedures that govern verifying, safeguarding, using, maintaining, and disclosing certain citizenship and immigration status information;
 - 7. Provide the User Agency access to Form G-845, and other forms and/or supplements as appropriate, which may be reproduced and/or computer generated without prior DHSUSCIS approval;
 - 8. Recover no more than its actual costs. The total estimated cost of the agreement is specified on the attached USCIS Anticipated Collections from Non-Federal Sources Addendum. The User Agency certifies that it has obligated at least the amount specified on the USCIS Anticipated Collections from Non-Federal Sources Addendum to pay for its SAVE/LESC usage. DHS-USCIS/ICE shall notify the User Agency's designated Point of Contact (POC) in writing when the amount paid plus what is owed for unpaid usage equals 50 percent of the estimated total costs. DHS-USCIS/ICE will not provide services that would result in the amount paid plus the amount owed for unpaid usage exceeding the amount specified on the USCIS Anticipated Collections from Non-

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Federal Sources Addendum. In this instance, DHS-USCIS/ICE will be excused from further performance of the work unless and until the User Agency's authorized official increases estimated total cost of this agreement by modification pursuant to provision VIII of this MOA;

9. Submit invoices to the User Agency's payment office at the address specified on the USCIS Anticipated Collections from Non-Federal Sources Addendum, with a copy furnished to the POC DHS-USCIS/ICE may submit invoices when the work is completed or as otherwise authorized. The High Level Identifier, tax identification number, and associated dollar amounts will be referenced on all invoices; and
 10. Promptly initiate year-end and closeout adjustments once final costs are known.
- B. User Agency agrees to:
1. System Use.
 - a) Establish the identity of the registrants and require each registrant to present the registrant's immigration or naturalization documentation that contains the information (e.g., alien registration number) required by the SAVE/LESC Program;
 - b) Physically examine the documentation presented by the registrant and determine whether the document(s) reasonably appear(s) to be genuine and to relate to the individual;
 - c) Provide to the SAVE/LESC Program all information to the SAVE/LESC Program available to the User Agency to respond to User Agency requests for verification of immigration or naturalized or derived citizenship status information.
 - d) Ensure that all Users performing verification procedures complete SAVE/LESC required training including: reading the SAVE/LESC Program Guide, taking the latest version of Web tutorial(s) and maintaining a working knowledge of requirements contained therein and in this MOA as updated;
 - e) Ensure that User Agency representatives are provided with and maintain User IDs only while they have a need to perform verification procedures;
 - f) Ensure all Users performing verification procedures comply with all requirements contained in the SAVE/LESC Program Guide, web-based tutorial, and this MOA, and updates to these requirements;
 - g) Ensure that all Users performing verification procedures have contact information for the SAVE/LESC Program and SAVE/LESC Monitoring and Compliance;

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- h) Ensure all Users perform any additional verification procedures the SAVE/LESC Program requires and/or the registrant requests after the User Agency initiates a request for verification;
- i) Use any information provided by DHS-USCIS/ICE under this MOA solely for the purpose of determining the eligibility of persons applying for the benefit issued by the User Agency and limit use of such information in accordance with this and all other provisions of this MOA;
- j) Comply with the requirements of the Federal Information Security Management Act (FISMA (PL-107-347), Title III, Section 301) and OMB guidance as applicable to electronic storage, transport of records between agencies, and the internal processing of records received by either agency under the terms of this MOA;
- k) Safeguard such information and access methods to ensure that it is not used for any other purpose than described in this MOA and protect its confidentiality; including ensuring that it is not disclosed to any unauthorized person(s) without the prior written consent of DHS-USCIS/ICE;
- l) Comply with the Privacy Act, 5 U.S.C. Section 552a, and other applicable laws, regulations, and policies, including but not limited to all OMB and DHS privacy guidance, in conducting verification procedures pursuant to this MOA, and in safeguarding, maintaining, and disclosing any data provided or received pursuant to the MOA;
- m) Comply with federal laws prohibiting discrimination against registrants and discriminatory use of the SAVE/LESC Program based upon the national origin, color, race, gender, religion, or disability of the registrant; Each registrant seeking access to information regarding himself/herself may do so by submitting a written signed request to DHS-USCIS/ICE. Instructions for submitting such requests may be found on the Freedom of Information Privacy Act page of www.uscis.gov.
- n) Provide all benefit-registrants who are denied voter registration based solely or in part on the SAVE/LESC response with adequate written notice of the denial and the information necessary to contact DHS-USCIS/ICE (see attachment 1; Fact Sheet, which is subject to revision and reposting on the SAVE/LESC Website and Online Resources) so that such individual may correct their records in a timely manner, if necessary;
- o) Provide all registrants who are denied registration based solely or in part on the SAVE/LESC response with the

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- opportunity to use the User Agency's existing process to appeal the denial and to contact DHS-USCIS/ICE to correct their records prior to a final decision, if necessary; and
- p) Refrain from using SAVE/LESC, or assisting any person or entity, to comply with the employment eligibility verification requirements of section 274A of the Immigration and Nationality Act, 8 U.S.C. Section 1324a.
2. Monitoring and Compliance.
- a) Provide the SAVE/LESC Program and SAVE/LESC Monitoring and Compliance with the current e-mail, U.S. Postal Service address, physical address, name and telephone number of the User Agency authorized representative for any notifications, questions or problems that may arise in connection with the User Agency's participation in SAVE/LESC and with notification of changes in the benefit offered by the User Agency;
- b) Notify the SAVE/LESC Program and SAVE/LESC Monitoring and Compliance immediately whenever there is reason to believe a violation of this MOA has occurred;
- c) Notify the SAVE/LESC Program and SAVE/LESC Monitoring and Compliance immediately whenever there is reason to believe an information breach has occurred as a result of User Agency action or inaction pursuant to Office of Management and Budget (OMB) Memorandum M-07-16, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information";
- d) Allow SAVE/LESC Monitoring and Compliance to monitor and review all records and documents related to the use, abuse, misuse, fraudulent use or improper use of SAVE/LESC by the User Agency, including, but not limited to original registrant consent documents required by the Privacy Act, 5 U.S.C. Section 552a or other applicable authority;
- e) Allow SAVE/LESC Monitoring and Compliance to conduct desk audits and/or site visits to review User Agency's compliance with this MOA and all other SAVE/LESC-related policy, procedures, guidance and law applicable to conducting verification and safeguarding, maintaining, and disclosing any data provided or received pursuant to this MOA;
- f) Allow SAVE/LESC Monitoring and Compliance to perform audits of User Agency's User Ids use and access, SAVE/LESC Training Records, SAVE/LESC financial records, SAVE/LESC biographical information, system profiles and usage patterns and other relevant data;

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- g) Allow SAVE/LESC Monitoring and Compliance to interview any and all User Agency SAVE/LESC system users and any and all contact persons or other personnel within the User Agency regarding any and all questions or problems which may arise in connection with the User Agency's participation in SAVE/LESC;
 - h) Allow SAVE/LESC Monitoring and Compliance to monitor system access and usage and to assist SAVE/LESC users as necessary to ensure compliance with the terms of this MOA and the SAVE/LESC Program requirements by its authorized agents or designees; and (i) Take corrective measures in a timely manner to address all lawful requirements and recommendations on every written finding including but not limited to those of SAVE/LESC Monitoring and Compliance regarding waste, fraud, and abuse, and discrimination or any misuse of the system, non-compliance with the terms, conditions and safeguards of this MOA, SAVE/LESC Program procedures or other applicable law, regulation or policy.
3. Reimbursement.
- a) Pay the transaction prices provided in the attached current standard billing rates, which along with methods of payment are subject to change upon prior written notification to the User Agency. Each year, the User Agency will obligate funds sufficient to reimburse DHS-USCIS/ICE under a current appropriation upon execution of the attached USCIS Anticipated Collections from Non-Federal Sources Addendum;
 - b) Pay in full within 30 days of the invoice date. The User Agency will pay any applicable sales, use, excise, and like taxes, where required by law, that are stated on each invoice. Regardless of payment type, the User Agency will clearly indicate the High Level Identifier with remittance;
 - c) If the User Agency pre-pays for its usage, it shall submit the entire committed amount before being allowed access to any appropriate databases; and
 - d) Promptly discuss and resolve issues and questions with DHS-USCIS/ICE regarding payments. Delinquent payments shall be handled in accordance with the Debt Collection and Improvement Act of 1996, 31 U.S.C. Section 3701. Interest on all unpaid balances shall be charged at the rate of the current value of funds to the United States Treasury effective on the date of the invoice. The rate is the Treasury tax and loan rate. It is published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements

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Manual Bulletins. Handling charges will accrue at monthly rates of \$5.00 for each of the first two months of delinquency and \$10.00 for each month thereafter. In addition to interest and handling charges, if DHS-USCIS/ICE does not receive payment within 90 days of the invoice, 6 percent per annum additional interest will be assessed. Charges will be computed from the date of the invoice and will accrue monthly with the applicable interest and handling charges. In the case of any late payment, the amount received will be applied in this sequence: (1) to any accrued penalty and handling charges, (2) to any accrued interest, and (3) to outstanding principal. Failure to make timely payment may result in termination of services.

V. POINTS OF CONTACT.

- A. USCIS SAVE/LESC - TBD.
- B. USER AGENCY- TBD.

VI. OTHER PROVISIONS.

- A. MOA Responsibilities. Only authorized employees, agents, or designees of DHSUSCIS and the User Agency will carry out the requirements of this MOA. In carrying out these responsibilities, they will operate within the scope of applicable regulations, specifically delegated authorities, the program authorities and funding limitations and terms and conditions of this MOA.
- B. Determining Benefit Eligibility. This MOA is limited to the provision of verification services. DHS-USCIS/ICE will verify limited citizenship and immigration status information, but will not recommend to the User Agency whether to issue the benefit. The DHSUSCIS response is not intended to be, and should not be construed as, an opinion on the part of DHS-USCIS/ICE or the United States regarding any right or benefit under any program administered by the User Agency. The User Agency has the responsibility to determine the registrant's eligibility for the benefit.
- C. Criminal Penalties.
 - 1. DHS-USCIS/ICE reserves the right to use information from the User Agency for any purpose permitted by law, including, but not limited to, the prosecution of violations of Federal administrative or criminal law.
 - 2. The User Agency acknowledges that the information it receives from DHS-USCIS/ICE is governed by the Privacy Act, 5 U.S.C. Section 552a(i)(1), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOA may be subject to criminal penalties.

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- D. Third Party Liability.
 - 1. Each party to this MOA shall be solely responsible for its own defense against any claim or action by third parties arising out of or related to the execution and/or performance of this MOA, whether civil or criminal, and retain responsibility for the payment of any corresponding liability.
 - 2. Nothing in this MOA is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees or the User Agency.
- E. Disputes. Disagreements on the interpretation of the provisions of this MOA that cannot be resolved between the DHS-USCIS/ICE program office and the User Agency point of contact should be provided in writing to the authorized officials at both agencies for resolution. If settlement cannot be reached at this level, the disagreement will be elevated to the next level in accordance with DHS-USCIS/ICE procedures for final resolution.
- F. Conflicts. This MOA, its attachments and addenda constitute the full MOA on this subject between DHS-USCIS/ICE and the User Agency. Any inconsistency or conflict between or among the provisions of this MOA, will be resolved in the following order of precedence: (1) this MOA and (2) other documents incorporated by reference in this MOA, i.e., the USCIS Anticipated Collections from Non-Federal Sources Addendum, and standard billing rates.
- G. Severability. Nothing in this MOA is intended to conflict with current law or regulation or the directives of DHS, DHS-USCIS/ICE, or the User Agency. If a term of this MOA is inconsistent with such authority, then that term shall be invalid but, to the extent allowable, the remaining terms and conditions of this MOA shall remain in full force and effect. In the event of a conflict that prevents either party from fulfilling its obligations, this MOA may be immediately canceled without providing the 30 day notice period referenced in Section IX.
- H. Assignment. The User Agency may not assign this MOA, nor may it assign any of its rights or obligations under this MOA. To the extent allowable by law, this MOA shall inure to the benefit of, and be binding upon, any successors to DHS-USCIS/ICE and the User Agency without restriction.
- I. Waiver. No waiver by either party of any breach of any provision of this MOA shall constitute a waiver of any other breach. Failure of either party to enforce at any time, or from time to time, any provision of this MOA shall not be construed to be a waiver thereof.

VII. EFFECTIVE DATE.

- A. This MOA shall be effective when the DHS-USCIS/ICE authorized official and User Agency authorized official have both signed the MOA.

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This MOA shall continue in effect unless modified or terminated in accordance with the provisions of this MOA.

VIII. MODIFICATION.

- A. This MOA is subject to periodic review by DHS-USCIS/ICE, its authorized agents or designees, and, if necessary, periodic modification and/or renewal to assure compliance with current law, policy, and standard operating procedure(s). This MOA and the attached users Anticipated Collections from Non-Federal Sources Addendum constitute the complete MOA between the parties for its stated purpose, and no modification or addition will be valid unless entered into by mutual consent of both parties evidenced in writing and signed by both parties and appended to this agreement; and
- B. The User Agency may accomplish a unilateral administrative modification to add funds to the MOA, and either party may accomplish a unilateral administrative modification to change POC information. A written bilateral modification (i.e., agreed to and signed by authorized officials of both parties) is required to change any other term of this MOA.

IX. TERMINATION.

- A. Either party may terminate this MOA at any time by providing 30 days written notice of intent to terminate. DHS-USCIS/LESC, when feasible, will consult with the User Agency and attempt to reconcile issues before terminating this MOA. Notwithstanding any other provision in the MOA, DHS-USCIS/LESC may suspend or terminate this MOA without prior notice if deemed necessary because of a requirement of law or policy, upon a determination by DHS-USCIS/LESC that there has been a breach of system integrity or security by the User Agency or a failure by the User Agency to comply with established procedures or legal requirements, including but not limited to failure to pay. Written notices shall be sent to the addresses of the POCs listed herein and shall be effective upon receipt. Either party may change its POC by written notice to the other party. The foregoing, in conjunction with the referenced and incorporated attachments, constitutes the full agreement on this subject between DHS-USCIS/LESC and the User Agency. This MOA supersedes all previous agreements governing the provision of verification services. Those agreements are explicitly acknowledged to be null and void. The undersigned represent that they are authorized to enter into this MOA on behalf of DHS-USCIS/ICE and the User Agency, respectively.