MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES AND THE STATE OF COLORADO REGARDING COMPLIANCE WITH THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

A. Introduction.

This agreement is entered into between the United States of America, through the United States Department of Justice ("United States" or "the Department"), and the State of Colorado and the Colorado Secretary of State, Bernie Buescher, in his official capacity as Colorado's chief state election official (collectively the "State"), to facilitate the State's compliance with Section 102(a)(8) of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009) ("MOVE Act"). UOCAVA provides that absent uniformed services voters and overseas voters ("UOCAVA voters") shall be permitted "to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 42 U.S.C. § 1973ff-1.

This matter arises out of UOCAVA's requirement, pursuant to amendments by the MOVE Act, that states transmit to their UOCAVA voters validly requested absentee ballots at least 45 days before an election for Federal office. 42 U.S.C. § 1973ff-1(a)(8). Based on Colorado's August 10, 2010 primary election date and associated deadlines, the State requested from the Presidential designee for UOCAVA, the Secretary of Defense, a hardship exemption from the "45 day advance" ballot transmission requirement of UOCAVA pursuant to 42 U.S.C. § 1973ff-1(g). On August 27, 2010, the Secretary of Defense denied the request for a hardship exemption. That same day, the Department of Justice notified Colorado that in light of the waiver request denial, it appeared that the State would be in violation of UOCAVA for the upcoming Federal general election, and a lawsuit to enforce UOCAVA had been authorized.

The United States and the State, through their respective counsel, have conferred and agree that this matter should be resolved without the burden and expense of litigation. The parties share the goal of ensuring that Colorado's UOCAVA voters will have sufficient opportunity to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election and in future Federal general elections. As consideration for this Agreement, the United States has agreed to forgo litigation, subject to compliance with the terms of this Agreement. The parties negotiated in good faith and hereby enter into this Agreement as an appropriate resolution of the UOCAVA claims alleged by the United States.

B. Recitals.

The United States and the State stipulate and agree that:

1. The United States District Court for the District of Colorado has jurisdiction to enforce provisions of UOCAVA, 42 U.S.C. §§ 1973ff to 1973ff-7, and the Federal Court would have jurisdiction over an action brought by the United States to enforce the terms of this Agreement pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201(a).

2. The United States Attorney General is authorized to enforce the provisions of UOCAVA. 42 U.S.C. § 1973ff-4.

3. The State of Colorado is responsible for complying with UOCAVA, and ensuring that validly-requested absentee ballots are sent to UOCAVA voters in accordance with its terms. 42 U.S.C. § 1973ff-1.

4. Bernie Buescher is the Secretary of State of the State of Colorado. As the State's Secretary of State, Buescher has general supervisory authority over all primary, general, congressional vacancy, and State-wide ballot issue elections in the State and is responsible for assuring that elections in the State are conducted in accordance with the law. COLO. REV. STAT. § 1-1-107 (2010).

5. Section 102(a)(8) of UOCAVA requires that states transmit validly requested ballots to UOCAVA voters not later than 45 days before an election for Federal office when the request is received at least 45 days before the election. 42 U.S.C. § 1973ff-1(a)(8).

6. States can be exempted from the requirement to transmit ballots 45 days in advance of a federal election if they apply for, and are granted, a hardship waiver from the Presidential Designee for UOCAVA, the Secretary of Defense. 42 U.S.C. § 1973ff-1(g). Pursuant to Section 102(g)(2)(B)(i) of UOCAVA, the State applied for a hardship waiver on the grounds that Colorado's August 10, 2010 primary election and subsequent September 3, 2010 certification prevented the State from complying with Section 102(a)(8)(A). 42 U.S.C. § 1973ff-1(a)(8)(A). On August 27, 2010, pursuant to its statutory authority, the Department of Defense denied the State's request for a hardship waiver, finding that (1) Colorado had failed to establish an undue hardship that prohibits the State from complying with UOCAVA; and (2) the State's proposed comprehensive plan did not provide sufficient time for UOCAVA voters to vote and have their ballots counted as a substitute for transmitting absentee ballots not later than the 45th day prior to the November 2, 2010 Federal general election in accordance with Section 102(a)(8)(A) of UOCAVA.

7. On August 10, 2010, the State held a Federal primary election in which voters selected candidates for the Federal general election on November 2, 2010.

8. On September 3, 2010, Colorado certified the contents of the Federal general election ballot.

9. County election officials have received timely requests for absentee ballots for the November 2, 2010 Federal general election from voters who are entitled to vote pursuant to the provisions of UOCAVA.

10. In order to be counted under Colorado law, ballots cast by Colorado military personnel serving outside the United States and their spouses and/or dependents residing outside of the United States for the same reason must be received by the close of business on the eighth day after the election, provided the ballot was voted and transmitted by 7:00 pm on election day. COLO. REV. STAT. § 1-8-103.5 (2010). Absentee ballots from other voters eligible to vote under UOCAVA, including absent uniformed services voters within the United States and non-military personnel residing overseas, must be received by the close of polls on election day to be counted.

11. The failure by the State either to obtain a hardship waiver or to transmit absentee ballots to UOCAVA voters by the 45th day before the November 2, 2010 Federal general election constitutes a violation of 102(a)(8)(A) of UOCAVA. The United States asserts that, absent the actions described herein to ensure that election officials in all of Colorado's counties are able to and will transmit requested ballots to UOCAVA voters no later than 45 days in advance of the November 2, 2010 Federal general election, United States citizens protected under UOCAVA may be deprived of a sufficient opportunity to vote in that election, in violation of UOCAVA.

12. The Department and the State have been engaged in extensive discussions since the August 27, 2010 denial by the Secretary of Defense of the State's waiver request, and have reached an agreement on a series of actions to be taken by the State to ensure compliance with Section 102(a)(8)(A) of UOCAVA and provide UOCAVA voters sufficient opportunity to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election. It is the intent of the State and the United States that the State immediately undertake and complete the actions set forth in this Agreement.

C. Terms of Agreement.

Now, therefore, for full and adequate consideration given and received, the United States and the State agree that:

1. The State shall take all necessary actions to ensure that each of its 64 counties transmits absentee ballots no later than 45 days before the November 2, 2010 Federal general election (September 18, 2010) by postal mail, or electronically by either email or facsimile, according to the request of the voter, to all qualified UOCAVA voters who have requested a ballot by that date. Those actions include, but are not limited to, the following: a) issuing directives as necessary to ensure each Colorado county transmits an absentee ballot no later than 45 days before the November 2, 2010 election; and b) monitoring each county's progress toward meeting its ballot transmittal deadline. If, however, there is evidence on or before the 45th day before the Federal general election that

any county clerk will be unable to or has failed to deliver or mail absentee ballots to all qualified UOCAVA voters, the Secretary of State will deploy staff and/or otherwise assist such counties to ensure the ballots are transmitted on or before the 45th day before the Federal general election. The Secretary of State shall exercise his full authority pursuant to Sections 1-1-107 and 1-8-103 of the Colorado Election Code to ensure absentee ballots are sent to all qualified voters in accordance with the terms of UOCAVA. In the event that any county election official fails to comply with any directive issued by the Secretary of State or his agents under this paragraph, the Secretary of State shall immediately take such enforcement actions pursuant to Section 1-1-107 Colorado Election Code as are necessary to ensure compliance with the directives.

2. If there is evidence after the 45th day before the November 2, 2010 Federal general election that any Colorado counties have failed to send official absentee ballots to all UOCAVA voters whose applications were received and approved by that date, the State agrees that it will immediately notify the United States. The parties shall confer immediately on the appropriate remedial steps, which shall include the State's adoption of an emergency rule or other directive(s) pursuant to Section 1-8-103 of the Colorado Election Code to provide for one or both of the following measures as the circumstances require:

   a. A requirement that official absentee ballots be transmitted by the county boards of elections to qualified UOCAVA voters by means other than regular United States mail, including express mail, at the expense of the State or the expense of the county, as appropriate.

   b. A requirement that the State and the counties take appropriate steps to make other means of returning absentee ballots available to all qualified absentee electors protected by UOCAVA, including express mail and/or electronic transmission of the official ballot by facsimile or email at the expense of the State or the county, as appropriate.

3. Because enforcement of the requirements of UOCAVA depends on timely and accurate information about the extent of compliance in each of Colorado's counties, the Secretary of State shall order the county clerk of each of Colorado's counties to confirm in writing to the Colorado Secretary of State, no later than September 20, 2010, that absentee ballots have been transmitted by postal mail or electronically, according to the request of the voter, no later than September 18, 2010 to all UOCAVA voters whose applications for such ballots have been received by that date.

4. Upon execution of this Memorandum of Agreement, the State shall issue a press statement for immediate release, posted immediately on the State's election information website, and distributed to the Federal Voting

Assistance Program; International Herald Tribune (http://www.iht.com); USA Today International (http://www.usatoday.com); Military Times Media Group (cvinch@militarytimes.com); Overseas Vote Foundation (http://www.overseasvotefoundation.org/intro/); Stars and Stripes (http://www.estripes.com), and any other appropriate newspaper or news media in the State of Colorado. The news release shall, at a minimum: (a) summarize this Agreement; (b) identify the contests for Federal office that will be on the ballot on November 2, 2010; and (c) provide appropriate contact information at the State of Colorado's Elections Division for assistance. The State shall make additional reasonable efforts to advise affected electors that although some counties may need to send a ballot on copy paper if their regular ballots are not printed in time, the ballots will be counted in the same manner as any other ballot. Such outreach efforts will include the press statement required by this paragraph, email correspondence to all affected electors for whom the State has an email address, a letter to the Colorado Department of Military Affairs, and a notice posted on the Secretary of State website. The state shall also urge counties to post such notice on the county websites.

5. The State shall provide a report to the United States Department of Justice no later than September 21, 2010 concerning the transmittal of UOCAVA absentee ballots by the counties. The report shall (a) certify that absentee ballots were transmitted no later than September 18, 2010 to all qualified UOCAVA voters whose applications for ballots have been received and approved by that date; and (b) indicate, by county, the number of requests received and the number of UOCAVA absentee ballots transmitted, and the method of transmittal thereof. No later than October 6, 2010, the State shall provide a supplemental report showing, by county, the number of requests received and the number of UOCAVA absentee ballots transmitted, and the method of transmittal thereof, on each day between September 20, 2010 and the 30th day before the election.

6. The State shall provide a report to the United States Department of Justice no later than December 17, 2010 concerning the number of UOCAVA absentee ballots, by county, received and counted for the November 2, 2010 general election for Federal office. The report will set forth the following information, by county, and categorized by absent uniformed services voters with APO and FPO addresses, uniformed services voters at a street address within the United States, and overseas civilian voters:

   a. The number of absentee ballots from UOCAVA voters received before the close of the polls on November 2, 2010 and counted;

   b. The number of absentee ballots from UOCAVA voters received and counted after the close of the polls on November 2, 2010 but prior to the close of business on November 10, 2010;

c. The number of absentee ballots from UOCAVA voters received later than the close of business on November 10, 2010; and

d. The number of absentee ballots from UOCAVA voters that were not counted in the general election for Federal office, for reasons other than late receipt.

7. The State shall take such actions as are necessary to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal general elections, including proposing legislation and taking any administrative actions needed to fully remedy the potential UOCAVA violations that gave rise to this Agreement. The parties agree to confer on the progress of these efforts, and Defendants shall provide a status report to the United States by July 1, 2011.

D. Term.

The State's obligations under this Agreement shall commence immediately and shall expire in their entirety on December 1, 2012. This Agreement may terminate sooner, however, and shall so terminate immediately upon the State's adoption of legislation or other measures that remedy fully the UOCAVA-related concerns giving rise to this Agreement.

E. Enforcement.

The terms of this Agreement are intended to resolve the potential violation of Section 102(a)(8) of UOCAVA arising from the denial of the State's waiver application on August 27, 2010. Where the State fails in any manner to comply with the terms of this Agreement, this Agreement is enforceable immediately in United States District Court for the District of Colorado as set forth above, and additionally in such event, the United States also may take any other actions required to enforce Section 102(a)(8) of UOCAVA in the United States District Court, including seeking appropriate relief as a substitute for or in addition to the actions which are the subject of this Agreement. Appropriate relief may include those measures referenced in Paragraph 2(a) and (b) of this Agreement and/or an appropriately-tailored extension of the State's ballot receipt deadlines. Nothing in this Agreement precludes the United States from taking appropriate enforcement action against the State for any other violations of UOCAVA that are not the subject of this Agreement.

F. General.

This Agreement is binding on the parties and their successors in office. The parties agree to the admissibility of this Agreement without objection in any subsequent proceeding for its enforcement or other action filed to enforce Section 102(a)(8) of UOCAVA.

The undersigned enter into this Agreement this 16th day of September, 2010:

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