

**FIFTH AMENDATORY AGREEMENT**

**THIS FIFTH AMENDATORY AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "**CITY**", and **ALCOHOL MONITORING SYSTEMS, INC.**, a Colorado corporation with its principal place of business located at 1241 W. Mineral Ave., Ste. 200, Littleton, CO 80120, hereinafter referred to as the "Contractor" or "AMS."

**RECITALS:**

**A.** The City requires the services of a contractor to provide monitoring of sobriety, utilizing equipment that monitors blood alcohol levels transdermally, to clients of the City's Electronic Monitoring program that are sentenced by the Denver County Court or referred by the Denver County Probation Department, with the sentencing or probation condition of mandated sobriety, and entered into an agreement with the Contractor dated December 7, 2004 (the "Agreement") for the provision of such services, referred to as the Program, which Agreement was amended on February 7, 2006, January 9, 2007, August 21, 2007 and on December 15, 2009; and

**B.** Due to the ongoing demand for services by the Contractor the parties wish to further amend the Agreement to extend the term, to provide additional compensation to the Contractor, to replace Exhibit A-1 with Exhibit A-2 and to update other contract language as follows; and

**THUS**, in consideration of the premises and the mutual covenants and obligations herein set forth the parties agree as follows:

**1.** All references to "...Exhibit A and A-1..." in the existing Agreement shall be amended to read: "...Exhibit A, A-1 and A-2, as applicable...". The Scope of Work marked as Exhibit A-2 is attached and incorporated by reference.

**2.** That Article 3 of the Agreement entitled "**TERM OF AGREEMENT**" is amended to read as follows:

**"3. TERM OF AGREEMENT:** The term of the Agreement shall commence on November 1, 2004 and terminate on October 31, 2013."

**3.** That Article 6 of the Agreement entitled "**PAYMENT**", as previously amended, is further amended to read as follows:

“6. **PAYMENT:** The Contractor agrees to accept, and the City agrees to pay, as full and complete compensation for completion of all the items of work contained in this Agreement and Exhibits A, A-1, A-2 and B, and B-1a sum not to exceed Two Million Dollars (\$2,000,000.00). The Parties agree that the City and the Contractor may negotiate the prices for products in Exhibit A-2 so that City may pay less than the prices set out in Exhibit without the need for amendment of this Agreement. In such event the Parties shall memorialize any downward price adjustments by e-mail and any price adjustments shall be valid through the remainder of the term. It is understood and agreed that any payment obligations of the City hereunder, whether direct or contingent, in the performance of this Agreement, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The Contractor acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.”

4. Article 30 of the Agreement entitled “**PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT**” is hereby amended to read as follows:

**“30. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the

Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.”

5. A new paragraph numbered 31 is hereby added to the Agreement reading as follows:

**31. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

6. This Fifth Amendatory Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

7. Except as herein amended, this Fifth Amendatory Agreement affirmed and ratified in each and every particular.

**EXHIBIT LIST:**

**EXHIBITA-2 – SCOPE OF WORK**

**[SIGNATURE PAGES FOLLOW]**

**EXHIBIT A-2**

This **Exhibit A-2** (“**Exhibit**”) to the (“**Agreement**”), effective as of October 31, 2011 is by and between **The City and County of Denver** (“**City**”) and **Alcohol Monitoring Systems, Inc.** (“**AMS**”) in consideration of their mutual promises and subject to its terms and conditions. This Exhibit amends the Agreement dated December 7, 2004 and supersedes and replaces all previous Exhibit A’s to that Agreement. Each capitalized term herein shall have the meaning assigned to it in the Agreement.

1. Term: Through the period ending: October 31, 2013
2. Territory – Manager of Safety Electronic Monitoring Program
3. SCRAMx Purchase Pricing:
  - SCRAMx Bracelet/Base Set: \$1,300.00 each
  - SCRAMx Bracelet Only: \$1,040.00 each
  - SCRAMx Base Only: \$260.00 each
  - SCRAMx Cellular: \$400.00 each

4. SCRAMx Rental Pricing:
  - SCRAMx Bracelet/Base Set: \$68/month each
  - SCRAMx Bracelet Only: \$51/month each
  - SCRAMx Cellular: \$20/month each

Each SCRAMx Rental requires a ninety 90 day minimum rental term. For every ninety (90) day rental period rented, agency may choose to buy rented bracelet, or bracelet/base set at a discount of \$100.00 of the purchase prices listed in item 3 of Exhibit A. i.e. SCRAMx bracelet only rented for 180 days may be purchased at a \$200 discount for \$840.00 (\$1,040 - \$200). Discounted purchase offer does not apply to Cellular.

5. Payment Terms for SCRAMx Purchases and Rentals:

Payment is due within thirty five (35) days from the date of delivery of purchased equipment. Rented equipment will be invoiced monthly and payment is due within thirty five (35) days from the date of such invoice.

6. Daily SCRAMx Services Fees as of Effective Date of this Exhibit:

\$3.55/day per active SCRAMx Bracelet
\$1.00/day per active SCRAMx Cellular

SCRAMx Daily Service Fees for SCRAMx units currently in use are billed on assigned SCRAMx bracelets per the following schedule. Monthly payments for SCRAMx Services will be invoiced to the City by AMS no later than the tenth (10<sup>th</sup>) day of the month for the preceding month’s

aggregate fees and shall be paid by the City to AMS within thirty (30) days from the date of such invoice - Pricing includes both continuous alcohol monitoring and optional House Arrest functionality.

7. Other Special Terms:

Training: SCRAMx training will be provided to the City as needed at no charge.

Shipping: SCRAMx equipment and supplies shipped to and from the City will be provided to the City at no charge.

Consumables: SCRAMx consumables (batteries, locking clips, face plates) will be provided to the City as needed at no charge.

Replacement straps: SCRAMx replacement straps will be provided as needed to the City at no charge.

Agency Owned Equipment Damaged Policy: AMS will notify and invoice City \$340.00 for each bracelet that AMS confirms damaged by a client within seven (7) days of being returned to AMS after damage occurred.

**Contract Control Number:**

**Vendor Name:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



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**EXHIBIT LIST:**

**EXHIBITA-2 – SCOPE OF WORK**

**[SIGNATURE PAGES FOLLOW]**

## EXHIBIT A-2

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**Contract Control Number:** CE41246

**Vendor Name:** ALCOHOL MONITORING SYSTEMS INC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at  
Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** CE41246

**Vendor Name:** ALCOHOL MONITORING SYSTEMS INC

By: Chris Stites

Name: CHRIS STITES  
(please print)

Title: VICE PRESIDENT  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

