

RESOLUTION NO. 15
SERIES 2018

INTRODUCED BY: MIKE GALLAGHER
SECONDED BY: RANDY WEIL

**A
RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
APPROVING A MEMORANDUM OF AGREEMENT
WITH THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT,
DIVISION OF OIL AND PUBLIC SAFETY,
FOR LOCAL JURISDICTION REGULATION OF CONVEYANCES
PURSUANT TO THE ELEVATOR AND ESCALATOR CERTIFICATION ACT,
TITLE 9, ARTICLE 5.5, COLORADO REVISED STATUTES**

WHEREAS, C.R.S. Section 29-1-203 authorizes governments to cooperate or contract with one another to provide any function, service, or facility; and

WHEREAS, Section 13.6 of the Cherry Hills Village Home Rule Charter authorizes the City Council, by resolution or by ordinance, to enter into contracts or agreements with other governmental units for receiving services; and

WHEREAS, the Elevator and Escalator Certification Act ("The Act"), Title 9, Article 5.5, Sections 101 through 120, Colorado Revised Statutes, declares that "in order to ensure minimum safety standards throughout Colorado, the regulation of escalator and elevator conveyances is a matter of statewide concern"; and

WHEREAS, The Act allows a local authority having jurisdiction to enter into a Memorandum of Agreement ("MOA") with the Colorado Department of Labor and Employment, Division of Oil and Public Safety ("OPS") to regulate conveyances that are located within its territory (city, county or city and county) of authority; and

WHEREAS, since the Act was passed in 2007, the City has entered into MOAs with OPS to regulate elevators and escalators within the City; and

WHEREAS, the City Council finds it is in the best interests of the community to continue to regulate elevators and escalators within the City through cooperation with OPS.


NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cherry Hills Village, Colorado that:

Section 1. The City Council hereby approves the attached MOA between the City of Cherry Hills Village and OPS, and authorizes the Mayor to execute said MOA.

Section 2. This Resolution shall be effective immediately.

Introduced, passed and adopted at the
regular meeting of City Council this 17th day
of July, 2018, by a vote of 6 yes 0 no.

(SEAL)



Laura Christman, Mayor

ATTEST:

APPROVED AS TO FORM:



Laura Smith, City Clerk



Linda C. Michow, City Attorney

MINDSUZ

**ATTACHMENT A:
MEMORANDUM OF AGREEMENT
WITH THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT,
DIVISION OF OIL AND PUBLIC SAFETY,
FOR LOCAL JURISDICTION REGULARION OF CONVEYANCES**

JUL 23 2018

RECEIVED



MEMORANDUM OF AGREEMENT-CMS #56517
FOR LOCAL JURISDICTION REGULATION OF CONVEYANCES
Pursuant to the Elevator and Escalator Certification Act
Title 9 Article 5.5, Colorado Revised Statutes

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into by the Colorado Department of Labor and Employment, Division of Oil and Public Safety ("OPS"), 633 17th Street, Suite 500, Denver, Colorado 80202-3610 and Cherry Hills Village, a Colorado home rule municipality ("Authority Having Jurisdiction" or "AHJ"), located at 2450 E. Quincy Avenue, Cherry Hills Village, Colorado 80113 (collectively referred to as the "Parties").

I. BACKGROUND

The Elevator and Escalator Certification Act (the 'Act'), Title 9, Article 5.5, Sections 101 through 120, Colorado Revised Statutes (C.R.S.), declares that "in order to ensure minimum safety standards throughout Colorado, the regulation of conveyances is a matter of statewide concern". Conveyance Regulations, 7 Colorado Code of Regulations [CCR] 1101-8, have been promulgated to implement the requirements in the Act, and associated policies and guidance have been developed to further clarify requirements in regulations.

The Act allows a local authority having jurisdiction (AHJ) to enter into an MOA with OPS to regulate conveyances that are located within its territory (city, county or city and county) of authority. Following OPS's approval of the AHJ's conveyance standards and execution of this MOA, the AHJ will be considered an Approved AHJ.

Any reference in this MOA to a statute, regulation, or other authority shall be interpreted to refer to such authority then current, or as may have been changed or amended since the execution of this MOA. Documents incorporated herein and by reference to this MOA are available for inspection on the OPS website at www.colorado.gov/ops.

II. AUTHORITY AND PURPOSE

The principle authority for this MOA is contained in §9-5.5-112 (2), C.R.S. The Parties have entered into this MOA to:

- Identify the responsibilities of each party for ensuring the safety of conveyances within the State of Colorado through compliance with the Act, regulations, and associated policies and guidance;
- Formalize the cooperative working relationships between the Parties; and
- To provide procedures for communications, exchange of information, and resolution of problems as necessary to carry out the provisions of the Act and regulations.

III. EFFECTIVE DATE AND TERM

This MOA shall be effective on July 30, 2018 upon the satisfaction of OPS that the AHJ has developed a program that can adequately regulate conveyances within its territory. This MOA will terminate on June 30, 2023, unless terminated sooner as specified herein.

IV. RESPONSIBILITIES OF OPS

- A. OPS shall approve the AHJ entering into this MOA.
- B. OPS shall adopt nationally recognized conveyance safety standards.
- C. OPS shall require that all newly installed and existing conveyances in the State of Colorado are registered with OPS. This process will include the collection of a one-time registration fee from the conveyance owner.
- D. OPS shall require that all conveyance contractors, mechanics, temporary mechanics and inspectors conducting work in the State of Colorado are licensed through OPS.

V. RESPONSIBILITIES OF THE AHJ

- A. The AHJ shall operate and enforce a conveyance regulation program within its territory of authority with standards equal to or more stringent than those within current OPS statute and regulation.
- B. The AHJ shall relay information regarding conveyances within its territory to the OPS on an annual frequency. This information shall be submitted to OPS no later than February 28th of each calendar year and shall include information from the previous calendar year. The information and information format shall be determined by the OPS and shall be incorporated by reference herein to this MOA.

- C. The AHJ shall, in cooperation with OPS, establish a schedule for the AHJ to initially adopt standards listed in §9-5.5-112 (1), C.R.S. Following this initial adoption, the AHJ shall remain current in adoption of future standard versions within 12 months from the date at which OPS adopts the standard.
- D. The AHJ shall ensure that all new and existing conveyances regulated by OPS within the territory of the AHJ are registered with OPS prior to issuing a Certificate of Operation for those conveyances.
- E. The AHJ shall be responsible for ensuring that all conveyances within the AHJ territory are operating under a current Certificate of Operation.
- F. The AHJ shall use best efforts to ensure that all entities described in IV. D. above are licensed with OPS prior to conducting work in its territory. Information regarding unlicensed entities shall be reported to OPS immediately in order that OPS enforcement be initiated.
- G. Within one (1) business day of notification received by the AHJ, the AHJ shall notify OPS of any accident resulting in injury to an individual.
- H. If the AHJ utilizes a contractor in the performance of its responsibilities under this MOA, the AHJ shall ensure that the subcontractor holds all required licenses and/or certification to perform their responsibilities, and maintains insurance coverage at all times while performing their responsibilities in accordance with the insurance requirements set forth in C.R.S. §9-5.5-115.
- I. The AHJ shall issue a construction permit to the conveyance owner or conveyance contractor prior to the installation or alteration of a regulated conveyance.
- J. If allowed per AHJ regulations, the AHJ shall review and make determination of approval or denial for all Alternate Materials and Methods Requests (AMMR - code variances) submitted by conveyance owners or contractors. The AHJ must notify the OPS on all AMMR determinations.

VI. ACCESS TO INFORMATION

- A. To the extent allowed by law, each party shall make available to each to the other party, at no cost, information regarding conveyances within its territory. Requests for information shall not impose an unreasonable resource burden on the other party.
- B. Upon reasonable notice to the AHJ during the term of this MOA, OPS may inspect and review AHJ's records with regard to this MOA.

VII. TERMINATION

The Parties may terminate this MOA for their convenience by notifying the other party in writing, as described in Section VIII C of this MOA, of their intent to terminate this MOA. Such termination shall be effective thirty (30) calendar days following notice. Notwithstanding the above, OPS may terminate this MOA immediately if the AHJ fails to satisfactorily perform its responsibilities hereunder during the term of this MOA.

VIII. GENERAL PROVISIONS

A. Legal Authority

The parties warrant that each possesses actual, legal authority to enter into this MOA. The parties further warrant that each has taken all actions required by its applicable law, procedures, rules, or by-laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this MOA and bind that party to its terms. The person or persons signing this MOA, or any attachments or amendments hereto, also warrant(s) that such person(s) possesses actual, legal authority to execute this MOA, and any attachments or amendments hereto, on behalf of that party.

B. Notice of Pending Litigation

Unless otherwise provided for in this MOA, the AHJ shall notify the OPS individuals, as listed below in C, within five (5) working days after being served with a summons, complaint, or other pleading in a case which involves any services provided under this MOA and which has been filed in any federal or state court or administrative agency.

C. Notice Procedure

All notices required to be given under this MOA shall be in writing and shall be deemed given when personally served or three (3) days after deposit in the United States Mail, certified mail, return receipt requested, and addressed to the following parties or to such other addressee(s) as may be designated by a notice complying with the foregoing requirements. If sent by facsimile, notice shall be deemed given at the time of completion of the transmission of the facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.

For the AHJ:

Name & Title:	Jim Thorsen, City Manager
Address:	2450 Quincy Avenue Cherry Hills Village, CO 80113
Phone/Fax:	303-789-2541/303-761-9386

For OPS:

Name & Title:	Lisa Eze, Purchasing Director
Address:	Colorado Department of Labor & Employment 633 17 th Street, Suite 1100, Denver CO 80202
Phone/Fax:	303-318-8054, 303-318-8068

With a copy to:

Name & Title:	Greg Johnson, Conveyance Section Manager
Address:	Colorado Department of Labor & Employment Oil & Public Safety Division 633 17 th Street, Suite 500, Denver CO 80202
Phone/Fax:	303-318-8536, 303-318-8534

D. Independent Contractor

Neither AHJ nor any agent or employee of AHJ shall be or shall be deemed to be an agent or employee of OPS.

E. Adherence To Applicable Laws.

At all times during the term of this MOA, both parties shall comply with all applicable federal and state laws, regulations, rules, or procedures, as these provisions currently exist or may hereafter be amended, all of which are incorporated herein by reference and made a part of the terms and conditions of this MOA.

F. Venue.

The Parties agree that exclusive venue for any action related to this MOA shall be filed in the City and County of Denver, Colorado.

G. Governmental Immunity Act

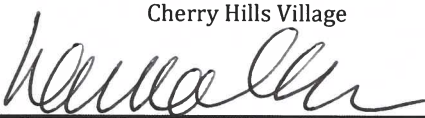

No term or condition of this MOA shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

H. Entire Understanding

This MOA is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect whatsoever, unless embodied in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written contract executed and approved by the Parties.

IX. APPROVALS

The Parties hereto have executed this MOA.

<p style="text-align: center;">Cherry Hills Village</p> <p>By: </p> <hr/> <p style="text-align: center;">Laura Christman, Mayor</p> <p>Date: <u>7/17/18</u></p>	<p style="text-align: center;">Colorado Department of Labor and Employment Division of Oil and Public Safety</p> <p>By: </p> <hr/> <p style="text-align: center;">Mahesh Albuquerque, Director</p> <p>Date: <u>7/28/18</u></p>
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MICHOW COX & McASKIN LLP
ATTORNEYS AT LAW

July 2, 2018

Peggy Christian
Public Safety Supervisor
Division of Oil and Public Safety
633 17th Street, Suite 500
Denver, CO 80202

Sent via email to peggy.christian@state.co.us

Dear Ms. Christian:

Re: Extension of MOA for Elevator Inspections; Cherry Hills Village

Dear Ms. Christian:

On behalf of the City of Cherry Hills Village, please accept this letter to request an extension of the existing Memorandum of Agreement ("MOA") between the State of Colorado and the City of Cherry Hills Village effective on July 2, 2013 through June 30, 2018. The City requests an extension of the existing MOA until July 30, 2018 to allow time to present to City Council for approval at its July 17, 2018 Council meeting.

I appreciate your cooperation in this matter. Please confirm approval of this extension by acknowledgment below, and feel free to contact me should you have any questions regarding this matter.

Sincerely,

Linda Michow
City Attorney

cc: Jim Thorsen, City Manager
Jay Goldie, Public Works Director

ACKNOWLEDGED AND APPROVED:

Peggy Christian, Public Safety Supervisor