

AGREEMENT BETWEEN ADAMS COUNTY AND ADAMS COUNTY ECONOMIC DEVELOPMENT, INC. FOR PROFESSIONAL SERVICES

This AGREEMENT is made and entered into as of this ____ day of _____, 2017, by and between Adams County Board of County Commissioners, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "the County," and Adams County Economic Development, located 12200 Pecos Street, Suite 100, Westminster, CO 80234, hereinafter referred to as "ACED". The County and ACED may be collectively referred to herein as the "Parties".

The County and ACED for the consideration herein set forth, agree as follows:

1. SERVICES OF ACED

1.1 ACED shall provide primary employer support and expansion services to strengthen economic development on a countywide basis for the County of Adams. The services provided by ACED shall include the following:

1.2 Creating and submitting to the Board of County Commissioners for its approval an annual work plan for achieving the scope of service and providing quarterly updates

1.3 Creating and submitting to the Board of County Commissioners a quarterly Economic Development Report to include:

1.3.1 Number of business retention visits

1.3.2 Business retention visit outcomes- new job and capital investment figures

1.3.3 Primary employer attraction efforts

1.3.4 Marketing activities

1.3.5 Adams County commercial real estate activity

1.3.6 Financial incentives update including current year payments and projected future year payments

1.3.7 Status update on progress made on achieving annual work plan.

1.4 ACED shall enhance the economic strength of the County by recruiting new primary employers, retaining existing primary employers and assisting current primary employers to expand in the County.

1.5 ACED shall exert targeted efforts to attract and retain primary jobs in targeted industries identified by ACED, including but not limited to advanced manufacturing, life and biosciences, energy, aviation and aerospace, capital intensive businesses, and corporate office users.

1.6 ACED shall market the County as a desirable business location to prospective businesses and industries in the region, throughout the nation and the world and shall maintain a current list of potential business prospects.

- 1.7 ACED shall provide any and all necessary community data information including current land and building opportunities to any Adams County business prospect or client to encourage it to locate in the County.
- 1.8 ACED shall conduct a minimum of 100 business retention visits per year and shall report the summary results of those visits in the Quarterly Economic Development Report to the Board of County Commissioners.
- 1.9 ACED shall negotiate incentives with qualifying primary businesses on behalf of Adams County, make recommendations to the Board of County Commissioners on incentive agreements, and shall submit documentation and justification for said incentives to the County for approval. ACED shall certify business activity and eligibility for incentive payments, and submit documentation and justification to the County prior to payment of incentives.
- 1.10 ACED shall provide the County with financial and performance measurement reports on a quarterly basis regarding its activities and metrics.
- 1.11 Prior to the issuance of the first quarterly payment set forth in Article 4, ACED shall brief the Commissioners and receive their approval of the annual work plan for achieving the scope of services. Prior to the issuance of the second, third and fourth quarterly payments, ACED shall meet with the Board of County Commissioners to review its progress on the work plan.

2 .RESPONSIBILITES OF THE COUNTY The County shall provide ACED with information as necessary or requested by ACED to enable ACED's performance under this agreement. The Deputy Director of Community & Economic Development at the County shall serve as the primary liaison to ACED.

3.TERM

3.1 Term of Agreement: The services to be performed by ACED under this agreement shall be commenced on the 1st day of January 2017 and shall be terminated on the 31st day of December 2017, inclusive, unless previously terminated by either pursuant to the provisions of Section 9.

4. PAYMENT AND FEE SCHEDULE

4.1 Payment and Fee Schedule: The County shall pay ACED a total of Five Hundred Twenty Six Thousand and Sixty Four Dollars (\$526,064). Payments shall be made on a quarterly basis. The following installment schedule is contingent upon on the performance of the scope of services set forth in Section 1.

4.2 Installment Schedule

Service Period	Payment Due Date	Amount
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Service Period	Payment Due Date	Amount
January 1, 2017 thru March 31, 2017	January 15, 2017	\$131,516
April 1, 2017 thru June 30, 2017	April 15, 2017	\$131,516
July 1, 2017 thru September 30, 2017	July 15, 2017	\$131,516
October 1, 2017 thru December 31, 2017	October 15, 2017	\$131,516

4.3 The consideration set forth in Paragraph 1, above, shall constitute the total consideration paid by the County to ACED for services provided and the expenditures incurred by ACED in the performance of this Agreement.

4.4 If at any time this Agreement is terminated by either party pursuant to the provisions of Article 9 hereof, the pro-rata portion of the advance payment and any monies not used in the direct furtherance of the purposes of this Agreement shall be returned to the County within (10) days of said termination and the County's responsibility for further payments hereunder is terminated.

4.5 ACED acknowledges and agrees that any monies not encumbered or benefits not used in the direct furtherance of the purposes of this Agreement at the end of the term set forth shall no longer be available to ACED except by further written agreement. Unless a subsequent agreement with the County is reached, any County funds not used in the furtherance of this Agreement shall be returned to the County on or before sixty (60) days after the expiration of this Agreement.

5. INDEPENDENT CONTRACTOR In providing services under this Agreement, ACED acts as an independent contractor and not as an employee of the County. ACED shall be solely and entirely responsible for his/her acts and the acts of his/her employees, agents, servants, and subcontractors during the term and performance of this Agreement. No employee, agent, servant, or subcontractor of ACED shall be deemed to be an employee, agent, or servant of the County because of the performance of any services or work under this Agreement. The Contractor, at its expense, shall procure and maintain workers' compensation insurance as required by law. **Pursuant to the Workers' Compensation Act § 8-40-202(2)(b)(IV), C.R.S., as amended, ACED understands that it and its employees and servants are not entitled to workers' compensation benefits from the County. ACED further understands that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement.**

6. NONDISCRIMINATION:

6.1 ACED shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex, or national origin. ACED agrees to post in conspicuous places, available to employees and applicants for employment, notices provided by the local public agency setting forth the provisions of this nondiscrimination clause. Adams County is an equal opportunity employer.

6.1.1 ACED will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

7. **INDEMNIFICATION:** ACED agrees to indemnify and hold harmless the County, its officers, agents, and employees for, from, and against any and all claims, suits, expenses, damages, or other liabilities, including reasonable attorney fees and court costs, arising out of damage or injury to persons, entities, or property, caused or sustained by any person(s) as a result of the ACED's performance or failure to perform pursuant to the terms of this Agreement or as a result of any subcontractors' performance or failure to perform pursuant to the terms of this Agreement.

8. **INSURANCE:** ACED agrees to maintain insurance of the following types and amounts:

8.1 Commercial General Liability Insurance: to include products liability, completed operations, contractual, broad form property damage and personal injury.

- i. Each Occurrence: \$1,000,000
- ii. General Aggregate: \$2,000,000

8.2 Comprehensive Automobile Liability Insurance: to include all motor vehicles owned, hired, leased, or borrowed.

8.2.1 Bodily Injury/Property Damage: \$1,000,000 (each accident)

8.2.2 Personal Injury Protection: Per Colorado Statutes

8.3 Workers' Compensation Insurance: Per Colorado Statutes

8.4 Professional Liability Insurance: to include coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services, as applicable.

8.4.1 Each Occurrence: \$1,000,000

8.4.2 This insurance requirement applies only to the Contractors who are performing services under this Agreement as professionals licensed under the laws of the State of Colorado, such as physicians, lawyers, engineers, nurses, mental health providers, and any other licensed professionals.

8.5 Adams County as "Additional Insured": The Contractor's commercial general liability, comprehensive automobile liability, and professional liability insurance policies and/or certificates of insurance shall be issued to include Adams County as an "additional

insured" and shall include the following provisions:

8.5.1 Underwriters shall have no right of recovery or subrogation against the County, it being the intent of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses resulting from the actions or negligence of the Contractor.

8.5.2 The insurance companies issuing the policy or policies shall have no recourse against the County for payment of any premiums due or for any assessments under any form of any policy.

8.5.3 Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.

8.6 Licensed Insurers: All insurers of ACED must be licensed or approved to do business in the State of Colorado. Upon failure of ACED to furnish, deliver and/or maintain such insurance as provided herein, this Agreement, at the election of the County, may be immediately declared suspended, discontinued, or terminated. Failure of ACED in obtaining and/or maintaining any required insurance shall not relieve ACED from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of ACED concerning indemnification.

8.7 Endorsement: Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or canceled without thirty (30) days prior written notice by certified mail, return receipt requested, to the County.

8.8 Proof of Insurance: At any time during the term of this Agreement, the County may require ACED to provide proof of the insurance coverage or policies required under this Agreement.

9 TERMINATION:

9.1 For Cause: If, through any cause, ACED fails to fulfill its obligations under this Agreement in a timely and proper manner, or if ACED violates any of the covenants, conditions, or stipulations of this Agreement, the County shall thereupon have the right to immediately terminate this Agreement, upon giving written notice to ACED of such termination and specifying the effective date thereof.

9.2 For Convenience: The County may terminate this Agreement at any time by giving written notice as specified herein to the other party, which notice shall be given at least thirty (30) days prior to the effective date of the termination. If this Agreement is terminated by the County, ACED will be paid an amount that bears the same ratio to the total compensation as the services actually performed bear to the total services ACED was to perform under this Agreement, less payments previously made to ACED under this Agreement.

10 MUTUAL UNDERSTANDINGS:

10.1 Jurisdiction and Venue: The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The parties agree that jurisdiction

and venue for any disputes arising under this Agreement shall be with Adams County, Colorado.

10.2 Compliance with Laws: During the performance of this Agreement, ACED agrees to strictly adhere to all applicable federal, state, and local laws, rules and regulations, including all licensing and permit requirements. The parties hereto aver that they are familiar with § 18-8-301, et seq., C.R.S. (Bribery and Corrupt Influences), as amended, and § 18-8-401, et seq., C.R.S. (Abuse of Public Office), as amended, and that no violation of such provisions are present. ACED warrants that it is in compliance with the residency requirements in §§ 8-17.5-101, et seq., C.R.S. Without limiting the generality of the foregoing, ACED expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

10.3 OSHA: ACED shall comply with the requirements of the Occupational Safety and Health Act (OSHA) and shall review and comply with the County's safety regulations while on any County property. Failure to comply with any applicable federal, state or local law, rule, or regulation shall give the County the right to terminate this agreement for cause.

10.4 Record Retention: ACED shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subject at all reasonable times to inspection, review, or audit by authorized Federal, State, or County personnel.

10.5 Assign Ability: Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by ACED without the prior written consent of the County.

10.6 Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver, nor shall it prejudice the waiving party's right to require strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.

10.7 Force Majeure: Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.

10.8 Notice: Any notices given under this Agreement are deemed to have been received and to be effective: 1) Three (3) days after the same shall have been mailed by certified mail, return receipt requested; 2) Immediately upon hand delivery; or 3) Immediately upon receipt of confirmation that an E-mail was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below:

Department: Adams County
Contact: Kristin Sullivan
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton CO 80601
Phone: 720-523-6857
E-mail: ksullivan@adcogov.org

Department: Adams County Purchasing
Contact: Kim Roland
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone: 720-523-6057
E-mail: kroland@adcogov.org

Department: Adams County Attorney's Office
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone: 720-523-6116
E-mail: hmiller@adcogov.org

Contractor: Adams County Economic Development
Contact: Barry Gore
Address: 12200 Pecos Street, Suite 100
City, State, Zip: Westminster, CO 80234
Phone: 303-453-8510
E-mail: bgore@adamscountyed.com

10.9 Integration of Understanding: This Agreement contains the entire understanding of the parties hereto and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties hereto.

10.10 Severability: If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of this Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

10.11 Authorization: Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.

11 COMPLIANCE WITH C.R.S. § 8-17.5-101, ET. SEQ. AS AMENDED 5/13/08:
Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, *et. seq.*, as amended May 13,

2008, ACED shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- 11.1 ACED shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.
- 11.2 ACED shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 11.3 ACED shall not enter into a contract with a subcontractor that fails to certify to ACED that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 11.4 At the time of signing this public contract for services, ACED has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.
- 11.5 ACED shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
- 11.6 If ACED obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, ACED shall: notify the subcontractor and the County within three (3) days that ACED has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that ACED shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 11.7 ACED shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the

Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

If ACED violates this Section, of this Agreement, the County may terminate this Agreement for breach of contract. If the Agreement is so terminated, ACED shall be liable for actual and consequential damages to the County

IN WITNESS WHEREOF, the Parties have caused their names to be affixed hereto:

Board of County Commissioners

Chairman

Date

Adams County Economic Development

Signature

Date

Printed Name

Title

Attest:

Stan Martin, Clerk and Recorder

Deputy Clerk

Approved as to Form:

Adams County Attorney's Office