

INTERGOVERNMENTAL AGREEMENT BETWEEN ADAMS COUNTY AND THE STATE OF COLORADO
REGARDING THE ACQUISITION AND DEVELOPMENT OF THE ADAMS YOUTH SERVICES CENTER.

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is entered into this ____ day of _____, 2017 by and between Adams County, Colorado, located at 4430 South Adams County Parkway, Brighton, Colorado 80601 ("County"), and the State of Colorado, acting by and through the Department of Human Services located at 1575 Sherman Street, Denver, Colorado 80203 ("State");

WHEREAS, the County intends to enter into a separate contract ("Purchase Contract") with IVE Colorado LLC, Jacobs Colorado LLC and King Paul 1 LLC, located at 4500 Cherry Creek Dr. South, #860, Denver, Colorado 80246 ("Owners"), to purchase an approximately twelve (12) acre parcel of land located in the City of Brighton, Colorado, as described in Exhibit A, Legal Description, attached hereto and incorporated by this reference ("Property"), for future development of a regional youth services center (the "Adams Youth Services Center" or "AYSC");

WHEREAS, the Property does not include mineral rights, water rights, or other rights retained by the Owners pursuant to the Purchase Contract;

WHEREAS, the County intends to convey the Property to the State at no cost to the State, in consideration for the State's request of future funds for the future development, construction and operation of the AYSC by the State, subject to the terms and conditions of this IGA, which will be of mutual benefit to the State and the County;

WHEREAS, the State has undertaken preliminary programming and design activities with respect to the Property and has identified the Property as suitable for the development and construction of the AYSC;

WHEREAS, the State, at its sole cost, will complete the planning and construction of the AYSC in phased increments, in accordance with the terms and conditions of this IGA, contingent upon the appropriation of State funds for such purpose, of which the first phase for planning is already funded; and

WHEREAS, the Parties are authorized to enter into this IGA pursuant to Article XIV, Section 18(2)(a) of the Colorado Constitution and § 24-1-136.5(7), C.R.S.;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties mutually agree as follows:

A. Obligations of the Parties

1. The County shall:

- a. Purchase the Property from Owners in fee simple by July 31, 2018;
- b. Require the Owners to provide the County with a Special Warranty Deed transferring the Property to the County, in a form reasonably acceptable to the State;
- c. Require the Owners to provide the County a title policy issued by Fidelity National Title Insurance Company ("Title Company"), which names the County as an insured, in a form reasonably acceptable to the County ("Title Policy"); and
- d. Request that the Owner provide an ALTA Survey to the County, which is specific to the Property and which contains a certification to the County, and the Title Company, in a form reasonably acceptable to the County. The County shall allow the State to review the ALTA Survey if one is received.

2. The State of Colorado shall:

- a. Be solely responsible for the costs of designing, developing, constructing and maintaining the AYSC and the Property, including the cost of any required permits, waivers, and approvals, and all courtesy submittals agreed to by the State, related to the design, development, construction, and maintenance of the AYSC and Property, all costs contingent upon availability of State funds for such purpose;
- b. At its sole cost, undertake the Buyer obligations listed in sections 11(T) and (U) of the Purchase Contract in a timely manner in order to ensure that deadlines in the Purchase Contract are met, except that the State does not undertake any delegation regarding Seller's remedies or indemnity under the Purchase Contract;

3. Upon receiving the below documents/information from the Title Company, County will furnish the State with:

- a. Copies of any plats, declarations, covenants, conditions, and restrictions burdening the Property, and

- b. Copies of any other documents listed in the schedule of exceptions. This requirement shall pertain only to documents as shown of record in the Adams County Office of the Clerk and Recorder.
 - 4. The County and the State shall jointly undertake and satisfy Title and Environmental due diligence by the deadlines set forth in the County's Purchase Contract with Owners.
 - a. Title due diligence shall include:
 - i. Inspection of the title documents for unmerchanability, form or content, or other unsatisfactory title conditions shown by the title documents;
 - ii. Examination of true copies of all leases and surveys in the Owner's or County's possession pertaining to the Property;
 - iii. Other title matters not shown by the public records;
 - iv. Inspection of the Property to determine if there is any right on the Property not disclosed in the public records; and
 - v. Inspection of any survey of the Property.
 - b. Environmental due diligence shall include review of:
 - i. Owners' most recent Phase I Environmental Site Assessment; and
 - ii. Any and all environmental, geotechnical or engineering reports furnished by the Owners.
 - c. Based on the due diligence review, the County may object to transfer of the Property from the Owners during the due diligence period set forth in the Purchase Contract. The County shall provide the State opportunity to review and object during due diligence review, and will not unreasonably refuse to object on the State's behalf. If the Purchase Contract is terminated as a result of said objection, this IGA shall terminate with no further obligation, responsibility, or obligation by either party, except as otherwise stated in this IGA.
 - 5. Pursuant to the Purchase Contract, Owners have agreed, at Owners' sole cost, to obtain a final plat for the Property. State shall review and comment on the draft plat in a timely manner. If the City of Brighton denies the final plat or a final plat is not obtained by July 14, 2018, and the Purchase Contract terminates, then this IGA shall terminate.
 - 6. The County's sole financial obligation is the purchase price of the Property, to be paid to the Owners at closing of the Purchase Contract.

B. Obligations following Transfer of the Property from the Owner to the County:

 - 1. Within thirty (30) days of the County's purchase of the Property from the Owner, the County shall transfer the Property to the State through a Special Warranty Deed free and clear of encumbrances, except for those encumbrances set forth in the Special Warranty Deed from

Owners to County.

2. The state shall actively and diligently attempt to secure funding for the construction of the AYSC on the Property on or before July 1, 2019. Construction of the AYSC must be completed by December 31, 2024. In the event that the State receives funding for and commences construction of the AYSC, the State shall construct the AYSC to State standards for this type of facility.
3. The dates described in Section B.2 of this IGA may be modified upon the mutual written agreement of both of the Parties.

C. Reversion of the Property:

1. If the State fails to meet the deadlines stated in section B.2, above :
 - a. The State shall transfer the Property subject to land dedications and public utility easements of record to the County by Special Warranty Deed within three (3) months of written request by the County;
 - b. The County shall reimburse the State for the increase of value to the Property from any improvements or development by the State, which shall be determined by an appraiser agreed upon by both parties within two years from the date of the State's transfer of the Property to the County or within sixty (60) days of a subsequent transfer by the County to a third party, whichever occurs first; and
 - c. This IGA shall terminate without penalty, and without further liability, responsibility, or obligation for either Party, other than as specifically set forth in this IGA.
2. In the event the State constructs the AYSC and in the event the State ceases to use the Property for use by the Department of Human Services for a consecutive period of six (6) months, the State shall transfer the Property subject to land dedications and public utility easements to the County by Special Warranty Deed.

D. Applicable State Special Provisions:

1. **CONTROLLER'S APPROVAL.** C.R.S. §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** C.R.S. §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, 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. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. NO EMPLOYMENT RELATIONSHIP. Neither any Party nor any Party's agent or employee of shall be deemed to be an agent or employee of any other Party.
5. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
6. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
7. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions.
8. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. C.R.S. §§24-18-201 and 24-50-507. The Parties aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. The Parties have no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Parties' services and the Parties shall not employ any person having such known interests.

E. Miscellaneous

1. This IGA is 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 all of the Parties.
2. If any provision of this IGA is determined to be unenforceable or invalid for any reason, the remainder of this IGA shall remain in effect.
3. This IGA and any rights hereunder shall not be assignable or otherwise transferable, in whole or in part, by either Party without the written consent of the other.
4. Waiver of strict performance or the breach of any provision of this IGA 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.

5. 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 control of such Party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fire, floods, earthquakes, or other acts of God
6. The Parties agree to devote their best efforts and to exercise good faith in implementing the provisions of this IGA.
7. Notwithstanding anything to the contrary herein, the obligation of the State to fulfill the State's obligations under this Agreement shall be subject to and conditioned upon the appropriation of funds for such purpose by the Colorado Assembly and approval of such expenditures by the Colorado State Controller. The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. If Federal appropriations or grants fund this contract in whole or in part, this IGA is subject to and contingent upon the continuing availability of appropriated Federal funds for this IGA. If State of Colorado or Federal funds are not appropriated, or otherwise become unavailable to fund this IGA, the State may immediately terminate this IGA in whole or in part without further liability.
8. The Parties represent to each other that the individuals signing this IGA have the authority to do so and all conditions precedent to executing this IGA have been met.
9. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
10. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the County and State, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement and do not create any rights for such third parties.

IN WITNESS WHEREOF, the Parties hereto have signed this IGA, which shall be effective upon the signature of the last person, including the Colorado State Controller or designee, to sign this IGA (the "Effective Date").

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

** Persons signing for Parties hereby swear and affirm that they are authorized to act on that Party's behalf and acknowledge that the other Party is relying on their representations to that effect.*

<p align="center"><u>COUNTY OF ADAMS</u></p> <p>_____ Name of Authorized Signatory</p> <p>_____ Title of Authorized Signatory</p> <p>_____ • Signature</p> <p>Date: _____</p>	<p align="center"><u>STATE OF COLORADO</u> <u>John W. Hickenlooper, Governor</u> Colorado Department of Human Services Anthony Gherardini, Deputy Executive Director of Operations</p> <p>_____ By: Anthony Gherardini Signatory avers to the State Controller or delegate that Parties have not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: _____</p>
<p align="center">LEGAL REVIEW Doug Edelstein, County Attorney</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Cynthia H. Coffman, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. No Party is authorized to begin performance until such time. If a Party begins performing prior thereto, the State of Colorado is not obligated to pay the Party for such performance or for any goods and/or services provided hereunder.

<p align="center"><u>STATE CONTROLLER</u> Robert Jaros, CPA, MBA, JD</p> <p align="center">By: _____</p> <p align="center">Clint Woodruff, Controller, Colorado Department of Human Services</p> <p align="center">Date: _____</p>
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