

AGREEMENT BETWEEN ADAMS COUNTY AND ADAMS COUNTY EDUCATION CONSORTIUM FOR PROFESSIONAL SERVICES

This AGREEMENT is made and entered into as of this 8 day of Aug, 2020, by and between the Adams County Board of County Commissioners, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," and Adams County Education Consortium, located 12200 Pecos Street, Suite 100, Westminster, CO 80234, hereinafter referred to as "ACEC". The County and ACEC may be collectively referred to herein as the "Parties". The County and ACEC for the consideration herein set forth, agree as follows:

1. SERVICES OF ACEC

- 1.1 ACEC shall provide services to the County in the support and development of the Adams County Scholarship Fund through the Colorado Opportunity Scholarship Initiative. The services provided by ACEC shall include the following:
- 1.2 ACEC will act as the fiscal agent for the County to administer the Colorado Opportunity Scholarship Initiative Grant.
- 1.3 ACEC will be solely responsible for complying with all state requirements in administering the grant.
 - 1.3.1 Funds must only be used for Colorado students whose income is determined to be between 0 and 250% of the maximum permissible income for the purpose of determining eligibility for Pell grants and participate in a rigor-based student success program.
 - 1.3.2 Funds may only be used for students attending Colorado public institutions of higher education.
 - 1.3.3 Funds may only be used for Colorado residents.
 - 1.3.4 ACEC shall ensure that funded projects maintain appropriate fiscal and program records and that fiscal audit of this program will be conducted by the ACEC as a part of its regular audits.
 - 1.3.5 ACEC shall make, keep, maintain, and allow inspection and monitoring by Adams County of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work of the delivery of Services (including, but not limited to the operation of program) or Goods hereunder. ACEC shall maintain such records for a period (the "Record Retention Period") of three years following the date of submission to the State of the final Expenditure report, or if this agreement is renewed quarterly or annually, from the date of submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this agreement starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by Adams County. Adams County may notify ACEC in writing that the Record Retention Period shall be extended.
 - 1.3.6 ACEC shall permit Adams County to audit, inspect, examine, excerpt, copy, and transcribe ACEC records during the Record Retention Period. ACEC shall make ACEC records available during normal business hours at the ACEC's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 5 Business Days' notice from Adams County, unless Adams County determines that a shorter period of notice, or no notice, is necessary to protect the interests of Adams County.

1.3.7 Adams County will monitor ACEC's performance of its obligation under this Agreement using procedures as determined by Adams County. Adams County shall monitor ACEC's performance in a manner that does not unduly interfere with ACEC's performance of the Work.

1.3.8 ACEC shall promptly submit to Adams County a copy of any final audit report of an audit performed on ACEC's records that relates to or affects this Agreement of the Work, whether the audit is conducted by the State of Colorado or a third party.

ACEC will annually provide Adams County with evaluation information that is required by the State of Colorado, Colorado Department of Higher Education (CDHE) referenced in the State of Colorado Grant Agreement, between CDHE and ACEC, required by Exhibit A.

ACEC Funded projects will maintain appropriate fiscal and program records and fiscal audits of the Colorado opportunity Scholarship Initiative program, 8 CCR 1504-9, will be conducted by ACEC as a part of its regular audits.

If any findings of misuse of these matching funds are discovered, the matching funds will be returned to Adams County.

1.3.9 ACEC will comply with any applicable state and federal rules and regulations governing the distribution of scholarships, including all requirements imposed by 8 CCR 1504-9.

2. RESPONSIBILITIES OF THE COUNTY

2.1 The County shall provide information as necessary or requested by ACEC to enable ACEC's performance under this agreement. The Deputy County Manager of Community Services shall serve as the primary liaison to ACEC.

3. **TERM OF AGREEMENT:** The services to be performed by ACEC under this Agreement shall be commenced on the ____ of ____, 2020, and shall be terminated on the 30th of June, 2024, inclusive, unless previously terminated by either party pursuant to the provisions in Section 9.

4. PAYMENT AND FEE SCHEDULE

4.1 The County shall pay ACEC a total of five hundred and twenty-five thousand, one-hundred and forty three dollars (\$525,143), of which twenty-six thousand, two hundred fifty-seven dollars and fifteen cents (\$26,257.15) will be used for the administrative costs associated with managing the grant. The remaining balance of four hundred ninety-eight thousand, eight hundred eighty-five dollars and eighty-five cents (\$498,885.85) will be used to award two-to-four (2-4) years scholarships.

4.2 Payment for the entire five hundred twenty-five thousand, one hundred forty-three dollars (\$525,143) shall be made by County within thirty days of County receiving an invoice from ACEC.

4.3 The consideration set forth in Paragraph 4.1, above, shall constitute the total consideration paid by the County to ACEC for services provided and the expenditures incurred by ACEC 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, any unspent funds shall be returned to the County within ten (10) days of said termination.

4.5 ACEC 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 ACEC 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 (6) days after the expiration of this Agreement.

5. **INDEPENDENT CONTRACTOR:** In providing services under this Agreement, ACEC acts as an independent contractor and not as an employee of the County. ACEC 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 ACEC 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. **ACEC, 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, ACEC understands that it and its employees and servants are not entitled to workers' compensation benefits from the County. ACEC 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 ACEC shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex, or national origin. ACEC 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 ACEC 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:** ACEC 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 ACEC'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:** ACEC 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": ACEC'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 ACEC.

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 ACEC.

8.6 Licensed Insurers: All insurers of ACEC must be licensed or approved to do business in the State of Colorado. Upon failure of ACEC 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 ACEC in obtaining and/or maintaining any required insurance shall not relieve ACEC from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of ACEC 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 ACEC to provide proof of the insurance coverage or policies required under this Agreement.

9 TERMINATION:

9.1 For Cause: If, through any cause, ACEC fails to fulfill its obligations under this Agreement in a timely and proper manner, or if ACEC 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 ACEC 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, ACEC will be paid an amount that bears the same ratio to the total compensation as the services actually performed bear to the total services ACEC was to perform under this Agreement, less payments previously made to ACEC 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 in Adams County, Colorado.

10.2 Compliance with Laws: During the performance of this Agreement, ACEC 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. ACEC 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, ACEC expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

10.3 OSHA: ACEC 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: ACEC 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 ACEC 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: Raymond H. Gonzales
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton CO 80601
Phone: 720-523-6829
E-mail: rgonzales@adcogov.org

Department: Adams County Finance Department
Contact: Jen Tierney
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone: 720-523-6049
E-mail: jtierney@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: hmillier@adcogov.org

Contractor: Adams County Education Consortium
Contact: Chuck Gross
Address: 12200 Pecos Street, Suite 100
City, State, Zip: Westminster, CO 80234
Phone: 303-453-8515
E-mail: cgross@adamscountyeducation.org

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, ACEC shall meet the

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

BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO

Chair

Date

ATTEST:
JOSH ZYGIELBAUM
CLERK AND RECORDER

APPROVED AS TO FORM:

Adams County Attorney's Office

Deputy Clerk

Adams County Education Consortium:



Name: CHUCK GROSS
Title: Executive Director

following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- 11.1 ACEC 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 ACEC shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 11.3 ACEC shall not enter into a contract with a subcontractor that fails to certify to ACEC 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, ACEC 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 ACEC 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 ACEC obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, ACEC shall: notify the subcontractor and the County within three (3) days that ACEC 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 ACEC 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 ACEC 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 ACEC violates this Section, of this Agreement, the County may terminate this Agreement for breach of contract. If the Agreement is so terminated, ACEC shall be liable for actual and consequential damages to the County