

AGREEMENT

THIS AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and a home rule city organized and existing by virtue of Article XX of the *Constitution of the State of Colorado*, (hereinafter, the "City"), and **DENVER COLLEGE SUCCESS CORPORATION**, a Colorado not-for-profit corporation authorized to do business in the State of Colorado, whose address is 1600 Stout Street, Suite 1400, Denver, Colorado 80202 (hereinafter, "DCSC").

RECITALS:

A. At the general election on November 6, 2018, the City's electors approved a sales and use tax increase of 0.08 percentage points, for the purpose of increasing post-secondary institution enrollment and completion for Denver residents by expanding the capacity of scholarship-granting nonprofit organizations to support scholarship recipients.

B. Article IV of Chapter 11 of the Denver Revised Municipal Code ("D.R.M.C."), which is hereafter referred to as the "Ordinance," sets forth the requirements of the DCSC, including provisions for the governance and administration of the Denver College Affordability Fund Tax (the "Tax" or the "Fund"), and requires, among other things, that expenditures of the Tax be made pursuant to an agreement between the City and a Colorado non-profit corporation.

C. DCSC is a Colorado non-profit corporation exempt from income tax, having as its mission the administration of the Fund, in order to increase post-secondary institution enrollment and completion for Denver residents.

D. The City desires to distribute to DCSC receipts from the Tax, on terms and conditions consistent with the Ordinance, and subject to the conditions set forth in this Agreement, and DCSC desires to accept such funds and agrees to utilize and apply the funds consistent with the Ordinance and subject to the conditions and restrictions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual agreements herein contained and subject to the terms and conditions herein stated, the parties agree as follows:

1. DCSC'S ADMINISTRATION OF THE FUND:

A. During the term of this Agreement, DCSC shall administer the Fund in a timely and competent manner, as more fully described in section 4 below and the Scope of Operations which is attached hereto and incorporated herein by reference as Exhibit A. In the event of any conflict between the terms and conditions contained herein and those of Exhibit A such that the full effect cannot be given to both or all provisions, then the terms and conditions contained in this Agreement shall control. DCSC shall notify the City's Executive Director of the Office of Children's Affairs ("Director") of any changes to the Scope of Operations, and prior to approving such changes DCSC shall give the Director an opportunity to provide comments or suggestions for

consideration by DCSC. Final approval of such changes shall be made by the Board of Directors of DCSC and the Director, provided such changes do not conflict with the terms and conditions of this Agreement or with the Ordinance.

- B. The Scope of Operations, including DCSC's selection of, agreements with, and monitoring of participating organizations and other contractors, shall be subject to and performed in accordance with this Agreement, the requirements set forth in the Ordinance, and with any and all applicable legal requirements. DCSC will permit the City to carry out reasonable monitoring and evaluation activities in order to review any of the procedures used by DCSC in carrying out the charitable and public purposes for which the Tax has been provided, and to make available for inspection any and all non-confidential notes and other documents used in fulfilling the purpose of the DCSC as set out in the Ordinance. DCSC will report to the Director in accordance with Section 6 below concerning the Scope of Operations and its compliance with the terms of this Agreement, and the Director or a designated representative may attend and participate in meetings as reasonably requested by the Director.

2. **CITY LIAISON:** This Agreement shall be administered by the Manager of Finance ("Manager") on behalf of the City. The Manager hereby delegates day to day administration of the Agreement to the Director, particularly with regard to the programmatic aspects of the grants of scholarships. DCSC agrees that it will work with the Manager and the Director, or her/his designee, to administer this Agreement, including providing reports of services and obligations to be performed by DCSC pursuant to this Agreement.

3. **TERM:** The "Term" of this Agreement will commence on July 1, 2019 and terminate on June 30, 2020, subject to unilateral options of the City to renew for eleven (11) additional one (1) year periods up to a conclusive termination date which shall be the date DCSC has expended all of the distributions received under this Agreement and has reported to the City with respect to such distributions in accordance with Section 6 below, which options shall be exercised by the action of the city council in appropriating distributions of the receipts from the Tax. In the event that such appropriation for this Agreement is not made for a future fiscal year, the City will be deemed to have thereby failed to exercise its option to renew this Agreement for any additional period. The Director shall notify DCSC on or about August 1 of each year if the Director does not intend to seek an appropriation of funds for the purposes of this Agreement.

4. **DCSC'S RESPONSIBILITIES:** For the Term of the Agreement, in addition to all obligations required by the Ordinance or stated elsewhere in this Agreement or in any attachments hereto, DCSC shall comply with the following requirements as conditions for disbursements from the Fund:

- A. **Articles of Incorporation/Bylaws.** DCSC's articles of incorporation shall provide for a seven (7) member board of directors. Six (6) members of the board of directors shall be appointed by the mayor and confirmed by the city council; one member of the board of directors shall be a member of the city council appointed by the city council. Members of the board of directors shall

be appointed to staggered three-year terms of office with each group containing one-third of the total, as near as may be. Members of the board of directors shall serve without compensation but may be reimbursed for actual and necessary expenses in accordance with the bylaws.

- B. Open Meetings/Open Records.** Meetings of DCSC's board of directors shall be treated as public meetings of a local public body subject to the provisions of the Colorado Open Meetings Law, sections 24-6-401, et seq., CRS, as amended. In addition, DCSC's records shall be treated as public records and subject to the provisions of the Colorado Open Records Act, sections 24-72-201, et seq., CRS, as amended.
- C. Limit on administrative expenses.** No more than 5% of the Tax distributions received by DCSC from the City in any year shall be spent on administrative expenses except that up to 10% of such revenue may be spent on administrative expenses during the first year of DCSC's existence. For purposes of this limitation, "administrative expenses" shall mean salaries and office expenses related to any staff or employees of DCSC; any fees or expenses paid to third-party contractors or consultants to assist in the development of the Fund; expenses associated with measurement of the performance of the Fund and scholarship recipients; the preparation of reports to city officials and to the public on the performance of the program; expenses reimbursed to members of the board of directors; routine business expenses such as insurance, accounting and legal expenses; and any similar overhead expenses incurred by DCSC. In the event that, due to differences between projected and actual Tax revenue or another unplanned and unexpected cause, DCSC exceeds its limit on administrative expenses in any year, DCSC will reduce administrative expenses in the subsequent year to bring total administrative expenses over the two-year period within the limit.
- D. Program expenditures.** At least 95% of the Tax revenue received by DCSC in any year shall be used only for organization reimbursement grants administered in accordance with the requirements of section 11-34, D.R.M.C. except that in the first year of DCSC's existence only 90% of tax revenue received is required to be used for such purposes.
- E. Qualified organizations.** In order to be eligible for reimbursement a nonprofit educational organization shall meet the following minimum requirements:
- (i) The organization shall be duly incorporated and in good standing under the Colorado Revised Nonprofit Corporation Act and approved by the Internal Revenue Service as a tax exempt, charitable organization.

(ii) The organization shall have existed for not less than three years and shall operate independently as a financial and operational entity separate from any post-secondary institution, school district, or charter school management organization.

(iii) To remain in good standing and eligible to receive reimbursement from the Denver College Affordability Fund, organizations must submit a report each year to DCSC, the form and substance of such report to be as required by DCSC to the extent necessary to conduct a reasonable audit of the organization's use of tax dollars.

(iv) Other requirements as may be established by DCSC's board of directors.

- F. **Status of Qualified Organizations.** Organizations receiving funds for scholarships from DCSC in accordance with this Agreement shall not be deemed to be subcontractors or subconsultants of DCSC.
- G. **Faith-based organizations.** DCSC in administering the Fund or expending any distributions derived from the Tax, and any organization participating in DCSC, shall not use tuition credits, grants or technical assistance derived from the Tax to engage in inherently religious activities, such as worship or proselytization and shall include the foregoing in all contracts using City Funds.

5. **SPENDING LIMITATIONS & FUNDING:**

- A. **Maximum Obligation of the City.** The City shall have no obligation under this Agreement to make distributions to DCSC which exceed the amount actually collected and paid into the Treasury of the City. The Director shall request an appropriation for the purposes of this Agreement each year, based upon the estimated receipts of the Tax.

The financial obligations of the City under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by city council, paid into the City Treasury, and encumbered for the purposes of this Agreement. DCSC acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for distributions in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation against the City.

DCSC will participate in the City's annual budget process through the Department as appropriate to estimate the following fiscal year's revenue and expenditures and agree upon an annual spending plan. The annual spending plan shall adhere to the spending limitations outlined in the Ordinance.

- B. Distributions.** Monthly distributions by the City to DCSC under this Agreement shall be made, based upon estimated Tax receipts, to the extent the same have been appropriated, paid into the City Treasury, and encumbered as described above, at the rate of one-twelfth of the estimated annual total during each month of each calendar year. For calendar year 2019, on or about the tenth day of the first month following the month of full execution of this Agreement, DCSC shall receive one lump sum payment comprised of payments for months passed. Following this lump sum payment, monthly distributions shall commence for the remaining months of 2019, at the rate of one-twelfth of the annual appropriation.
- C. Budget/Carry Forward.** DCSC shall expend funds provided under this Agreement during the Term in accordance with the Ordinance and terms of this Agreement. In the event distributions of receipts of the Tax received by DCSC during a particular year are not expended, such unused amount may be carried forward by DCSC and used for administrative or programmatic expenditures in a subsequent year or years, subject to the other limitations set forth in the Ordinance and this Agreement. In the event less than 10% in the first year and 5% in subsequent years of Tax revenue distributed to DCSC during the year is used for administrative expenses in the year the distributions are received by DCSC, such unused amount may be carried forward by DCSC to a subsequent year or years and added to the funds which may then be used for administrative expenses or program expenditures, in the discretion of DCSC.
- D. Reconciliation.** At least annually during or about the second quarter of the following year upon close out of the City's fiscal year and completion of audit, the City will facilitate a reconciliation of projected revenue to actual revenue in the Fund. If the actual revenue exceeds the appropriation, the City will make a payment for the variance to DCSC. If the actual revenue is less than the appropriated and distributed payments, DCSC must reimburse the City for the variance. This may be done with one payment, or a repayment plan may be approved by the Director and the Manager of Finance. DCSC shall prepare, and OCA shall approve, a revised spending plan according to the outcome of the reconciliation. DSCS shall maintain reserves.

6. REPORTS:

- A. Annual Reports.** Not less than once annually, three months after the end of DCSC's fiscal year of each year beginning in 2020, DCSC shall report to the mayor, the city council, the auditor, and the public the following information:
- (i) The number of students receiving assistance from the Fund, in total and by program.

- (ii) Metrics tracking students year over year, students graduated, students making measurable progress toward completion, students who have lost eligibility due to performance or enrollment status, and students who have otherwise stopped receiving assistance from the Fund.
- (iii) The number of organizations receiving reimbursements by size and type.
- (iv) An inventory of student support services which the board determines to be reimbursable, the number and amount of these reimbursements, and the number of students receiving support.
- (v) Audited financial statements for DCSC, including full reports on expenditures for the prior fiscal year and anticipated budgets and work plans for the ensuing fiscal year.

B. Quarterly Progress Reports. DCSC shall submit quarterly progress reports in a form approved by the Director describing in detail DCSC's compliance with the Scope of Operations and all work done to satisfy the requirements under this Agreement and to carry on the DCSC as provided in the Ordinance and as required under this Agreement, including but not limited to the number of students receiving scholarships, the nature and scope of outreach efforts conducted, the number of organizations receiving direct grants or technical assistance, the number of experts retained to provide program design and assistance, an itemized description by expense category of the amount of all monies expended by DCSC during the preceding quarter, and other information as may be reasonably requested by the Director. Each report shall be delivered to the Director. DCSC's annual report shall suffice for one of its quarterly reports.

C. Form of Reports. Any and all reports required to be given by DCSC under this Agreement shall be on a standardized form mutually agreed upon prior to the delivery of the first of such reports. The parties shall use reasonable efforts to minimize the number of different reporting forms required from DCSC to comply with the terms of this Agreement.

7. STATUS OF DCSC: The status of DCSC shall be that of an independent, tax exempt, non-profit corporation organized to institute and carry out a charitable and educational program funded by the receipts of the Tax under the requirements of the Ordinance. Neither DCSC, its officers, directors, nor its personnel are or shall be employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever. DCSC is a corporation and as such is responsible for the operational management, errors, and omissions of its employees.

8. TERMINATION OF AGREEMENT: The City may terminate this Agreement for cause upon default by DCSC. Prior to termination of this Agreement by the City for cause, the City shall notify DCSC in writing of its intent to terminate the Agreement, identify the default in DCSC's performance, and shall give DCSC ninety (90) days to cure such default before the City may terminate this Agreement for cause. The City may also by written notice to DCSC immediately terminate the whole or part of this Agreement in the event DCSC fails to immediately notify the Director when any of its board member or executive employees learn that any of its board members or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with DCSC's business.

9. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the DCSC, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. The City will be responsible for its own costs and employee time incurred in performing such an audit, however, DCSC shall be responsible for its internal costs incurred to comply with the audit. DCSC's internal costs may include the costs of photocopying, printing, courier and delivery services and the like.

10. PROCUREMENT: DCSC shall spend funds provided under this Agreement in a way that serves the public interest, honors the public trust, and is consistent with Exhibit A. "Supplies" means all tangible personal property other than Equipment as defined below. "Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of Five Thousand Dollars (\$5,000.00) or more per unit. "Controlled Assets" means tangible personal property having an acquisition cost of no less than Five Hundred Dollars (\$500.00) and no more than Four Thousand Nine Hundred Ninety Nine Dollars and Ninety Nine Cents (\$4,999.99) and tangible personal property that fall in the following categories: computers, laptops, scanners, facsimile machines, copiers, printers, and capital leases with a present value of no less than Two Thousand Five Hundred Dollars (\$2,500.00) and no more than Four Thousand Nine Hundred Ninety Nine Dollars and Ninety Nine Cents (\$4,999.99).

DCSC shall use distributions received under this Agreement solely for the purposes of effectuating the purposes of DCSC as set forth herein. If requested by the Director or the Director's representative, DCSC shall submit to the Director, as part of the Annual Report as provided under section 6 above, an inventory list of all Equipment and Controlled Assets purchased under this Agreement. DCSC shall update said inventory list as part of its Annual Report given in accordance with section 6. The inventory shall specify the location of all Equipment and Controlled Assets. Upon the expiration or termination of this Agreement, unless the Agreement is renewed by a written amendment hereto executed by the parties in the same manner as this Agreement, all real property, Equipment and Controlled Assets purchased with funds under this Agreement shall either be returned to the City, or disposed of as the City shall direct.

11. PERFORMANCE MONITORING/INSPECTION: DCSC shall permit the Director or his authorized designees, to monitor all activities conducted by DCSC pursuant to the

terms of this Agreement and inspect any and all records, whether in hardcopy or electronic format, relating to any matter covered by this Agreement, except those matters required to be kept confidential by law. Such monitoring may consist of reviewing methods, procedures and practices, examining internal evaluation procedures, examining program data, on-site observation, on-site verification, attending all meetings, hearings, or proceedings held by DCSC, its board of directors or advisors, or its employees or any other reasonable procedures relating to the performance of services under this Agreement. All such monitoring and inspection shall be performed in a manner that will not unduly interfere with the services to be provided under this Agreement. Unless the City has reason to believe there are special circumstances requiring a different schedule or procedure, and the City shall have given written notice to DCSC of such special circumstances, (i) the City shall not make such monitoring or inspection more often than annually, and (ii) such monitoring or inspection shall be conducted at a mutually agreeable time and so as to prevent unnecessary interference with the work of DCSC. Attendance at public meetings shall not constitute monitoring or inspection for purposes of this section.

12. WHEN RIGHTS AND REMEDIES NOT WAIVED: Other than an express, written waiver, in no event shall any action or inaction by either party hereunder constitute or be construed to be a waiver by the party of any breach of covenant or default which may then exist on the part of the other party, and a party's action or inaction when any such breach or default shall exist by the other party shall not impair or prejudice any right or remedy available to the non-defaulting party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

13. INSURANCE:

A. General Conditions. DCSC agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. DCSC shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, DCSC shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-

insured retention, the City must be notified by DCSC. DCSC shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of DCSC. DCSC shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- B. Proof of Insurance.** DCSC shall provide a copy of this Agreement to its insurance agent or broker. DCSC will provide proof of insurance within thirty days of receipt of funds. DCSC certifies that the certificate of insurance attached as Exhibit C, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of DCSC's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- C. Additional Insureds.** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), DCSC and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- D. Waiver of Subrogation.** For all coverages required under this Agreement, with the exception of Professional Liability - if required, DCSC's insurer shall waive subrogation rights against the City.
- E. Subcontractors and Subconsultants.** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of DCSC. DCSC shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. DCSC agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
- F. Workers' Compensation/Employer's Liability Insurance.** DCSC shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. DCSC expressly represents to the City, as a

material representation upon which the City is relying in entering into this Agreement, that none of DCSC's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date DCSC executes this Agreement.

G. Commercial General Liability. DCSC shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. Business Automobile Liability. DCSC shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

I. Commercial Crime. DCSC shall maintain \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or valuable property by DCSC's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

J. Cyber Liability. DCSC shall maintain Cyber Liability coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

K. Additional Provisions.

(a) For Commercial General Liability, the policy must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

- (c) DCSC shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, DCSC will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

14. PERSONAL INFORMATION AND DATA PROTECTION: DCSC confirms and warrants that it complies with any and all applicable Data Protection Laws relating to the collection, use, disclosure, and other processing of Personal Information and that it will perform its obligations under this Agreement in compliance with them. This section will survive the termination of this Agreement.

15. INDEMNITY:

- A. **DCSC INDEMNITY.** DCSC shall defend, release, indemnify and save and hold harmless the City against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, release, indemnify and save and hold harmless the City from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, including without limitation workers' compensation claims, of or by anyone whomsoever, in any way resulting from or arising out of DCSC's activities or performances in connection herewith, including acts or omissions of DCSC or its officers, employees, representatives, suppliers, invitees, licensees, sub-consultants, contractors, and agents; provided, however, that DCSC need not indemnify and save harmless the City, its officers, agents, and employees from damages resulting from the negligence of the City's officers agents and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense; provided, however, that such defense costs must be reasonable in light of the costs which would have been paid if DCSC, or DCSC acting through its insurance company, had provided the defense.
- B. **NO WAIVER OF NON-PROFIT STATUTE.** Notwithstanding any other provision of this Agreement to the contrary, no term of condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Revised Nonprofit Corporation Act, C.R.S., 7-121-101 et seq., as now or hereafter amended. It is acknowledged that C.R.S. 7-123-105, provides for limitations on actions against nonprofit corporations. No provision of this Agreement, whether or not incorporated herein by reference, shall be construed or interpreted so as to diminish the limitations afforded DCSC under this Statute with regard to any action civil action brought against it, it being the intent of the parties that DCSC shall have the right to avail itself of the provisions of the Statute to the fullest extent permitted thereunder.

16. GOVERNMENTAL IMMUNITY: Notwithstanding any other provision of this Agreement to the contrary, no term of condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, C.R.S., 24-10-101 et seq., as now or hereafter amended. It is acknowledged that any liability for claims for injuries to persons or property arising out of the negligence of the City, its departments, agencies, officials and employees, is controlled and limited by the provisions of the Colorado Governmental Immunity Act as now or hereafter amended and other applicable laws.

17. TAXES, LATE CHARGES, AND PERMITS: The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the payment to DCSC of the Tax as provided herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115. DCSC agrees to pay promptly all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to take out and keep current all required licenses or permits, whether municipal, state or federal, required for the conduct of its charitable and educational activities hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. DCSC further agrees to furnish the City duplicate receipts or other satisfactory evidence showing the prompt payment by DCSC of all required licenses and permits and all taxes.

18. ASSIGNMENT AND SUBCONTRACTING: The City is not obligated or liable under this Agreement to any party other than DCSC. DCSC shall not assign its rights or obligations under this Agreement, except upon prior written consent and approval of the City, which consent or approval may be withheld in the absolute discretion of the City. Any attempts by DCSC to assign or transfer its rights hereunder without such prior written consent of the Director shall, at the option of said Director, automatically terminate this Agreement and all rights of DCSC hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Director. In the event any such assignment shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or other third party, and DCSC shall remain fully responsible to the City according to the terms of this Agreement. Nothing herein shall be construed to limit or prohibit DCSC from engaging consultants, independent contractors, suppliers, or other entities or third parties to assist DCSC in the Scope of Operations or providing on behalf of DCSC services or material contemplated by the Scope of Operations; provided, however, DCSC shall remain fully responsible to the City for the performance by such third parties of any services or providing of such materials contemplated under the Scope of Operations.

19. NO THIRD PARTY BENEFICIARY: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and DCSC, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements, including but not limited to contractors, consultants and suppliers. It is the express intention of the City and DCSC that any person other than the City or DCSC receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

20. NO AUTHORITY TO BIND CITY TO CONTRACTS: DCSC has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City, as required by Charter and ordinance.

21. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect nor bind the City. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns. Despite the foregoing, the parties may memorialize certain details with regard to administration of the fund, and documents needed to carry out the intentions in this Agreement, including modifying the Scope of Work set forth in Exhibit A hereto, with a writing signed by DCSC and either the Manager or Director on behalf of the City.

22. SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

23. CONFLICT OF INTEREST: The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein that would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter Sections 1.2.8, 1.2.9 and 1.2.12 and DCSC further agrees not to hire or contract for services any official, officer, or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter Sections 1.2.8, 1.2.9 and 1.2.12.

DCSC agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. DCSC represents that it has disclosed and recorded in its board minutes any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct, other than enforcement of this Agreement, that would affect the judgment, actions or work of DCSC by placing DCSC's own interests, or the interests of any party with whom DCSC has a contractual arrangement, in conflict with those of the City. The City, in its reasonable discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict reasonably exists after it has given DCSC written notice which describes the conflict. DCSC shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

The City acknowledges that various members of the Board of Directors of DCSC may have professional or business positions which require them to deal with the City on matters unrelated to DCSC, and the City confirms that such unrelated activity will not constitute a conflict contemplated under this section 22. In addition, the City acknowledges and agrees that in discharging their fiduciary duties as a member of the Board of Directors of DCSC, a member of

the Board of Directors shall be free to take such action as the Board member determines is in the best interest of DCSC or is necessary and reasonable in discharging such member's fiduciary duties as a Board member.

24. NOTICES: Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

By DCSC to: Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

With copies to: Manager of Finance
201 W. Colfax Ave., Dep't. 1010
Denver, Colorado 80202

Executive Director, Office of Children's Affairs
201 W. Colfax Ave., Dep't. 1101
Denver, Colorado 80202

City Attorney's Office
1437 Bannock Street, Room 353
Denver, Colorado 80202

And by the City to: Stephen Kurtz
Chair of the Board, Denver College Success Corporation
6355 E. Tufts Avenue
Englewood, CO 80111
Stephen.kurtz@musclesound.com

With a copy to: Mark Goodman
Treasurer, Denver College Success Corporation
Chairman and CEO
Colorado Nut Company, Inc.
2596 Barberry Place
Denver, CO 80204
mgoodman@coloradonutco.com

Trey Rogers
Counsel, Denver College Success Corporation
Recht Kornfeld
1600 Stout Street, Suite 1400
Denver, CO 80202
trey@rklawpc.com

Notices will be sent by electronic mail and 1) hand-delivered during normal business hours to the appropriate office, above, or 2) by prepaid U.S. Certified Mail, Return Receipt Requested. Mailed notice shall be deemed effective upon receipt. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered but such substitutions shall not be effective until actual receipt of written notification.

25. DISPUTES: All disputes of whatsoever nature between the City and DCSC regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code 56-106(b)-(f). For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in Article 1 hereof.

26. GOVERNING LAW, VENUE: Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and promulgated pursuant thereto. Such applicable laws, together with the Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

27. COMPLIANCE WITH APPLICABLE LAWS: The Scope of Operations undertaken by DCSC under this Agreement, whether directly or through third parties, shall be performed in compliance with all applicable Federal, State and City laws, ordinances, codes, regulations, rules, executive orders, and policies whether or not specifically referenced herein.

28. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:

A. This Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, as now existing or hereafter amended, (the "Certification Statute"). Compliance by DCSC and its contractors with the Certification Statute, and the execution of the 'Certification', Exhibit B attached hereto and incorporated by reference, are both expressly made a contractual condition of this Agreement.

B. DCSC shall not knowingly employ or contract with an illegal alien. DCSC shall not enter into a contract with a consultant or contractor that knowingly employs or contracts with an illegal alien or that fails to certify to DCSC that it does not knowingly employ or contract with an illegal alien to perform any portion of the Scope of Operations.

C. DCSC represents, warrants, and agrees that:

(1) It has verified or will attempt within 30 days of full execution of this Agreement to verify that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the U.S. Social Security Administration

and U.S. Department of Homeland Security (“Basic Pilot Program” or “BPP”), as defined in § 8-17.5-101(1), C.R.S., or that if it is not accepted into the BPP prior to entering into this Agreement, it shall apply to participate in the BPP every three months until either it is accepted into the BPP or its has completed its obligations under this Agreement, whichever occurs first.

(2) It will not use the BPP to undertake pre-employment screening of job applicants while performing its obligations under this Agreement.

(3) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs with or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three days, and terminate such subconsultant or subcontractor if within three 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. DCSC shall not be required to give notice or terminate under this subsection (3) in the event application of the Certification Statute to this Agreement is preempted by federal law.

(4) It shall comply with all reasonable requests 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.

D. If DCSC fails to comply with any provision of this Section 27, the City may terminate this Agreement for breach and DCSC shall be liable for actual and consequential damages to the City.

29. NO DISCRIMINATION:

A. In administering DCSC or expending any moneys derived from the Tax, DCSC agrees not to discriminate against any person on the basis of race, color, religion, national origin, gender, age (except as to the age of students eligible for participation under the ordinance), military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability.

B. In connection with the performance of work under this Agreement, DCSC agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and DCSC further agrees to insert the foregoing provision in all of its contracts relating to the Scope of Operations.

30. INTELLECTUAL PROPERTY RIGHTS: The City and DCSC agree that all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information of Consultant, including without limitation copyrighted or trademark protected materials (collectively “DCSC Materials”) made available, directly or indirectly, by DCSC to City as

part of the Scope of Services, are the exclusive property of DCSC or the third parties from whom DCSC has secured the rights to use such product. DCSC Materials, processes, methods and services shall at all times remain the property of DCSC; however, DCSC hereby grants to the City a nonexclusive, royalty free, perpetual and irrevocable license to use DCSC Materials.

31. LEGAL AUTHORITY:

- A. DCSC warrants and represents that it possesses the legal authority, pursuant to proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.
- B. DCSC warrants and represents that the person or persons signing and executing this Agreement on behalf of DCSC is fully authorized to do so and has and the authority to validly and legally bind DCSC to all the terms, performances and provisions herein set forth.

32. NO CONSTRUCTION AGAINST DRAFTING PARTY: Each of the parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions, have been prepared by a particular party.

33. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS: The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, DCSC's obligations for the provision of insurance, for indemnity to the City, for the return of property, Supplies, and Equipment and Controlled Assets, shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

34. INUREMENT: The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

35. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement by DCSC, time is of the essence.

36. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

37. CITY EXECUTION OF AGREEMENT: This Agreement is expressly subject to, and shall not be or become effective or binding on the City until it has been approved by the Denver City Council and fully executed by the City and County of Denver.

38. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE: This Agreement consists of Paragraphs 1 through 41, which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Exhibit A	Scope of Operations
Exhibit B	Certification under §8-17.5-102, C.R.S.

In the event of (i) an irreconcilable conflict between a provision of Paragraphs 1 through 41, and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Paragraphs	1 through 41 hereof
Exhibit B	Certification under §8-17.5-102, C.R.S.
Exhibit A	Scope of Operations

39. COUNTERPARTS OF THIS AGREEMENT: This Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

40. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: DCSC consents to the use of electronic signatures by the City for the execution of this Agreement. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner determined by the City, and such electronic signature(s) will be binding on 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 this 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.

41. REASONABLENESS OF CONSENT OR APPROVAL: Whenever under this Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of any Party hereto, such Party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

THIS PAGE INTENTIONALLY BLANK

Contract Control Number:
Contractor Name:

MOEAI-201951693
DENVER COLLEGE SUCCESS CORPORATION

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

MOEAI-201951693
DENVER COLLEGE SUCCESS CORPORATION

By: Stephen S. Kurtz

Name: Stephen S. Kurtz
(please print)

Title: BOARD CHAIR
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

Scope of Operations

Background

The Denver College Affordability Fund Tax (the "Tax"), approved by Denver voters in November of 2018, reflects the commitment of Denver residents to ensuring that post-secondary education is a public, not only a private, good. Through a modest increase in the City sales tax, the revenue from which is to be administered by an independent non-profit organization (Denver College Success Corporation or DCSC), more than \$10 million annually will be used to increase college enrollment and degree completion by Denver residents who seek a degree from an accredited post-secondary institution in Colorado.

Work Plan

Denver College Success Corporation shall submit to the Director on an annual basis a work plan for the administration of the Denver College Success Program and the Denver College Affordability Fund revenues that are made available hereunder. The annual work plan shall be submitted to the Director in the first quarter of each year and shall include the plan for the expenditures of funds including but not limited to:

- An outline of a set of goals and processes by which the Denver College Success Corporation can accomplish those goals;
- Administrative expenses as outlined in the enabling ordinance;
- A list of qualified nonprofit organizations approved by the Denver College Success Corporation Board;
- A list of qualified nonprofit organizations that failed to remain in good standing and eligible to receive reimbursement from the Denver College Affordability Fund;
 - The list shall include the reasons why the organizations were unable to stay in good standing;
- A formal plan to spend its cash reserves that complies with the Ordinance.

Denver College Success Corporation shall include a summary report of reimbursements made at the end of each reimbursement cycle in its quarterly reports.

EXHIBIT B

CERTIFICATION UNDER §8-17.5-102, C.R.S.

DCSC, in compliance with §8-17.5-102, C.R.S., certifies that at the time of the execution of this Certification:

1. DCSC does not knowingly employ or contract with an illegal alien.
2. DCSC has participated or will within 30 days of full execution of this Agreement attempt to participate in the Basic Pilot Employment Verification Program in order to verify that it does not employ any illegal aliens.

**DENVER COLLEGE SUCCESS
CORPORATION**

By: 
Signature

Stephen S. Kurtz
[Printed] Name of Person Signing

BOARD CHAIR
[Printed] Title

DATE: September 16, 2019



Exhibit C

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/24/2020

9/13/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with 2 main columns: PRODUCER (Lockton Companies) and INSURED (Denver College Success Corporation). Right side contains CONTACT NAME, PHONE, E-MAIL, ADDRESS, and INSURER(S) AFFORDING COVERAGE (Philadelphia Indemnity Insurance Co., Travelers Casualty and Surety Co of America, Pinnacol Assurance Company).

COVERAGES CERTIFICATE NUMBER: 16299944 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation, and Directors and Officers.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101 Additional Remarks Schedule may be attached if more space is required) Denver College Success Corporation

As required by written contract, the City and County of Denver, it's Elected and Appointed Officials, Employees and Volunteers are included as additional insured as respects the Commercial General Liability and Business Auto

Table with 2 columns: CERTIFICATE HOLDER (16299944, City and County of Denver) and CANCELLATION (SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE signature).