

**PARKS, RECREATION AND CULTURE MEMORANDUM
#23-2020**

DATE: October 12, 2020

TO: Honorable Mayor Meredith Leighty and City Council Members

THROUGH: Heather Geyer, City Manager *hmg*

FROM: Amanda J. Peterson, Director of Parks, Recreation & Culture *ajp*

SUBJECT: CR-135 – Amendment 2 to the Adams 12 Five Star Schools MOU for Use of Undeveloped Property West of Justice Center

PURPOSE

To seek approval of a second amendment to the Memorandum of Understanding (MOU) between Adams 12 Five Star Schools and the City of Northglenn to extend the temporary use of a portion of City property at the undeveloped parcel to the west of the Justice Center through Dec. 31, 2020.

BACKGROUND

Through their bond program, Adams 12 Five Star Schools is making significant improvements to schools throughout the district, including those in Northglenn. One project is the installation of a new fiber optic network to improve connectivity between all schools and other district facilities. The school district has requested to temporarily utilize approximately one acre of the property to the west of the Justice Center (the area informally known as “Justice Center West Park”) during construction, and intends to dedicate fiber strands to the City to improve connectivity between City facilities as a part of the project.

The temporary use has included staging a construction trailer and storage containers on the site, fully-fenced with chain link. As per the initial MOU, authorized in June 2018, the district is responsible for all costs associated with the staging area, as well as restoration of the site to the existing condition at the conclusion of the project (Attachment 1).

An amendment to the original MOU was authorized by City Council in July 2020, extending the district’s use of the property through Sept. 20, 2020 (Attachment 2).

UPDATE

The district has continued to encounter construction delays, and is requesting a second amendment to the MOU to extend the use of the property through Dec. 31, 2020.

The district has identified the following factors as contributing to the continued delay:

- There are seven canal crossing permits associated with the project. Although all of the permits have now been secured, the inspection and review process only allows for one or two crossings to be completed each week.
- There is one Regional Transportation District (RTD) crossing agreement that has been in process for over a year; this agreement is anticipated to be finalized soon, but work cannot occur until the permit has been secured.
- One of the subcontractors for this project, Henkels & McCoy, is based in Oregon. Wildfires in Oregon have impacted several key employees, resulting in a four-week delay. This subcontractor has an additional four to five weeks of work to complete the project once

they can return to Colorado.

The City is currently in the design phase of a new park proposed for this property. At this time, however, no funds have been allocated for the construction phase, and there is no identified start date for the City to begin park construction on the parcel.

BUDGET/TIME IMPLICATIONS

All expenses associated with this MOU are the responsibility of Adams 12 Five Star Schools. The district is making efforts to complete the project in advance of the Dec. 30, 2020, deadline.

As a part of this project, the district will provide the City with fiber optic connectivity between City buildings (City Hall, Justice Center, Water Treatment Plant, and the Maintenance and Operations Facility) at an extremely reduced cost that will greatly enhance the City's internal network.

RECOMMENDATION

Staff recommends that the proposed second amendment to the MOU be approved, as presented. The continued delays appear to be outside of the school district's immediate control, and the district staff have conveyed their commitment to completing the project in as timely a manner as is possible. By continuing to provide the district with an appropriate staging area for the project, the schools and the students in our community will benefit. Additionally, improvements to the City's fiber optic connectivity should result in future cost savings and improved communication technology.

STAFF REFERENCE

If Council members have any questions they may contact Director of Parks, Recreation and Culture Amanda Peterson at 303.450.8950 or apeterson@northglenn.org.

ATTACHMENTS

1. Resolution No. 18-80
2. Resolution No. 20-101

CR-135 – Amendment 2 to the Adams 12 Five Star Schools MOU for Use of Undeveloped Property West of Justice Center

SPONSORED BY: MAYOR DODGE

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-82
Series of 2018

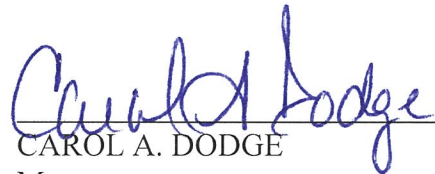
18-80
Series of 2018

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND ADAMS 12 FIVE STAR SCHOOLS FOR USE AND ACCESS OF CITY OWNED PROPERTY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the City of Northglenn and Adams 12 Five Star Schools, attached hereto, for the use and access of City-owned property for the Adams 12 Five Star Schools Fiber Optic Network Connectivity Project is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED, at Northglenn, Colorado, this 25th day of June, 2018.




CAROL A. DODGE
Mayor

ATTEST:



JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:



COREY Y. HOFFMANN
City Attorney

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NORTHGLENN
AND ADAMS 12 FIVE STAR SCHOOLS
FOR USE AND ACCESS**

This **MEMORANDUM OF UNDERSTANDING** is made and entered into this day 25th of June, 2018 (the "Effective Date"), by and between the **CITY OF NORTHGLENN**, hereinafter referred to as the "City", and **ADAMS 12 FIVE STAR SCHOOLS**, hereinafter referred to as "Adams 12," and collectively referred to as the "Parties."

WHEREAS, on or about July 1, 2018, Adams 12 is commencing construction of a fiber optic network to provide connectivity between all Adams 12 schools and facilities (Project); and

WHEREAS, Adams 12 will require use of and exclusive access to approximately one (1) acre of the property immediately west of the new City of Northglenn Justice Center and Water Tanks which is owned by the City identified on Attachment A (the "Property") for temporary activities related to the Project, including storage of construction materials, construction vehicle ingress/egress/parking, and placement of a temporary construction trailer/office within the Property, as described herein; and

WHEREAS, the City wishes to collaborate with Adams 12 and support and facilitate the completion of the Project, and such Project and related improvements are in the best interests of the community and the Parties; and

NOW, THEREFORE, AND IN CONSIDERATION of the covenants and agreements below appearing, the Parties agree as follows:

1. The City hereby grants permission to Adams 12 and its agents and contractors to enter, remain upon, and except as otherwise stated in this Agreement, exclusively occupy the Property for the term of this Agreement and to conduct any work or other activities or engage in any uses related to the Project, including such work as is described above. The Project is expected to commence by July 1, 2018 and be completed by April 30, 2020.
2. Adams 12 shall pay for all costs incurred with regard to such entry upon and use of Property including arranging all necessary utility locates and any temporary utility line installations and shall not permit any liens to be filed against the Property as a result of work on the Project.
3. Except as otherwise stated in this Agreement, Adams 12 shall within a reasonable time period effect repair of any damage caused to the Property by Adams 12, or its agents or subcontractors as a result of their entry onto the Property or the performance of the above described work and, upon completion of those activities restore the Property to the condition that existed prior to their entry upon it.
4. Adams 12 will notify the City of the Project schedule and coordinate Project activities with the City and shall not create any unreasonably hazardous or unsafe conditions on the Property.
5. As Adams 12 is constructing its fiber optic network to connect to its schools and facilities throughout the City, Adams 12 shall work and coordinate with the City to provide City use of selected fiber strands constructed as part of the Adams 12 project for connecting City facilities to the City network. The Parties agree to negotiate in good faith to develop a separate agreement to address the City use of fiber constructed as part of the Adams 12 Project.

6. Adams 12 shall procure and maintain at its sole and exclusive expense insurance coverage, including comprehensive liability, personal injury, property damage, and worker's compensation for the property in an amount no less than the monetary limitations of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (presently three hundred fifty thousand dollars (\$350,000.00) per person and nine hundred ninety thousand dollars (\$990,000.00) per occurrence). Evidence of coverage shall be sent to the City's Risk Manager. The certificate of insurance shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be cancelled, terminated, or materially changed until at least thirty (30) days prior written notice has been given to the other party.
7. The term of this Agreement shall commence as of execution of this Agreement by both Parties and terminate on April 30, 2020 and may be further extended upon mutual written agreement of the Parties.
8. This Agreement may be terminated only within thirty (30) days of April 30, 2020, or at any time thereafter, upon receipt of written notice by either party. Notwithstanding the foregoing, Adams 12 understands that if the City determines to develop the Property prior to April 30, 2020, the City may provide Adams 12 with one-hundred twenty (120) days written notice to terminate this Agreement.
9. In the event that there is a dispute under this Agreement that cannot be resolved to the mutual satisfaction of the Parties, the Parties shall meet to attempt to resolve the dispute or the anticipated recourse or remedy. If this attempted resolution or negotiation fails, the City Manager and the Adams 12 Superintendent or their respective designees shall meet to attempt to resolve or negotiate the matter. If this fails, the Parties may mutually agree to any other mediation attempts and if those attempts fail, either party may exercise any other legal remedies available to them.
10. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Adams County, Colorado.
11. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.
12. No term or condition of this agreement 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, CRS §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.
13. This Agreement and any attached exhibits constitute the entire Agreement between the Parties, superseding all prior oral or written communications. The Contractor further understands and agrees that this Agreement supersedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the Parties.
14. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

The City: _____
 City of Northglenn
 P.O. Box 330061
 Northglenn, CO 80233

Adams 12: Phil Spare, General Counsel
Adams 12 Five Star
Schools 1500 E 128th
Avenue Thornton, CO
80241

15. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.
16. This Agreement may only be modified upon written agreement of the Parties.
17. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either party without the written consent of the other.
18. Each party's financial obligations are subject to annual appropriations as required by Article X, Section 20 of the Colorado Constitution.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

CITY OF NORTHGLENN

By: Caral Dodge

ATTEST:

Johanna Small
Johanna Small, City Clerk

APPROVED AS TO FORM:

Corey Hoffmann
Corey Y Hoffmann, City Attorney

ADAMS 12 FIVE STAR SCHOOLS

By: Chris Howie

ATTEST:

Susan Parker

APPROVED AS TO FORM:

Phil Spare
Phil Spare, General Counsel

ATTACHMENT A

PROPOSED PROJECT ACTIVITIES

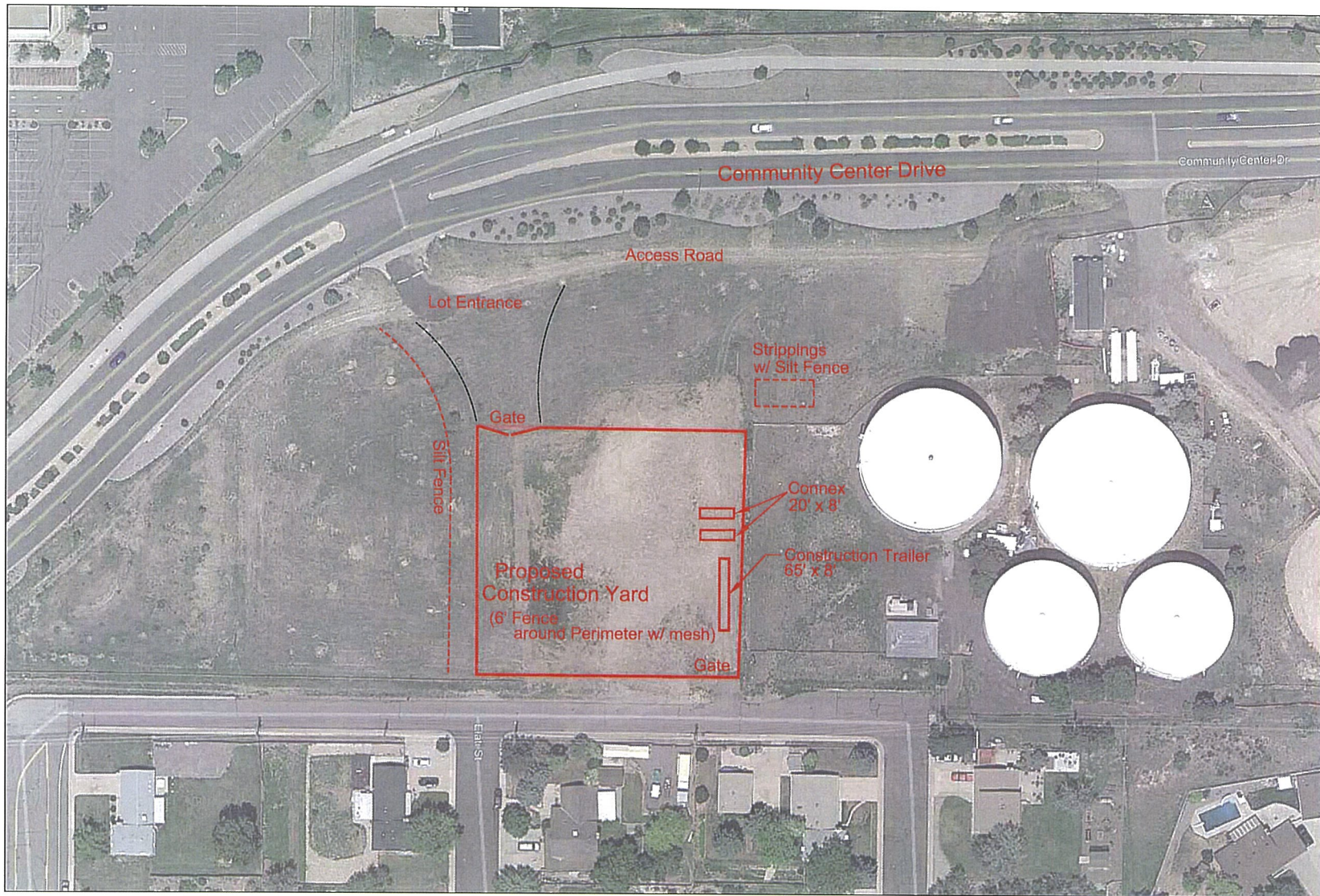
Staff / Activities at Site:

- One (1) 65'x8' construction trailer and two (2) 20'x8' connex containers for storing expensive tools/materials & equipment, and a dumpster (all within the fenced in area)
- Primary access to the site will be from Community Center Drive, the gate shown on the 112th Avenue side of the site will only be used in case of emergency
- Typically, 2-3 staff on-site during the work day
- Maximum of 15-20 staff on site (4 crews) at the start of the work day in the morning for a safety review meeting, pick up equipment/materials for the day, and then returning at the end of the day
 - Staff will park inside the fence at the job site
- Material deliveries anticipated to include 1-2 truckloads per month, somewhat higher at the start of the project, the larger items include:
 - Conduit Reels (8'H x 4'W)
 - Fiber Optic Cable Reels (4'H x 3'W)
 - Handholes (3'L x 2'W x 2'D & 3'L x 2'W x 3'D)
- The site, including work in the field, are non-smoking sites

Site Plan:

- Approximately one (1) Acre in size
- Fencing is a temporary 6' high chainlink fence with a mesh screen
- Grading and yard preparation to be completed per City direction
- Will place Road Base in the yard area, including a combination of approximately 4" of road base with 2" top coat of gravel & finds (i.e. sands to provide compaction)
- The Adams 12 contractor, Henkels & McCoy, will coordinate with the City for a water meter for the site and will coordinate with Xcel Energy for electrical for the job trailer on the site

See Attached Drawing for Site Plan



Attachment A

Adams 12 Five Star Schools
Proposed Contractor Construction Lot

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-100
Series of 2020

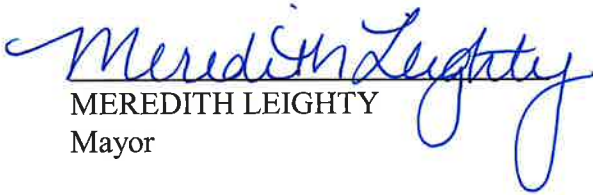
20-101
Series of 2020

A RESOLUTION APPROVING A FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NORTHGLENN AND ADAMS 12 FIVE STAR SCHOOLS FOR USE AND ACCESS OF CITY OWNED PROPERTY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The First Amendment to the Memorandum of Understanding between the City of Northglenn and Adams 12 Five Star Schools, attached hereto, for the use and access of City-owned property for the Adams 12 Five Star Schools Fiber Optic Network Connectivity Project is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED, at Northglenn, Colorado, this 13th day of July, 2020.


MEREDITH LEIGHTY
Mayor

ATTEST:


JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:


COREY Y. HOFFMANN
City Attorney

**FIRST AMENDMENT TO
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NORTHGLENN
AND ADAMS 12 FIVE STAR SCHOOLS
FOR USE AND ACCESS**

This **AMENDMENT** is made and entered into this day 13th of July, 2020 (the "Effective Date"), by and between the **CITY OF NORTHGLENN**, hereinafter referred to as the "City", and **ADAMS 12 FIVE STAR SCHOOLS**, hereinafter referred to as "Adams 12," and collectively referred to as the "Parties."

WHEREAS, the Parties entered into "Memorandum of Understanding between the City of Northglenn and Adams 12 Five Star Schools for Use and Access" dated June 25, 2018 ("2018 MOU"); and

WHEREAS, Adams 12 desires to extend the Use and Access of the property through September 30, 2020 for activities related to the Project described in the Memorandum of Understanding; and

WHEREAS, the City wishes to collaborate with Adams 12 and support and facilitate the completion of the Project, and such Project and related improvements are in the best interests of the community and the Parties; and

NOW, THEREFORE, AND IN CONSIDERATION of the covenants and agreements below appearing, and other good and valuable consideration, the Parties agree as follows:

1. Paragraph 7 of the 2018 MOU is deleted in its entirety and is replaced with the following language:
"7. The term of this Agreement shall continue uninterrupted from April 30, 2020 and terminate on September 30, 2020 and may be further extended upon mutual written agreement of the Parties."
2. Paragraph 8 of the 2018 MOU is revised by replacing both references to April 30, 2020 with the date of September 30, 2020.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to the 2018 MOU on the date first set forth above.

CITY OF NORTHGLENN

By: Meredith Leighty

ATTEST:

Johanna Small
Johanna Small, City Clerk

APPROVED AS TO FORM:

Corey Hoffmann
Corey Hoffmann, City Attorney

ADAMS 12 FIVE STAR SCHOOLS

By: [Signature]

ATTEST:

[Signature]

APPROVED AS TO FORM:

Phil Spare
Phil Spare, General Counsel

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-135
Series of 2020

Series of 2020

A RESOLUTION APPROVING A SECOND AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NORTHGLENN AND ADAMS 12 FIVE STAR SCHOOLS FOR USE AND ACCESS OF CITY OWNED PROPERTY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Second Amendment to the Memorandum of Understanding between the City of Northglenn and Adams 12 Five Star Schools, attached hereto, for the use and access of City-owned property for the Adams 12 Five Star Schools Fiber Optic Network Connectivity Project is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED, at Northglenn, Colorado, this _____ day of _____, 2020.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

**SECOND AMENDMENT TO
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NORTHGLENN
AND ADAMS 12 FIVE STAR SCHOOLS
FOR USE AND ACCESS**

This **AMENDMENT** is made and entered into this day ____ of _____, 2020 (the "Effective Date"), by and between the **CITY OF NORTHGLENN**, hereinafter referred to as the "City", and **ADAMS 12 FIVE STAR SCHOOLS**, hereinafter referred to as "Adams 12," and collectively referred to as the "Parties."

WHEREAS, the Parties entered into "Memorandum of Understanding between the City of Northglenn and Adams 12 Five Star Schools for Use and Access" dated June 25, 2018 ("2018 MOU"), as subsequently amended by the First Amendment to Memorandum of Understanding between the City of Northglenn and Adams 12 Five Star Schools for Use and Access dated July 13, 2020; and

WHEREAS, Adams 12 desires to extend the Use and Access of the property through December 31, 2020 for activities related to the Project described in the Memorandum of Understanding; and

WHEREAS, the City wishes to collaborate with Adams 12 and support and facilitate the completion of the Project, and such Project and related improvements are in the best interests of the community and the Parties; and

NOW, THEREFORE, AND IN CONSIDERATION of the covenants and agreements below appearing, and other good and valuable consideration, the Parties agree as follows:

1. Paragraph 7 of the 2018 MOU is deleted in its entirety and is replaced with the following language:
"7. The term of this Agreement shall continue uninterrupted from September 30, 2020 and terminate on December 31, 2020 and may be further extended upon mutual written agreement of the Parties."
2. Paragraph 8 of the 2018 MOU is revised by replacing both references to September 30, 2020 with the date of December 31, 2020.

IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment to the 2018 MOU on the date first set forth above.

CITY OF NORTHGLENN

By: _____

ATTEST:

Johanna Small, City Clerk

APPROVED AS TO FORM:

Corey Hoffmann, City Attorney

ADAMS 12 FIVE STAR SCHOOLS

By:  _____

ATTEST:



APPROVED AS TO FORM:



Phil Spare, General Counsel