

COOPERATION AGREEMENT
UNITED STATES AIR FORCE ACADEMY
AND
COLORADO SPRINGS URBAN RENEWAL AUTHORITY

THIS COOPERATION AGREEMENT (“**Agreement**”) is made and entered into as of October 21, 2015, by and between the UNITED STATES AIR FORCE ACADEMY, a Federal Entity established under 10 USC 9331 et seq. (“**USAFA**”), and the COLORADO SPRINGS URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “**Financing Entity**”). USAFA and the Financing Entity are referred to herein collectively as the “**Parties**” and each individually as a “**Party**”.

RECITALS

The following recitals are incorporated in and are made part of this Agreement:

A. On or about December 16, 2013, the Colorado Economic Development Commission (the “**Commission**”) approved the application of the City of Colorado Springs for a regional tourism project referred to as the “City for Champions Project” pursuant to the Colorado Regional Tourism Act, Part 3 of Article 46, Title 24, C.R.S. (the “**Act**”), and subsequently adopted its Resolution No. 3, a true copy of which is attached hereto as Exhibit A and incorporated herein by reference (the “**Resolution**”), in accordance with the Act.

B. By the Resolution, the Financing Entity was authorized to receive and utilize the state sales tax increment revenue dedicated for the Project (as defined below) for the duration of the Financing Term. The Commission authorized the utilization of the state sales tax increment revenue by the Financing Entity pursuant to the Act and subject to the conditions of approval stated in the Resolution.

C. Pursuant to the Resolution, the Financing Entity must enter into a written agreement with each Project Element Sponsor (as defined below) (i) delineating the relationship and decision-making authority for the Project between itself and the Project Element Sponsor for each of the Project Elements (as defined below), and (ii) that describes and governs the design, construction, ownership and maintenance of Eligible Improvements (as defined below) for each Project Element.

D. USAFA is the Project Element Sponsor for the Project Element known as the U.S. Air Force Academy Gateway Visitors Center, as more particularly described in Exhibit B to the Resolution (the “**Visitors Center**”).

E. In satisfaction of the Resolution and in furtherance of the Project, the Financing Entity and USAFA desire to enter into this agreement to delineate their relationship and the decision-making authority, and describe and govern the design, construction, ownership and maintenance of Eligible Improvements for, the Visitors Center, in accordance with the terms of this Agreement.

TERMS

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants provided herein, the Financing Entity and USAFA agree as follows:

Section 1. Definitions. All capitalized terms in this Agreement shall have the meanings set forth below or elsewhere in this Agreement and are intended to be interpreted in conjunction with the definitions set forth in Section 24-46-303 of the Act and the definitions set forth in the Resolution. If there is a conflict among the definitions used in the Act, the Resolution and the Agreement, the Act shall control, then the Resolution, and last, this Agreement.

A. **“Advances”** means Eligible Costs advanced to the Financing Entity, or paid for by the Applicant or the Financing Entity.

B. **“Applicant”** means the City of Colorado Springs, a home rule city and Colorado municipal corporation. The Mayor of Applicant or the Mayor’s designee is authorized to act for the Applicant for purposes of implementing the Resolution pursuant to Art. 4, §10, of the Charter of the City of Colorado Springs.

C. **“Base Year Revenue”** means the state sales tax revenue collected by the state from taxable transactions occurring within the Regional Tourism Zone during the twelve-month period beginning on December 1, 2012 and ending on November 30, 2013, as required by C.R.S. § 24-46-303(1).

D. **“Bond(s)”** means the bonds, bond anticipation notes, other forms of debt instruments, or other financial obligations to which the Dedicated Revenue is pledged, and which are issued or incurred and documented by the Financing Entity for the purpose of paying Eligible Costs as described in C.R.S. § 24-46-303(4). For all purposes of this Resolution, the term “Bonds” excludes any financial obligation, or portion thereof, for which Dedicated Revenue is not pledged for repayment.

E. **“Bond Documents”** means any resolution, indenture, reimbursement agreement, intergovernmental agreement, loan agreement, note, bond, debt instrument, or other contract under which the Financing Entity issues or incurs debt or other financial obligations relating to the Project Elements and for which Dedicated Revenue is pledged in connection with financing the Eligible Improvements.

F. **“Bond Funded Element”** means any Project Element for which the Financing Entity has entered a contractual agreement pledging that the Project Element will receive a specific dollar or percentage amount of the proceeds from any Bond issuance or similar debt instrument authorized by C.R.S. § 24-46-310, and which amount is anticipated to equal at least \$5,000,000.00 in funding pledged to such Project Element.

G. **“Bond Trustee”** means the trustee or successor trustee appointed in any Bond Documents.

H. **“Commencement of Substantial Work”** means the dates on which substantial work on each Project Element commences, including but not limited to the Financing Entity’s issuance of Bonds for the express purpose of financing the Eligible Costs for each Project Element, the repayment of which is secured by a pledge of some or all of the Dedicated Revenue, or the commencement of actual development or predevelopment of each Project

Element, including but not limited to any of the following: erecting permanent structures, excavating the ground to lay foundations, mass grading of the site, or work of a similar description that manifests an intention and purpose to complete the Project. Each Project Element shall have its own Commencement of Substantial Work date. In order for the Financing Entity's issuance of Bonds to satisfy the Commencement of Substantial Work requirement for a Project Element, that element must be a Bond Funded Element.

I. **"Commission"** means the Colorado Economic Development Commission, created and authorized under C.R.S. § 24-46-102.

J. **"Credit Enhancement"** means any credit enhancement, liquidity, interest rate protection, or insurance for the Bonds.

K. **"Dedicated Revenue"** means the revenue from the Percentage of State Sales Tax Increment Revenue to be received by the Financing Entity and paid into the Special Fund. The total cumulative amount of Dedicated Revenue shall not exceed \$120,500,000 over the course of the Financing Term.

L. **"Department"** means the Colorado Department of Revenue.

M. **"Developer(s)"** means any entity or entities contracted to develop any portion of the Project or the Project Elements, or such entities' successors and assigns. The term Developer is not necessarily intended to include any Project Element Sponsor.

N. **"Director"** means the Executive Director of the Colorado Office of Economic Development, created and authorized under C.R.S. § 24-48.5-101.

O. **"Effective Date of the Resolution"** shall mean December 16, 2013, the date on which the Commission approved the Project in accordance with the Act and the Resolution.

P. **"Eligible Costs"** shall have the same meaning as C.R.S. § 24-46-303(4).

Q. **"Eligible Improvements"** means those improvements generally described in C.R.S. § 24-46-303(5), which are necessary to or convenient for only the completion of the Regional Tourism Project as specifically described in Exhibit B to the Resolution.

R. **"Enhanced Use Lease"** refers to a partnership between the Air Force and public entities or private developers to create mutually beneficial commercial projects on non-excess Air Force real estate. In exchange for leasing property, the Air Force receives cash or in-kind consideration, at or above fair market value.

S. **"External Financial Advisor"** means any consultant that: (i) has experience advising Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing (including, without limitation, interest rates), sales and marketing of such securities and the procuring of bond ratings, Credit Enhancement and insurance in respect of such securities; (ii) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place publication; and (iii) is not an officer or employee of the Financing Entity or the Applicant and has not been otherwise engaged to provide services in connection with the transactions contemplated by the Resolution.

T. **“Final Completion Date”** means December 16, 2023, and is the date by which all Project Elements must be completed or placed in service per the conditions of the Resolution. In the event of a catastrophic event, such as a natural disaster, terrorist attack, or war, that directly and substantially delays work on any Project Element, the Commission shall have the option of extending the Final Completion Date.

U. **“Financing Entity”** means the Colorado Springs Urban Renewal Authority, a body corporate and politic of the State of Colorado organized and existing pursuant to Part 1 of Article 25, Title 31, C.R.S.

V. **“Financing Term”** means the period of time commencing upon the Effective Date of the Resolution and expiring on the date of payment in full of the Bonds, within which period of time the Financing Entity is authorized to receive and utilize, in accordance with the Act, the Resolution, and this Agreement, the Dedicated Revenue, subject to an aggregate cap of \$120,500,000.00, to finance Eligible Costs; provided, however, that no single Bond issuance shall have a maturity date in excess of thirty (30) years.

If the Financing Entity consolidates or refinances previously issued debt or Bonds as authorized by C.R.S. § 24-46-304(2)(h) and provides written notification of the consolidation/refinancing details by certified mail to the Commission and the Department within thirty (30) calendar days of such consolidation/refinancing being effective, then the maximum thirty (30) year term referenced above may be extended to the earlier of the timeframe authorized by C.R.S. § 24-46-304(2)(h), or the date of payment in full of the Bonds, but in no event shall the total Financing Term, including the initial financing and refinancing, exceed fifty (50) years.

W. **“Ineligible Improvements”** means any commercial, residential, or civic improvements constructed outside or beyond the geographic area of the Regional Tourism Zone, other than the Visitors Center, and any commercial, residential, or civic improvements not necessary to or convenient for the completion of the Project or any Project Element as specifically described in Exhibit B to the Resolution.

X. **“Minimum Element Allocation Percent(ages)”** or **“MEAP(s)”** means the following specific minimum proportions of the Dedicated Revenue that the Financing Entity must dedicate to each Project Element:

- i. U.S. Olympic Museum and Hall of Fame: 42%
- ii. Colorado Sports & Event Complex: 23%
- iii. U.C.C.S. Sports Medicine and Performance Center: 14%
- iv. U.S. Air Force Academy Gateway Visitors Center: 5%

After the Commencement of Substantial Work for the U.S. Olympic Museum and Hall of Fame has occurred, the Financing Entity shall pledge or allocate the remaining 16 percent of Dedicated Revenue to or among any Project Element, including Eligible Improvements to the Southwest Colorado Springs Downtown Infrastructure; provided, however, that the determination of the foregoing allocation shall, upon consultation with the Financing Entity, be made in the reasonable discretion of the Applicant consistent with the Resolution. However, not more than 6 percent of this 16 percent portion of Dedicated Revenue may be pledged or allocated to the Visitors Center. The MEAPs may be modified by and at the sole discretion of the Commission.

Y. **“OEDIT”** means the Colorado Office of Economic Development and International Trade.

Z. **“Percentage of State Sales Tax Increment Revenue”** means 13.08% of the state sales tax revenue collected within the Regional Tourism Zone in excess of the Base Year Revenue. The Percentage of State Sales Tax Increment Revenue is subject to an aggregate cap of \$120,500,000.00.

AA. **“Proceed Account”** means a separate, segregated Project-Element specific account that is established and controlled by the Financing Entity for the purpose of receiving and disbursing proceeds from Bonds. The funds in a Proceed Account cannot be used to pay for or reimburse Eligible Expenses for any other Project Element besides the Project Element it is dedicated to.

BB. **“Project”** or **“Regional Tourism Project”** means only the approved project generally referred to as the “City for Champions” Project and the approved Project Elements as specifically described in Exhibit B to the Resolution and as approved by the Commission.

CC. **“Project Element”** or **“Project Elements”** means the U.S. Olympic Museum and Hall of Fame, the Colorado Sports & Event Center, the Sports Medicine and Performance Center, and/or the Visitors Center, as more fully described herein and in Exhibit B to the Resolution.

DD. **“Project Element Sponsor”** means: USAFA with respect to the Visitors Center; the University of Colorado Colorado Springs with respect to the Sports Medicine and Performance Center; the United States Olympic Museum, a Colorado nonprofit corporation, with respect to the U.S. Olympic Museum and Hall of Fame; and the entity to be organized or designated by the Applicant to oversee the development and operating of the Colorado Sports & Event Center.

EE. **“Regional Tourism Zone”** means the geographic area more particularly described and depicted in Exhibit A to the Resolution.

FF. **“Special Fund”** means a separate segregated fund established pursuant to C.R.S. § 24-46-307(1)(b) that is established and controlled by the Financing Entity, subject to the provisions of the Act, the Resolution, and this Agreement.

GG. **“Sub-Account”** means a separate, segregated accounting mechanism within the Special Fund to track Dedicated Revenue by each Project Element according to the conditions in this Agreement.

Section 2. The Project. On December 16, 2013, the Commission approved the Applicant’s application for a Regional Tourism Project. The Commission adopted the Resolution implementing that approval and specifying that, among other things:

A. A Percentage of State Sales Tax Increment Revenue, which is referred to herein as Dedicated Revenue, will be dedicated to the Project.

B. The Dedicated Revenue will be paid to a Special Fund established by the Financing Entity for the purpose of financing the Project.

C. The Financing Entity will be responsible for administering the Special Fund to pay for Eligible Costs associated with the Project and reporting to the Commission pursuant to the Resolution.

Section 3. Duties of the Financing Entity.

A. General. The Financing Entity shall serve as the “Financing Entity” for the Project as defined in the Act and designated by the Commission, and, in addition to the other powers and duties required to finance the Project, shall be responsible for receiving, depositing, and distributing the Dedicated Revenue in accordance with the Resolution and this Agreement. The Financing Entity shall create procedures for carrying out its duties under the Resolution and this Agreement. The Financing Entity shall prepare a procedure for documenting, certifying, and paying Eligible Costs in accordance with the Act, the Resolution and this Agreement. In furtherance thereof, USAFA shall, or shall cause the Developer to, document, certify and submit to the Financing Entity all Eligible Costs for which USAFA, a lender, a Bond Trustee or the Developer seeks reimbursement under the Act.

B. Special Fund.

i. The Financing Entity shall establish the Special Fund required by the Act, and upon receipt thereof, shall deposit in the Special Fund all of the Dedicated Revenue received by the Financing Entity from the Department as authorized by the Act. The Financing Entity shall segregate any Dedicated Revenue from other moneys of the Financing Entity, if any, and shall utilize such Dedicated Revenue solely to pay for or finance Eligible Costs incurred for the purpose of constructing the Eligible Improvements and implementing the Project. The Financing Entity may not use Dedicated Revenue to pay for or finance the construction of Ineligible Improvements. The Special Fund may be used, without limitation except as provided herein, to pay the principal of, the interest on, and any premiums due in connection with the Bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, the Financing Entity for financing or refinancing in whole or in part, the Project. The Dedicated Revenue deposited in the Special Fund, when and as received by the Financing Entity, shall be subject to the lien of such pledge by the Financing Entity, without physical delivery, filing, or other act. The Financing Entity shall transfer the amounts in the Special Fund either directly to the Project Element Sponsor(s), directly to the lender, directly to the Bond Trustee identified in the Bond Documents at the times specified in the Bond Documents, directly to the Developer(s) if required by the terms of any contract between a Project Element Sponsor and Developer, under an Enhanced Use Lease or other agreement, or to a separate administrative account it maintains to pay for Eligible Costs incurred by the Financing Entity for implementing the Project after the Effective Date of the Resolution, such as costs for accounting, legal services, and overhead or administrative staffing, as and when incurred.

ii. Once deposited into the Special Fund, the Dedicated Revenue, net of any money transferred to the Financing Entity’s administrative account, must be further sub-divided by the Financing Entity into five Sub-Accounts based on the percentages set by the MEAPs. The Financing Entity will establish a Sub-Account relating to the Visitors Center (the “USAFA Sub-Account”) and allocate five percent (5%) of the Dedicated Revenue indicated to such Sub-Account.

iii. The Financing Entity must only use Dedicated Revenue in the USAFA Sub-Account to pay for Eligible Costs for the Visitors Center and cannot loan or transfer Dedicated Revenue between the USAFA Sub-Account and any other Sub-Account.

C. Certification of Eligible Costs.

i. Prior to and as a condition precedent to paying or reimbursing any Project Element Sponsor, Developer, or lender for any Eligible Costs with Dedicated Revenue or Bond proceeds, the Financing Entity must obtain a certification from an independent engineer engaged by the Financing Entity for hard and soft construction-related costs stating that such construction-related costs are reasonable and comparable for similar projects. Before initiating construction of each Project Element, and on an annual basis thereafter, the independent engineer must certify that the proposed design plans and on-going construction for each Project Element are in accordance with Section 5(B) and Exhibit B to the Resolution. Nothing in this subsection shall be construed to preclude the design engineer for any portion of the Project from serving as the independent engineer referred to in this Subsection.

ii. Prior to and as a condition precedent to paying or reimbursing any Project Element Sponsor, Developer or lender for any Eligible Costs with Dedicated Revenue or Bond proceeds, the Financing Entity must obtain a certification from an independent certified public accountant that all costs are Eligible Costs based on copies of the invoices, bills, and requests for payment provided to the Financing Entity and in accordance with the Resolution and the Act. As part of this certification, the independent certified public accountant (“CPA”) shall confirm that funds from the Sub-Accounts and Proceed Accounts tied to specific Project Elements are only used to pay for or reimburse expenses for their specific Project Elements. Similarly, as part of this certification, if funds being used for reimbursement of Eligible Costs are from the proceeds of a Bond, the independent CPA shall confirm that the division of Bond proceeds, net of eligible administrative costs, among the Project Elements’ Eligible Costs complies with the requirements of Section 6(C) of this Agreement. The Financing Entity shall prepare a procedure for documenting, certifying, and paying Eligible Costs. USAFA or the Developer shall document, certify and submit to the Financing Entity all Eligible Costs for which USAFA or the Developer seeks reimbursement under the Act.

iii. Prior to and as a condition precedent to paying or reimbursing any Project Element Sponsor, Developer or lender for any Eligible Costs with Dedicated Revenue or Bond proceeds, the Financing Entity must ensure that all service providers or contractors employed by the Developer were selected in accordance with all applicable federal, state, and/or local procurement laws. Upon request of the Financing Entity, USAFA shall, or shall cause the Developer of the Visitors Center to, provide a certificate that all service providers or contractors employed by USAFA or the Developer were selected in accordance with all applicable federal, state, and/or local procurement laws.

iv. Prior to and as a condition precedent to paying or reimbursing any Project Element Sponsor, Developer or lender with Dedicated Revenue or from Bond proceeds for interest or other financing cost qualifying as Eligible Costs, the Financing Entity shall obtain and forward to OEDIT a certification from an External Financial Advisor that the interest rate or financing costs are reasonable in light of market conditions, the term and structure of the financial instrument, and any other factors deemed applicable by that advisor.

v. In connection with the foregoing, USAFA shall provide, or cause to be provided, such other documentation as the Financing Entity may reasonably request, which may include, without limitation: a certification of acceptance from any public agency to which any infrastructure elements will be transferred, including but not limited to the City of Colorado Springs, Colorado Springs Utilities and the State of Colorado; and lien releases or other evidence that the contractors and vendors performing the work have been compensated for the work for which the partial payment is being requested.

Section 4. Design, Construction, Ownership and Maintenance of the Visitors Center.

A. General. USAFA and the Developer, selected through the Enhanced Use Lease process or otherwise, will be responsible for the design, construction, ownership and maintenance of the Visitors Center in accordance with Enhanced Use Lease procedures as applicable. USAFA will be responsible to ensure the Developer understands Commencement of Substantial Work with regard to the Visitors Center occurs in accordance with the Resolution in order to receive Dedicated Revenue. If the Commencement of Substantial Work condition is not met for the Visitors Center, and the date by which the Commencement of Substantial Work must occur has not been extended by the Commission under C.R.S. § 24-46-309(2), then the approval for the Visitors Center will be revoked and the Department shall reduce the amount of Dedicated Revenue transferred to the Special Fund each month by the MEAP for the Visitors Center (total reduction: 5%). In such event, any Dedicated Revenue in the Sub-Account associated with the Visitors Center that has been transferred to the Special Fund but has not been expended, plus any investment income earned thereon, shall be refunded to the State Treasurer.

B. Specific Conditions. USAFA agrees to comply, or to cause the Developer to comply, as applicable, with the following terms and conditions in order to receive Dedicated Revenue:

(i) As required by Section 5(B) of the Resolution, the Visitors Center must satisfy the approximate and minimum size requirements listed in Exhibit B to the Resolution, and must include all of the required components listed in Exhibit B to the Resolution. Before deviating from the approximate size requirements listed in Exhibit B to the Resolution by more than 20%, USAFA and the Developer, selected through the Enhanced Use Lease process or otherwise, must first obtain express approval from the Commission. Before omitting any of the required components listed in Exhibit B to the Resolution, USAFA and the Developer must first obtain express approval from the Commission. USAFA acknowledges that if USAFA and the Developer fail to obtain preapproval as required by Section 5(B) of the Resolution, then the Commission may modify its approval of the Visitors Center per the terms of Section 5(L) of the Resolution.

C. Final Completion Date. USAFA shall be responsible to ensure the Developer understands that the Visitors Center is fully completed and placed in service on or before the Final Completion Date in order to receive Dedicated Revenue. If the Final Completion Date condition is not met for the Visitors Center, then the Commission may modify its approval of the Visitors Center in accordance with Section 5(L) of the Resolution. If the Visitors Center has not been placed in service by the Final Completion Date, the Department's payments of future Dedicated Revenue shall be modified by reducing the MEAP for the remainder of the Financing Term. However, if the Financing Entity has pledged some or all of the Dedicated Revenue to a

Bond issuance or other similar debt instrument, and some of the Dedicated Revenue pledged to the Bond issuance comes from a Sub-Account associated with the Visitors Center, then Dedicated Revenue that was pledged to the Bond issuance shall be reduced as described in Section 5(L) of the Resolution, and the Financing Entity must execute an extraordinary mandatory redemption to Bond holders as set forth therein.

Section 5. Reports and Meetings. USAFA acknowledges that the Financing Entity has numerous reporting and meeting requirements under the Resolution. USAFA agrees to work with the Developer to collect and remit to the Financing Entity all information regarding the Visitors Center required to comply with the reporting requirements in Section 6 of the Resolution. The Financing Entity may from time to time develop or modify reasonable procedures for submitting reports or gathering information. USAFA will work with the Developer to comply with such procedures. If requested by the Financing Entity, the Director, the Commission or the Applicant, USAFA agrees to send a representative or representatives to meetings with the Commission or the Director, as applicable. USAFA shall attest to the accuracy of the information in the any and all reports that it is required to provide hereunder to the best of its knowledge. If any information provided in a report required by this Section 5 or by other state law contains trade secrets, proprietary information, or is otherwise entitled to protection under Article 72 of Title 24, C.R.S., it shall be so designated by USAFA and the Financing Entity shall, and shall request the Commission to, make reasonable efforts to keep any designated information confidential to the extent permitted by Article 72 of Title 24, C.R.S.

Section 6. Bonds.

A. Authority to Issue Bonds. In full or partial reliance on the Dedicated Revenue paid into the Special Fund, the Financing Entity may issue Bonds from time to time, in its discretion, to finance any Eligible Improvement with respect to the Project and may also issue refunding or other Bonds of the Financing Entity from time to time in its discretion for the payment, retirement, renewal or extension of any Bonds previously issued by the Financing Entity pursuant to C.R.S. § 24-46-304(2)(h) and the Public Securities Refunding Act, C.R.S. §§ 11-56-101, *et seq.* Prior to issuing any Bonds in reliance on any Dedicated Revenue from the Sub-Account for the Visitors Center, the Financing Entity will provide written notification to USAFA. Further, the Financing Entity shall provide written notification of any consolidation and/or refinancing details by certified mail to the Commission and the Department at least 30 calendar days prior to such consolidation and/or refinancing being effective in order for the Financing Term to be extended pursuant to C.R.S. § 24-46-304(2)(h) and Section 1(V) of the Resolution.

B. Interest. The Bonds shall be issued in accordance with the Resolution, the Bond Documents and applicable law. Upon issuance of the Bonds, the Financing Entity shall deliver copies of all final Bond Documents to the Applicant and the Commission, together with an opinion of the Financing Entity's bond counsel that the final Bond Documents are in conformity with the Resolution. To the extent that any Bonds are placed privately to finance part or all of any Project Element, including, without limitation, the placement of any Bonds issued or incurred to evidence Advances, then before the issuance or incurrence of such privately placed Bonds the Financing Entity shall obtain the certification of an External Financial Advisor as required by the Resolution. Privately placed Bonds may only be issued, and interest may begin accruing on the Bonds, after the Commission has received the bond counsel opinion and certification of the External Financial Advisor required by the Resolution.

C. Dedicated Revenue in Sub-Accounts Pledged to Bonds. As part of the issuance or incurrence of any Bonds, the Financing Entity must determine which of the five Sub-Accounts are pledging Dedicated Revenue and the respective amount pledged from each Sub-Account to the Bonds. The proceeds of a specific Bond issuance or incurrence must be utilized to pay for only the Eligible Costs of the Project Element with the Sub-Account that pledged Dedicated Revenue to the Bond. As such, the Financing Entity shall divide all Bond proceeds into separate Project Element-specific Proceed Accounts (these Proceed Accounts must be accounted for separately from the Sub-Accounts that receive Dedicated Revenue). If Dedicated Revenue for multiple Project Elements is used for repayment and collateral, then Bond proceeds shall be classified into separate Proceed Accounts in proportion to the Dedicated Revenue pledged from each Project Element's Sub-Account. If Dedicated Revenue is pledged from the flexible Sub-Account, then a portion of the Bond proceeds may be used to pay for Eligible Improvements which are part of the Visitors Center (subject to the limitation that no more than 6 percent of the total of 16 percent of the Dedicated Revenue in the flexible Sub-Account may be used on the Visitors Center). Prior to any Bond issuance or incurrence, the Financing Entity must notify the Director or Director's designee about which Sub-Account(s) is (are) pledging Dedicated Revenue to the Bond issuance or incurrence, and the amount of the pledge(s). Before any Bond issuance or incurrence may occur, the Commission must approve in writing the plan for the division of the Bond proceeds between or among those Project Elements that have pledged Dedicated Revenue to the Bond. Dedicated Revenue may not be pledged to repay any financial obligation other than Bonds.

D. Acknowledgement of USAFA. USAFA acknowledges the terms and conditions of the Resolution and this Agreement applicable to Bond issuances by the Financing Entity. To the extent authorized by law, USAFA agrees to cooperate with the Financing Entity as necessary and reasonable to satisfy such terms and conditions.

Section 7. Duties of USAFA. To the extent not otherwise addressed in this Agreement and to the extent authorized by law, USAFA agrees to satisfy all of the terms and conditions set forth in the Resolution to be satisfied as the Project Element Sponsor of the Visitors Center, unless such terms and conditions are expressly modified or clarified by the Commission.

Section 8. Records. USAFA shall cooperate as necessary and reasonable to enable the Financing Entity to keep proper and current itemized records, books and accounts.

Section 9. Notices. Written notifications under this Agreement shall be made by certified mail at the following addresses:

UNIVERSITY:

United States Air Force Academy
Attn: Carlos R. Cruz-Gonzalez
USAFA/A7
2304 Cadet Drive Suite B2
USAF Academy CO 80840

FINANCING ENTITY:

Colorado Springs Urban Renewal Authority
c/o Executive Director
30 S. Nevada Ave., Suite 502
Colorado Springs, CO 80901

To change an address in this Agreement, a written *notice of same* must be submitted by certified mail to the other Party.

Section 10. Miscellaneous.

A. No Impairment. During the Financing Term, the Financing Entity not shall enter into any agreement or transaction which impairs the rights of the Commission under the Resolution.

B. Defense of Litigation. To the extent authorized by law, each Party shall cooperate with the other Party and/or the Commission in taking reasonable actions to defend against any litigation brought by any third party against the Financing Entity, the Applicant and/or Commission concerning the Project, the Eligible Improvements, this Agreement or the Resolution.

C. Default. Time is of the essence. In the event of a default hereunder the non-defaulting Party must give the defaulting Party notice of such default and a reasonable opportunity to cure such default. In the event the defaulting Party does not cure such default within the cure period, the default will be deemed a breach and the non-defaulting Party shall be entitled to all available remedies at law and in equity, or, if applicable, this Agreement. No commissioner, council member, official, employee, attorney, or agent of the Financing Entity or USAFA shall be personally liable under this Agreement.

D. Heading, Captions. The headings or captions of the Sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

E. Additional Documents or Action. The Parties agree to execute any additional documents or take any additional action that is reasonably necessary to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

F. Integration and Amendment. This Agreement represents the entire agreement between the Parties with respect to the matters contained herein and there are no oral or collateral agreements or understandings between the Parties with respect to the subject matter. This Agreement may be amended only by an instrument in writing executed by the Parties; provided, however, that in the event of any amendment, supplement, clarification or modification of any term or condition of the Resolution by the Commission, to the extent such term or condition is the same as, or substantially similar to, a term or condition of this Agreement, such term or condition of this Agreement shall be deemed automatically amended, supplemented, clarified or modified to the same extent as such term or condition is amended, supplemented, clarified or modified in the Resolution. In the case of any conflict between the terms and conditions of this Agreement and the Resolution, the terms and conditions of the Resolution shall control.

G. Waiver. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

H. Governing Law. This Agreement is subject to, and shall be interpreted and performed under, the laws of the United States and the State of Colorado. Court jurisdiction for any litigation arising under this Agreement shall be exclusively in the U.S. District Court for the District of Colorado.

I. Binding Effect. This Agreement shall inure to the benefit of and be binding on the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this Section shall be construed to permit the assignment of this Agreement.

J. Assignment. This Agreement may not be assigned without the express prior written consent of the Parties.

K. Third Party Beneficiaries. It is specifically agreed between the Parties that this Agreement is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Agreement. Each Party specifically does not waive or intend to waive any protection, immunity, or other provision of Federal law or the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., as now written or amended in the future.

L. No Presumption. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

M. Severability. If any provision of this Agreement as applied to any Party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity or enforceability of the Agreement as a whole.

N. Good Faith of Parties. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

O. Parties Not Partners. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint venturers, and no Party shall be responsible for any debt or liability of any other Party.


P. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first written above.

UNITED STATES AIR FORCE ACADEMY


COLORADO SPRINGS URBAN RENEWAL
AUTHORITY

By:



MICHELLE D. JOHNSON
Lieutenant General, USAF
Superintendent

By:



Wynne Palermo
Chair