



Appendix F

Draft Project-Specific Programmatic Agreement

PRELIMINARY DRAFT

**PROGRAMMATIC AGREEMENT AMONG
THE U.S. AIR FORCE ACADEMY,
COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND
BLUE & SILVER DEVELOPMENT PARTNERS, LLC
REGARDING
THE TRUE NORTH COMMONS/GATEWAY VISITOR CENTER
IN EL PASO COUNTY, COLORADO**

THIS PROGRAMMATIC AGREEMENT (hereinafter the “Agreement”) is made and entered into by and between the United States Air Force Academy (hereinafter “USAFA”), the Colorado State Historic Preservation Officer (hereinafter “SHPO”), and Blue & Silver Development Partners, LLC (hereinafter “Blue & Silver”) (all to be referred to hereinafter as the “Parties”).

WHEREAS, the United States government is the owner of approximately 18,455 acres of land, managed by the United States Air Force for the purpose of operating a military academy, the entirety of which is eligible for listing on the National Register of Historic Places as the USAFA Historic District (5EP595); and

WHEREAS, the United States of America, acting by and through the Secretary of the Air Force, is authorized by 10 U.S.C. § 2667 and intends to enter into a 99 (ninety-nine) year Enhanced Use Lease (EUL) with Blue & Silver, covering approximately 52 (fifty-two) unimproved acres of real property (the “Property”) situated within the USAFA Historic District, as indicated on the maps at Attachment 1; and

WHEREAS, Blue & Silver will use the property to design, construct, develop, operate, maintain, repair, replace, and manage, the True North Commons/Gateway Visitor Center (the Project) at the north gate of the United States Air Force Academy (USAFA); and

WHEREAS, pursuant to 36 CFR 800.5(a)(2)(vii), an EUL constitutes a federal undertaking subject to the requirements of Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations at 36 CFR Part 800; and

WHEREAS, the USAFA, in consultation with the SHPO, defined the Area of Potential Effects as the 52 acres that will be developed and the Cadet Area National Historic Landmark (NHL) District (5EP4680); and

WHEREAS, the USAFA, in consultation with the SHPO, determined that transfer of the Property out of Federal ownership or control, Project construction, and the change in use from open space to commercial and construction on the 52 acre parcel may have an adverse effect on the integrity of setting and feeling of the USAFA Historic District and the Cadet Area National Historic Landmark District; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of a Programmatic Agreement (PA) is appropriate because effects on historic properties cannot be fully determined prior to USAFA approval of the undertaking; and

WHEREAS, Blue & Silver participated in the consultation and has responsibilities under this Agreement, and pursuant to 36 CFR § 800.6(c)(2) has been invited to be a signatory to this Agreement; and

WHEREAS, in accordance with 36 CFR § 800.6(c), the USAFA, by letter dated March 18, 2019 notified the Advisory Council on Historic Preservation (ACHP), the SHPO, and other stakeholders (listed at Attachment 2), and invited them to participate in consultation and development of this PA; and

WHEREAS, the Kiowa Tribe of Oklahoma, Northern Cheyenne Tribe, Rosebud Sioux Tribe, Southern Ute Indian Tribe, Three Affiliated Tribes of the Mandan, Hidatsa & Arikara Nation, Cheyenne and Arapaho Tribes of Oklahoma, Cheyenne River Sioux Tribe, Eastern Shoshone Tribe of Wind River Reservation desire to sign this PA as Concurring Parties; and

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WHEREAS, the City of Colorado Springs (the City) participated in the development of this PA and desires to sign as a Concurring Party; and

WHEREAS, the National Park Service (NPS) participated in the development of this PA pursuant to 36 CFR § 800.10(c), and is signing as a Concurring Party because the undertaking has the potential to adversely affect the Cadet Area National Historic Landmark District, which is situated within the larger National Register-eligible USAFA Historic District; and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1)(iii), the USAFA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination and the ACHP has chosen not to participate in the consultation; and

WHEREAS, USAFA sought and considered the views of the public on this undertaking through a public involvement process including a public notice published in the _____ newspaper to elicit public comments and/or public involvement regarding the potential impacts; and.

WHEREAS, all public comments received by USAFA have been documented and addressed in the Final Environmental Assessment prepared in _____ 2019; and

WHEREAS, the definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this PA.

NOW, THEREFORE, the USAFA, the SHPO and Blue & Silver agree that, upon the decision by USAFA to proceed with the undertaking, the following stipulations will be implemented in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The USAFA shall ensure that the following measures are carried out:

I. ENHANCED USE LEASE

- A. The USAFA will require that Blue & Silver comply with all applicable stipulations and provisions of this PA, as a condition of the EUL.
- B. The USAFA shall ensure that the terms of this PA are being met and implemented prior to issuing a notice to proceed for any phase of the Project.
- C. The USAFA shall not sign a Finding of No Significant Impact for an Environmental Assessment (EA), or Record of Decision for an Environmental Impact Statement (EIA) for this undertaking until after all required signatories have executed this PA.
- D. The USAFA shall issue a lease to Blue & Silver only after the executed PA has been filed with the ACHP and all other requirements for the lease have been met.
- E. If a lease amendment is required, USAFA will consult with the signatories and concurring parties on the potential of the amendment to adversely affect to historic properties, including properties of religious and cultural significance to tribes. If the lease amendment cannot fully be addressed under the terms of this PA, USAFA may also pursue amendment of this PA per Stipulation IX.
- F. Blue & Silver recognizes that contact and collaboration with undertaking stakeholders is solely the responsibility of the USAFA, as the agent for the Secretary of the Air Force on behalf of the United States of America. Blue & Silver Development Partners, LLC will not contact any stakeholder (Tribal or otherwise) regarding any undertaking. All existing or potential stakeholder communication will be directed to the USAFA Cultural Resources Manager.

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II. PROJECT DEVELOPMENT AND IMPLEMENTATION

- A. The Parties agree that that development activities by Blue & Silver pursuant to the EUL must avoid adversely affecting cultural resources when practicable. A cultural resources survey was conducted for this undertaking in July and August 2018, identifying 21 cultural resource sites within a 298.38-acre area that fully includes the 52-acre EUL, and an additional buffer around that portion of the APE where direct effects have the potential to occur. USAFA consultation with SHPO on the NRHP eligibility and potential for effects on historic properties is ongoing and will continue for each Project phase under the terms of this PA.
- B. Each phase of the Project and all design, construction, development, operation, maintenance, repair, replacement, and management of the EUL area must undergo assessment of adverse effects to identified historic properties in accordance with 36 CFR 800.5 and have any adverse effects resolved in accordance with 36 CFR 800.6. Because development will be phased, multiple consultations on potential affects and their avoidance, minimization, and/or mitigation may be ongoing at any time. To allow for planning, Blue & Silver or USAFA will host monthly meetings to discuss upcoming Project phases and elements.
- C. For each phase of the project development, the Blue & Silver Project representative assigned to this PA will provide a draft consultation package to USAFA. The USAFA will collaborate with Blue & Silver to finalize the package and then initiate consultation with the other Consulting Parties. The proposed Project phasing is as follows, but may be refined and modified as work plans are completed for development.
1. The initial construction phase would span approximately nine (9) months at which time lots would be prepared for sub-parcel development.
 2. Subsequent to completing building pads on lots, phased sub-parcel development would begin.
 3. Construction activities associated with the phased completion of sub-parcel development would persist for approximately three (3) years. On completion, Blue and Silver will return the Visitor Center and the quadrant of land on which it is located USAFA. Once returned, the quadrant and any improvements will no longer be covered by this PA.
- D. For consultation on the design of each phase, Blue & Silver will provide the USAFA Cultural Resources Manager (CRM) and the USAFA CRM Program with the proposed Project design, work plan and all associated GIS/CAD data for all new development design.
- E. The Project work plan with design details provided to the CRM should include, but are not limited to, the following.
1. Maps showing the location of proposed work within the EUL area and in which parcels or parcel portions the work is planned to occur;
 2. Photos of the proposed Project area showing existing conditions and overviews in reference to the Cadet Area NHL and Interstate 25 (I-25);
 3. Description of all proposed Project work in language comprehensible to the common reader;
 4. Information on how the design complies and does not comply with the EUL planning principles and design standards; and
 5. Examples of the exterior materials to be used within the proposed Project.
- F. The Project and Project phases must comply with planning principles and design standards specifically designed for the EUL area (the *True North Commons Design Guidelines*) that have incorporated significant elements of the existing USAFA Design Standards. These principles and standards for the EUL area will include:

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1. Oversight of all planning and design under the *True North Commons Design Guidelines* that has been established to uphold Project compliance with the design standards established for the EUL.
- G. If necessary, the USAFA will request a meeting with Blue & Silver to discuss details of the Project so that a consultation package can be drafted.
- H. Upon receiving the proposed Project design for each phase from Blue & Silver and after all required Project details have been clarified, Blue & Silver will prepare a draft consultation package for review and finalization by USAFA. Then USAFA will provide an anticipated timeline to prepare the consultation package for distribution to Consulting and Concurring Parties. Coordination of the package will be routed through Blue & Silver to insure Project detail accuracy. After final approval and signature of the package by USAFA (represented by the 10th Civil Engineer Squadron's Front Office), the consultation package will be mailed, and emailed, if possible, to the Consulting Parties.
- I. Consulting Parties will have 30 calendar days from the date of delivery of the consultation package to review and provide comments on the proposed plan. Follow-up communication to ensure stakeholder's views are considered will include USAFA contacting stakeholders by email and telephone.
- J. After the comment period closes, the USAFA will review and consider the comments received. All comments received will be documented in the administrative record.
 1. Should no comments be received that result in changes to the Project design/work plan, USAFA CRM will document the results of consultation and notify Blue & Silver that Section 106 consultation for the phase of the development is complete.
 2. Otherwise, USAFA will consult with the Consulting Parties on comments requiring further consideration to address within 10 calendar days of receiving the comment. If stakeholder concerns result in changes to Project details, Blue & Silver will forward a revised plan to USAFA, and upon approval USAFA will forward the revised plan to the Consulting Parties and allow another 10 calendar days for comment.
 3. Should USAFA determine that implementing Project changes to address a Consulting Party's concerns are not feasible, or where implementing the changes would result in adverse effects to historic properties, USAFA will, within 10 calendar days of receiving the comment, consult with all Consulting Parties on mitigation measures to be added to Project work plan requirements.

III. UNANTICIPATED DISCOVERIES

- A. Blue & Silver and all sub-lessees and contractors will comply with all provisions in the USAFA's Integrated Cultural Resources Management Plan (ICRMP) that is in effect at the time the unanticipated discovery is made.
- B. Standard Operating Procedures (SOPs) to be applied from the ICRMP include, but are not limited to, the following provisions:
 1. Discoveries of Archaeological Resources and NAGPRA Cultural Items;
 2. Accidents and Emergencies Affecting Historic Properties; and
 3. Suspected Vandalism.

IV. REPORTING

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- A. Under its right of entry to the EUL parcels, USAFA may inspect the lease lands and exterior areas surrounding Project buildings and structures for the purpose of monitoring compliance with the NHPA and this PA.
 - 1. USAFA will conduct inspections or direct inspections to be conducted to its specifications at minimum on an annual basis for the calendar years in which this PA is in effect.
 - 2. Blue & Silver will provide USAFA with information on conformance to the terms and conditions of this PA at the completion of the construction on each phase of the Project.
- B. At end of each calendar year, following the execution of this PA and for the life of the lease, Blue & Silver shall submit a written report to the USAFA, describing progress on implementing the terms of this PA, the results of monitoring and inspection, the development of construction plans and specifications, construction completed during the period covered by the report, mitigation measures that have been implemented, the schedule for completion of mitigation, the treatment of any post-review discoveries pursuant to Stipulation III, scheduling changes proposed, problems encountered and of relevance to this PA, and disputes addressed pursuant to Stipulation VII. This report may be submitted electronically to the USAFA.

V. CONFIDENTIALITY

The USAFA, Blue & Silver, and Consulting Parties acknowledge that historic properties covered by this PA are subject to the provisions of Section 304 of the NHPA (54 USC § 307103) and 36 CFR §800.11(c), relating to the disclosure of sensitive information on historic properties and, in accordance, will ensure the confidentiality regarding the character and location of historic properties involved in the implementation of this PA.

VI. PARTIES TO THE PA

- A. The term “Consulting Parties” as used in this agreement refers to Required Signatories, Invited Signatories, and Concurring Parties.
- B. The term “Signatories” refers to Required Signatories and Invited Signatories. Pursuant to 36 CFR § 800.6(c)(1), USAFA and SHPO are Required Signatories. Pursuant to 36 CFR § 800.6(c)(2)(iii), Blue & Silver is an Invited Signatory because it assumes responsibilities under this agreement. Invited Signatories have the same rights as Required Signatories with regard to seeking amendment or terminating this agreement.
- C. Concurring parties also have option of signing the PA in accordance with (36 CFR § 800.6(c)(3). Concurring Parties opting to participate in the development of the PA include the NPS, the City, and the following tribes: Kiowa Tribe of Oklahoma, Northern Cheyenne Tribe, Rosebud Sioux Tribe, Southern Ute Indian Tribe, Three Affiliated Tribes of the Mandan, Hidatsa & Arikara Nation, Cheyenne and Arapaho Tribes of Oklahoma, Cheyenne River Sioux Tribe, Eastern Shoshone Tribe of Wind River Reservation.

VII. DISPUTE RESOLUTION

- A. Should any of the Signatories to this PA listed in Stipulation VI.B object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, the USAFA will consult with that Consulting Party to resolve the objection. If the USAFA determines that the objection cannot be resolved, USAFA will:
 - 1. Forward all documentation relevant to the dispute, including the resolution proposed by the USAFA, to the ACHP. The ACHP shall provide the USAFA with its advice, pursuant to 36 CFR § 800.2(b)(2), on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USAFA shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, Signatories, and Concurring Parties, and provide them with a copy of

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this written response. The USAFA will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within thirty (30) calendar days, the USAFA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USAFA shall prepare a written response that considers any timely comments regarding the dispute from the Signatories and Concurring Parties, and provide them and the ACHP with a copy of such written response.
 3. USAFA's and Blue & Silver's responsibilities to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.
- B. If at any time during the implementation of the measures stipulated in this PA an objection should be raised by the public, the USAFA will notify the Signatories and Concurring Parties and consult with the public objector to seek resolution. If the USAFA determines that the objection cannot be resolved, the USAFA may, but is not required to, seek advice or comment from ACHP in accordance with **Stipulation VII.A**.

VIII. TERM OF AGREEMENT

- A. The term of this PA shall be ten **(10) years** from the date of execution by the Signatories.
- B. Six (6) months prior to the date on which the PA will expire, Blue & Silver shall notify the other Signatories of the impending expiration. The USAFA may consult with the other Signatories to reconsider the terms of the PA and amend it in accordance with **Stipulation IX**. The USAFA shall notify the Signatories and Concurring Parties as to the course to be pursued.
- C. The Signatories anticipate that this PA will be renewed and revised, as necessary, during the estimated 99 year life of the Project.

IX. AMENDMENT

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date it is executed by the Signatories identified under **Stipulation VI.B** and filed with ACHP.

X. TERMINATION

- A. If any of the Signatories to this PA under **Stipulation VI.B** determine that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to this PA to attempt to develop an amendment per **Stipulation IX**. If, within thirty (30) calendar days (or another time period agreed to by all Signatories), an amendment cannot be reached, any Signatory may terminate the PA upon written notification to the other Signatories.
- B. Once the PA is terminated, for the Project development to continue in compliance with Section 106 of the NHPA, the USAFA and other Signatories to this PA must do either of the following (the USAFA shall notify all Consulting Parties as to which course of action it will pursue):
 1. Execute an agreement pursuant to 36 CFR § 800.6; or
 2. Request, consider, and respond to the comments of ACHP under 36 CFR § 800.7.

XI. EXECUTION

Execution of this PA by the USAFA and the Signatories under **Stipulation VI.B**, submission of the PA to the ACHP in accordance with 36 CFR 800.6(b)(1)(iv), and implementation of its terms is evidence that the USAFA has taken into account the effects of the undertaking on historic properties and afforded the

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ACHP an opportunity to comment.

XII. EFFECTIVE DATE

This PA will take effect when executed by all Signatories under Stipulation **VI.B.**

Signatories:

UNITED STATES AIR FORCE ACADEMY

By:
LIEUTENANT GENERAL JAY B. SILVERIA
Superintendent

Date:

COLORADO STATE HISTORIC PRESERVATION OFFICE

BY: _____
STEVE TURNER, AIA
Colorado State Historic Preservation Officer

Date: _____

BLUE & SILVER DEVELOPMENT PARTNERS, LLC

BY: _____

Date:

[Other signers will be added on identification]

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Attachment 2

Native American Tribes and Other Stakeholders Notified Pursuant to 36 CFR § 800.5(a)(2)(vii) and Invited to Participate in the Development of the Programmatic Agreement:

- 1) Apache Tribe of Oklahoma
- 2) Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
- 3) Cheyenne and Arapaho Tribes of Oklahoma
- 4) Cheyenne River Sioux Tribe
- 5) City of Colorado Springs
- 6) City of Monument
- 7) Colorado Department of Transportation
- 8) Comanche Nation of Oklahoma
- 9) Crow Creek Sioux Tribe
- 10) Crow Nation
- 11) Eastern Shoshone Tribe of Wind River Reservation
- 12) El Paso County
- 13) Flandreau Santee Sioux Tribe of South Dakota
- 14) Fort Belknap Indian Community
- 15) Fort Sill Apache Tribe
- 16) Jicarilla Apache Tribe
- 17) Kiowa Tribe of Oklahoma
- 18) Lower Brule Sioux Tribe of the Lower Brule Reservation
- 19) Mescalero Apache Tribe
- 20) National Park Service
- 21) Navajo Nation
- 22) Northern Arapaho Tribe
- 23) Northern Cheyenne Tribe
- 24) Oglala Sioux Tribe
- 25) Pawnee Nation of Oklahoma
- 26) Pueblo de Cochiti
- 27) Pueblo of Picuris
- 28) Pueblo of Santa Ana
- 29) Pueblo of Santa Clara
- 30) Pueblo of Taos
- 31) Pueblo of Zuni
- 32) Rosebud Sioux Tribe
- 33) San Ildefonso Pueblo
- 34) Santee Sioux Nation
- 35) Southern Ute Indian Tribe
- 36) Spirit Lake Nation
- 37) Standing Rock Sioux Tribe
- 38) The Western Museum of Mining and Industry
- 39) Three Affiliated Tribes of the Mandan, Hidatsa & Arikara Nation
- 40) Upper Sioux Indian Community
- 41) Ute Indian Tribe of the Uintah & Ouray Reservation
- 42) Ute Mountain Ute Tribe
- 43) Wichita and Affiliated Tribes of Oklahoma
- 44) Yankton Sioux Tribe

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