

## ECONOMIC DEVELOPMENT COMMISSION

### MEETING MINUTES

September 19, 2019

8:30 a.m. – 1:30 p.m.

#### MEETING DATE

September 19, 2019

1600 Broadway, Suite 2500

Denver, CO 80202

#### MEETING PARTICIPANTS

##### **A. Commission Members**

Carrie Schiff, Benita Duran, Chris Franz, Rob Brown, Denise Brown, David Drago, Jay Seaton, Jandel Allen-Davis, Becky Takeda-Tinker, Wendell Pryor, and Lisa Reeves.

##### **B. Guests**

Alex with Project Feline, Delaney Keating, George Frances, Virginia Ortiz, Stacy Voss, Ed Sealover, Aldo Svaldi, Lucas High, Justin Vause, Bob Cope, Carlos Cruz-Gonzalez, David Neville, Sally Tasker, Don Hunt, Robin Brown, Dan Schnepf, and Marissa Stoller.

##### **C. Staff**

Betsy Markey, Jeff Kraft, Michelle Hadwiger, Sean Gould, Sonya Guram, Andrew Wallace, Ken Jensen, Che Sheehan, LeeAnn Morrill, Katie Woslager, Tad Johnson, Reid Aronstein, Jill McGranahan, Mariel Rodriguez-McGill, Kelly Boug, Donald Zuckerman, Nikki Maloney, and Virginia Davis.

#### DECISION/ACTION ITEMS

1. The Economic Development Commission approved the Minutes from the August 15 and September 6, 2019 EDC meetings.
2. The Economic Development Commission approved the following projects/items:

<b>JGTC:</b>	Project Feline.
<b>SF:</b>	Location Neutral Employment Program.
<b>EZ:</b>	NE - MCC 2019-24 Capital Campaign; NE - NJC Applied Technology Center; MC - Mesa County Libraries Foundation/East Valley Project; MC - Colorado West Land Trust Capital Campaign; JEF - DDRC Employment Services and Job Training; MC - HopeWest Capital Campaign; MC - HopeWest Operations 2024; DEN - Joshua Station (Mile High Ministries); and DEN - Clara Brown Commons (Mile High Ministries).
<b>CCR:</b>	CHFA Contract Renewal request.
<b>RJS:</b>	FHE FrackLock.
<b>COFTM:</b>	Project Doughnut.

##### **A. Meeting Called to Order**

Schiff called the meeting to order.

##### **New Staff Members**

Kraft introduced OEDIT new employees, Tad Johnson, Nikki Maloney, and Andrew Wallace.

##### **Meeting Minutes**

Franz moved approval of the August 15 and September 6, 2019 EDC meeting Minutes. R. Brown seconded the motion. Motion passed unanimously.

M/S/P – Franz, R. Brown – August 15 and September 6, 2019 EDC Minutes approved as presented by staff. Pryor and Takeda-Tinker abstained from the vote.

**B. Strategic Fund (SF): Delaney Keating  
Startup Colorado Update**

Keating provided a program update highlighting the organizational development and staff changes. Staff has established deadlines to complete the research and implementation plan for tracking the key performance indicators from impact measurements to desired outcomes inside of 2019.

Startup Colorado (SUCO) has met and exceeded the 1:1 matching funds requirement, extending our overall budget to \$2,700,000. (See the table below.) Funds are allocated within the budget to administer ongoing operational support for the 5-year program with a budget of \$340,000 for year one (2017-2018) and a budget of \$630,876.50 for 2019/2020. There is a cumulative budget overflow of \$120,000, due to delays in hiring additional staff, which will now fund our research and implementation of impact measurement. SUCO is under operational and fiscal management of the CU Boulder School of Law. A reconciled detail of the budget is available upon request.

The EDC requested to see something solid on measurable metrics in the next report for the Startup Colorado program.

**C. Job Growth Incentive Tax Credit (JGICT): Michelle Hadwiger**  
Hadwiger and Kraft provided some background on the JGICT program.

**Project Feline**

Hadwiger presented Project Feline. Project Feline is a California-based company that is considering opening an office in the Denver Metro region. The company behind Project Feline is a fin-tech startup that provides its users with a technology-based platform on which they can perform a number of different financial functions. The platform allows its users to perform these functions at a lower cost than through traditional financial institutions allowing the company to improve access to the financial system and address the needs of a new segment of the market underserved by other companies. Through the different service offerings on the platform, one of the company's primary goals is to help facilitate financial literacy among its users. To create a robust technology platform for users, the company employs highly trained individuals across financial services and technology.

Project Feline primarily entails the expansion of the company's "Customer Experience" team. Following the expansion of the "Customer Experience" team, the company anticipates that additional cross-functional roles could locate to the new office as well.

Colorado is competing with Arizona and Florida for Project Feline. Within Colorado, the company is considering Denver, Douglas, and Arapahoe County.

Staff is requesting \$9,006,216 in performance-based JGICT over an 8-year period, 96 months. This incentive is contingent upon: the creation of up to 791 net new full-time jobs at a minimum average annual wage (AAW) equal to or greater than the average annual wage of the county in Colorado in which the project chooses to locate; the maintenance of net-new jobs in Colorado for one full year before any credits become vested; and the creation of at least 20 net new full-time jobs.

M/S/P – Duran, Franz – Project Feline approved as presented and recommended by staff.

**A. Introduction of New Commissioners**

Markey and Kraft introduced and welcomed our new EDC members, Commissioners Takeda-Tinker, Pryor, and Allen-Davis.

**B. Strategic Fund (SF): Sean Gould**

**Location Neutral Employment Program (LNEP)**

Gould presented staff's request to 7 eligible counties to the LNEP Program. On May 16th 2019, at the EDC Meeting in Sterling, CO, the Colorado Mutual Prosperity strategy was approved by the commission. The program is based on using two existing statutorily tools the EDC has for economic development; the Job Growth Incentive Tax Credit (JGITC) with a Strategic Fund Incentive layered on top for Net New Job growth in remote rural areas. The EDC also approved up to \$200,000 in community marketing grants in up to \$5,000 for each rural communities that are eligible for the Rural Jump Start (RJS) program. In the approval, 40 counties were currently eligible for the RJS program.

Franz moved approval of the LNEP program. D. Brown seconded the motion.

D. Brown asked for clarification on the staff write-up for LNEP program request. Currently it says that OEDIT is asking the EDC to change the policy of "Current Eligible Counties for RJS" to any county that "Has Ever Been Eligible for RJS" since the RJS program started.

Kraft said that is a miscommunication and clarified that we cannot change who is eligible for Jump-Start, it's largely statutory. This does not affect the RJS program. What this should say is that we used the RJS program criteria in drafting the program for LNEP.

Schiff said, the proposed amended motion is the definition of counties eligible for the LNEP program will include any county that is currently, or previously was, eligible for the RJS program since its inception.

Franz moved approval of the amended motion for the LNEP program. D. Brown seconded the motion.

Schiff said, the staff write-up says "The EDC also approved up to \$200,000 in community marketing grants in up to \$5,000 for each rural communities that are eligible for the Rural Jump Start (RJS) program".

Why are we including this? Because the RJS program is about basing your company in rural Colorado, in one of the counties that qualifies.

Gould clarified that saying, the forty counties however they decide to involve themselves in the LNEP program, there could be a grant for them to build marketing materials or perhaps travel to meet with the companies that are participating in the LNEP program.

Kraft clarified further bay saying that the staff write-up should read LNEP instead of RJS. We were just using the RJS as a proxy to talk about the LNEP program.

Staff will correct this language in the program materials.

M/S/P – Franz, D. Brown – Amended motion, LNEP was approved as amended and recommended by staff. Pryor abstained from the vote.

**D. Enterprise Zone (EZ): Andrew Wallace, Sonya Guram**

Wallace provided a brief background of the EZ program.

Wallace presented the following EZ Contribution projects for approval.

Enterprise Zone	Project Name	Project Type	Project Category	Completion Date	Project Budget	1 yr. Projected Credits
Northeast	MCC 2019-24 Capital Campaign	Capital Campaign	Community Facility	2024	\$24,900,000	\$187,500
Northeast	NJC Applied Technology Center	Capital Campaign	Community Facility	2024	\$6,661,642	\$750,000
Mesa	Mesa County Libraries Foundation/East Valley Project	Capital Campaign	Community Facility	2024	\$10,000,000	\$88,750
Mesa	Colorado West Land Trust Capital Campaign	Capital Campaign	Infrastructure	2024	\$2,700,000	\$100,000
Jefferson County	DDRC Employment Services and Job Training	Operations	Job Training Program	2024	\$5,754,166	\$6,250
Mesa	HopeWest Capital Campaign	Capital Campaign	Community Facility	2024	\$13,000,000	\$250,000
Mesa	HopeWest Operations 2024	Operations	Healthcare	2024	\$32,950,000	\$251,250
Denver	Joshua Station (Mile High Ministries)	Operations	Homeless Support	2024	\$896,000	\$31,250
Denver	Clara Brown Commons (Mile High Ministries)	Capital Campaign	Workforce housing	2024	\$22,837,631	\$750,000
TOTAL					\$2,048,129	\$85,448.75

M/S/P – D. Brown, Duran – EZ projects approved as presented and recommended by staff.

**E. Colorado Credit Reserve (CCR): Jeff Kraft, Nikki Maloney, Justin Vause**

Kraft, Maloney, and Vause presented the CCR Request. This memo is to inform the Commission of the Colorado Credit Reserve Program and request the Commission’s approval to have OEDIT contract on its behalf with the Colorado Housing and Finance Authority (CHFA) to continue the existing CCR program.

In 2009 the legislature appropriated \$2,500,000 for funding of the program which was administered under a multi-year contract with CHFA. In 2015 the legislature appropriated \$400,000 to continue the funding of the program. The funding request was for a minimum of 3 years and was subject to an annual appropriation. As a part of our decision today, we would like your approval to extend this contract with CHFA under our Sole Source mechanism, since this relationship was defined by legislative statute, for 5 years and is funded for this year.

The CCR Program is a pooled guaranty loan program, which is designed to increase the availability of credit to small business in Colorado. The program encourages lenders located in Colorado to extend extra credit in amounts up to \$500,000 to Colorado businesses by establishing a reserve account at each participating lender (CCR Account) to cover losses on loans it registers under the program. Registration fees of 1% of the loan will be collected from the borrower and deposited in the CCR reserve Account of that lender.

Schiff asked for regular updates on this program moving forward.

The Commission agreed that they would like to have a policy discussion for this program at a future meeting.

Duran asked to see some reporting on WMBO businesses on future reporting.

Staff will come back to the EDC in the future with more details from the annual report of this program.

M/S/P – Allen-Davis, Pryor – CCR Program approved as presented and recommended by staff.

#### **F. Rural Jump-Start (RJS): Ken Jensen**

Jensen provided a brief overview of the RJS program.

Jensen presented FHE Fracklock. FHE is a manufacturing company currently operating in Fruita in Mesa County, making hardware used on oil and gas wells. FHE is setting up a new division to manufacture and market a new product called FracLock, which is a hydraulically actuated remote quick connect system to control pressure for the fracking of oil and gas wells. OEDIT has reviewed this application, and it passes on all metrics. OEDIT recommends that the EDC approve this application for the benefits of the Rural Jump-Start program. The Governor's office is aware of this application and does not have any concern with it going forward.

OEDIT recommends approving the new FracLock division of FHE for the Rural Jump-Start program with an allocation of 10 new hires.

This approval is only for the new division, and FHE has indicated that they will be able to administratively separate the operations of this new division from the rest of company operations.

M/S/P - R. Brown, Takeda-Tinker – FHE Fracklock was approved as presented and recommended by staff.

#### **Change to Program Manual on New Hire Benefit**

Jensen said, Two Rural Jump-Start companies have reached out to OEDIT recently. ProStar GeoCorp has informed OEDIT that the company plans to open a satellite office in Boulder, and wanted to know the location requirements for employee benefits. Furthermore, both ProStar GeoCorp and Phoenix Haus have informed OEDIT that they intend to utilize to use co-employment or professional employer organizations for certain employees.

This is the relevant New Hire language from the statute:

- 8) "New hire" means an individual who has performed labor or services in the rural jump-start zone for the new business for more than six months from the date hired and for which such individual receives a federal form W-2 and where the job performed by the individual:
  - (a) Is either a full-time, wage-paying job or is equivalent to a full-time, wage-paying job requiring at least thirty-five hours per week; and
  - (b) Has a salary or compensation equal to or greater than the county average annual wage.

OEDIT has discussed this issue internally and with the department of Revenue, and is proposing to add the following language to the Rural Jump-Start program manual:

Employee Travel

Employees of New Businesses who travel outside of the Rural Jump-Start zone as part of their job responsibilities are considered to be New Hires, provided all other New Hire requirements are met.

#### Employees Who Work at Multiple Locations

If an employee of a New Business works in multiple locations, some of these locations being inside the Rural Jump-Start zone and some being outside the Rural Jump-Start zone, then in order to be considered a New Hire, the employee must spend at least 80% of their non-travel time at location(s) inside the Rural Jump-Start zone.

#### Co-Employment

Workers at a New Business who are paid through another entity such as a co-employer or professional employer organization are considered to be New Hires, provided all other New Hire requirements are met.

OEDIT has spoken with the Department of Revenue on this issue, and they indicated that they consider it to be the responsibility of the EDC to determine whether a company or individual is eligible for Rural Jump-Start Program benefits. However they consider the amount of the benefit to be the responsibility of the DoR, and therefore they are amending Form 0113, which is the form used by both companies and employees to determine the amount of tax benefit. The new form will ask the employee what percent of the time they spend in the RJS Zone, and this percentage will be used to determine the final tax credit amount.

The Commission directed staff to move forward with this change to the Program Manual

### **G. Colorado Office of Film, Television, and Media (COFTM): Mariel Rodriguez-McGill, Donald Zukerman COFTM Budget**

Rodriguez-McGill presented the budget saying, that the SF funds that were approved by the EDC at the August meeting are not reflected in the budget yet. Staff still needs to have a meeting with the Budget Commission to receive final approval from the JBC. Once that happens, those monies will reflect on the budget which currently shows a balance of \$3,928.96 in unobligated funds.

#### **Project Doughnut**

Rodriguez-McGill presented Project Doughnut. Project Doughnut is a competitive cooking television series that airs on the Food Network. In each episode, professional chefs vie in a timed competition in their professional specialty. The winner receives a cash prize.

The competitions are judged by specialists in their culinary fields, dependent upon the particular 'challenge.' Contestants are given eight hours to complete a task and must adhere to the competition rules; for example, edible art cake competitions often require that a cake reaches a minimum height, exhibits a certain theme, and is able to be moved to a judging table without falling over. The show's host stops the clock at the end of the eight hours with the catchphrase: "Competitors, Stop Your Work!"

The project is funded by Food Network and will air on the network in late December of 2019. This is a studio-based show, and High Noon is filming at Centennial's WestWorks studios. The production company has mentioned that the availability of this studio and the potential of a film incentive helped with the bid to bring the Project Doughnut to Colorado.

Staff is requesting a rebate of up to \$130,000, in support of this project.

M/S/P - Duran, Allen-Davis – Project Doughnut was approved as presented and recommended by staff.

**H. Regional Tourism Act (RTA): Ken Jensen, Jeff Kraft, Che Sheehan, LeeAnn Morrill, Bob Cope, Carlos Gonzalez-Cruz**

**RTA Program Updates**

Jensen provided the RTA program updates.

Project/Element	Key Next Steps	Immediate Items for EDC
<b>US Olympic Museum</b>	EDC tour of the Hybl Center planned for October 2.	
<b>UCCS Sports Performance Center</b>	UCCS held its “Topping off” ceremony. See board book for article on the event.	
<b>USAFA Welcome Center</b>	The master lease is anticipated to be released to the State in 2019. EDC awaiting required September 16 <sup>th</sup> update and copy of lease to review. This items has been turned to Red on this report.	Can commencement occur without bonding or construction?
<b>Downtown Stadium and Arena</b>	OEDIT staff updated milestone letter. See board book for more information.	
<b>Go NoCO</b>	NCRTA working to provide audited annual report per statutory requirement. OEDIT staff raised issue at recent meeting with NCRTA. Betsy Markey sent letter to applicants regarding next steps for any project requesting modifications. See board book for copy of letter.	
<b>Stanley Film Center</b>	OEDIT staff provided written resolution to NCRTA/SFC. OEDIT staff awaiting additional feedback.	

Kraft provided brief overview of the RTA program.

Sheehan provided an update on Colorado Springs/C4C Milestones for Commencement.

**Colorado College Robson Arena**

Milestones Toward Commencement	Expected Documentation	Milestone	Complete?
In June of 2015, CC issued \$110 million in taxable bonds. The Colorado College Board of Trustees determined that those funds could only be utilized for capital construction projects identified and approved by the Board.	OEDIT to obtain bond documents and certification from CC CFO on the amount available to fund the arena.	2(i)	X OEDIT received proof of issuance. This and other milestones confirms this.
In the summer of 2018, CC entered into an agreement with the City of Colorado Springs concerning the possibility of building a multi-purpose competitive hockey arena and designating the arena as a part of the City for Champions Colorado Sports and Events Center project.	OEDIT to obtain copy of agreement.	8(i)	X

**Colorado Springs Switchbacks Weidner Stadium**

Milestones toward Commencement	Expected Documentation	Milestone	Complete?
In October 2018, after a competitive process, the Colorado Springs Switchbacks selected Design/Build team GE Johnson / Perkins & Will Architects to construct the stadium as part of a design/build process for design and administrative costs of \$1,000,000.	OEDIT to obtain copy of RFP and key pages from contract including signatures.	9(o)	Received RFP and RFP Response. Email sent on Oct. 4, 2018 confirms selection. Will mark complete once GMP is received expected in mid-September.
In early 2019, SFC and the design/build team will have completed schematic design.	OEDIT to obtain copy of document.	12(o)	X

### **Colorado Springs Sports and Events Center Update**

Kraft introduced Cope and Cruz-Gonzalez to provide an update of the USAFA project.

Cope provided an update on the Sports and Events Center, showing updated graphics. A list of updates on the Milestones was provided to the EDC.

- 8(i) -Formation of the Colorado Springs Sports Authority -Articles to be Filed 9-20-19
- 20(i) Consummation of a written agreement between CC and the Colorado Springs Sports Authority - Final Drafts in Review
- 21 (i) Formal pledge of one third of the CSEC MEAP to CC -To be Approved by CSURA 9-25-19
- 22(i) Certification that Robson Arena design satisfies Exhibit B -Expected 9-20-19
- IO(o) Bond documents -Submitted to OEDIT 9-17-19
- 15(0) Consummation of a written agreement between Switchbacks and the Colorado Springs Sports Authority - Final Drafts in Review
- 16(0) Formal pledge of two thirds of the CSEC MEAP to Switchbacks -To be Approved by CSURA 9-25-19
- Bonds to be issued in Mid-October

We have secured the NCAA Division 2 Championships at Weidner. For the indoor arena, we are in negotiations with an NGB, which is a National Governing Body for an Olympic organization, that has 10 sports within the discipline. They have a national championship that occurs in July. It's perfect timing for CC when they don't need the arena. They would be able to cover it for 30-35 days. All 10 disciplines could come in and have their championships and that represents about 13,000 room nights.

### **Colorado Springs USAFA Update**

Kraft provided some background of this project to date.

Cruz-Gonzalez addressed the EDC's concerns regarding the site development lease for the Visitor's Center. Schnepf has asked us to get the site lease signed by the 25<sup>th</sup>. We learned yesterday, that we will not be able to do that. We have been working with Blue and Silver with the site lease to make sure we understand what they need and bridge any gaps and identify and mitigate any risks. We also have a check list that indicates what needs to go with the site lease package back to the Secretary. We initiated the statute that requires we notify Congress before the Secretary can enter into this type transaction. The notification was done on the 17<sup>th</sup> of September. They have 14 days to respond. If the Secretary hears nothing back, then the Secretary can take that as authority to move forward with the lease. There is a separate statute, which we learned yesterday, that requires that once we make the notification, the Secretary has to wait 14 days from the 1<sup>st</sup> day of the following month that the notification occurs. So the earliest the Secretary can sign the list would be on the 14<sup>th</sup> of October. This is what we are working too.

Morrill can you commit to us that it will be signed on October 14<sup>th</sup>? Or will it be after that?

Cruz-Gonzalez said we are making every effort but I don't want to commit to a date.

Morrill said, usually, at least in state contracts, administrative officials have some discretion in instances to waive certain timing requirements to answer the exigencies that allow them the flexibility to do things without falling into normal statutory timelines. Do you have anything like that?

Cruz-Gonzalez said, I don't know. I would have to ask.

D. Brown asked, aside from the timeline, are there any issues that are creating the possibility of not negotiating the final lease.

Cruz-Gonzalez said, I can't think of any.

D. Brown asked, Blue and Silver the same questions.

Schnepf said, no. Not at this time.

Cope said, he has been impressed with the way the federal government and the AFA has been activated at the highest level. It is on their radar and getting the attention.

Cope provided the Bond Schedule to the EDC with a few items highlighted, Site Development Lease Execution, Sublease Agreements Executed, and LART Grant Approval.

In regards to the Site Development Lease, yesterday morning I had that listed at the top of the Schedule with a September 25<sup>th</sup> date, we learned mid-day how the statute is written, which caused us to move this item down the Schedule with an October 15<sup>th</sup> date. This is a perfect example of how things can change quickly.

For the Sub Lease Agreements. These need to be executed with the Sub Lease Developers. I don't see any problems here but there are third parties involved and we don't control those third parties.

The other is the LART Grant Approval. The Mayor's office and Chief of Staff are supporting and recommending our LART Grant Approval. This is our Lodging and Auto Rental Tax fund that is administered by the City Council. The purpose of this fund is to support tourism in the Pikes Peak region.

The current Schedule shows a bond closing date of November 20, 2019. We would like to stick to this date.

Kraft asked if any of the items on the Bonding Schedule when awry, what would be the date certain that you know you would get the Bonding done?

Cope said it would be the end of the first quarter of 2020.

D. Brown asked if we have the authority to extend?

Kraft said we extended for the one year and we do not have authority to extend past the one year extension. Ultimately the question that will be in front of the Commission would be have they done enough work to justify a Commencement? They will not have bonded and they won't have broken ground, which are the two delineated statutory paths to Commencement, but there are also some language in statute that says there may be other things that could demonstrate Commencement.

Cope provided a Draft substitute motion with some highlighted changes updating it from the one that was reviewed in August with some highlighted changes.

#### **Background from OEDIT Staff on USAFA Visitor's Center Project Element**

With regard to the United States Air Force Academy ("USAFA") Gateway Visitor's Center Project Element ("Visitor's Center") of the City for Champions Regional Tourism Act Project, and based on conversations with and documents provided by the Project Element Developer and related stakeholders, OEDIT staff understands:

- The construction of the physical building that houses the Visitor's Center and the construction of related infrastructure Eligible Improvements, are expected to be financed with the proceeds of three series of Bonds (the "Series A, B, and C Bonds") that will be issued by the USAFA Visitor's Center Business Improvement District (the "BID").
- The Financing Entity, which is the Colorado Springs Urban Renewal Authority, will enter into a pledge agreement with the BID in which the Dedicated Revenue for this Project Element will be remitted to the BID and pledged to the payment of the Series A, B, and C Bonds.
- The Series A and C Bonds are expected to finance the Eligible Costs of related infrastructure Eligible Improvements, and the Series B Bonds are expected to finance the Eligible Costs of the physical building in which the Visitor's Center will be housed with the potential, subject to the Commission's express approval, that a portion of the Series B Bonds proceeds also may be used to finance the Eligible Costs of related infrastructure Eligible Improvements.
- The Series A, B, and C Bonds will be payable from several revenue sources, including property tax revenues generated by a mill levy imposed by the BID, property tax and local sales tax increment revenues received by the Financing Entity, public improvement fees and shared sales tax revenues, as well as the Dedicated Revenue.
- The Series A, B, and C Bonds are expected to be issued in the approximate aggregate principal amount of \$65,185,000.00, with at least \$25 million in net proceeds from the Series B Bonds being used to pay for the design and construction of the physical building that houses the Visitor's Center and approximately \$16 million in net proceeds from the Series A and C Bonds being used to pay for infrastructure Eligible Improvements. However, different funding sources and alternative timing of deposits into each fund are still being explored to fund the project and the amount of the Series A, B, and C Bonds actually issued may be reduced accordingly.
- The Project Element Developer and the BID will develop the physical building in which the Project Element will be housed and related infrastructure Eligible Improvements, and it shall be the exclusive obligation of the Government (Air Force) to construct or install any furniture, fixtures, exhibits, equipment, or other tenant improvements necessary to operate the Project Element. The Air Force has demonstrated a clear intention to pay for the FFE&E and will own and operate the completed Visitor Center. The Project Element Developer will complete and deliver a useable physical building in which the Project Element will be housed by June of 2023 to enable the Air Force to install FFE&E and other tenant improvements.
- The Project Element Developer will design and complete the Project Element such that it fully satisfies the approximate and minimum size requirements listed in Resolution No. 3 Exhibit B, and as previously modified by the Commission.

- The maximum amount of Dedicated Revenue that will be allocated to this Project Element pursuant to Resolution No. 3, as amended, is \$13,255,000.00 (comprised of \$6,025,000.00 from the 5% MEAP and
- \$7,230,000.00 from the 6% amount of allocated flexible funding).
- The estimated maximum principal amount of Bonds that could be issued based solely on the Dedicated Revenue allocated to this Project Element is approximately \$7,000,000.00.

With the above information as background, OEDIT staff recommends that the Commission approve the following written motion:

**Written substitute motion for consideration by the EDC:**

I move that the Commission modify its approval of the USAFA Gateway Visitor's Center Project Element ("Project Element") of the City for Champions Regional Tourism Act Project (the 0 Project") as follows and direct OEDIT staff and legal counsel to incorporate the following conditions of approval that apply only to the USAFA Gateway Visitor's Center Project Element into an amended Resolution No. 3 for adoption by the Commission mmc pro tune at a later meeting:

1. Unless otherwise specified in this motion, all capitalized terms have the same meaning as defined by and used in the Colorado Regional Tourism Act, C.R.S. Sections 24-46-301 through 310, Resolution No. 3, or both.
2. The USAFA Visitor's Center Business Improvement District (the "BID"), that was formed with the approval of the City Council of the City of Colorado Springs, shall issue Bonds that will generate at least \$40 million in net proceeds (thus qualifying the Project Element as a Bond Funded Element), to finance the design and construction of the Project Element and associated infrastructure improvements.
3. The net proceeds of the Series B Bonds must total at least \$25 million, must be held in a Proceeds Account (the "Series B Proceeds Account") maintained by the Bond Trustee and, except as hereinafter provided, must be disbursed solely to pay for or reimburse the Eligible Costs of designing and constructing the physical building in which the Project Element will be housed subject to the one exception set forth in paragraph 4 below. Disbursement of the Series B Bonds proceeds shall only occur upon receipt by the Bond Trustee of a requisition signed by the BID and the Financing Entity, together with certifications by an independent engineer and an independent certified public accountant as required by Resolution No. 3, as amended.
4. Disbursement of the Series B Bonds proceeds to pay for or reimburse the Eligible Costs of constructing or installing any infrastructure that qualifies as an Eligible Improvement because it is necessary to or convenient for completion of the Project Element shall occur only if the BID and Financing Entity later seek the Commission's express approval and the Commission, after adopting any additional terms and conditions for such approval in a later amendment to Resolution No. 3, as amended, expressly approves the BID and Financing Entity's joint request. The requirements for use and disbursement of Series B Bonds proceeds described in paragraph 3 and this paragraph 4 must be included in the Series B Bonds' indenture terms.

5. The net proceeds of the Series A and C Bonds that are used to finance the Eligible Costs of related infrastructure Eligible Improvements are not required to be held in a Proceeds Account and are not subject to the requisition requirements set forth in Resolution No. 3, as amended.
6. The Dedicated Revenue allocated to the Project Element by Resolution No. 3, as amended, shall be pledged to the payment of all three series of Bonds issued by the BID. No Dedicated Revenue allocated to the Project Element by Resolution No. 3, as amended, shall be used to pay or reimburse any costs related to the Project Element until all three series of the Bonds are issued.
7. The Financing Entity shall enter into a written pledge agreement with the BID in which the Financing Entity agrees to remit all Dedicated Revenue allocated to the Project Element by Resolution No. 3, as amended, to the Bond Trustee. This pledge agreement shall specify that 6% of the 16% of Dedicated Revenue in the flexible Sub-Account of the Special Fund will be included in the pledge.
8. As part of the requirements in Section 7(B) of Resolution No. 3, as amended, the BID's bond counsel shall include in the opinion delivered to the Commission, which must first be reviewed and certified by the Financing Entity as accurate, a. conclusion that the Series A, B, and C Bonds and their respective indentures comply with all of the requirements in Resolution No. 3, as amended, and all of the requirements set forth in this written motion.
9. Provided that on or before December 16, 2019:
  - (a) the Project Element Developer enters into a written site development lease with the United States of America, acting through the Secretary of the Air Force (the "Air Force"), in which the Air Force agrees, among other things, to lease the Project Element site to the Project Element Developer, and that includes a provision where the Air Force agrees (i) that it shall be the exclusive obligation of the Government (Air Force) to construct or install any furniture, fixtures, exhibits, equipment, or other tenant improvements in the Project Element, (ii) that the Government (Air Force) shall use best efforts to complete its installation of the Government Improvements (any furniture, fixtures, exhibits, equipment, or other tenant improvements) and to open the Visitor Center (Project Element) to the public fully stocked and staffed on or before the Opening Deadline (Completion Date), and (iii) that in the event the Government (Air Force) will not be reasonably able to complete the installation of the Government Improvements (any furniture, fixtures, exhibits, equipment, or other tenant improvements) on or before the Opening Deadline (Completion Date) the Lessee (Developer) shall have the right to enter the Government's (Air Force's) existing visitor center for the United States Air Force Academy at the Installation (Academy) to remove some or all of the existing exhibits, fixtures, furniture and equipment therefrom, and install such existing exhibits, fixtures, furniture and equipment in the Visitor Center (Project Element) as necessary to satisfy the requirements of the EDC. The execution of the site development lease shall constitute the acquisition of governmental authorization required to complete the Project Element and shall demonstrate a significant action that moves the Project Element toward completion. A final draft of such site development lease shall be delivered to the Commission by October 17, 2019 for its review and express approval before it is executed by the Project Element Developer and the Air Force; and

- (b) the Project Element Developer and the BID enter into a sublease agreement in which the Project Element Developer, among other things, leases the USAFA Gateway Visitor's Center site to the BID, and the BID agrees to design and construct the USAFA Gateway Visitor' s Center, and a copy of such executed sublease is delivered to the Commission, thereby demonstrating a significant action that moves the Project Element toward completion; and
- (c) the EDC receives a letter from the Air Force (i) attesting to the high priority status of the Project Element, (ii) setting forth the methods and the options available to provide the necessary funding for the furniture, fixtures, exhibits, equipment, and other tenant improvements, and (iii) certifying that the Air Force has executed a contract with AOA Builds of Orlando Florida valued at \$40,000 to develop the Visitor Center story line, initial exhibit concepts, and exhibit technology requirements for the Project Element, thereby manifesting an intention and purpose to complete the Project Element; and
- (d) the Applicant (City), the Air Force Academy and the Project Element Developer have formally annexed the federally owned Project Element site into the City of Colorado Springs, which annexation cannot be easily reversed and thereby constituting the acquisition of governmental authorization required to complete the Project Element and thereby demonstrating significant action that moves the Project Element toward completion; and
- (e) the Applicant (City) and the Project Element Developer have caused a Concept Plan, PUD zoning and a final plat to be approved, thereby constituting the acquisition of governmental authorization required to complete the Project Element and thereby demonstrating significant action that moves the Project Element toward completion; and
- (f) the Applicant (City), the Project Element Developer and the Colorado Springs Urban Renewal Authority have obtained an Urban Renewal Designation for the Project Element site, thereby constituting the acquisition of governmental authorization required to complete the Project Element and thereby demonstrating significant action that moves the Project Element toward completion; and
- (g) the Applicant (City), El Paso County, School District 20, and the Pikes Peak Library District have executed Cooperation Agreements thereby committing Property tax increment and sales tax increment to the Urban Renewal Area in support of the Project Element for a period of 25 years, thereby constituting the acquisition of governmental authorization required to complete the Project Element and thereby demonstrating significant action that moves the Project Element toward completion; and
- (h) the Project Element Developer has secured a commitment from the Air Force as its major user of the Project Element; and
- (i) The EDC receives a letter from the Project Element Developer certifying that as of September 5, 2019, \$2.6 million has been expended in advancing the Project Element, including significant amounts for Eligible Costs, thereby manifesting an intention and purpose to complete the Project Element; and
- (j) the EDC receives certification that 11% of MEAP allocation (11% of Dedicated Revenue) has been pledged by the Financing Entity for the payment of Eligible Costs associated with the Project Element,

then such combination of actions will constitute the Commencement of Substantial Work for the Project Element.

10. In the event that the Project Element has not been completed by the Final Completion Date, as it may be extended by the Commission in its sole discretion, the extraordinary mandatory redemption of Bonds required by Section 5(L) of Resolution No. 3, as amended, shall be in an amount equal to the lesser of: (i) the amount of unspent Series A, B, and/or C Bonds proceeds as of the Final Completion Date; or (ii) \$7,000,000.00 from any combination of Series A, B, and/or C Bonds proceeds.
11. After the issuance of the Series A, B, and C Bonds, and for long as any Series A, B, and C Bonds remain outstanding, the Commission shall not reduce the MEAP that has been allocated to the Project Element under Resolution No. 3, as amended, and it shall not reduce the payments to the Financing Entity of the Dedicated Revenue allocated to the Project Element by Resolution No. 3, as amended, except as provided in this paragraph. In the event that any of the Series A, B, and C Bonds are redeemed prior to maturity pursuant to an extraordinary mandatory redemption pursuant to Section 5(L), then the Commission may, in its sole discretion, reduce the payment to the Financing Entity of Dedicated Revenue allocated to the Project Element by some or all of the MEAP associated with the Project Element as follows: (i) if less than \$7,000,000.00 in aggregate principal amount of Series A, B, and C Bonds are redeemed pursuant to Section 5(L), the MEAP may be reduced in an amount that does not exceed a percentage equal to the aggregate principal amount of the Series A, B, and C Bonds redeemed divided by \$7,000,000; and (ii) if \$7,000,000 in aggregate principal amount of Series A, B, and C Bonds proceeds are redeemed pursuant to Section 5(L), the MEAP may be reduced to zero such that no further Dedicated Revenue is allocated to this Project Element or paid to the Financing Entity.
12. The Series A, B, and C Bonds may be issued for a term that exceeds 30 years provided that the maximum term for which Dedicated Revenue is pledged to the payment of the Series A, B, and C Bonds in the written pledge agreement does not exceed the Financing Term.

Cruz-Gonzalez said we do not have concerns about the exhibits. We are working within the process the federal government has laid out. Our commitment is to develop, design, fabricate and install the exhibits. We started the process in 2018. Awarded the contract to a firm in Florida that had two tasks . One was to develop a storyline for the Visitor Center and the second was to give us twenty-four concepts for exhibits. That team has been working with the Developer. The Developer has been kind enough to provide us with schematic design information so they can see what the facility will look like. That product is due to us at the end of the month now.

We are unable to obligate the Government before we have an appropriation. The main fund source for the Exhibits are going to be the Operations and Maintenance account, which we get from the Air Force that helps us operate the academy year to year. We submit our budget requirements. We wait for Congress to appropriate. We get our distribution and the Superintendent allocates those resources and we execute our requirements including the Exhibits. In FY20, I have for my shop, a budget item to take the concepts and start the design process. We have established a grand opening date for the Fall of 2023. This has not been approved by the Superintendent yet. To meet that grand opening we need to start the design of the Exhibits in FY20. Get the design done in FY21 and then I have a line item in the budget for fabrication and installation of the Exhibits for FY22. In FY20, the line item is in the \$500,000 to \$1M range.

Kraft asked, will you know what that amount is on October 1, 2019?

Cruz-Gonzalez said the budget request for the Academy is roughly \$150M to \$170M range.

Pryor asked if the AFA has had any of its funds sequestered through one of the President's actions?

Cruz-Gonzalez said no. We do have donor funds that we can leverage if we can't get the other funds in time.

D. Brown said, in the diversion of Military funds to build the border wall the US Military Academy did have to cough up \$95M that was otherwise going to go for an engineering building. So my guess is, this is a door that's been open. It's probably a funding resource that could be used again in the future. Our major concern was, certainly the Superintendent, everybody at the Academy, and the Developer want to follow through on this. There is no question about that. The reality is, it may be out of their control and we're sitting there with an empty building. One other question. Your colleague who was here at the last meeting, Duane Boyle, said that the Endowment could not be pledged as a backup to the expense of the FFEE. Am I hearing from you that the Superintendent could obligate the Endowment as a backup?

Cruz-Gonzalez said, there is a bit of a nuance. Duane is correct in that we can't commit the Endowment funds, they have to determine the projects they plan to support. Besides that, the Superintendent has access to an unrestricted Gift Account to satisfy any need the Academy may have. Our intent is still to approach the Endowment because they can help us by going to Corporations.

Schiff said, it sounds like the Gift Account that the Superintendent has access to is adequate capacity to be dedicated to the FFEE if you don't have any other funding. Is it possible to get a commitment using that as your ultimate backup?

Cruz-Gonzalez said, I don't want to commit my Superintendent, but it is available as an option.

D. Brown said, what would you think of making a recommendation to the Superintendent that the Superintendent commit, in a worst case scenario, the low end of \$6M for the Exhibits, from funds that are not appropriated through the Federal Budget Process.

Schiff said, ultimately what we're looking for is not, Air Force will use its best efforts, its Air Force will complete its installation.

Cruz-Gonzalez said the concern we had last month was the term obligation. That just got us too close to an anti-deficient condition where we essentially obligate the Government without having an appropriation. That we just can't do. Our commitment has always been that the Air Force will be responsible for outfitting the Visitor Center with the FFEE. That has been our commitment from day one and is still our commitment to this day. What I can't do is provide you language that commits an appropriation that we don't have.

Cope closed the discussion saying, thank you for the partnership. These projects have been in the works for several years and a lot of work has gone into them from all sides. For the Visitor Center Project, it has come down to two main issues, Commencement of Substantial Work and FFEE. Regarding Commencement, we have identified extraordinary milestones that are consistent with the RTA statute. They are consistent with Resolution No. 3. And are consistent with OEDIT/EDC policy. These include a site development lease. Designation and annexation of Federal property and the commitment of millions of dollars in property/sales tax increment from all of the entities in El Paso County. Not to mention the \$2.6M that have already been spent. In my view, in reading the requirements, I think that two of these things are enough to substantiate Commencement of Substantial Work.

Regarding the FFEE, the Air Force has already committed \$40,000. They have identified a requirement in 2020 for \$500,000 to \$1M. They have identified a requirement for \$6M to \$12M in 2022. I did want to clarify about political concerns, those are mostly military construction projects. They would take this funding from their operational budget and they wouldn't expect that to be eliminated. There would always be some discretion there. They can't make the commitment but they would have the discretion to use those funds.

After more than six years of this project being a major priority for the whole community, the risk that we would go ahead and build a hotel, and a retail center, and an office building, and adjunct facility and a fully completed Visitor's Center with a Certificate of Occupancy and then not build out the exhibits is extremely low. In the unlikely event that we nothing the AFA has laid out would work, we have developed mechanisms in the Site Development lease that would allow the Developer to move the existing exhibits from the existing Exhibitor Center. None of us expect or want that to happen. It's in the agreement to satisfy the concerns of the EDC. Otherwise it would not even be there.

Schiff thanked the Colorado Springs contingent for coming and providing the information.

Schiff requested a motion to enter into Executive Session to discuss the Colorado Springs RTA project.

R. Brown said, pursuant to Colorado Revised Statutes Section 24-6-402(3)(a)(II), I move that we go into executive session with our attorney for the purpose of receiving legal advice about the Colorado Springs RTA Project. Pryor seconded the motion. Motion passed unanimously.

The EDC is now in Executive Session.

R. Brown moved we exit Executive Session. Franz seconded the motion. Motion passed unanimously.

The EDC is now in Open Session.

Schiff said, one thing we would like to get is a visit from the Mayor in his role as head of the financing entity and a letter documenting why he thinks Commencement of Substantial Work has begun. We would like to get specifically, information about the bonding by October 15, 2019, a definitive analysis about where the bonding stands. As for the FFEE, the letter we received from Cruz-Gonzalez was helpful. We would like a meeting with the Superintendent. If he could come to our next meeting, I know he's a very busy guy with other more important concerns but, if he could visit with us. Often times we have found that hearing it from the person who is ultimately going to be signing off on these things is important for us. A letter from him, not necessarily as an alternative, but a letter similar to yours, in addition to the various financial resources you have that also notes the discretionary funds would also be helpful for our consideration on our decision. The other thing we would like to see in the lease is a requirement where you have the ability to move the display from the existing Visitor Center into the new Visitor Center as a stop-gap.

Kraft said, this is really premised on the lease and sub-lease being signed as soon as possible in October but definitely before December 16<sup>th</sup>. Everything is premised on further discussion and those leases being signed. It has been delayed and delayed and we need to have those leases signed.

Schiff said for our October 17<sup>th</sup> meeting, we would like to see the signed leases and if not what is the hold up and the anticipated time to get them done. We need to build in time to let Morrill and staff to review them.

We recognize how important it is and we know that everybody is behind it but we have responsibilities just like you do.

The Commission thanked the Colorado Springs contingent for their update.

**I. Other: Ken Jensen, Sean Gould, Katie Woslager, and Carrie Schiff**

**Transferrable Tax Credit (TTC)**

Jensen presented the TTC program update. In this fiscal year, the EDC has the authority to issue the final \$10 million in precertifications. If the projects for Evraz and VF Corporation proceed as planned, Evraz will receive a precertification of \$6.9 million this fiscal year (for a total of \$17 million), and VF Corporation will receive a precertification of \$3.1 million this fiscal year (for a total of \$13 million). These two precertifications total \$30 million, which is the statutory maximum.

OEDIT met with VF Corporation in early August, where they indicated that the company has signed the lease on the property in Lodo, and that they believe that signing this lease, along with other investments, satisfies the Strategic Capital Investment requirement. Unfortunately, VF Corporation was not able to provide detailed written information on the lease terms and investment amounts at this meeting. When OEDIT has this information, it will be brought to the EDC for confirmation that the Strategic Capital Investment has been made.

Project 5000 (Evraz) needs to complete an engineering study before they can make a determination as to whether to commit to their project. Their goal is to finish this engineering study by December of 2019, then present the study to their board for the "Go/No Go" decision, which is expected in early 2019.

**AI Budget**

Woslager presented the AI Budget which shows \$5,741,932 in current available funds for future projects.

**Next EDC Meeting**

October 9, 2019 Call Meeting and October 17, 2019.

**With all items discussed, the meeting was adjourned.**