

**CASTLE ROCK COLLABORATIVE CAMPUS
DEVELOPMENT AGREEMENT**

DATE: _____, 2017.

PARTIES: **TOWN OF CASTLE ROCK**, a home rule municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

**STATE OF COLORADO, DEPARTMENT OF HIGHER EDUCATION,
STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL
EDUCATION FOR THE USE AND BENEFIT OF ARAPAHOE
COMMUNITY COLLEGE**, 5900 S. Santa Fe Drive, Littleton, Colorado 80120
(“ACC”).

RECITALS:

A. ACC proposes to develop an innovative and collaborative educational facility in the Town of Castle Rock for the benefit of the greater Castle Rock community. This facility is referred to in this Agreement as the “Campus.” ACC will separately contract with Colorado State University (“CSU”), and the Douglas County School District (“District”) to provide complimentary course offerings and other services on the Campus as further outlined in Article IV of this Agreement.

B. The Campus will bring together educational, business and community elements to enable delivery of higher education, vocational training and work-force training. The integration of the offerings and services of the District and CSU at the Campus will support the provision of educational and career pathways from high school through post-graduate degrees. The Campus will enable local employers and entrepreneurs to provide internships, mentorships, hands-on instruction and job placement. The Campus will be an interactive hub for students, citizens, businesses and educators and thereby support the attraction, growth and retention of primary employers within the Town, a core tenet of the Town’s economic development policy.

C. ACC intends to construct, operate and program the physical facility for the Campus on a vacant approximately 14.931-acre parcel adjacent to the Castle Rock Adventist Hospital in the Meadows Planned Development within the Town of Castle Rock (the “Property”). ACC has acquired the land and plans to construct two main buildings for the Campus, each of approximately a minimum of 40,000 square feet and a maximum of 54,000 square feet, and associated access, parking and landscaping (the “Project”).

D. The Town and its advisors have reviewed financial projections for the Project and have determined that, absent the financial assistance authorized by this Agreement, it is unlikely ACC will be able or willing to make the extraordinary capital investment in the Project necessary for the successful implementation of the Project.

E. The Project will create a community-oriented campus that engages the citizens, students and businesses of Castle Rock and surrounding communities, while also meeting the Town's goal to deliver a higher education campus to Castle Rock.

F. ACC has committed to enhanced architectural and design elements in the Project that will add to the appeal and interest in the Project to the public at large.

THEREFORE, in reliance on the matters set forth above and in consideration of the mutual promises contained in this Agreement, the Parties agree and covenant as follows:

ARTICLE I DEFINITIONS

1.01 Defined Terms. The following words when capitalized in the text shall have the meanings indicated below.

Agreement: this Castle Rock Collaborative Campus Development Agreement, inclusive of any future amendments.

Building(s): either Building 1 or Building 2 or both, as the context indicates.

Building 1: the first building constructed in the Project with a minimum of 40,000 square feet and a maximum of 54,000 square feet of gross leasable area suitable for educational and related office use.

Building 1 Cap: \$2,000,000, the maximum amount of Development Costs that Owner may receive for completion of construction of Building 1.

Building 2 Cap: the Project Cap (\$3,000,000) less the Development Cost recovered by ACC for Building 1 as provided in Article III.

Building 2: the second building constructed in the Project with a minimum of 40,000 square feet and a maximum of 54,000 square feet of gross leasable area suitable for educational and related office use.

Building CO: a certificate of occupancy required under the State Regulations, including specifically fire safety regulations to allow the occupancy and use of Building 1 or Building 2, as the context indicates.

Building Permit: the permit required under the State Regulations in order to commence construction of Building 1 or Building 2, as the context indicates.

Code: the Castle Rock Municipal Code, as amended.

CSU: Colorado State University, a Colorado Institution of Higher Education.

Development Costs: (i) Development Fees paid by ACC to the Town or the State as a condition to issuance of a permit for Buildings 1 and 2, and (ii) Site Development Costs incurred by ACC (less any portion of the Development Costs reimbursed to ACC by third parties) which fees and charges are categorized on the attached *Exhibit 1*. Development costs paid by Castle Rock Development Company are excluded from Development Costs.

Development Fees: the fees and charges imposed by the Town or the State under the State Regulations as a condition to issuance of a building permit for the two Buildings.

District: the Douglas County RE-1 School District.

Party: Either ACC or Town, or collectively, “Parties.”

Project: initially Building 1 and at a future date Building 2 if warranted by future demand, comprising in total not less than 80,000 and not more than 108,000 of higher education and office space to be constructed on the Property.

Project Approvals: the development and construction permits and approvals required under the Town or State Regulations for the Project, inclusive of applicable construction permits and building permits.

Project Cap: \$3,000,000, which is maximum amount of Development Costs ACC may recover under this Agreement.

Project Features: the key Project elements and Project features and the conceptual design of the Project campus and Buildings as summarized in the attached *Exhibit 2*.

Property: the real property constituting approximately 14.931 acres upon which ACC will develop the Project, as such property is more particularly described in the attached *Exhibit 3*.

Site Development Costs: the cost incurred by ACC in development of the Property to enable construction of the Project, including, engineering, design, site grading, utility extension and installation, access and parking, but excluding the acquisition cost of the Property.

State Regulations: the statutes, rules and policies of the Colorado State Architect as the same may be amended from time to time.

Town Regulations: the ordinances, resolutions, rules and regulations of the Town, including the Code, but excluding any rule or regulation for which ACC is exempt under State Regulation or is otherwise exempt under law.

Certain other terms are defined in the text of the Agreement and shall have the meaning indicated.

1.02 Cross- reference. Any reference to a section or article number, without further description, shall mean such section or article in the Agreement.

ARTICLE II APPLICATION AND EFFECT

2.01 Entitlement. This Agreement and the financial commitments extended ACC are exclusive to ACC. No Project partner (including CSU or the District), joint venture, lessor, condominium owner, or Project tenant, business or occupant shall have any claim to the financial assistance under this Agreement.

2.02 Property Acquisition: ACC has acquired the Property under such terms and conditions as it deems appropriate. Acquisition of the Property does not entitle ACC to any financial assistance or participation by the Town, until and unless the Project is developed in accordance with this Agreement. The Project must be developed exclusively on the Property in order to qualify for any of the financial incentives extended ACC under this Agreement.

2.03 Project Qualifications. ACC shall develop and construct the Project in substantial compliance with the Project Features. ACC shall demonstrate compliance with the requirements for Project Features at the time of issuance of the Building Permit for each Building. The Project Features may later be amended by mutual agreement as a result of unanticipated circumstances. ACC shall obtain all Project Approvals for the Project. ACC shall submit site plans and architectural drawings and plans to the Town for review and approval of the outside appearance and design of the Project.

2.04 Town and State Regulations. Town and State Regulations shall apply to the development and construction of the Project and the use and occupancy of the Project. All necessary Project Approvals shall be obtained and maintained in good standing.

ARTICLE III FINANCIAL ASSISTANCE

3.01 Development Benchmarks.

A. All financial assistance contained in this Article III is conditioned upon issuance of (i) a Building Permit for Building 1 not later than June 30, 2018, and (ii) a Building 1 CO not later than July 30, 2020 (together, the “Project Commencement Benchmark”). If the Project Commencement Benchmark is not met, then at the option of the Town, this Agreement may be terminated, in which event it shall thereafter have no force or effect. Alternatively, either before or after occurrence of the Project Commencement Benchmark, at the discretion of the Town, the Project Commencement Benchmark may be extended by the mutual execution of an amendment to this Agreement.

B. The financial assistance that accrues to ACC under 3.02 upon completion of Building 2 is conditioned upon issuance of the Building 2 CO at a future date and not later than July 30, 2022 (the “Building 2 Benchmark”). If the Building 2 Benchmark is not met then, at the option of the Town, ACC’s right to the financial assistance associated with Building 2 CO provided in 3.02 shall terminate. However, the remaining provisions of this Agreement shall remain in effect. Alternatively, either before or after the occurrence of the Building 2 Benchmark, at the discretion of the Town, the Building 2 Benchmark may be extended by the mutual execution of an amendment to this Agreement.

3.02 Reimbursement of Development Costs. Provided ACC develops the Project in accordance with this Agreement including compliance with 3.01, Town shall reimburse ACC Development Costs incurred by ACC in development of the Project in accordance with and subject to the limitations of this section 3.02. Town shall reimburse to ACC Development Costs as follows:

A. Upon issuance of the Building 1 Permit, ACC shall be entitled to reimbursement from Town of fifty percent (50%) of the Development Costs incurred by ACC as of that date, but limited in amount to the Building 1 Cap. Upon issuance of the Building 1 CO, ACC shall be entitled to reimbursement of Development Costs not previously reimbursed by Town, subject to the Building 1 Cap.

B. Upon issuance of the Building 2 Permit, ACC shall be entitled to reimbursement of fifty percent (50%) of the Development Costs incurred by ACC not previously reimbursed under 3.02A, provided (i) such reimbursement shall be limited in amount to the Building 2 Cap, and (ii) ACC is in substantial compliance with the Campus Programming requirements for Building 1. Upon issuance of the Building 2 CO, ACC shall be entitled to reimbursement of Development Costs not previously reimbursed by Town, subject to the Building 2 Cap.

C. ACC shall provide Town with a written request for such reimbursement of Development Costs with supporting documentation demonstrating the nature, amount and confirmation of payment of the Development Costs. Town shall make disbursement to ACC under A. and B. above within 20 business days of receipt and acceptance of such documentation by Town.

3.03 Limitation. Irrespective of any other provision in this Agreement, in no event shall the aggregate payments to ACC under this Agreement exceed the Project Cap.

ARTICLE IV CAMPUS PROGRAMMING

4.01 Purpose. ACC will develop an innovative and collaborative educational facility in the Town of Castle Rock for the benefit of the greater Castle Rock community in accordance with the following.

A. ACC will separately contract with CSU, and the District to provide complementary course offerings and other services on the Campus.

B. The Campus will bring together educational, business and community elements to enable delivery of higher education, vocational training and work-force training. The integration of the offerings and services of the District and CSU at the Campus will support the provision of educational and career pathways from high school through post-graduate degrees. The Campus will enable local employers and entrepreneurs to provide internships, mentorships, hands-on instruction and job placement. The Campus will be an interactive hub for students, citizens, businesses and educators and thereby support the attraction, growth and retention of primary employers within the Town, a core tenet of the Town's economic development policy. The Campus will be a leader in modeling progressive, 21st century educational delivery through this collaborative approach. A partnership with CSU, District and the Town of Castle Rock will provide educational opportunities that will position students in the region to achieve higher levels of education and gain employment.

C. The spaces programmed for the Campus have been defined and quantified responding to well documented demand in the Castle Rock community, the region, and the ACC system for expanded but focused curriculum offerings that will support Associate of Art, Associate of Applied Science and Associate of Science degrees and certificates, workforce training specifically targeting education leading to high growth job areas including Healthcare, Information Technology and Businesses/Entrepreneurship. The Campus will also continue offering its core General Education curriculum supporting the general transfer student. All of these factors will better support the population growth of college students in Douglas County, as well as the significant concurrent enrollment at the high school level and increased transfer rates at the University level in the ACC region.

4.02 Use Restriction. Consistent with the restrictive covenants applicable to the Property upon which the Project will be constructed, specifically the Construction Declaration dated June 30, 2017 recorded in Douglas County at Ref# 2017044365, for a period of ten years from June 30, 2017 the Property may only be used by ACC to construct, operate and maintain a public community college including ACC's intended permitted use of the Property as a Collaboration Campus partnering with CSU, the District and other education institutions, business partners and community organizations to provide higher education, concurrent enrollment and workforce training to students.

ARTICLE V OTHER PROVISIONS

5.01 Event of Default. Failure of the Town or ACC to perform any covenant, agreement, obligation or provision of this Agreement including compliance with 4.02, shall constitute an event of default under this Agreement.

5.02 Default Notice. In the event a party alleges that the other is in default, the non-defaulting party shall first notify the defaulting Party(ies) in writing of such default, and specify the exact nature of the default in such notice. The defaulting Party shall have twenty (20) working

days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies.

5.03 Remedies. Upon default of this Agreement and failure to timely cure, the non-defaulting Party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and compliance with this Agreement, or to collect the monies then due and thereafter to become due. Provided further, failure of ACC to meet the Project Benchmarks under 3.01 gives rise only to the remedy of termination by Town as provided in 3.01.

5.04 TABOR Compliance. The financial commitments of the Town under Article III are subject to and conditioned upon the subsequent budget and appropriation by the Town Council in the year in which such commitments become due of the necessary funds to reimburse Development Costs. In the event such budget and appropriation is not made, then such non-appropriation shall not constitute a default of this Agreement by Town, irrespective of any provision to the contrary in this Agreement. Consequently, this Agreement does not create a multiple fiscal year direct or indirect debt or other financial obligation of the Town under Article X, Section 20 of the Colorado Constitution (“TABOR”). Any financial obligations of ACC under this Agreement payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

5.05 Governing Law. This Agreement shall be governed and construed in accordance with Colorado law and Douglas County shall be the proper venue for the commencement of any claims in state court.

5.06 Amendment. Any and all changes to this Agreement, in order to be mutually effective and finding upon the parties and their successors, must be in writing.

5.07 Notice. The addresses of the parties to this Agreement are listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other parties or three (3) days following the date the same is deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed to the other parties at the addresses noted; or such address as is subsequently endorsed in writing, or in the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in the Property.

Town: Town Attorney
Town of Castle Rock
100 N. Wilcox Street
Castle Rock, CO 80104

ACC: President
Arapahoe Community College
5900 S. Santa Fe Drive
Littleton, CO 80120

With a Copy to:

General Counsel
Colorado Community College System
9101 E. Lowry Blvd
Denver, CO 80230

5.08 No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and ACC, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or ACC receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

5.09 Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

5.10 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.

5.11 Entire Agreement. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written.

5.12 Recordation. This Agreement and any amendments thereto shall be recorded in the public records of Douglas County, Colorado.

TOWN:

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jennifer Green, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

David L. Corliss, Town Manager

STATE OF COLORADO)
) **ss.**
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by Lisa Anderson as Town Clerk and Paul Donahue as Mayor of the Town of the Town of Castle Rock, Colorado.

Witness my official hand and seal.
My commission expires: _____

[S E A L]

Notary Public

**BUYER/PURCHASER
STATE OF COLORADO**

John W. Hickenlooper , Governor

**Department of Higher Education, by the State Board for Community Colleges and
Occupational Education, for the use and benefit of Arapahoe Community College**

By:

Diana M. Doyle, Ph.D.

President, Arapahoe Community College

Date:

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of
_____, 2017 _____ as _____ for Arapahoe
Community College

Witness my official hand and seal.

My commission expires: _____

[S E A L]

Notary Public

Exhibit 1
Categories of Development Costs

Professional Services for the design of the Buildings including but not limited to:

1. Architectural and Engineering Services including all fees for the design of the Buildings, structural engineering, mechanical engineering and all special consultants such as fire protection, acoustics, and information technology.
2. Code Review and Inspection. The cost for an approved Code Review Agent review of the Buildings for compliance with building codes as required by the Office of the State Architect per Section 24-30-1303(1)(r), C.R.S.

Construction Costs for the construction of the Buildings including but not limited to:

1. Utilities. Utilities to a point five feet outside Building 1 will be provided by Castle Rock Development Corporation pursuant to the Purchase Contract. All other costs for the Building associated with obtaining power, water, gas telephone lines, sewer, including water tap fees paid to other governmental entities, including the Town.
2. Site Improvement including all excavation and backfill costs to prepare the site and all other work such as clearing, leveling, asphalt paving, curb and gutter, walks, site lighting drainage structures, landscaping including sod, trees and bushes and irrigation systems.

Exhibit 2

Project Features

ACC intends to construct, operate and program the physical facility for the Campus on a vacant approximately 14.931-acre parcel adjacent to the Castle Rock Adventist Hospital in the Meadows Planned Development within the Town of Castle Rock. ACC has acquired the land and will initially construct one main building for the Campus and another building at a future date, each of approximately a minimum of 40,000 square feet and a maximum of 54,000 square feet, and associated access, parking and landscaping (the “Project”).

The new facility will embody and facilitate collaboration between all of the partners while providing a highly engaging and progressive learning environment for students. Building 1 will center around a two-story space that houses the Learning Commons within which students can engage with each other, faculty and staff in an Academic Success Center; College provided computer stations; open and enclosed study/huddle spaces; a bookstore, café, a help/welcome desk, and adjoining outdoor spaces. Surrounding this building hub will be all of the learning spaces including those for CSU’s use, administrative support and community based spaces including a Community Room, and leased space occupied by community business partners.

Exhibit 3
Legal Description for the Property

Lot 2A-1, The Meadows Filing No. 17, Area No. 1, Amendment No. 2 Plat, County of Douglas, State of Colorado