

United States Department of the Air Force

MAJCOMname
Air Force Real Property
Agency (AFRPA)



Enhanced Use Leasing Project
Basename Air Force Base

In-Kind Consideration Trust Agreement

RFQ No. AFRPA-**FY-XXXX**

PROPOSALS ARE DUE NO LATER THAN
5:00 P.M. ET **Proposal due date** AT:

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IN KIND CONSIDERATION TRUST AGREEMENT

By and Between

THE UNITED STATES OF AMERICA

acting by and through

THE SECRETARY OF THE AIR FORCE,

as the Government

[_____] ,
a, (type of entity)

as the Lessee

and

[_____] ,
a [type of entity]

as the Trustee

Dated as of [month, day, year]

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IN-KIND CONSIDERATION TRUST AGREEMENT

THIS IN-KIND CONSIDERATION TRUST AGREEMENT (“**Agreement**”) is made and entered into as of [month, day, year] (“**Effective Date**”) by and among **The United States of America, acting by and through the Secretary of the Air Force** (the “**Government**”), [Name of Lessee], a [type of entity] created under the laws of the State of [name of State] (the “**Lessee**”), and [Name of Trustee] a [type of entity] (the “**Trustee**”). The Government, Lessee and Trustee are hereinafter sometimes referred to collectively as the “**Parties**,” and individually as a “**Party**.”

RECITALS

WHEREAS, the Government, as landlord, and the Lessee, as tenant are parties to that certain **Department of the Air Force Site Development Lease**, dated [month, day year] (the “**Lease**”), whereby Lessee leases from the Government certain real property located on [Base name] Air Force Base, County of [Base county and state] (“**Leased Premises**”); and

WHEREAS, the Lease, as supplemented by that certain **In-Kind Consideration Delivery Agreement** between the Parties dated [month, day, year] requires, as consideration for the leasehold interest and rights granted by the Government to the Lessee in the Lease, that the Lessee provide certain in-kind consideration to the Government in accordance with 10 U.S.C. § 2667 (the “**Enabling Statute**”); and

WHEREAS, pursuant to and in accordance with the Lease, the Lessee has agreed to establish a trust account to into which to pay rent under the Lease in consideration of the Government’s agreement to allow Lessee to defer delivery of in-kind consideration until funds in such trust account equal or exceed the estimated value of the deferred in-kind consideration; and

WHEREAS, Lessee has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

NOW THEREFORE, in and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Government, the Lessee and the Trustee agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01 Definitions. Capitalized terms used herein shall have the meanings set forth below:

“**Affiliate**” means, as to any Person, any other Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Person.

“Agreement” shall have the meaning set forth in the Preamble.

“Annual Administration Fee” means such fee as set forth in **Exhibit B** hereto.

“Control” (and the co-relative terms “Controlling,” “Controlled by,” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of outstanding securities, equity, or other beneficial ownership interests, by contract or otherwise.

“Lessee” shall have the meaning set forth in the Recitals.

“Effective Date” shall have the meaning set forth in the Recitals.

“Enabling Statute” shall have the meaning set forth in the Recitals.

“Event of Default” shall have the meaning set forth in Section 4.01 of this Agreement.

“Extraordinary Expenses” mean those expenses of the Trustee described in **Section 3.04** and **Section 3.05** and the expenses of any actions undertaken by the Trustee pursuant to **Section 4.02** to protect and enforce its rights and the rights of the Government under this Agreement upon an Event of Default.

“Government” shall have the meaning set forth in the Preamble.

“In-Kind Consideration Account” shall have the meaning set forth in **Section 2.01**.

“In-Kind Consideration Delivery Agreement” shall have the meaning set forth in the Recitals.

“Investment Securities” shall have the meaning set forth in **Exhibit A** hereto.

“Lease” shall have the meaning set forth in the Recitals.

“Lease Event of Default” means any “Event of Default” as that term is defined in the Lease.

“Leased Premises” shall have the meaning set forth in the Recitals.

“Ordinary Expenses” means those fees and expenses incurred by the Trustee in the performance of its duties under this Agreement of the type ordinarily performed by corporate trustees under like trust agreements, which shall be in the amounts set forth on **Exhibit B** hereto.

“Party” and **“Parties”** shall have the meaning set forth in the Preamble.

“Person” means any natural person, firm, joint venture, limited liability company, association, trust, partnership, corporation, public body or other legal entity.

“Reimbursement Rate” means the rate of interest prescribed by the Secretary of the Treasury for amounts past due to the Federal government pursuant to the Debt Collection Act of 1982 (31 U.S.C. § 3717) as amended.

“Trust Estate” shall have the meaning set forth in **Section 2.01**.

“Trustee” shall have the meaning set forth in the Preamble.

“Trustee’s Fees” means the Ordinary Expenses of the Trustee and the Extraordinary Expenses of the Trustee.

Section 1.02 Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall be applied:

(a) The singular form of any word used herein shall include the plural, and vice versa, unless the context otherwise requires. All capitalized terms used, but not otherwise defined, herein shall have the meaning set forth and attributed to them in the Lease.

(b) All references herein to “Articles,” “Sections” and “Exhibits” are to the corresponding Articles, Sections and Exhibits of this Agreement unless otherwise noted; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article or Section of this Agreement.

(c) The headings or titles of the Articles and Sections of this Agreement are solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of any provision of this Agreement.

(d) The preamble to this Agreement, the granting clauses, and other preliminary language are hereby incorporated into this Agreement.

(e) All accounting terms used but not defined in this Agreement shall have the meanings assigned to them in generally accepted accounting principles as in effect from time to time.

(f) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party.

(g) The Parties acknowledge and agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Agreement or any amendment, supplement or exhibit hereto.

ARTICLE II

ESTABLISHMENT AND MANAGEMENT OF ACCOUNT

Section 2.01 Establishment. The Lessee, in consideration of the acceptance by the Trustee of the trust hereby created, the Government's execution and delivery of the Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in connection with (i) the performance of Lessee's obligation to make Base [and Percentage] Rent payments as defined in and pursuant to the terms of the Lease; (ii) the performance of the Lessee's obligations under this Agreement; and (iii) the delivery to the Government of in-kind consideration under the In-Kind Consideration Delivery Agreement, does hereby grant, bargain, sell, convey, pledge and assign, irrevocably in trust, unto the Trustee and unto its successors and assigns in trust forever, subject to the rights of the Lessee and the Government herein, the following:

All right, title and interest of the Lessee in and to all Base [and Percentage] Rent payments delivered by the Lessee to the Trustee from time to time and held by the Trustee in funds and accounts established hereby (the "**In-Kind Consideration Account**"), including interest or investment earnings thereon, subject only to the provisions of this Agreement permitting application thereof for the purposes and on the terms and conditions set forth in this Agreement.

TO HAVE AND TO HOLD all the same (hereinafter referred to as the "**Trust Estate**"), whether now owned or hereafter acquired, unto the Trustee and its successors in said trusts and to them and their assigns forever;

IN TRUST, upon the terms and trusts herein set forth for use in connection with the provision of in-kind consideration to the Government under the In-Kind Consideration Delivery Agreement or as otherwise set forth in this Agreement and upon the terms and subject to the conditions hereinafter set forth.

Section 2.02 Purpose. As set forth in the Lease, the Government has elected to receive certain in-kind consideration under the Lease. The Government has permitted the Lessee to defer delivering such in-kind consideration on the condition that the Lessee deposit scheduled rent payments under the Lease in the In-Kind Consideration Account up to an amount at least equal to the estimated value of the deferred in-kind consideration. It is the intent and purpose of this Agreement to protect the interests of the Government in receiving rent under the Lease if for any reason the Lessee fails to deliver such deferred in-kind consideration. Accordingly, this Agreement and the In-Kind Consideration Delivery Agreement, among other things, (i) provide for the release of funds from the In-Kind Consideration Account to the Lessee when and as the Lessee satisfies its obligation to deliver in-kind consideration, and (ii) provide for the release of funds from the In-Kind Consideration Account to the Government (for deposit to the

special Treasury account established under the Enabling Statute) if the Lessee fails to deliver the deferred in-kind consideration for any reason, as more fully set forth in **Section 2.04**.

Section 2.03 Deposits. The Lessee shall deliver or transmit funds to the Trustee pursuant to and in accordance with the Lease, together with written instructions directing the Trustee to deposit such funds into the In-Kind Consideration Account. The Lessee shall simultaneously provide a copy of such instructions to the Government. Upon receipt of such funds and written instructions, the Trustee shall deposit all such funds into the In-Kind Consideration Account and provide prompt written notice of the same to the Government.

Section 2.04 Disbursements. The Trustee shall disburse or transfer funds from the In-Kind Consideration Account in accordance with this Section. The Trustee shall make such disbursements or transfers in a prompt and timely manner and provide the Government with written notice confirming completion of such disbursement or transfers.

(a) The Trustee shall disburse funds from the In-Kind Consideration Account to the Lessee upon presentation to the Trustee from time-to-time the following:

i. A consecutively numbered invoice executed by a duly authorized officer of the Lessee attesting that the Lessee has provided in-kind consideration to the Government, and attesting to the amount Lessee is entitled to be reimbursed for the provision of such in-kind consideration; and

ii. a certification executed by the Government, through the Secretary of the Air Force or his duly authorized designee, attesting that the Lessee is entitled to reimbursement in the amount set forth on the subject invoice. If the Government certifies that Lessee is entitled to less than the entire amount set forth in the subject invoice, the Trustee shall make payment from the In-Kind Consideration Account only in such amount as the Government certifies.

(b) The Trustee shall disburse funds from the In-Kind Consideration Account to the Government for deposit in the special Treasury Account established under the Enabling Statute upon presentation to the Trustee a certification executed by the Government, through the Secretary of the Air Force or his duly authorized designee, attesting to one or more of the following:

i. That the Government has received the deferred in-kind consideration required under the Lease, that the Lessee has been reimbursed from the In-Kind Consideration Account for the agreed-upon cost of the deferred in-kind consideration and that the Government is entitled to receive the remaining balance of the In-Kind Consideration Account.

ii. That a Event of Default has occurred and is continuing

iii. That the Government has not received all or part of the deferred in-kind consideration for any reason, including without limitation (a) the Government's election not to

issue a Project Notice under the In-Kind Consideration Delivery Agreement (b) the failure of the Parties to execute a Work Order Agreement (as defined in an pursuant to the In-Kind Consideration Delivery Agreement) for the deferred in-kind consideration; (c) a default by the Lessee under a Work Order Agreement; or (d) the termination of a Work Order Agreement by agreement or for the convenience of the Government.

(c) Upon the Government's receipt of notice from the Trustee of the Lessee's failure to pay all or a portion of the Extraordinary Expenses in accordance with **Section 3.05 (b)**, the Government may (but shall not be obligated to), in its sole discretion, provide written direction for a disbursement of funds on deposit in the In-Kind Consideration Account to the Trustee in such amount as necessary to cure the Lessee's default in payment of the Extraordinary Expenses. Upon any such disbursement, the Lessee shall be liable to the Government for the amount of the disbursement together with interest at the Reimbursement Rate.

Section 2.05 Investment of Moneys on Deposit in Account.

(a) The Trustee shall invest funds held in the In-Kind Consideration Account in Investment Securities as described in clauses (b) through (h) of **Exhibit A** to this Agreement, or as otherwise directed pursuant to the joint instructions of the Government and the Lessee. The Investment Securities purchased shall be held by or under the control of the Trustee and shall be deemed at all times a part of the account or fund from which funds were derived for such Investment Securities, and the interest accruing thereon and any profit realized from such Investment Securities and any loss resulting from such Investment Securities shall be charged to such account or fund. In computing the assets of any fund or account, investments and accrued interest thereon shall be deemed a part thereof at current market values. Any purchase of Investment Securities may be made by or through the Trustee or any of its Affiliates.

(b) The Trustee shall use its best efforts to sell at the best price obtainable, or present for redemption, any Investment Securities purchased by it as an investment whenever it shall be necessary to provide money for any disbursement from the In-Kind Consideration Account. Notwithstanding the foregoing, the Trustee shall not be liable for any depreciation in the value of any Investment Securities in which money of the In-Kind Consideration Account is invested or for any loss or penalty arising from or sustained with respect to any Investment Securities.

(c) Fees and costs incurred by the Trustee in connection with investments shall be included in the Annual Administration Fee payable to the Trustee from the In-Kind Consideration Account in accordance with **Section 3.05**.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE LESSEE

Section 3.01 Representations and Warranties of the Lessee. The Lessee makes the following representations, warranties, and covenants as the basis for the undertakings on its part herein contained:

(a) The Lessee is a [type of entity] duly organized under the laws of the State of [Name of State] and is qualified and authorized to enter into, and to perform and carry out the transactions provided for in this Agreement. This Agreement has been duly authorized, executed and delivered by the Lessee and creates valid, legal and binding obligations of the Lessee, enforceable against the Lessee in accordance with its terms. There is no completed, pending or, to the Lessee's knowledge, threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Lessee.

(b) The execution and delivery by the Lessee of this Agreement, the consummation of the transactions herein contemplated, including the conveyance of the Trust Estate to the Trustee, and Lessee's compliance with all of the provisions hereof, will not conflict with or constitute a Lessee default under the provisions of: (i) any indenture, mortgage, deed of trust, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which the Lessee is a party or by which the Lessee or its properties are otherwise subject or bound; (ii) any federal, state, and local statutes, laws, regulations, ordinances, and administrative or judicial decisions or precedents; or (iii) an, judgment, order, writ, injunction, decree, or demand of any court or administrative agency.

(c) The Lessee is not an Affiliate of the Trustee.

Section 3.02 Liens or Security Interests. The Lessee shall not attempt to assign, pledge, encumber, grant a security interest in, or create or suffer to be created any lien, encumbrance, security interest, or charge upon the Trust Estate or the income or revenues therefrom, or enter into any contract or take any action by which the rights of the Trustee may be impaired.

Section 3.03 Obligation to Defend. The Lessee shall protect, preserve and defend the rights of the Trustee and Government hereunder, in any action or proceeding affecting or purporting to affect the same. The Lessee shall pay on demand all costs and expenses incurred by the Trustee or the Government in or in connection with any such action or proceeding, including attorneys' fees and litigation costs, whether any such action or proceeding progresses to judgment and whether brought by or against the Trustee.

Section 3.04 Indemnification of Trustee. The Lessee shall indemnify the Trustee for, and hold the Trustee harmless against, any loss, liability, expense or advance incurred or made without gross negligence or willful misconduct on the part of the Trustee, arising out of or in connection with the acceptance of the Trust Estate and performance of its powers and duties in administration of the Trust Estate under this Agreement, including the Trustee's costs and expenses in defending itself against any and all claims incurred in, or in connection with, or arising from the Trustee's acceptance of the Trust Estate and performance of its powers and

duties in administration of the Trust Estate under this Agreement or in connection with any action or proceeding brought thereon, including attorney's fees and litigation costs, and upon notice from the Trustee shall defend the Trustee in any such action or proceeding. Any amounts payable by the Lessee to the Trustee pursuant to this **Section 3.04** shall be payable only as specifically provided herein, and the Trustee shall have no general right to offset any such amounts against amounts received from the Lessee for deposit in the In-Kind Consideration Account or any funds held by the Trustee in the In-Kind Consideration Account or investment earnings on such funds.

Section 3.05 Payment of Trustee's Fees and Expenses.

(a) The Ordinary Expenses of the Trustee are set forth on **Exhibit B**, which **Exhibit B** may be updated from time to time by mutual agreement of the Parties. Within ten (10) business days after the Effective Date, the Parties shall jointly authorize one or more disbursements from the In-Kind Consideration Account for (i) the Ordinary Expenses of the Trustee incurred in connection with the negotiation, execution and delivery of this Agreement and the establishment of the Trust Estate created by this Agreement, and (ii) the Annual Administration Fee payable with respect to the year beginning on the Effective Date and ending on [____]. The Parties shall jointly authorize the disbursement of the Annual Administration Fee payable to the Trustee with respect to each subsequent year from the In-Kind Consideration Account on or before the [____] day of each [____].

(b) The Lessee shall pay any Extraordinary Expenses of the Trustee within thirty (30) days of written demand therefor from the Trustee. The Trustee shall be entitled to interest at the Reimbursement Rate on any amounts due from the Lessee not paid when due in accordance with this Section, such interest to accrue from the date or dates on which the expenses underlying such amounts demanded were incurred by the Trustee.

ARTICLE IV

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND GOVERNMENT

Section 4.01 Events of Default. Any one or more of the following shall constitute an event of default under this Agreement ("**Event of Default**"):

(a) the Lessee's failure to perform or observe any covenant, warranty, agreement or condition of this Agreement, where such breach or failure continues for a period of thirty (30) days after delivery of written notice thereof to the Lessee (i) by the Trustee (with a copy to the Government), or (ii) by the Government (with a copy to the Trustee); *provided, that*, if the breach or failure is such that it cannot reasonably be cured within such thirty (30) day period, the Lessee shall have such longer period as may be approved in advance in writing by the Government, with the consent of the Trustee, so long as the Lessee commences curing such breach or failure within the thirty (30) day period and diligently prosecutes such cure to completion within one hundred twenty (120) days of the Lessee's initial receipt of notice of such breach or

failure from the Trustee or Government; or

(b) an Event of Default as defined in the Lease shall have occurred and be continuing that the Government expressly declares to be an Event of Default under this Agreement, which declaration may be made in the sole and absolute discretion of the Government.

Section 4.02 Remedies.

(a) Subject to **Section 5.02 (a)**, upon the occurrence and continuation of an Event of Default, the Trustee, in its own name and as trustee of an express trust, may, with the written consent of the Government, and shall, at the written direction of the Government, proceed forthwith to protect and enforce its rights and the rights of the Government under this Agreement by such suits, actions or proceedings in equity or at law or in bankruptcy, or otherwise, for specific performance of any covenant or agreement contained herein, or for the enforcement of any proper legal or equitable remedy as the Trustee, being advised by counsel, deems necessary and most effective.

(b) Notwithstanding anything to the contrary in this Agreement, the Trustee, upon the written direction of the Government, shall waive any Event of Default and its consequences; *provided, that*, the Government shall not grant a waiver for Lessee's failure to pay all or a portion of the Trustee's Extraordinary Expenses unless (i) there are sufficient funds in the In-Kind Consideration Account to pay such defaulted Extraordinary Expenses, and (ii) the Government has issued a written direction to the Trustee pursuant to **Section 2.04(c)** authorizing the use of funds in the In-Kind Consideration Account to pay such defaulted Extraordinary Expenses to the Trustee.

(c) All rights and remedies given or granted to the Trustee and Government hereunder are cumulative, nonexclusive, and are in addition to any and all rights and remedies that such Party may have by reason of any law, statute, ordinance, or otherwise.

(d) No delay or omission to exercise any right or remedy available upon the happening and continuance of any Event of Default shall impair any such right or remedy or shall be construed to be a waiver thereof, but any such right and remedy may be exercised from time to time and as often as may be deemed appropriate by the Government in its sole and absolute discretion.

(e) Nothing contained herein shall in any way prohibit the Government from exercising any remedy available to it either under **Section 2.04(b)** hereof, the Lease, a Work Order Agreement, or under law or equity.

Section 4.03 Right of Government to Direct Proceedings. If an Event of Default shall have occurred and be continuing, notwithstanding anything in this Agreement to the contrary, the Government shall have the sole and absolute right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, subject to the terms of **Section 5.02(a)**, to direct the time, method, and place of conducting all proceedings to be taken in

connection with the enforcement of the terms and conditions of this Agreement or in connection with any other proceedings hereunder; provided, however, that such direction shall be in accordance with the provisions of law and of this Agreement.

ARTICLE V

TRUSTEE

Section 5.01 Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Agreement and signifies its acceptance of the duties and obligations imposed upon it by executing this Agreement and delivering the same to the Government and the Lessee.

Section 5.02 Responsibilities of Trustee.

(a) Notwithstanding any provision of this Agreement to the contrary, no Trustee shall be under any obligation or duty to perform any act that would involve it in expense or liability or to institute or defend any suit in respect to this Agreement or to advance its own moneys, unless (i) properly indemnified by the Lessee to its satisfaction, or (ii) upon the occurrence and continuation of an Event of Default, the Government has provided the Trustee written direction pursuant to **Section 2.04(c)** authorizing the Trustee to use funds on deposit in the In-Kind Consideration Account to pay the reasonable expenses of any such actions undertaken by the Trustee, to the Trustee's satisfaction. No Trustee shall be liable in connection with the performance of its duties under this Agreement except for its own gross negligence or willful misconduct.

(b) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, undertakes to perform such duties, and only such duties, of the Trustee as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Trustee. In case an Event of Default has occurred, which has not been cured or waived, the Trustee shall exercise such of the rights and powers vested in it by this Agreement and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) The Trustee may execute any of the trusts or powers thereof and perform any of its duties by or through attorneys, accountants, agents, receivers, or employees, and shall not be responsible for the acts of any attorneys, accountants, agents, or receivers appointed by it in good faith and without gross negligence, and shall be entitled to advice of counsel concerning all matters of the trusts hereof and the duties hereunder and may in all cases pay such compensation to and the disbursements of all such attorneys, accountants, agents, and receivers as may be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Lessee or the Government) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be

responsible for any loss or damage resulting from any action taken or omitted to be taken in good faith in reliance upon such opinion or advice. The Trustee shall not be responsible for any misconduct or negligent conduct of any attorney, accountant, agent, or receiver appointed by it in good faith and without gross negligence.

(d) The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the Lessee except as expressly required herein, but the Trustee may require of the Lessee full information and advice as to the agreements aforesaid, and the Lessee's performance or observance of such covenants, conditions or agreements.

(e) Upon receipt of any notice, request, resolution, consent, certificate, report, order, affidavit, letter, or other paper or document furnished to it pursuant to any provision of this Agreement, the Trustee shall examine such instrument to determine whether it conforms to the requirements of this Agreement and shall be protected in acting upon any such instrument believed by the Trustee in good faith to be genuine and correct and to have been signed or sent or given by the proper Party.

(f) The Trustee shall immediately notify the Government of any Event of Default known to the Trustee.

Section 5.03 Trustee's Books, Records, and Reports.

(a) The Trustee shall keep and maintain accurate, true and complete books of records and account (separate from all other records and accounts), in accordance with generally accepted accounting principles, in which complete and correct entries shall be made of its transactions relating to the Trust Estate established by this Agreement. Such books and records shall at all times be subject to inspection by the Government and the Lessee.

(b) No more than thirty (30) days after the end of each calendar quarter, the Trustee shall deliver to the Government and the Lessee, in such media and in such form as the Government shall reasonably direct, the following information, which shall be certified to the Government and the Lessee as true, complete, and accurate by the Trustee:

(i) a summary of the In-Kind Consideration Account which includes the balance on the first day of each month, deposits and withdrawals and the ending balance on the last day of each month for the account;

(ii) a summary listing of the Investment Securities, cash and money market funds that comprise the In-Kind Consideration Account, as well as uninvested amounts (cash or money market funds), as of the last day of each calendar quarter, such that the sum of such items for each of the accounts matches the account balance for the respective account on that date; and

(iii) an invoice for its Trustee's Fees broken out by Ordinary Expenses and Extraordinary Expenses, if any, for the preceding calendar quarter.

(c) Upon the written request of the Government, the Trustee shall deliver to the Government such information and supporting documentation as shall be reasonably necessary to permit the Government to take all necessary action to assure compliance by the Lessee with the terms and conditions of this Agreement.

(d) Upon the written request of either the Government or the Lessee, the Trustee shall deliver to such party all documentation and information needed to confirm compliance by the Trustee with the terms and conditions of this Agreement.

Section 5.04 Resignation of Trustee. The Trustee may at any time resign and be discharged from the duties and obligations created by this Agreement by giving not less than sixty (60) days prior written notice to the Lessee and the Government. Any such resignation shall become effective only upon the appointment of a successor Trustee pursuant to the provisions of **Section 5.06** and delivery by the successor Trustee of an instrument of acceptance of such appointment to the Lessee and Government. If an instrument of acceptance by a successor Trustee is not delivered to the resigning Trustee within sixty (60) days after it gives notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee.

Section 5.05 Removal of Trustee. The Trustee may be removed (i) at any time by written notice of removal from the Government, with the written approval of the Lessee or (ii) at any time except during the continuance of an Event of Default, by written notice of removal from the Lessee, with the written approval of the Government. Any removal of the Trustee shall become effective only upon the appointment of a successor Trustee pursuant to the provisions of **Section 5.06** and delivery by the successor Trustee of an instrument of acceptance of such appointment to the Lessee and Government.

Section 5.06 Appointment of Successor Trustee.

(a) If at any time the Trustee shall (i) resign or be removed, (ii) be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, or (iii) otherwise become incapable of acting hereunder, a successor Trustee shall be appointed by the Lessee with the written approval of the Government; *provided, however,* if (A) a successor Trustee is not appointed within thirty (30) days after the Lessee's receipt of a notice of resignation pursuant to **Section 5.04** or within ten (10) days after either the delivery of a removal notice pursuant to **Section 5.05** or the Lessee's knowledge of any of the events specified in (ii) or (iii) hereinabove, or (B) an Event of Default has occurred and is continuing, then the successor Trustee shall be appointed by the Government.

(b) Every such successor Trustee appointed pursuant to the provisions of this **Section 5.06** shall be a bank, banking corporation, or trust company organized under the laws of any state of the United States or the laws of the United States and that is in good standing, have a reported combined capital, surplus and undivided profits of not less than [_____] \$[XX], and shall be willing, qualified and able to accept the trusteeship upon the terms and conditions of this Agreement.

Section 5.07 Transfer of Rights and Property to Successor Trustee. Any successor Trustee appointed under this Agreement shall execute, acknowledge, and deliver to its predecessor Trustee, and also to the Lessee and Government, an instrument in writing accepting such appointment, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, trusts, remedies, immunities, privileges, duties and obligations of its predecessor Trustee, with like effect as if originally named as Trustee. The Trustee ceasing to act, on the written request of the Lessee, Government or the successor Trustee, shall execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as reasonably may be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property held under this Agreement, and every predecessor Trustee shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions set forth in or pursuant to this Agreement. Should the successor trustee require any conveyance or instrument in writing from the Lessee be to more fully and certainly vest in and confirm to such successor Trustee such estates, trusts, rights, obligations, remedies, immunities, privileges, rights, powers, and duties, the Lessee shall execute and deliver any and all such conveyances and instruments. Notwithstanding anything contained elsewhere in this Agreement, any such predecessor Trustee shall not be entitled to any compensation or reimbursement for costs and expenses incurred in connection with any transfer or rights or properties under this Agreement, except for such costs and expenses incurred with the prior written consent of the Lessee; *provided, however*, if an Event of Default has occurred and is continuing, then any such compensation or reimbursement for costs and expenses shall be approved by the Government.

Section 5.08 Trust Estate May Be Vested in Separate Trustee or Co-Trustee.

(a) In the event of litigation under this Agreement, including without limitation enforcement of an Event of Default, or if the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights, or remedies herein granted to the Trustee or may not hold title to the Trust Estate, in trust, as herein granted, or may not take any other action that may be necessary or desirable in connection therewith, the Parties acknowledge it may be necessary that the Trustee appoint an additional institution as a separate trustee or co-trustee.

(b) If the Trustee appoints an additional institution as a separate trustee or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity,

estate, title, duty, obligation, interest, security interest, and lien expressed or intended by this Agreement to be exercised by, vested in, granted, or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate trustee or co-trustee but only to the extent necessary to enable such separate trustee or co-trustee to exercise such powers, rights, and remedies. Every covenant and obligation necessary to the exercise thereof by such separate trustee or co-trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance, or instrument in writing from the Lessee be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties, and obligations, the Lessee shall execute and deliver any and all such deeds, conveyances, and instruments. In case any separate trustee or co-trustee, or a successor to either, dies, becomes incapable of acting, resigns, or is removed, all the estates, properties, rights, powers, trusts, duties, and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

(d) No co-trustee shall be liable for the acts or omissions of the other.

Section 5.09 Termination of Trust. This Agreement shall terminate when the Trustee has disbursed all funds in the In-Kind Consideration Account as provided in Section 2.04. At such time the Parties shall execute an instrument evidencing the termination of this Agreement.

Section 5.10 Representations and Warranties of the Trustee. The Trustee represents and warrants as follows:

(a) The Trustee is duly organized and is qualified and authorized to enter into, and to perform and carry out its obligations under in this Agreement. This Agreement has been duly authorized, executed and delivered by the Trustee and creates valid, legal and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general equitable principles.

(b) The Trustee's execution and delivery of this Agreement and the performance of its obligations hereunder and the fulfillment of or the compliance with all of the provisions hereof are legal and will not violate any law, regulation, or order.

(c) There is no pending action, suit, or proceeding, arbitration, or government investigation against the Trustee, an adverse outcome of which would materially affect the Trustee's performance of its obligations hereunder.

(d) The Trustee is not an Affiliate of the Lessee.

ARTICLE VI

Section 6.03 Final Agreement. This Agreement is the final agreement among the Parties with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no other representations, warranties, promises, agreements, or understandings, oral, written or implied, among the Parties with respect to the subject matter of this Agreement other than those included in this Agreement.

Section 6.04 Conflicts. If any provision of this Agreement conflicts with a provision of the Lease or the provisions of a Work Order Agreement, the provisions of this Agreement shall control to the extent of such conflict. For purposes of this **Section 6.04** a conflict exists only when there is an irreconcilable difference between a provision in this Agreement and a provision in the Lease or a Work Order Agreement. An additional requirement, condition, or term in the Lease or Work Order Agreement shall not be in conflict with this Agreement except when such requirement, condition or term is clearly inconsistent with an express requirement, condition, or term of this Agreement.

Section 6.05 Binding Effect. This Agreement shall be binding upon the Parties and their permitted respective successors and assigns. Nothing set forth in this **Section 6.05** shall be deemed or construed to create or allow any assignment or transfer rights not otherwise provided for in this Agreement.

Section 6.06 Severability. If any one or more of the covenants or agreements provided for in this Agreement on the part of the Lessee, Trustee or Government shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such covenant or agreement shall not affect any of the remaining clauses, provisions or sections of this Agreement.

Section 6.07 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.08 Parties Benefitted. This Agreement is made and entered into for the sole protection and benefit of the Lessee, Government and Trustee and their permitted successors and assigns. Nothing expressly contained herein or to be implied from this Agreement is intended or shall be construed to give any person or company other than the Parties hereto any legal or equitable right, remedy or claim under or with respect to this Agreement or any covenants, conditions and provisions herein contained.

Section 6.09 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of [Base state], except as preempted by Federal law.

Section 6.10 Time. Time is of the essence in the performance of the obligations set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly Authorized Officers as of the Effective Date.

[The Remainder of this Page is Intentionally Blank]

Government Signature Page to In-Kind Consideration Trust Agreement

GOVERNMENT:

THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Air Force, as the Government

By: _____
Kathleen I. Ferguson, P.E.
Deputy Assistant Secretary of the Air Force
(Installations)

Lessee Signature Page to In-Kind Consideration Trust Agreement

LESSEE:

[Lessee name and form of legal entity]

By: _____
[Printed Name and Title]

Trustee Signature Page to In-Kind Consideration Trust Agreement

TRUSTEE:

[Name of Trustee], a [type of entity]

By: _____
[Printed Name and Title]

EXHIBIT A

INVESTMENT SECURITIES

Investment Securities means any investment set forth below which matures (or is subject to tender at the option of the Trustee or is marketable prior to maturity) at such time or times as to enable disbursements to be made from the Account in which such investment is held in accordance with the terms of this Agreement:

(a) Cash insured at all times by the **Federal Deposit Insurance Corporation** or otherwise collateralized with obligations described in clause (b) of this definition.

(b) Direct obligations of (including obligations issued or held in book entry form on the books of) the **U.S. Department of the Treasury**.

(c) Obligations of any of the following federal agencies that represent the full faith and credit of the United States of America, including: (i) direct obligations or fully guaranteed certificates of beneficial ownership of the Export-Import Bank; (ii) certificates of beneficial ownership of the **Rural Economic Community Development Administration** (formerly the **Farmers Home Administration**); (iii) participation certificates of the **General Services Administration**; (iv) guaranteed Title XI financing of the **U.S. Maritime Administration**; (v) guaranteed mortgaged-backed bonds and pass-through obligations of the **Government National Mortgage Association**; (vi) project notes, local authority bonds, new communities debentures and U.S. public housing notes and bonds of the **U.S. Department of Housing & Urban Development**; (vii) debentures of the **Federal Housing Administration**; and (viii) obligations of the **Federal Financing Bank**.

(d) Direct obligations of any of the following federal agencies, which obligations are not fully guaranteed by the full faith and credit of the United States of America: (i) senior debt obligations issued by the **Federal Home Loan Bank System**, **Federal National Mortgage Association**, **Federal Home Loan Mortgage Corporation**, or **Student Loan Marketing Association**; (ii) obligations of the **Resolution Funding Corporation**; and (iii) consolidated system wide bonds and notes of the **Farm Credit System**.

(e) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks, including the Trustee or an Affiliate of the Trustee, that have a rating on their short term certificates of deposit on the date of purchase of "A-1+" by S&P or "Prime-1" or "A3" or better by Moody's and maturing no more than 360 days after the date of purchase. Ratings on holding companies are not considered as the rating of the bank.

(f) Commercial paper that is rated at the time of purchase in the single highest classification, "A-1+" by S&P and "Prime-1" by **Moody's** and that matures not more than 270 days after the date of purchase.

(g) Money market funds registered under the **Federal Investment Company Act of 1940**, whose shares are registered under the **Securities Act**, and rated “AAAm” or “AAAm-G” or better by S&P and “Aaa,” “Aa1” or “Aa2” if rated by Moody’s, including any mutual fund for which the Trustee or its Affiliate serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or its Affiliate receives fees from such funds for services it or its Affiliate renders to such fund in respect of such investment, (ii) the Trustee charges and collects fees for services it renders pursuant to the Agreement in respect of such investment, which fees are separate from and may be in addition to the fees received from such funds in respect of such investment, and (iii) such services rendered by the Trustee or its Affiliates to such funds and pursuant to the Agreement in respect of such investment may at times duplicate those provided to such funds by the Trustee or its Affiliates in respect of other investments.

(h) General obligations of states of the United States with a rating of at least “AA” or higher by S&P and “A3” or higher by Moody’s.

(i) Any other investment approved in writing by the Government and the Lessee consistent with S&P’s criteria for permitted investments.

EXHIBIT B

SCHEDULE OF ORDINARY EXPENSES

Filename: Generic IKC Trust Agreement (Final) July 24, 2012
Directory: O:\!Legal\1_SAF GCN File Plan\09 EUL-VBT\EUL Gener-
ics\Generic EUL Documents\Generic IKC Trust Agmt
Template: C:\Users\1268394580C\AppData\Roaming\Microsoft\Templates\N
ormal.dotm
Title: TRUST AGREEMENT
Subject:
Author: Kenneth Barrett
Keywords:
Comments:
Creation Date: 7/24/2012 1:15:00 PM
Change Number: 3
Last Saved On: 7/24/2012 1:15:00 PM
Last Saved By: S Leslie
Total Editing Time: 0 Minutes
Last Printed On: 7/24/2012 1:16:00 PM
As of Last Complete Printing
Number of Pages: 28
Number of Words: 7,692 (approx.)
Number of Characters: 43,848 (approx.)