

TAX INCREMENT REVENUE AGREEMENT
(El Paso County)
(Gold Hill Mesa Commercial Urban Renewal Plan)

This Tax Increment Revenue Agreement (the "Agreement") is entered into as of February 7, 2023 (the "Effective Date") by and between the COLORADO SPRINGS URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the "Authority"), whose address is 30 South Nevada Avenue, Colorado Springs, Colorado 80903, and the EL PASO COUNTY, COLORADO, a political subdivision of the State of Colorado (the "County"), whose address is 200 South Cascade Ave., Colorado Springs, Colorado, 80903. The Authority and the County are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS.

The following recitals are incorporated in and made a part of this Agreement. Capitalized terms used herein and not otherwise defined are defined in Section 1 below.

A. **Proposed Redevelopment.** The Parties have been advised that the real property described in Exhibit A (the "Property") lying within the corporate limits of the City of Colorado Springs, Colorado (the "City") is being studied for designation as an urban renewal area to be redeveloped by one or more developers and/or property owner(s) as a mixed use development(s) that will eliminate existing blighted conditions which constitute threats to the health, safety and welfare of the community and barriers to development.

B. **Urban Renewal and Tax Increment Financing.** To accomplish the proposed redevelopment and to provide certain required public improvements, the Authority has recommended inclusion of the Property in a proposed urban renewal plan, entitled as the "Gold Hill Mesa Commercial Urban Renewal Plan" (the "Plan" or "Urban Renewal Plan") authorizing and utilizing tax increment financing in accordance with the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S. (the "Act"), to pay Eligible Costs of the Improvements. The proposed Plan that includes the Property has been provided to the County under separate cover. The final Plan approved by the City Council of the City shall be the "Plan" for purposes of this Agreement.

C. **Nature of Urban Renewal Project and Purpose of Agreement.** The proposed Urban Renewal Project consists of designing, developing and constructing the Improvements (which includes paying the Eligible Costs of public improvements) necessary to serve the proposed Urban Renewal Area and to comply with §31-25-107(4)(g) of the Act that requires the Plan to afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the Urban Renewal Area by private enterprise. Approval of the Urban Renewal Plan is subject to recent legislation, including requirements imposed by HB 15-1348 for new urban renewal plans adopted after January 1, 2016.

D. **Impact Report.** The Authority has submitted to the County a copy of the Impact Report required to be submitted to the County by §31-25-107(3.5) of the Act, which includes a tax

forecast for the County. The Authority has also submitted to the County a package of information responsive to the County's Urban Renewal Policy, dated September 20, 2018.

E. Colorado Urban Renewal Law. In accordance with the Act as amended to the date of this Agreement (including the requirements of HB 15-1348 and SB 18-248), the Parties desire to enter into this Agreement to facilitate adoption of the Plan and redevelopment of the proposed Urban Renewal Area described therein. The Agreement addresses, among other things, the estimated impacts of the Urban Renewal Plan on County services associated solely with the Urban Renewal Plan.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants, promises and agreements of each of the Parties hereto, to be kept and performed by each of them, it is agreed by and between the Parties hereto as set forth herein.

1. DEFINITIONS. As used in this Agreement:

1.1. "Act" means the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S.

1.2. "Agreement" means this Agreement, as it may be amended or supplemented in writing. References to sections or exhibits are to this Agreement unless otherwise qualified.

1.3. "Authority" means the Party described in the Preamble to this Agreement, the Colorado Springs Urban Renewal Authority, a body corporate and politic of the State of Colorado.

1.4. "Bonds" shall have the same meaning as defined in §31-25-103 of the Act.

1.5. "County" means El Paso County, Colorado, a political subdivision of the State of Colorado.

1.6. "County Property Tax Increment Revenues" means the portion of Property Tax Increment Revenues generated by the County's mill levy received by the Authority from the El Paso County Treasurer and paid into the Special Fund as specified in Section 3.1.

1.7. "County Sales Tax" means the sales tax of one percent (1.00%) imposed by the County on all nonexempt retail transactions and the furnishing of certain services within the County. For purposes of this Agreement, "County Sales Tax" shall not include the Public Safety Sales Tax in the amount of twenty-three hundredths percent (0.23%)

1.8. "County Sales Tax Increment Revenues" means, for each Plan Year, the revenues received from the County Sales Tax within the boundaries of the Urban Renewal Area which are in excess of that portion of the County Sales Tax collected within the boundaries of the Urban Renewal Area in the twelve-month period ending on the last day of the month prior to the effective date of approval of the Plan.

1.9. “Duration” means the twenty-five (25) year period that the tax increment or tax allocation provisions will be in effect as specified in §31-25-107(9)(a) of the Act, the Plan, and the Impact Report.

1.10. “Eligible Costs” means those costs eligible to be paid or reimbursed from the Tax Increment Revenues pursuant to the Act.

1.11. “Future Mill Levy” has the meaning set forth in Section 3.2.

1.12. “Impact Report” means the impact report setting forth the burdens and benefits of the Urban Renewal Project previously submitted to the County.

1.13. “Improvements” means the public improvements and private improvements to be constructed on the Property pursuant to the Plan.

1.14. “Party” or “Parties” means the Authority or the County or both and their lawful successors and assigns.

1.15. “Plan” means the urban renewal plan defined in Recital B above.

1.16. “Project” shall have the same meaning as Urban Renewal Project.

1.17. “Property Tax Increment Revenues” means all the TIF revenues derived from ad valorem property tax levies described in §31-25-107(9)(a)(II) of the Act allocated to the Special Fund for the Duration of the Urban Renewal Project.

1.18. “Special Fund” means the fund described in the Plan and §31-25-107(9)(a)(II) of the Act into which the Property Tax Increment Revenues will be deposited.

1.19. “Tax Increment Revenues” means, collectively, the Property Tax Increment Revenues and the County Sales Tax Increment Revenues.

1.20. “TIF” means the property tax increment portion of the property tax assessment roll described in §31-25-107(9)(a)(II) of the Act.

1.21. “Urban Renewal Area” means the area included in the boundaries of the Plan.

1.22. “Urban Renewal Plan” means the urban renewal plan defined in Recital B above.

1.23. “Urban Renewal Project” means all undertakings and activities, or any combination thereof, required to carry out the Urban Renewal Plan pursuant to the Act.

2. Impact Report. The Parties acknowledge and agree that the Impact Report addresses the following information and hereby make and adopt the following findings relating to the Impact Report:

(a) The Urban Renewal Project is projected to create significant new employment opportunities and other benefits as specified in the Impact Report that will benefit the Parties, the region, and the State of Colorado.

(b) The Duration of time estimated to complete the Urban Renewal Project is the twenty-five (25) year period of time specified in §31-25-107(9)(a) of the Act.

(c) The estimated annual Property Tax Increment Revenue to be generated by the Urban Renewal Project for the Duration of the Urban Renewal Project and the portion of such Property Tax Increment Revenue to be allocated to fund the Urban Renewal Project are set forth in this Agreement and the Impact Report.

(d) The nature and relative size of the revenue and other benefits expected to accrue to the City, the County, and other taxing entities that levy property taxes in the Urban Renewal Area are set forth in the Impact Report and include, without limitation:

- (i) [The increase in base value resulting from biennial general reassessments for the Duration in accordance with §31-25-107(9)(e) of the Act;
- (ii) The benefit of improvements in the Urban Renewal Area to existing taxing entity infrastructure in accordance with §31-25-107(3.5) of the Act;
- (iii) The estimate of the impact of the Urban Renewal Project on County and taxing entity revenues in accordance with §31-25-107(3.5) of the Act;
- (iv) The cost of additional County and taxing body infrastructure and services required to serve development in the Urban Renewal Area in accordance with §31-25-107(3.5) of the Act;
- (v) The capital or operating costs of the Parties, the City, and other taxing bodies that are expected to result from the Urban Renewal Project in accordance with HB 15-1348;
- (vi) The legal limitations on the use of revenues belonging to the Parties, the City, and any taxing entity in accordance with HB 15-1348 and SB 18-248; and
- (vii) The other estimated impacts of the Urban Renewal Project on County and other taxing body services or revenues in accordance with §31-25-107(3.5) of the Act.]

3. RETENTION OF PROPERTY TAX INCREMENT REVENUES. In compliance with the requirements of HB 15-1348 and SB 18-248, the Parties have negotiated and agreed to the sharing of Property Tax Increment Revenues as set forth herein.

3.1. County Property Tax Increment Revenues. The County and the Authority agree that the Authority may retain and expend in furtherance of the Urban Renewal Project one hundred percent (100%) of the County Property Tax Increment, commencing on the date of approval by the City of the Plan, and lasting for the Duration.

3.2. Mill Levy Allocation. If the County's eligible electors approve a new or increased mill levy for any lawful purpose ("Future Mill Levy"), any revenue derived from the Future Mill

Levy shall not be considered part of the County Property Tax Increment. Rather, upon approval by the eligible electors of the County of a Future Mill Levy, the County shall provide notification of the same to the Authority. From the date of such notice until the Duration has expired, the Authority shall annually deduct from the Property Tax Increment Revenue it receives any revenues attributable to the Future Mill Levy, as applicable, and shall remit such revenues to the County.

4. PLEDGE OF PROPERTY TAX INCREMENT REVENUES. The County recognizes and agrees that in reliance on this Agreement and in accordance with the provisions of §31-25-109(12) of the Act, the adoption and approval of the Plan includes an irrevocable pledge of all of the Property Tax Increment Revenues, including the County Property Tax Increment, to pay the Authority's Bonds and other financial obligations in connection with the Urban Renewal Project. The Authority has elected to apply the provisions of §11-57-208, C.R.S., to this Agreement. The Property Tax Increment Revenues, when and as received by the Authority are and shall be subject to the lien of such pledge without any physical delivery, filing, or further act and are and shall be an obligation of the Parties pursuant to §31-25-107(9) of the Act. The Parties agree that the creation, perfection, enforcement and priority of the pledge of the Property Tax Increment Revenues as provided herein shall be governed by §11-57-208, C.R.S. The lien of such pledge on the Property Tax Increment Revenues shall have priority over any of all other obligations and liabilities of the Parties with respect to the Property Tax Increment Revenues.

5. CONTRIBUTION OF COUNTY SALES TAX INCREMENT REVENUES. In order to further the goals of the Plan, in accordance with §31-25-107(9.5)(a) of the Act, the County also agrees to contribute to the Project the revenues received from the County Sales Tax Increment Revenues subject to the conditions of this Section 5. The Parties acknowledge that this pledge is not considered "increment" pursuant to the Act, and as such, the County's pledge is subject to annual appropriation. It is hereby agreed and acknowledged that this Agreement evidences an intent to contribute all the County Sales Tax Increment Revenues to the Authority for the purpose of accomplishing the Project, but that, as to the agreement to contribute County Sales Tax Increment Revenues only, this Agreement shall not constitute a debt or indebtedness of the County within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation, and the making of any contribution of the revenues referenced in this Section 5 shall be at all times subject to annual appropriation by the County. As and when appropriated, the County Sales Tax Increment Revenues shall be remitted to the Authority no less frequently than semi-annually. The Authority shall deposit such payments into the Special Fund established for the Project. The County's remittance of its Sales Tax Increment Revenues shall be further subject to the following conditions:

5.1 The County shall only provide County Sales Tax Increment Revenues for taxes collected from businesses within the Urban Renewal Area which have active State and City sales tax licenses. The Authority shall promptly inform the County if and when a new City sales tax license is issued within the Urban Renewal Area. In the event the Authority fails to notify the County of a new license, the County shall only be responsible for remitting County Sales Tax Increment Revenues thirty (30) days prior to the County receiving actual notice, along with any eligible sales tax collected thereafter.

5.2 The County Sales Tax Increment Revenues for the Duration shall be limited to one hundred percent (100%) of the County Sales Tax collected within the Urban Renewal Area.

6. NOTIFICATION OF PROPOSED MODIFICATIONS OF THE PLAN; AGREEMENT NOT PART OF PLAN. The Authority agrees to notify the County of any intended modification of the Plan as required by §31-25-107(7) of the Act. This Agreement is not part of the Plan.

7. WAIVER. Except for the notices required by this Agreement, the County, as authorized by §31-25-107(9.5)(b) and §31-25-107(11) of the Act, hereby waives any provision of the Act that provides for notice to the County, requires any filing with or by the County, requires or permits consent from the County, and provides any enforcement right to the County for the Duration, provided, however, that the County shall have the right to enforce this Agreement.

8. LIMITATION OF AGREEMENT. This Agreement applies only to (i) the County Property Tax Increment, as calculated, produced, collected and paid to the Authority from the Urban Renewal Area by the El Paso County Treasurer in accordance with §31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado, and (ii) the County Sales Tax Increment Revenues, as calculated, produced, collected and paid to the Authority from the Urban Renewal Area by the El Paso County Treasurer as provided in this Agreement, and does not include any other revenues of the City or the Authority.

9. MISCELLANEOUS.

9.1. Delays. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God; fires; floods; earthquake; abnormal weather; strikes; labor disputes; accidents; regulation or order of civil or military authorities; shortages of labor or materials; or other causes, similar or dissimilar, including economic downturns, which are beyond the control of such Party.

9.2. Termination and Subsequent Legislation or Litigation. In the event of termination of the Plan, including its TIF financing component, the Authority may terminate this Agreement by delivering written notice to the County. The Parties further agree that in the event legislation is adopted or a decision by a court of competent jurisdiction after the Effective Date of this Agreement that invalidates or materially effects any provisions hereof, the Parties will in good faith negotiate for an amendment to this Agreement that most fully implements the original intent, purpose and provisions of this Agreement, but does not impair any otherwise valid contracts in effect at such time.

9.3. Entire Agreement. This instrument embodies the entire agreement of the Parties with respect to the subject matter hereof. 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, between the Parties hereto. No modification to this Agreement shall be valid unless agreed to in writing by the Parties.

9.4. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their successors in interest.

9.5. No Third-Party Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned Parties and nothing in this agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned Parties that any person or entity other than the undersigned Parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

9.6. No Waiver of Immunities. Nothing in this Agreement shall be construed as a waiver of the rights and privileges of the Parties pursuant to the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as the same may be amended from time to time. No portion of this Agreement shall be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this agreement.

9.7. Amendment. This Agreement may be amended only by an instrument in writing signed by the Parties.

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

9.9. Interpretation. All references herein to Bonds shall be interpreted to include the incurrence of debt by the Authority in any form consistent with the definition of "Bonds" in the Act, including payment of Eligible Costs or any other lawful financing obligation.

9.10. Incorporation of Recitals and Exhibits. The provisions of the Recitals and the Exhibits attached to this Agreement are incorporated in and made a part of this Agreement.

9.11. No Assignment. No Party may assign any of its rights or obligations under this Agreement.

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

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

9.14. Governing Law. This Agreement and the provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado.

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

9.16. Notices. Any notice required by this Agreement shall be in writing. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed facsimile transmission or electronic delivery with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than 5 business days thereafter. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each Party shall be entitled to change its address for notices from time to time by delivering to the other Party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth in the Preamble to this Agreement.

9.17. Days. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to C.R.S. § 24-11-101(1), such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

9.18. Authority. The persons executing this Agreement on behalf of the Parties covenant and warrant that each is fully authorized to execute this Agreement on behalf of such Party.

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IN WITNESS WHEREOF, the Authority and the County have caused their duly authorized officials to execute this Agreement effective as of the Effective Date.

EL PASO COUNTY, COLORADO, a political subdivision of the State of Colorado

By: Camie Brenner
Title: Chair

ATTEST:

By: _____



23-40A

COLORADO SPRINGS URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado

By: [Signature]
Title: Executive Director

ATTEST:

By: _____

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Exhibit A

The Property

A clarified version of Figure 1 is below, with the accurate and legally described URA boundary overlaid and represented by the area in green that is within the black outline.

Figure 1. Gold Hill Mesa Urban Renewal Plan Area



Note: On the east side of this map, the area shown in blue below the black outline is within the existing Residential URA boundary and is not included within the new URA boundary.