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AGREEMENT DELINEATING THE RELATIONSHIP AND DECISION-MAKING  
AUTHORITY FOR THE CITY FOR CHAMPIONS PROJECT  
BETWEEN  
THE CITY OF COLORADO SPRINGS, COLORADO  
AND  
COLORADO SPRINGS URBAN RENEWAL AUTHORITY

THIS AGREEMENT (“Agreement”) is made and entered into as of June 26, 2015, by and between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, (“Applicant”) and the Colorado Springs Urban Renewal Authority, a body corporate and politic of the State of Colorado (“Financing Entity”). Applicant and Financing Authority are referred to herein collectively as the “Parties” and each individually as a “Party”.

RECITALS

The following recitals are incorporated in and a made of this Agreement:

A. On or about December 16, 2013, the Colorado Economic Development Commission approved the application of the Applicant for a regional tourism project referred to as the “City for Champions Project” pursuant to the Colorado Regional Tourism Act, Part 3 of Article 46, Title 24, C.R.S. (the “Act”), and subsequently adopted its Resolution No. 3, a true copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, (the “Resolution”) in accordance with the Act.

B. By the Resolution, Financing Entity was authorized to receive and utilize the state sales tax increment revenue dedicated for the Project for the duration of the Financing Term. The Commission authorized the utilization of the state sales tax increment revenue by the Financing Entity pursuant to the Act and subject to the conditions of approval stated in the Resolution.

C. Pursuant to Paragraph E of Section 5 of the Resolution, Applicant and Financing Entity must enter into a written agreement delineating the relationship and decision-making authority for the City for Champions Project.

D. In satisfaction of Paragraph E of Section 5 of the Resolution, Applicant and Financing Entity desired to enter into this agreement to delineate their relationship and the decision-making authority for the City for Champions Project, in accordance with the terms of this Agreement.

TERMS

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants provided herein, Applicant and Financing Entity agree as follows:

**Section 1. Definitions.** All capitalized terms in this Agreement shall have the meanings set forth below and are intended to be interpreted in conjunction with the definitions set forth in Section 24-46-303 of the Act and the definitions set forth in the Resolution. If there is a conflict

among the definitions used in the Act, the Resolution and the Agreement, the Act shall control, then the Resolution, and last, this Agreement.

A. **“Advances”** means Eligible Costs advanced to the Financing Entity, or paid for by the Applicant or the Financing Entity.

B. **“Applicant”** means the City of Colorado Springs, a home rule city and Colorado municipal corporation. The Mayor of Applicant or the Mayor’s designee is authorized to act for the Applicant for purposes of implementing the Resolution and this Agreement pursuant to Art. 4, §10, of the Charter of the City of Colorado Springs.

C. **“Base Year Revenue”** means the state sales tax revenue collected by the state from taxable transactions occurring within the Regional Tourism Zone during the twelve-month period beginning on December 1, 2012 and ending on November 30, 2013, as required by C.R.S. § 24-46-303(1).

D. **“Bond(s)”** means the bonds, bond anticipation notes, other forms of debt instruments, or other financial obligations to which the Dedicated Revenue is pledged, and which are issued or incurred and documented by the Financing Entity for the purpose of paying Eligible Costs as described in C.R.S. § 24-46-303(4). For all purposes of this Resolution, the term “Bonds” excludes any financial obligation, or portion thereof, for which Dedicated Revenue is not pledged for repayment.

E. **“Bond Documents”** means any resolution, indenture, reimbursement agreement, intergovernmental agreement, loan agreement, note, bond, debt instrument, or other contract under which the Financing Entity issues or incurs debt or other financial obligations relating to the Project Elements and for which Dedicated Revenue is pledged in connection with financing the Eligible Improvements.

F. **“Bond Funded Element”** means any Project Element for which the Financing Entity has entered a contractual agreement pledging that the Project Element will receive a specific dollar or percentage amount of the proceeds from any Bond issuance or similar debt instrument authorized by C.R.S. § 24-46-310, and which amount is anticipated to equal at least \$5,000,000.00 in funding pledged to such Project Element.

G. **“Bond Requirements”** means the debt service on, and related reasonable, necessary and Eligible Costs incurred in connection with the Bonds, Bond Documents, or other forms of debt instruments.

H. **“Bond Trustee”** means the trustee or successor trustee appointed in any Bond Documents.

I. **“Commencement of Substantial Work”** means the dates on which substantial work on each Project Element commences, including but not limited to the Financing Entity’s issuance of Bonds for the express purpose of financing the Eligible Costs for each Project Element, the repayment of which is secured by a pledge of some or all of the Dedicated Revenue, or the commencement of actual development or predevelopment of each Project Element, including but not limited to any of the following: erecting permanent structures, excavating the ground to lay foundations, mass grading of the site, or work of a similar description that manifests an intention and purpose to complete the Project. Each Project Element shall have its own Commencement of Substantial Work date. In order for the Financing

Entity's issuance of Bonds to satisfy the Commencement of Substantial Work requirement for a Project Element, that element must be a Bond Funded Element.

J. **"Commission"** means the Colorado Economic Development Commission, created and authorized under C.R.S. § 24-46-102.

K. **"Credit Enhancement"** means any credit enhancement, liquidity, interest rate protection, or insurance for the Bonds.

L. **"Dedicated Revenue"** means the revenue from the Percentage of State Sales Tax Increment Revenue to be received by the Financing Entity and paid into the Special Fund. The total cumulative amount of Dedicated Revenue shall not exceed \$120,500,000 over the course of the Financing Term.

M. **"Department"** means the Colorado Department of Revenue.

N. **"Developer(s)"** means any entity or entities contracted to develop any portion of the Project or the Project Elements, or such entities' successors and assigns. The term Developer is not necessarily intended to include any Project Element Sponsor.

O. **"Director"** means the Executive Director of the Colorado Office of Economic Development, created and authorized under C.R.S. § 24-48.5-101.

P. **"Effective Date of the Resolution"** shall mean December 16, 2013, the date on which the Commission approved the Project in accordance with the Act and the Resolution.

Q. **"Eligible Costs"** shall have the same meaning as C.R.S. § 24-46-303(4).

R. **"Eligible Improvements"** means those improvements generally described in C.R.S. § 24-46-303(5), which are necessary to or convenient for only the completion of the Regional Tourism Project as specifically described in Exhibit B to the Resolution.

S. **"External Financial Advisor"** means any consultant that: (i) has experience advising Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing (including, without limitation, interest rates), sales and marketing of such securities and the procuring of bond ratings, Credit Enhancement and insurance in respect of such securities; (ii) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place publication; and (iii) is not an officer or employee of the Financing Entity or the Applicant and has not been otherwise engaged to provide services in connection with the transactions contemplated by the Resolution.

T. **"Final Completion Date"** means December 16, 2023, and is the date by which all Project Elements must be completed or placed in service per the conditions of the Resolution. In the event of a catastrophic event, such as a natural disaster, terrorist attack, or war, that directly and substantially delays work on any Project Element, the Commission shall have the option of extending the Final Completion Date.

U. **"Financing Entity"** means the Colorado Springs Urban Renewal Authority, a body corporate and politic of the State of Colorado organized and existing pursuant to Part 1 of Article 25, Title 31, C.R.S.

V. **“Financing Term”** means the period of time commencing upon the Effective Date of the Resolution and expiring on the date of payment in full of the Bonds, within which period of time the Financing Entity is authorized to receive and utilize, in accordance with the Act, the Resolution, and this Agreement, the Dedicated Revenue, subject to an aggregate cap of \$120,500,000.00, to finance Eligible Costs; provided, however, that no single Bond issuance shall have a maturity date in excess of thirty (30) years.

If the Financing Entity consolidates or refinances previously issued debt or Bonds as authorized by C.R.S. § 24-46-304(2)(h) and provides written notification of the consolidation/refinancing details by certified mail to the Commission and the Department within thirty (30) calendar days of such consolidation/refinancing being effective, then the maximum thirty (30) year term referenced above may be extended to the earlier of the timeframe authorized by C.R.S. § 24-46-304(2)(h), or the date of payment in full of the Bonds, but in no event shall the total Financing Term, including the initial financing and refinancing, exceed fifty (50) years.

W. **“Ineligible Improvements”** means any commercial, residential, or civic improvements constructed outside or beyond the geographic area of the Regional Tourism Zone, other than the U.S.A.F.A. Visitors Center Project Element, and any commercial, residential, or civic improvements not necessary to or convenient for the completion of the Project or any Project Element as specifically described in Exhibit B to the Resolution.

X. **“Local Government”** means the Applicant, which has been approved to undertake the Project, or where applicable, participating local governments as defined by C.R.S. § 24-46-303(8).

Y. **“Minimum Element Allocation Percent(ages)”** or **“MEAP(s)”** means the following specific minimum proportions of the Dedicated Revenue that the Financing Entity must dedicate to each Project Element:

- i. U.S. Olympic Museum and Hall of Fame: 42%
- ii. Colorado Sports & Event Complex: 23%
- iii. U.C.C.S. Sports Medicine and Performance Center: 14%
- iv. U.S. Air Force Academy Gateway Visitor’s Center: 5%

After the Commencement of Substantial Work for the U.S. Olympic Museum and Hall of Fame has occurred, the Financing Entity shall pledge or allocate the remaining 16 percent of Dedicated Revenue to or among any Project Element, including Eligible Improvements to the Southwest Colorado Springs Downtown Infrastructure; provided, however, that the determination of the foregoing allocation shall, upon consultation with the Financing Entity, be made in the reasonable discretion of the Applicant consistent with the Resolution. However, not more than 6 percent of this 16 percent portion of Dedicated Revenue may be pledged or allocated to the U.S.A.F.A. Gateway Visitors Center. The MEAPs may be modified by and at the sole discretion of the Commission.

Z. **“OEDIT”** means the Colorado Office of Economic Development and International Trade.

AA. **“Percentage of State Sales Tax Increment Revenue”** means 13.08% of the state sales tax revenue collected within the Regional Tourism Zone in excess of the Base Year

Revenue. The Percentage of State Sales Tax Increment Revenue is subject to an aggregate cap of \$120,500,000.00.

BB. **“Proceed Account”** means a separate, segregated Project-Element specific account that is established and controlled by the Financing Entity for the purpose of receiving and disbursing proceeds from Bonds. The funds in a Proceed Account cannot be used to pay for or reimburse Eligible Expenses for any other Project Element besides the Project Element it is dedicated to.

CC. **“Project”** or **“Regional Tourism Project”** means only the approved project generally referred to as the “City for Champions” Project and the approved Project Elements as specifically described in Exhibit B to the Resolution and as approved by the Commission.

DD. **“Project Element”** or **“Project Elements”** means the U.S. Olympic Museum and Hall of Fame (“Olympic Museum”), the Colorado Sports & Event Center (“Event Center”), the University of Colorado Colorado Springs (“U.C.C.S.”) Sports Medicine and Performance Center (“U.C.C.S. Center”), and/or the United States Air Force Academy (“U.S.A.F.A.”) Gateway Visitors Center (“Visitor Center”), as more fully described herein and in Exhibit B to the Resolution.

EE. **“Project Element Sponsor”** means: the U.S. Olympic Museum, a Colorado Non-Profit Corporation with respect to the U.S. Olympic Museum and Hall of Fame Project Element; the University of Colorado Colorado Springs with respect to the U.C.C.S. Sports Medicine and Performance Center Project Element; the United States Air Force Academy with respect to the U.S.A.F.A. Gateway Visitors Center; and the entity to be organized or designated by the Applicant to oversee the development and operating of the Colorado Sports & Event Center.

FF. **“Regional Tourism Advisory Board”** means the board or committee established by the Applicant, which will make funding allocation recommendations between approved Project Elements and provide other advice regarding the Project.

GG. **“Regional Tourism Zone”** means the geographic area more particularly described and depicted in Exhibit A to the Resolution.

HH. **“Special Fund”** means a separate segregated fund established pursuant to C.R.S. § 24-46-307(1)(b) that is established and controlled by the Financing Entity, subject to the provisions of the Act, the Resolution, and this Agreement.

II. **“Sub-Account”** means a separate, segregated accounting mechanism within the Special Fund to track Dedicated Revenue by each Project Element according to the conditions in this Agreement.

**Section 2. The Project.** On December 16, 2013, the Commission approved the Applicant’s application for a Regional Tourism Project. The Commission adopted the Resolution implementing that approval and specifying that, among other things:

A. The Project will consist of the four Project Elements.

B. A Percentage of State Sales Tax Increment Revenue, which is referred to herein as Dedicated Revenue, will be dedicated to the Project.

C. The Dedicated Revenue will be paid to a Special Fund established by the Financing Entity for the purpose of financing the Project.

D. The Financing Entity will be responsible for administering the Special Fund to pay for Eligible Costs associated with Project and reporting to the Commission pursuant to the Resolution.

E. The Applicant or the Financing Entity, as applicable, must satisfy all of the conditions of approval adopted by the Commission for the Project through the Resolution.

**Section 3. Duties of the Financing Entity.** The Financing Entity shall serve as the “Financing Entity” for the Project as defined in the Act and designated by the Commission, and, in addition to the other powers and duties required to finance the Project, shall be responsible for receiving, depositing, and distributing the Dedicated Revenue in accordance with the Resolution and this Agreement. Financing Entity shall create procedures for carrying out its duties under this Agreement. The Financing Entity must satisfy all of the terms and conditions set forth in the Resolution to be satisfied by it, unless such terms and conditions are expressly modified or clarified by the Commission. Without limiting the foregoing, the Financing Entity agrees as follows:

A. Special Fund.

- i. Financing Entity shall establish the Special Fund required by the Act, and upon receipt thereof, shall deposit in the Special Fund all of the Dedicated Revenue received by Financing Entity from the Department as authorized by the Act. Financing Entity shall segregate any Dedicated Revenue from other moneys of Financing Entity, if any, and shall utilize such Dedicated Revenue solely to pay for or finance Eligible Costs incurred for the purpose of constructing the Eligible Improvements and implementing the Project. Financing Entity may not use Dedicated Revenue to pay for or finance the construction of Ineligible Improvements. The Special Fund may be used, without limitation except as provided herein, to pay the principal of, the interest on, and any premiums due in connection with the Bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, Financing Entity for financing or refinancing in whole or in part, the Project. The Dedicated Revenue deposited in the Special Fund, when and as received by Financing Entity, shall be subject to the lien of such pledge by Financing Entity, without physical delivery, filing, or other act. Financing Entity shall transfer the amounts in the Special Fund either directly to the Project Element Sponsor(s), directly to the lender, directly to the Bond Trustee identified in the Bond Documents at the times specified in the Bond Documents, directly to the Developer(s) if required by the terms of any contract between a Project Element Sponsor and Developer, or to a separate administrative account it maintains to pay for Eligible Costs incurred by Financing Entity for implementing the Project after the Effective Date of the Resolution, such as reasonable costs for accounting, legal services, and overhead or administrative staffing, as and when incurred.

- ii. Once deposited into the Special Fund, the Dedicated Revenue, net of any money transferred to the Financing Entity's administrative account, must be further subdivided by the Financing Entity into five Sub-Accounts based on the percentages set by the MEAPs. Financing Entity will establish the following Sub-Accounts and allocate the percentage of the Dedicated Revenue indicated to each Sub-Account, respectively: (1) U.S. Olympic Museum and Hall of Fame: 42 percent; (2) Colorado Sports & Event Center Stadium and Arena Complex: 23 percent; (3) U.C.C.S. Sports Medicine and Performance Center: 14 percent; (4) U.S. Air Force Academy Visitors Center: 5 percent and (5) flexible Sub-Account: 16 percent. Dedicated Revenue in the flexible Sub-Account must only be pledged or allocated in accordance with the requirements of Section 1(Y) of this Agreement.
- iii. Financing Entity must only use Dedicated Revenue in each of the first four Sub-Accounts to pay for Eligible Costs for the specific Project Element associated with the Sub-Account and cannot loan or transfer Dedicated Revenue between the first four Sub-Accounts.
- iv. Up to 25 percent of one or both of the Sub-Accounts for the U.S. Olympic Museum and Hall of Fame and the Colorado Sports & Event Center may be utilized for Eligible Costs associated with Eligible Improvements to the Southwest Colorado Springs Downtown Infrastructure. For purposes of making payments out of the Sub-Accounts associated with the U.S. Olympic Museum and Hall of Fame and the Colorado Sports & Event Center Project Elements, the Eligible Costs associated with the Eligible Improvements to the Southwest Colorado Springs Downtown Infrastructure shall be considered Eligible Costs associated with the U.S. Olympic Museum and Hall of Fame and Colorado Sports & Event Center Project Elements. Any such allocations from the Sub-Accounts associated with the U.S. Olympic Museum and Hall of Fame Project Element and Colorado Sports & Event Center Project Element for the purposes of Eligible Costs associated with the Eligible Improvements to the Southwest Colorado Springs Downtown Infrastructure must be determined and approved in advance by the Applicant after consultation with the Financing Entity.

B. Agreements with Project Element Sponsors. Before Financing Entity may use any Dedicated Revenue to pay for the Eligible Costs of any Project Element or for Eligible Improvements to the Southwest Colorado Springs Downtown Infrastructure, and before it may issue or incur any Bond to finance a Project Element, Financing Entity must sign written agreements consistent with the Resolution and this Agreement delineating the relationship and decision-making authority for the Project between itself and the Project Element Sponsor for each of the Project Elements. Each such agreement must describe and govern the design, construction, ownership, and maintenance of Eligible Improvements for the Project Element to which the agreement relates. Each such agreement must also require the Project Element Sponsor to collect and remit to the Financing Entity all information regarding the Project Element required to comply with the reporting requirements in Section 6 of the Resolution and Section 5 of this Agreement. The agreement with the Project Element Sponsor for the Colorado Sports & Events Complex must be approved in writing by Applicant, after consultation with the Financing Entity; provided however, that such approval shall remain in the reasonable discretion of the Applicant.

C. Conditions Precedent. Financing Entity agrees to comply with all conditions and restrictions outlined in Section 5 of the Resolution.

D. Certification of Eligible Costs.

- i. Prior to and as a condition precedent to paying or reimbursing any Project Element Sponsor, Developer, or lender for any Eligible Costs with Dedicated Revenue or Bond proceeds, Financing Entity must obtain a certification from an independent engineer engaged by Financing Entity for hard and soft construction-related costs stating that such construction-related costs are reasonable and comparable for similar projects. Before initiating construction of each Project Element, and on an annual basis thereafter, the independent engineer must certify that the proposed design plans and on-going construction for each Project Element are in accordance with Section 5(B) and Exhibit B to the Resolution. Nothing in this subsection shall be construed to preclude the design engineer for any portion of the Project from serving as the independent engineer referred to in this Subsection.
- ii. Prior to and as a condition precedent to paying or reimbursing any Project Element Sponsor, Developer or lender for any Eligible Costs with Dedicated Revenue or Bond proceeds, Financing Entity must obtain a certification from an independent certified public accountant that all costs are Eligible Costs based on copies of the invoices, bills, and requests for payment provided to the Financing Entity and in accordance with the Resolution and the Act. As part of this certification, the independent certified public accountant (“CPA”) shall confirm that funds from the Sub-Accounts and Proceed Accounts tied to specific Project Elements are only used to pay for or reimburse expenses for their specific Project Elements. Similarly, as part of this certification, if funds being used for reimbursement of Eligible Costs are from the proceeds of a Bond, the independent CPA shall confirm that the division of Bond proceeds, net of eligible administrative costs, among the Project Elements’ Eligible Costs complies with the requirements of Section 6(D) of this Agreement. Subject to the prior written approval of the Applicant in the event that such Eligible Improvements will be dedicated or conveyed to, or maintained by, the Applicant, the Financing Entity shall have the authority to design, construct, own, and operate and maintain the Eligible Improvements, or cause them to be designed, constructed, owned and maintained by others, in accordance with all applicable laws, ordinances, standards, policies and specifications, including those of the Applicant, until conveyance or dedication of the Eligible Improvements that are to be maintained by the Applicant, or any other special district or utility company, or private entity, pursuant to any applicable written agreements with the Applicant or any other entity.
- iii. Prior to and as a condition precedent to paying or reimbursing any Project Element Sponsor, Developer or lender for any Eligible Costs with Dedicated Revenue or Bond proceeds, Financing Entity must ensure that all service providers or contractors employed by the Developer were selected in accordance with all applicable federal, state, and/or local procurement laws. Financing Entity



may rely on a certificate from the applicable Project Element Sponsor or Developer in satisfaction of the forgoing condition.

- iv. Prior to and as a condition precedent to paying or reimbursing any Project Element Sponsor, Developer or lender with Dedicated Revenue or from Bond proceeds for interest or other financing cost qualifying as Eligible Costs, Financing Entity shall obtain and forward to OEDIT a certification from an External Financial Advisor that the interest rate or financing costs are reasonable in light of market conditions, the term and structure of the financial instrument, and any other factors deemed applicable by that advisor.

E. Reports, Meetings, and Recordkeeping. Financing Entity agrees to comply with the Reporting and Meetings requirements in Section 5 of this Agreement and the recordkeeping requirements in Section 8 of this Agreement.

#### **Section 4. MEAP Adjustments.**

A. If the Commission revokes or modifies its approval of any Project Element resulting in a reduction of the total Dedicated Revenue being provided to the Financing Entity, then the Financing Entity must allocate subsequent deposits of Dedicated Revenue into only those Sub-Accounts associated with the non-revoked/non-modified Project Elements.

B. The MEAPs of the non-revoked/non-modified Project Elements shall be recalculated and adjusted upwards to keep the dollar amount of Dedicated Revenue being allocated to those Project Elements' Sub-Accounts the same as it would have been before the revocation or modification. Except as provided in Section 5 (L) of the Resolution which addresses MEAP recalculations in the event that one or more Project Element(s) are not completed or placed in service by the Final Completion Date, the MEAP recalculations shall be done as follows: separately divide each non-revoked/non-modified Project Element's original MEAP and the remaining percentages allocated to the Sub-Account by the sum of all non-revoked/non-modified Project Elements' original MEAPs plus remaining percentages allocated to the flexible Sub-Account to determine the new MEAP and new flexible Sub-Account percent. The sum of the new MEAPs plus the new percent allocated to the flexible Sub-Account should be equal to 100%.

C. If a Project Element is revoked due to the failure to Commence Substantial Work, then the Financing Entity must reduce the percent of Dedicated Revenue allocated to the flexible Sub-Account as specified in Section 5(A)(1-4) of the Resolution.

D. In the event a Project Element with a MEAP is not completed or placed in service by the Final Completion Date, Financing Entity shall comply with Section 5(L) of the Resolution.

**Section 5. Reports and Meetings.** Financing Entity acknowledges and agrees to be bound by the reporting and meeting requirements in Section 6 of the Resolution, including the following:

A. Reporting. Financing Entity shall attest to the accuracy of the information in the any and all reports that it is required to provide hereunder. Financing Entity shall provide a copy of all required reports to the City at the same time it submits such reports to the Commission.

- i. Quarterly Reports. Financing Entity shall submit written quarterly reports to the Commission, detailing the progress on the Project as described in the Resolution. Quarterly reports shall include documentation that required quarterly and semi-annual meetings have been completed. The written quarterly reports shall be submitted to the Commission 30 calendar days after the end of each calendar quarter with the first report to be due January 31, 2015, with the final due date being in September in the year following the completion of the Project and the Financing Term.
- ii. Annual Reports and Independent Audit Reporting Obligations. Financing Entity will comply with all reporting and audit requirements of the Act. The annual reports and independent audits required by the Act shall be submitted to the Commission on or before September 30th of each year, commencing on September 30, 2015, in accordance with C.R.S. § 24-46-308. In addition to the information required in the annual reports and independent audit as stated in the Act, the Financing Entity shall include the following additional information in its annual reports:
  - (a) a comparison of the actual state sales tax increment revenue collected by the Department and the projected state sales tax increment revenue projected in the Application;
  - (b) an economic analysis that assesses the actual overall effectiveness of the Regional Tourism Project to date including:
    - (1) the number of net new jobs directly created by the project in each category as defined by CDLE and the wages and health benefits for jobs in each category;
    - (2) the market impact;
    - (3) regional and in-state competition;
    - (4) attraction of out-of-state tourists;
    - (5) the fiscal impact to local governments within and adjacent to the Regional Tourism Zone; and
    - (6) the return to the state on its investment;
  - (c) information on all expenditures of local, state and federal public funds for developing the Regional Tourism Project during the prior fiscal year;
  - (d) in the event that the Applicant or the Financing Entity or other local entities use property tax revenue to finance the Project, an analysis of the impact to local school districts and the percentage of the total program pursuant to C.R.S. § 22-54-106 that the state is required to fund; and
  - (e) a table showing revenue and expenditure by detailed expense item for the administrative account, each Sub-Account, each Proceed Account and each Project Element, and a summary to date of all revenues and expenditures by the administrative account, each Sub-Account, each Proceed Account and each Project Element to track compliance with the

MEAPs. This table shall include expenditures from Bond Proceed Accounts which shall be separately identified, tracked and accounted for. For the Sub-Accounts associated with the U.S. Olympic Museum and Hall of Fame and Colorado Sports & Event Center, the amount of funds spent on Eligible Improvements to the Southwest Colorado Springs Downtown Infrastructure must be separately tracked and reported on.

- iii. Confidentiality of Information Provided in Reports. If any information provided in a report required by this Section 5 or by other state law contains trade secrets, proprietary information, or is otherwise entitled to protection under Article 72 of Title 24, C.R.S., it shall be so designated by the Financing Entity and the Commission shall make reasonable efforts to keep any designated information confidential to the extent permitted by Article 72 of Title 24, C.R.S.

B. Meetings with the EDC Director and Commission. The Financing Entity shall schedule and participate in quarterly meetings with the Director or Director's designee to discuss progress on the Project. The quarterly meetings shall be completed in the month after the written quarterly report due date unless an alternative date has been agreed to by the Director in writing. Such quarterly meetings shall begin in 2015 and shall continue until all Project Elements have been completed. The Financing Entity shall request and participate in a semi-annual meeting with the Commission twice a year to discuss progress on the Project with such semi-annual meetings to begin in 2015 and to continue until all Project Elements have been completed. The Applicant may participate in the meetings described in this paragraph, but shall attend if requested by the Financing Entity.

## **Section 6. Bonds.**

A. Authority to Issue Bonds. In full or partial reliance on the Dedicated Revenue paid into the Special Fund, the Financing Entity may issue Bonds from time to time, in its discretion, to finance any Eligible Improvement with respect to the Project and may also issue refunding or other Bonds of the Financing Entity from time to time in its discretion for the payment, retirement, renewal or extension of any Bonds previously issued by the Financing Entity pursuant to C.R.S. § 24-46-304(2)(h) and the Public Securities Refunding Act, C.R.S. §§ 11-56-101, *et seq.* The Financing Entity must obtain Applicant's prior written approval before issuing Bonds the proceeds of which are applied, in whole or in part to finance any Project Element over which the Applicant maintains control or that will be dedicated to the Applicant at the completion of such Project Element. The Financing Entity must obtain Applicant's prior approval, before consolidating or refinancing any such previously issued Bonds; such approval to include amount, maximum rate of interest, and maturity. Further, the Financing Entity shall provide written notification of any consolidation and/or refinancing details by certified mail to the Commission and the Department at least 30 calendar days prior to such consolidation and/or refinancing being effective in order for the Financing Term to be extended pursuant to C.R.S. § 24-46-304(2)(h) and Section 1(V) of the Resolution.

B. Interest. The Bonds shall be issued in accordance with the Resolution, the Bond Documents and applicable law. Upon issuance of the Bonds, Financing Entity shall deliver copies of all final Bond Documents to the Applicant and the Commission, together with an

opinion of the Financing Entity's bond counsel that the final Bond Documents are in conformity with the Resolution.

To the extent that any Bonds are placed privately to finance part or all of any Project Element, including, without limitation, the placement of any Bonds issued or incurred to evidence Advances, then before the issuance or incurrence of such privately placed Bonds the Financing Entity shall obtain the certification of an External Financial Advisor to the effect as follows:

"We are [I am] an External Financial Advisor within the meaning of the Resolution and certify that: (1) the net effective interest rate (calculated as defined in C.R.S. § 32-1-103(12) to be borne by [insert the designation of the debt] does not exceed a reasonable tax-exempt interest rate, using criteria deemed appropriate by us [me] based upon our [my] analysis of securities issued in connection with reasonably comparable projects and factual circumstances, including, without limitation, interest rates; and (2) the structure of [insert designation of the debt] is reasonable considering the financial circumstances of the Financing Entity."

Privately placed Bonds may only be issued, and interest may begin accruing on the Bonds, after the Commission has received the bond counsel opinion and certification of the External Financial Advisor required by this Subsection (B).

C. Opinion. As part of the issuance of any Bonds, the Financing Entity shall request from the Commission a legal opinion regarding the validity of the Resolution and the Act, as of the closing date, the delivery of which opinion shall be subject to the limitations set forth in the Resolution and which opinion may state in substance that, as of the closing date, the Resolution and the Act were duly enacted, authorized, and executed under Colorado law.

D. Dedicated Revenue in Sub-Accounts Pledged to Bonds. As part of the issuance or incurrence of any Bonds, Financing Entity must determine which of the five Sub-Accounts are pledging Dedicated Revenue and the respective amount pledged from each Sub-Account to the Bonds. Financing Entity must obtain Applicant's prior approval before pledging Dedicated Revenue in any Sub-Accounts to any Bonds related to any Project Element(s) over which the Applicant maintains control or that will be dedicated to the Applicant at the completion of such Project Element. The proceeds of a specific Bond issuance or incurrence must be utilized to pay for only the Eligible Costs of the Project Element with the Sub-Account that pledged Dedicated Revenue to the Bond. As such, Financing Entity shall divide all Bond proceeds into separate Project Element-specific Proceed-Accounts (these Proceed-Accounts must be accounted for separately from the Sub-Accounts that receive Dedicated Revenue). If Dedicated Revenue for multiple Project Elements is used for repayment and collateral, then Bond proceeds shall be classified into separate Proceed-Accounts in proportion to the Dedicated Revenue pledged from each Project Element's Sub-Account. If Dedicated Revenue is pledged from the flexible Sub-Account, then a portion of the Bond proceeds may be used to pay for Eligible Improvements which are part of the U.S.A.F.A. Gateway Visitors Center (subject to the limitation that no more than 6 percent of the total of 16 percent of the Dedicated Revenue in the flexible Sub-Account may be used on the U.S.A.F.A. Gateway Visitors Center Project Element). Prior to any Bond issuance or incurrence, Financing Entity must notify the Director or Director's designee about which Sub-Account(s) is (are) pledging Dedicated Revenue to the Bond issuance or incurrence,

and the amount of the pledge(s). Before any Bond issuance or incurrence may occur, the Commission must approve in writing the plan for the division of the Bond proceeds between or among those Project Elements that have pledged Dedicated Revenue to the Bond. Dedicated Revenue may not be pledged to repay any financial obligation other than Bonds.

#### **Section 7. Duties of the Applicant.**

A. Regional Tourism Advisory Board. In accordance with the Resolution, the Applicant has established a Regional Tourism Advisory Board. The Applicant and the Financing Entity acknowledge that the Regional Tourism Advisory Board's role is purely advisory, that its only task is to provide non-binding advisory opinions to the Applicant, and that it has no authority to make decisions on behalf of the Applicant, Financing Entity, the Commission, the Department or the State of Colorado, or any other entity.

B. Reports and Meetings. The Applicant acknowledges and agrees to be bound by the reporting and meeting requirements in Section 6 of the Resolution, including the following:

- (i) The Applicant shall supplement, on a monthly basis, the list of businesses in the Regional Tourism Zone to the Department using the form attached to the Resolution as Exhibit C. Such information to include, but not be limited to: (i) The Colorado Business Account Number and site number; (ii) company name; (iii) trade name or d/b/a; (iv) location address; (v) start date; (vi) description of whether existing, new, or closed account; (vii) description of whether new location in the zone or moved out of the regional tourism zone.
- (ii) The Applicant will cooperate with the Financing Entity in the preparation and submission of reports to the Commission and attendance at meetings as may be reasonably requested by the Financing Entity, including, without limitation, assistance with gathering and assembling the data required by Section 6.B(ii) of the Resolution.

The Applicant shall attest to the accuracy of the information it provides in the reports it is required to provide pursuant to the Resolution.

C. Compliance with Resolution. Without limiting the foregoing, the Applicant must satisfy all of the terms and conditions set forth in the Resolution to be satisfied by it, unless such terms and conditions are expressly modified or clarified by the Commission.

#### **Section 8. Records.**

A. Inspection of Records. All books, records and reports (except those required by applicable law to be kept confidential) in the possession of Financing Entity relating to the Project shall at all times be open to inspection by such employees, accountants or other agents as the Applicant, Commission or Director may from time to time designate.

B. Books and Accounts. Financing Entity shall keep proper and current itemized records, books and accounts in which complete and accurate entries shall be made of the receipt and use of all amounts of revenue received, from any and all sources, including, without limitation, the Dedicated Revenue and Bond proceeds and such other calculations required by this Agreement, the Resolution and any applicable law or regulation.

**Section 9. Notices.** Written notifications under this Agreement shall be made by certified mail at the following addresses:

**APPLICANT:**

City of Colorado Springs  
Attn: Mayor  
30 S. Nevada Ave., Suite 601  
Colorado Springs, CO 80901

With a copy to:

City Attorney  
30 S. Nevada Ave., Suite 501  
Colorado Springs, CO 80901

**FINANCING ENTITY:**

Colorado Springs Urban Renewal Authority  
c/o Executive Director  
30 S. Nevada Ave., Suite 604  
Colorado Springs, CO 80901

To change an address in this Agreement, a written *notice of same* must be submitted by certified mail to the other Party.

**Section 10. Miscellaneous.**

A. No Impairment. During the Financing Term, Financing Entity not shall enter into any agreement or transaction which impairs the rights of the Commission under the Resolution.

B. Defense of Litigation. Each Party shall cooperate with the other Party and/or the Commission in taking reasonable actions to defend against any litigation brought by any third party against the Financing Entity, the Applicant and/or Commission concerning the Project, the Eligible Improvements, this Agreement or the Resolution.

C. Remedy. Financing Entity shall reimburse City for any damages or losses incurred by the City resulting from the use of Dedicated Revenue for unauthorized purposes or from a material breach of the Resolution or this Agreement by Financing Entity.

D. Default. Time is of the essence. In the event of a default hereunder the non-defaulting Party must give the defaulting Party notice of such default and a reasonable opportunity to cure such default. In the event the defaulting Party does not cure such default within the cure period, the default will be deemed a breach and the non-defaulting Party shall be entitled to all available remedies at law and in equity. No commissioner, council member, official, employee, attorney, or agent of the Financing Entity or the Applicant shall be personally liable under this Agreement. Notwithstanding the foregoing, in the event of any waiver, forbearance, modification, clarification or cure period granted or issued by the Commission

relating to a term or condition of the Resolution which is the same as, or substantially similar to, a term or condition of this Agreement, such waiver, forbearance, modification, clarification or cure period shall be automatically deemed to extend to such term or condition of this Agreement and such waiver, forbearance, modification, clarification or cure period granted or issued by the Commission shall be automatically deemed to be a waiver, forbearance, modification, clarification or cure period granted or issued by the Party entitled to enforce such term or condition hereunder.

E. Heading, Captions. The headings or 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.

F. Additional Documents or Action. The Parties agree to execute any additional documents or take any additional action that is reasonably necessary to carry out this Agreement.

G. Integration and Amendment. This Agreement represents the entire agreement between the Parties with respect to the matters contained herein and there are no oral or collateral agreements or understandings between the Parties with respect to the subject matter. This Agreement may be amended only by an instrument in writing executed by the Parties; provided, however, that in the event of any amendment, supplement, clarification or modification of any term or condition of the Resolution by the Commission, to the extent such term or condition is the same as, or substantially similar to, a term or condition of this Agreement, such term or condition of this Agreement shall be deemed automatically amended, supplemented, clarified or modified to the same extent as such term or condition is amended, supplemented, clarified or modified in the Resolution. In the case of any conflict between the terms and conditions of this Agreement and the Resolution, the terms and conditions of the Resolution shall control.

G. 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.

H. Governing Law. This Agreement is subject to, and shall be interpreted and performed under, the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs. Court jurisdiction for any litigation arising under this Agreement shall be exclusively in the District Court for the Fourth Judicial District of Colorado, El Paso County, Colorado.

I. Binding Effect. This Agreement shall inure to the benefit of and be binding on the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this Section shall be construed to permit the assignment of this Agreement.

J. Assignment. This Agreement may not be assigned without the express prior written consent of the Parties.

K. Third Party Beneficiaries. It is specifically agreed between the Parties that this Agreement is not intended by any of its terms, provisions, or conditions to create in the public or

any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Agreement. Each Party specifically does not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., as now written or amended in the future.

L. 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.

M. Severability. If any provision of this Agreement as applied to any Party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity or enforceability of the Agreement as a whole.

N. Good Faith of Parties. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

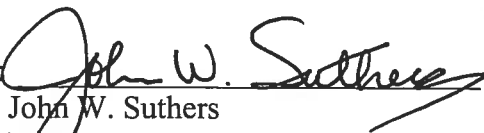
O. Parties Not Partners. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint venturers, and no Party shall be responsible for any debt or liability of any other Party.

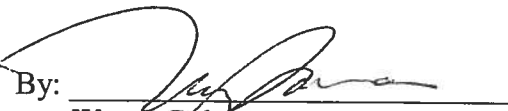
P. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first written above.


CITY OF COLORADO SPRINGS

COLORADO SPRINGS URBAN  
RENEWAL AUTHORITY

By:   
John W. Suthers  
Mayor

By:   
Wynne Palermo  
Chair

**APPROVED AS TO FORM .**  
**CITY OF COLORADO SPRINGS**  
**CITY ATTORNEY'S OFFICE**

  
Name: Thomas J. Floriak