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# SHERMAN & HOWARD

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**Kurt A. Kaufmann**  
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October 14, 2015

Ms. Wynne Palermo, Chair  
Colorado Springs Urban Renewal Authority  
30 South Nevada Avenue, Suite 604  
Colorado Springs, Colorado 80903

Mr. Michael S. Devine, Chair  
United States Olympic Museum Finance Committee  
Algonquin Museum Services  
2 Greenwich Office Park  
Greenwich, Connecticut 06831

Colorado Springs Urban Renewal Authority  
Tax Increment Bonds  
(United States Olympic Museum Project)  
Series 2015

Wynne and Mike:

We have agreed to serve as bond counsel in connection with issuance of the above-captioned bonds (the “Bonds”) by the Colorado Springs Urban Renewal Authority (the “Authority”). The Bonds will finance the acquisition and construction of the United States Olympic Museum and Hall of Fame (the “Project”), which will be owned and operated by the United States Olympic Museum, a 501(c)(3) tax exempt corporation (the “Corporation”). The purpose of this letter is to set forth our role and responsibilities as bond counsel with respect to the financing.

We believe it is good practice to set forth in writing (and in some detail) the elements of our mutual understanding in establishing our relationship. While some of the matters covered in this engagement letter will never be relevant or of concern between us, we hope you will understand that as attorneys it is our natural function to try to make communication clear and complete, and to anticipate and resolve questions before they arise. We also believe that the performance of our

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services may require your effort and cooperation. Consequently, the better we each understand our respective roles, responsibilities and contributions, the more efficient, effective and economical our work can be.

### **Personnel**

Kurt Kaufmann will be principally responsible for the work performed by Sherman & Howard L.L.C. with respect to the financing. Laci Knowles will also have a significant role with respect to the financing and Jim Lane will assist in matters relating to the federal income tax status of interest on the Bonds. Where appropriate, certain other tasks may be performed by other attorneys or legal assistants. At all times, however, Kurt Kaufmann will coordinate, review and approve all work with respect to the financing.

### **Scope of Employment**

Bond counsel is engaged as a recognized expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of bonds. As bond counsel, we will examine applicable law, consult with the parties to the transaction prior to the issuance of the Bonds and prepare a trust indenture or bond resolution pursuant to which the Bonds will be issued by the Authority and secured. Depending on the security for the Bonds, we may also draft other operative documents such as a loan agreement between the Urban Renewal Authority and the Corporation and possibly a mortgage or deed of trust. We will also draft other proceedings relating to the authorization of the sale and issuance of the Bonds, including closing certificates. Subject to the completion of the proceedings to our satisfaction, we will render our opinion relating to the validity of the Bonds, the enforceability of the security for the Bonds and the exclusion of the interest paid on the Bonds (subject to certain limitations which will be expressed in the opinion) from gross income for federal income tax purposes and for Colorado income tax purposes.

In rendering our approving opinion on the Bonds, we will rely upon representations of the Authority and the Corporation set forth in the financing documents, the certified proceedings, and other certifications of officials of the Corporation and other persons (including certifications as to the use of Bond proceeds for the Project and various tax matters) without undertaking to verify the same by independent investigation.

We do not review the financial condition of the Corporation, the adequacy of the State of Colorado sales tax increment revenues or other security to be pledged for the repayment of the Bonds, or the feasibility of the Project, and we will express no opinion relating thereto.

Our review of the Colorado Regional Tourism Act (the "Act") and, in particular, the Resolution of the Colorado Economic Development Commission (the "State Resolution") has revealed a large number of "conditions precedent" to issuing the Bonds. The majority of these

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conditions take the form of agreements or certificates. As just one example, Section 5E of the State Resolution requires the Mayor (or his designee acting as the Applicant) to “sign a written agreement delineating the relationship and decision-making authority for the Project between itself and the Financing Entity [the Urban Renewal Authority].” Drafting this agreement and the many other agreements called for in the State Resolution “before any Bonds may be issued” are outside the scope of bond counsel services covered by this engagement letter.

### **Disclosure Responsibilities**

We understand from George K. Baum & Company, the placement agent for the Bonds (the “Placement Agent”) that the Bonds will be privately placed with one or more institutional investors. Accordingly, it is not expected that an official statement or other disclosure document will be prepared in connection with the sale of the Bonds.

### **Representation of the Authority**

In performing our services as bond counsel, the Authority will be our client and an attorney-client relationship will exist between us. We will represent the interests of the Authority rather than its individual Board members, or the Authority’s employees. We assume that the Corporation and other parties to the transaction will retain such counsel as it and they deem necessary and appropriate to represent it and their interests in this transaction. Counsel to the Corporation will be required to render opinions as to, among other matters, the validity and enforceability of any documents to which the Corporation is a party. Depending upon the security for the Bonds, counsel to the Corporation may also be required to render an opinion as to the status of the Corporation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Our limited representation of the Authority does not alter our responsibility to render an objective opinion as bond counsel.

### **Conflicts of Interest**

Sherman & Howard is a large firm with a broad transactional practice, and before accepting any new business, the Colorado Rules of Professional Conduct (the “Rules”) require us to evaluate whether there exist any ethical constraints to representing the Authority in connection with the Bonds. We want to advise you of situations in which we may, in the future, represent a party adverse to the Authority. One such example is our potential future representation of the Placement Agent.

During our representation of the Authority in connection with the Bonds, the Placement Agent may ask us to represent them on new matters unrelated to our representation of the Authority in connection with the Bonds. The Rules permit a law firm to represent clients in such concurrent conflict situations if the firm reasonably believes it can provide competent and diligent

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representation to all clients, the representation is not prohibited by law, and all clients give their consent. We believe that our representation of the Authority in connection with the Bonds and of the Placement Agent in future unrelated matters would satisfy these conditions.

With respect to our future representation of the Placement Agent in a matter unrelated to the Bonds, we acknowledge that the Authority might be concerned about confidentiality of information. The Rules prohibit us from using any information obtained in our capacity as bond counsel to the disadvantage of the Authority. If the Authority has questions or concerns about our analysis of this issue, about possible future representation of the Placement Agent, or if the Authority would like us to consult further with its general counsel as to the nature and scope of this waiver and the potential significance for the Authority, please let us know. Subject to such consultation, we will treat the Authority's execution of this letter as consent to our future representation of the Placement Agent in matters unrelated to the Bonds.

#### **File Retention**

At or within a reasonable period after closing, we will review the file to determine what materials should be retained as a record of our representation and those which are no longer needed. We will return any original documents obtained from the Authority and we will retain for several years a copy of the transcript of the bond proceedings and such other materials as correspondence, final substantive work product, documents obtained from the Authority, and documents obtained from third parties. We will not retain such materials as duplicates of the above-described material, or drafts and notes that do not appear needed any longer.

Ordinarily the firm will keep the retained materials until seven years after the final maturity of the Bonds. At the end of that time, unless the Authority shall advise us in writing to the contrary, we will destroy the bulk of the file. If the file is especially voluminous, we may destroy all or a portion of it earlier, as our storage facilities are limited. If either the Authority or the Corporation prefers other arrangements for retention or disposition of our files in this matter, please advise us in writing.

#### **Fee Arrangement**

The Corporation will be responsible for paying our fees and expenses as bond counsel. Under no circumstances will the Authority be responsible for our compensation.

The structure of the Bonds and the financing are yet to be determined; we understand the United States Olympic Museum Finance Committee ("USOMFC") and the Placement Agent are discussing the security for the Bonds and other matters related to the issuance and sale of the Bonds. The structure of the Bond documents will be largely driven by the security arrangement and manner of sale. Given the uncertainty of the scope of work that will be asked of us, it is difficult to give an

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estimate of our fees at this time. Given that and the novelty of financings under the Act (no financings have yet closed), we would propose that our fee be set based on our standard hourly rates and number of hours we devote to the financing.

Our standard hourly rates are: \$475 for Mr. Kaufmann, \$325 for Ms. Knowles, and \$590 for Mr. Lane. In addition, we will expect to be reimbursed for all disbursements made on your behalf, including any travel costs, photocopying, air freight and other deliveries, filing fees, computer assisted research and other necessary office expenses.

The USOMFC has requested us to set a maximum on our fee if we are selected as bond counsel for this financing. There will be a significant amount work preparatory to the drafting of the documents pursuant to which the Bonds will be issued and secured. For that preparatory work, we will cap our fee at \$30,000. Once we begin to draft such documents and thereafter, we will cap our fee at \$85,000. We certainly hope that our fee will not reach these levels, but, as indicated above, there are a lot of uncertainties about the financing at this time that make it difficult to estimate our time costs.

If the financing is not consummated we will not include \$10,000 of our time costs as part of our fee. In other words, if the financing is not consummated, we will bill for our time costs, less \$10,000, plus out of pocket expenses. Taking into account the above caps on our fees, the maximum exposure of the Corporation in the event of a failed financing (i) prior to commencing drafting the bond documents, would be \$20,000 plus out of pocket expenses, and (ii) after commencing drafting of the bond documents, would be \$75,000 plus out of pocket expenses. Our fee is normally paid at the closing, and we customarily do not submit any statement until the closing.

### **Termination of Engagement**

Our fees contemplate compensation for usual and customary services as bond counsel, as described above. Upon delivery of our opinion letter, our responsibilities as bond counsel will terminate with respect to this transaction, and our representation of the Authority and the attorney-client relationship created by this engagement letter will be concluded. Specifically, but without implied limitation, we do not undertake to provide continuing advice to the Authority, the Corporation or to any other party to the transaction. Many post-issuance events may affect the Bonds, the tax-exempt status of interest on the Bonds, or liabilities of the parties to the transaction. Such subsequent events might include a change in the project originally financed with Bond proceeds, a failure by one of the parties to comply with its contractual obligations (*e.g.*, rebate requirements, continuing disclosure requirements), an IRS audit, or a change in federal or state law. Should the Authority or the Corporation seek the advice of bond counsel on a post-closing matter or seek other, additional legal services, we would be happy to discuss the nature and extent of our separate engagement at that time.

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**Approval**

If the foregoing terms of this engagement are acceptable to each of you, respectively, please so indicate by returning the enclosed duplicate original of this letter signed by the officer so authorized, retaining the other original for your files.

We are pleased to have the opportunity to serve as bond counsel on this financing and look forward to a mutually satisfactory and beneficial relationship.

SHERMAN & HOWARD L.L.C.

By 

Accepted and Approved:

COLORADO SPRINGS URBAN RENEWAL  
AUTHORITY

By   
Chair

Date November 11, 2015

UNITED STATES OLYMPIC MUSEUM FINANCE  
COMMITTEE

By \_\_\_\_\_  
Chair

Date \_\_\_\_\_

KAK/dlv  
cc: H. William Mahaffey, Esq.