

FIRST AMENDMENT TO COOPERATION AGREEMENT

THIS FIRST AMENDMENT TO COOPERATION AGREEMENT (“Amendment”) is made effective as of February 26, 2019 by and among the CITY OF COLORADO SPRINGS, a home rule city and Colorado municipal corporation (the “City”), COLORADO SPRINGS URBAN RENEWAL AUTHORITY (the “Authority”) and COPPER RIDGE METROPOLITAN DISTRICT (In the City of Colorado Springs), Colorado (the “Metro District”) (the City, the Authority and the Metro District hereinafter collectively referred to as the “Parties”), on the following terms and conditions.

RECITALS

WHEREAS, the City, the Authority and the Metro District are parties to that certain Cooperation Agreement dated as of October 22, 2013 (the “Agreement”) (capitalized terms used herein and not otherwise defined will have the meanings given to such terms in the Agreement);

WHEREAS, pursuant to Recital P of the Agreement, the Parties agreed to monitor and consult with each other with respect to additional funding sources that may become available to be used for the planning, designing or constructing of the Improvements or for the payment of debt service on the Metro District Improvements Bonds and to cooperate in pursuing such additional funding sources with the goals of reducing the amount of Metro District Improvements Bonds needed to be issued to complete the Improvements and maximizing the debt service coverage on the Metro District Improvements Bonds, thereby providing the most economical funding for the Improvements;

WHEREAS, the Developer has satisfied the requirement of Recital K and Section 2(i) of the Agreement to enter into a contract or written agreement with two Anchors to locate within the Copper Ridge Development prior to commencement of the Bond Funding Period, as acknowledged by the City and the Authority in 2015;

WHEREAS, the Metro District is finalizing the Plan of Finance as required by Recital K and Section 2(ii) of the Agreement, in anticipation of commencing the Bond Funding Period;

WHEREAS, in keeping with the obligations of the Parties to cooperate in pursuing additional funding sources as described above, and in recognition of the benefits to be derived by the City by the completion of the Improvements as acknowledged in the Agreement, the City has agreed to allocate an additional 0.75% general fund municipal sales tax to the existing allocation of 1.0% general fund municipal sales tax constituting the City Sales Tax Increment Revenues under the Agreement for the remainder of the tax increment period authorized by the Act and, thereafter, for an additional period as set forth herein to be determined and paid, subject to annual appropriation, in the same manner as otherwise provided in this Agreement; and

WHEREAS, the Parties acknowledge again their intention that the priority for application of the Property Tax Increment Revenues and City Sales Tax Increment Revenues is the repayment of all series of Metro District Improvements Bonds issued for the construction of all of the Improvements and funding costs of Improvements; and

WHEREAS, additional roadway improvements are and have been necessary in connection with the Copper Ridge Development and may be funded through application of Surplus Revenues, if any (as defined in the Agreement); and

WHEREAS, the Parties desire to amend the Agreement to authorize all such additional funding on the terms and conditions set forth herein;

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. City Sales Tax Increment Revenues. From and after the date of this Amendment, “City Sales Tax Increment Revenues” as defined in Recital L of the Agreement shall be revised to mean that municipal sales tax increment derived from sales tax revenues of the City equal to 87.5% of the 2% general fund municipal sales tax (i.e. 1.75 %) which are in excess of the base amount originally established in accordance with the provisions of Section 31-25-107(9) of the Act.

2. Amendment to Section 4 of the Agreement. Section 4 of the Agreement is hereby amended and restated in its entirety to read as follows:

“Section 4. Commitment of City Sales Tax Increment Revenues.

(a) The City agrees that the City Sales Tax Increment Revenues will be allocated to the Authority in accordance with the Plan and the Act for a period of 25 years commencing with the date of approval of the Plan, to wit: May 11, 2010, which City Sales Tax Increment Revenues shall be pledged by the Authority to the Metro District and pledged by the Metro District solely for uses as set forth above with respect to the Escrow Funding Period and the Bond Funding Period. The City Sales Tax Increment Revenues shall be used by the Metro District for the purposes set forth in the Plan, and as set forth in Sections 1 and 2 of this Cooperation Agreement. The City Sales Tax Increment Revenues shall be paid to the Authority or its designated depository as and when collected by the City in accordance with the Act for deposit as provided in Sections 1 and 2 hereof.

(b) Notwithstanding anything in this Cooperation Agreement to the contrary, for the period from and after the expiration of the 25-year period, from May 11, 2035, to and until February 12, 2044 (the “Extended Term”), unless sooner terminated as provided in Section 4(d) below, in order to further the goals of the Plan and the Project and maximize the debt service coverage on the Metro District Improvements Bonds, thereby providing the most economical funding for the Improvements, the City also agrees to contribute to the Project the revenues received from the City Sales Tax Increment Revenues, calculated and paid in the same manner as if determined under the Act, the Plan and this Agreement, subject to the conditions of this Section 4(b). The Parties acknowledge that this commitment to contribute funding during the Extended Term is not considered “increment” pursuant to the Act, and as such, the City’s commitment under this Section 4(b) is subject to annual appropriation by the City Council of City. It is hereby agreed and acknowledged that this Cooperation Agreement evidences an intent to contribute all the City Sales Tax Increment Revenues to the Authority for the purpose of accomplishing the Project, but that, as to the agreement to contribute City Sales Tax Increment Revenues during the Extended

Term, this Cooperation Agreement shall not constitute a debt or indebtedness of the City 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 4(b) shall be at all times subject to annual appropriation by the City Council of the City. As and when appropriated, the City Sales Tax Increment Revenues shall be remitted to the Authority as otherwise provided in this Cooperation Agreement, shall be pledged by the Authority to the Metro District solely for uses as set forth above with respect to the Escrow Funding Period and the Bond Funding Period and shall be otherwise subject to all the terms, conditions and limitations set forth in this Agreement, including, without limitation the provisions of Sections 1 and 2 above; provided, however, that any pledge of the City Sales Tax Increment Revenues derived during the Extended Term shall be limited to the extent appropriated and actually made available to the Authority.

(c) At such time as the aggregate of all funds deposited in the Improvements Construction Account (or Accounts) held by the Bond Trustee (or Trustees) in connection with all series of Metro District Improvements Bonds is determined to be sufficient by the District, the City and Authority to fund and fully construct all of the Improvements (including, with the consent of the City, Non-Construction Related Costs), such determination to be evidenced by a written certificate signed by the District, the City and Authority and delivered to the Bond Trustee, and to the extent the Surplus Revenues are not needed to pay the debt service on the Metro District Improvements Bonds and to fully fund all funds and accounts in accordance with the Bond Indenture, then (i) the District shall be authorized to apply Surplus Revenues on an annual basis first toward the costs of public improvements in the Project Area other than construction of the Improvements in a cumulative amount not to exceed \$13,500,000; and (ii) thereafter, Surplus Revenues, if any, shall be returned and paid to the City. Any Surplus Revenues applied in accordance with clauses (i) or (ii) of this Section 4(c) shall be released from the lien of the Bond Indenture.

(d) When all bonds, loans, advances, and indebtedness and other obligations, including interest thereon and any premiums due in connection therewith, have been paid in full or defeased, or from and after February 12, 2044, whichever is earlier, all municipal sales tax collections in the Project Area shall be paid to the City and this Cooperation Agreement shall terminate”.

3. Amendment to Section 6 of the Agreement. Clause (iv) of Section 6 of the Agreement is hereby amended by deleting the date “December 31, 2018” and substituting the date “December 31, 2019” therefor.

4. Amendment to Section 24 of the Agreement. The following sentence shall be added at the end of Section 24:

Notwithstanding the foregoing, the Parties hereto acknowledge and agree that in connection with the issuance of the Metro District Improvement Bonds, the Metro District may assign to the Bond Trustee its rights to receive the Property Tax Increment Revenues and City Sales Tax Increment Revenues under this Cooperation Agreement.

4. Miscellaneous Provisions.

(a) Entire Agreement; Binding Effect. The Agreement, as amended by this Amendment, contains the entire understanding of the parties hereto with respect to, and supersedes all prior agreements and understandings relating to, the subject matter hereof. All the terms and provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. All Recitals at the beginning of this Amendment are incorporated herein by this reference.

(b) Counterparts. This Amendment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This Amendment may be transmitted by facsimile or electronic mail, and facsimile or pdf signatures shall constitute original signatures for all applicable purposes.

(c) No Other Modification. Except as expressly modified by this Amendment, the terms, provisions, covenants and conditions of the Agreement shall remain unchanged and are hereby ratified and confirmed as of the date hereof as being in full force and effect. Notwithstanding the foregoing, whether or not specifically amended by this Amendment, all of the terms and provisions of the Agreement are hereby amended to the extent necessary to give effect to the purpose and intent of this Amendment.

(d) Time of the Essence. Time is of the essence in this Amendment.

(e) Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

(f) Further Assurances. The Parties shall each cooperate with each other to take all additional actions and execute and deliver all additional documents necessary or desirable to effectuate the provisions and spirit of this Amendment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY OF COLORADO SPRINGS

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

COLORADO SPRINGS URBAN RENEWAL
AUTHORITY

By: _____
Chair

ATTEST:

COPPER RIDGE METROPOLITAN
DISTRICT

By: _____

ATTEST:
