

URBAN RENEWAL AGREEMENT FOR DEVELOPMENT  
OF THE MUSEUM & PARK URBAN RENEWAL AREA

THIS URBAN RENEWAL AGREEMENT (the “Agreement”) FOR DEVELOPMENT OF THE MUSEUM & PARK URBAN RENEWAL AREA is made as of June 1, 2020, by and among the COLORADO SPRINGS URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “Authority”), INTERURBAN DEVELOPMENT COMPANY, LLC, a Colorado limited liability company (the “Developer”), and the SW DOWNTOWN BUSINESS IMPROVEMENT DISTRICT (“BID”), a quasi-municipal corporation and political subdivision of the State of Colorado (the Authority, Developer and BID are also referred to herein collectively as the “Parties” or individually as a “Party”).

**RECITALS**

A. The Authority is an Urban Renewal Authority formed and created by the City Council, City of Colorado Springs, County of El Paso, Colorado.

B. The Developer owns, or through its Affiliates (as defined below) controls, certain real property located in Colorado Springs, El Paso County, Colorado which is depicted (or consists of the parcels listed) on the attached Exhibit A (the “Property”). The Property is located within the boundaries of the Museum & Park Urban Renewal Plan adopted by the City Council of the City of Colorado Springs, Colorado (the “City”) on December 11, 2018 (the “Urban Renewal Plan”).

C. The BID is a business improvement district with boundaries contiguous to the Urban Renewal Plan boundaries, organized and authorized pursuant to Colorado Revised Statutes §§31-25-801 *et seq.*, (the “BID Act”) for the purposes set forth in its Operating Plan.

D. The Developer intends to develop the Property, or cause the Property to be developed, substantially in accordance with the Concept Plan (as it applies to the Property and any additions to the Property as the Parties may agree are to be included in this Agreement) depicted in the Concept Plan (the “Concept Plan”), which Concept Plan is incorporated in and made a part of this Agreement as Exhibit A1. The Concept Plan may be supplemented, updated, and clarified in accordance with Section 14.12 as to its more specific application to the Property.

E. The Developer has already undertaken various activities in furtherance of the Project Vision including but not limited to the following:

- Donated the land for the U.S. Olympic and Paralympic Museum and Hall of Fame (“Museum”);
- Served on the committee to build the Museum, and in that capacity have contributed to raising more than \$20 million for the Museum;
- Along with other funding partners, advanced funds to the City for an application to the State of Colorado for an award of incremental state sales tax revenues pursuant to the Regional Tourism Act;
- Advanced funds for master planning design work for the Museum and the property surrounding the Museum, a portion of which is addressed in this Agreement;

- Invested in and acquired all of the private property within the Urban Renewal Plan boundaries;
- Worked with the City and other government entities to identify sources and commitments for other funds to support infrastructure within the Urban Renewal Plan area, such as PPRTA, to provide an additional \$28 million in funds;
- Advancing developer funds for design of the Bridge;
- Petitioned for and supported the creation of the BID and two metropolitan districts pursuant to Title 32, Colorado Revised Statutes, in order to levy additional property taxes on property owned by the Developer to generate additional revenue to finance the infrastructure necessary to implement the Concept Plan; and
- Has obtained permitting for and is advancing abatement and removal of existing structures on the property for construction of the Phase 1 private development completion of which is anticipated within 180 days.

F. The Public Improvements and Reimbursable Project Costs (as defined below) are described on Exhibit B, attached to and made a part hereof. The Urban Renewal Plan allocates property tax increment revenue (“Property Tax TIF”), municipal sales tax increment revenue (“City Sales Tax TIF”) and municipal use tax increment revenue (“City Use Tax TIF”), as well as all other revenues available, to the Authority to carry out the redevelopment of the Area defined in the Urban Renewal Plan. This Agreement shall, among other things, allocate and pledge the City Sales Tax TIF, City Use Tax TIF and the Property Tax TIF produced from increases in municipal sales tax, certain municipal use tax and ad valorem property taxes levied on real and personal property within the Area to the Developer (and its Affiliates as defined herein) or the BID, as applicable, and approved assigns in accordance with this Agreement.

G. The Authority and the City have entered into that certain Cooperation Agreement dated as of December 11, 2018 (as the same may be amended from time to time, the “Cooperation Agreement”) providing for, among other things, the distribution and pledge of (i) the City Sales Tax TIF produced by taxable sales on and within the Area and (ii) the City Use Tax TIF paid solely on construction materials used within the Area to the Developer (and its Affiliates and approved assigns) in accordance with this Agreement.

H. The Parties to this Agreement intend to cooperate with each other in the development of the Property and pledge and payment of the Property Tax TIF, Sales Tax TIF and Use Tax TIF to or on behalf of the Developer as provided herein.

I. A City-initiated fiscal impact analysis of the Concept Plan concluded that the Project, if executed, would provide the following fiscal and economic benefits to the City:

- Economic Impacts:
  - Permanent Jobs: 5,292
  - Construction Jobs: 1,358
  - Total Jobs: 6,650
- Total Economic Impact: \$10 Billion
- Fiscal Impacts:
  - Net New City Tax Revenue: \$108.2 Million

- Net New City PPRTA Revenue: \$28 Million
- Total Net New City Revenue: \$136.2 Million

NOW THEREFORE, based upon the mutual covenants and considerations contained herein, the Parties agree as follows:

## **1. PURPOSE**

The purpose of this Agreement is to further the goals and objectives of the Colorado Urban Renewal Law, Colorado Revised Statutes §§ 31-25-101 et seq. (the “Act”) and the Urban Renewal Plan for the Property by eliminating blight and providing for the development and redevelopment of the Property. The Authority has determined that this Agreement and the development and redevelopment of the Property as described in the Concept Plan are consistent with and conform to the Urban Renewal Plan and the public purposes and provisions of applicable state and local laws, including the Act. Specifically, but without limitation, this Agreement is intended to promote and facilitate the following objectives:

- (a) Encourage and protect existing development on the Property;
- (b) Renew and improve the character and environment of the Area;
- (c) Enhance the current sales tax base and property tax base of the Area;
- (d) Provide the incentives necessary to induce private development and redevelopment of the Area;
- (e) Demolish and remove blighted structures from the Area;
- (f) Effectively use undeveloped land within the Area;
- (g) Encourage financially successful projects within the Property;
- (h) Stabilize and upgrade property values within the Area;
- (i) Accommodate and provide for the voluntary environmental cleanup of the Area;
- (j) Promote improved traffic, public transportation, public utilities, recreational and community facilities within the Area; and
- (k) Promote the participation of existing owners in the revitalization and development of the Property.

## **2. CERTAIN DEFINITIONS**

2.1. “Act” shall have the meaning set forth in Section 1.

2.2. “Affiliate” shall mean any entity in which the Developer or Christopher S. Jenkins serves as manager or general partner or otherwise is in control, directly or indirectly, of such entity.

- 2.3. “Agreement” shall have the meaning set forth in the Preamble.
- 2.4. “Area” shall have the meaning set forth in the Urban Renewal Plan.
- 2.5. “Authority” shall have the meaning set forth in the Preamble.
- 2.6. “Authority Administrative Fee” shall have the meaning set forth in Section 7.13.
- 2.7. “Authority’s Reimbursement Obligation” shall have the meaning set forth in Section 7.5.
- 2.8. “BID” shall have the meaning set forth in the Preamble.
- 2.9. “BID Act” shall have the meaning set forth in Recital C.
- 2.10. “BID Bonds” shall have the meaning set forth in Section 7.2.
- 2.11. “Bond Documents” means the Indentures and the documents incidental thereto.
- 2.12. “City” shall have the meaning set forth in Recital B.
- 2.13. “City Sales Tax TIF” shall have the meaning set forth in Recital F, as further described in Section 6.1.
- 2.14. “City Use Tax TIF” shall have the meaning set forth in Recital F, as further described in Section 6.1.
- 2.15. “Concept Plan” shall have the meaning set forth in Recital D.
- 2.16. “Cooperation Agreement” shall have the meaning set forth in Recital G.
- 2.17. “County” means El Paso County, Colorado, a political subdivision of the State of Colorado.
- 2.18. “County Agreement” means that certain Tax Increment Revenue Agreement by and between the County and the Authority dated as of November 15, 2018, as the same may be amended from time to time.
- 2.19. “County Sales Tax TIF” shall mean, for each Plan Year (as defined in the County Agreement), the revenues received from the County Sales Tax (as defined in the County Agreement) within the boundaries of the Area which are in excess of that portion of the County Sales Tax collected within the boundaries of the Area in the twelve-month period ending on the last day of the month prior to the effective date of approval of the Urban Renewal Plan.
- 2.20. “CSDDA” means the Colorado Springs Downtown Development Authority, a body corporate of the State of Colorado.
- 2.21. “D11” means Colorado Springs School District No. 11, a political subdivision of the State of Colorado.

- 2.22. “Default” shall have the meaning set forth in Sections 12.1, 12.2 and 12.3.
- 2.23. “Developer” shall have the meaning set forth in the Preamble.
- 2.24. “Developer’s Account” shall have the meaning set forth in Section 7.8.
- 2.25. “Development Plan” shall have the meaning set forth in Section 4.1.
- 2.26. “District Debt Service Mill Levy” shall have the meaning set forth in the Master Indenture.
- 2.27. “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 and the Urban Renewal Plan.
- 2.28. “Event of Default” shall have the meaning set forth in Sections 12.1, 12.2 and 12.3.
- 2.29. “Improvements” shall have the meaning set forth in Section 4.1.
- 2.30. “Indemnified Parties” and “Indemnified Party” shall have the meaning set forth in Section 13.1.
- 2.31. “Indentures” shall have the meaning set forth in Section 7.2.
- 2.32. “Master Indenture” shall have the meaning set forth in Section 7.2.
- 2.33. “Metro Districts” means, collectively, SW Downtown Metropolitan District No. 1 and SW Downtown Metropolitan District No. 2, each a quasi-municipal corporation and political subdivision of the State of Colorado.
- 2.34. “Metro District Pledge Agreement” means that certain Capital Pledge Agreement by and among the [Metro Districts] and the Trustee.
- 2.35. “Operating Plan” means, collectively, each Operating Plan and Budget filed annually by the BID with the City Clerk of the City pursuant to the BID Act. As of the date of this Agreement, the 2020 Operating Plan and Budget is the most recent Operating Plan which has been so filed by the BID.
- 2.36. “Parties” and “Party” shall have the meanings set forth in the Preamble.
- 2.37. “Phase” shall have the meaning set forth in Section 4.1.
- 2.38. “Pledged Revenues” shall mean the TIF Revenue remaining in the Special Fund each year after the Authority (i) makes payments, if any, to the Taxing Entities pursuant to the Taxing Entity Agreements, including, without limitation, payment of the District Operating Mill Levy Tax Increment Revenues to the BID, and (ii) collects the Authority Administrative Fee.
- 2.39. “PPLD” means the Pikes Peak Library District, a political subdivision of the State of Colorado.

2.40. “Private Improvements” means the improvements subject to ad valorem property taxes to be constructed on the Property by the Developer or an approved transferee of the Developer in accordance with the Concept Plan.

2.41. “Project” means the undertakings of the Developer and the BID pursuant to the Concept Plan and in furtherance of the Urban Renewal Plan.

2.42. “Property” shall have the meaning set forth in Recital B.

2.43. “Property Tax TIF” shall have the meaning set forth in Recital F.

2.44. “Public Improvements” shall mean the improvements or activities and undertakings listed in Exhibit B that the Developer will construct in accordance with this Agreement.

2.45. “Reimbursable Project Costs” shall mean the reasonable and necessary expenditures, including Soft Costs, documented in accordance with this Agreement for the Public Improvements constructed or otherwise provided by the Developer or BID and shown on Exhibit B attached hereto and made a part hereof or otherwise eligible to be reimbursed pursuant to the Act.

2.46. “Sales Tax TIF” shall mean, collectively, the City Sales Tax TIF, the City Use Tax TIF and the County Sales Tax TIF.

2.47. “SECWCD” means the Southeastern Colorado Water Conservancy District, a political subdivision of the State of Colorado.

2.48. “Series 2020A Supplemental Indenture” shall have the meaning set forth in Section 7.2.

2.49. “Service Plan” means that certain “Service Plan for SW Downtown Metropolitan District Nos. 1-2” approved by the City Council of the City on September 26, 2017 pursuant to Resolution No. 107-17, as the same may be amended from time to time.

2.50. “Soft Costs” means the reasonable and necessary soft costs incurred by the BID or Developer related to the Public Improvements, the Urban Renewal Plan, and the Project (excluding the Private Improvements) for the Area, including, without limitation, impact reports, financing projections, studies, surveys, agreements with the Taxing Entities, the Cooperation Agreement, this Agreement, architects, consultants, financial advisors, surveyors, engineers, lawyers, accountants, governmental fees and permits, utility fees and costs, and related interest and finance charges.

2.51. “Special Fund” shall have the meaning set forth in Section 7.8.

2.52. “SW Downtown Development Agreement” means that certain Cooperation Agreement for Redevelopment of Portions of Southwest Downtown, Colorado Springs, Colorado by and among the City, Colorado Springs Utilities, the BID, the Authority and the Developer dated as of February 11, 2020 regarding development of certain portions of southwest downtown Colorado Springs.

2.53. “Taxing Entities” means any county, special district, or other public body that levies an ad valorem property tax on property within the Area subject to a tax allocation provision. The Taxing Entities are the City, the County, the BID, D11, the Metro Districts, PPLD, CSDDA and SECWCD.

2.54. “Taxing Entity Agreements” means those certain property tax (and sales tax, as applicable) revenue agreements by and between the Authority and each of the Taxing Entities made pursuant to C.R.S. § 31-25-107(9.5), including, without limitation, the Cooperation Agreement and the County Agreement, as the same may be amended from time to time. This Agreement shall constitute the Taxing Entity Agreement between the Authority and the BID.

2.55. “TIF Revenue” shall mean the Property Tax TIF plus the Sales Tax TIF.

2.56. “Trustee” shall have the meaning set forth in Section 7.2.

2.57. “Urban Renewal Plan” shall have the meaning set forth in Recital B.

2.58. “Vermijo and Sierra Madre Improvements” shall have the meaning set forth in Section 6.4.

### **3. THE BID AND THE METRO DISTRICTS**

3.1. BID Purpose. Pursuant to the City’s Ordinance No. 17-94 and the Operating Plan, the BID’s primary purpose is to provide for the financing, acquisition, construction, completion, installation, replacement and/or operation and maintenance of the services and public improvements necessary to support the development of a commercial mixed-use development located near the north entrance of the Project. The Operating Plan authorized the BID to impose a debt service mill levy not to exceed 50 mills and an operations and maintenance mill levy not to exceed 10 mills in 2020 (for collection in 2021), and to establish public improvement fees and any other lawful revenue source, and may use the revenues derived therefrom to pay for the Project.

3.2. BID Reimbursement Agreement. The BID and the Developer entered into a Reimbursement Agreement for Operations dated December 14, 2017 (the “District Reimbursement Agreement”), wherein the Developer agreed to either initially construct certain public infrastructure improvements to convey to the BID, or to initially fund the construction of the improvements by the BID, which improvements include but are not limited to water, sanitary sewer, park and recreation facilities, roadways, street and safety protection improvements, drainage improvements, and any other public improvements authorized by the Operating Plan. The BID and the Developer determined that for reasons of economic efficiency and timeliness it is in the best interests of the BID to establish a means by which either (1) the Developer will construct or cause to have constructed by a general contractor the Public Improvements which the BID will acquire after they have been completed; or (2) the Developer will initially fund the construction and installation of the Public Improvements subject to reimbursement as provided in the District Reimbursement Agreement. As an alternative to the Developer’s construction of and the BID’s subsequent acquisition of the Public Improvements, at the Developer’s election, the BID may construct all or a portion of the Public Improvements and acquire related real property interests.

3.3. BID Operating Mill Levy Tax Increment Revenues.

(a) In order to facilitate the funding by the BID of the costs of operations and maintenance services, the Authority hereby agrees that it will segregate and promptly remit, on a monthly basis, to the BID, all District Operating Mill Levy Tax Increment Revenues. Notwithstanding the foregoing, the Authority shall have the obligation to remit such District Operating Mill Levy Tax Increment Revenues to the BID solely to the extent the Authority receives the same.

(b) The BID agrees to use all District Operating Mill Levy Tax Increment Revenues to fund the costs of operations and maintenance services.

(c) The Authority will apply any Property Tax TIF received in respect of the District Debt Service Mill Levy in the same manner as the other Pledged Revenues.

For purposes of this Section 3.3, the following capitalized terms shall have the following meanings:

(i) “Base Valuation” means, with respect to the Property, the total assessed valuation of all taxable property last certified by the assessor prior to the effective date of the approval of the Urban Renewal Plan, as the same may be subsequently adjusted in accordance with the Act.

(ii) “District Operating Mill Levy Tax Increment Revenues” means the portion of Property Tax Increment Revenues attributable to the District Operating Mill Levy.

(iii) “District Operating Mill Levy” means the operations and maintenance mill levy described in the Operating Plan.

(iv) “Incremental Valuation” means, with respect to the Property, the amount of assessed valuation, if any, which exceeds the Base Valuation.

(v) “Property Tax Increment Revenues” means the ad valorem property tax revenues collected on the Incremental Valuation of all taxable property located within the Property.

(d) Any limitation or procedure for the disbursement of Property Tax TIF funds elsewhere in this Agreement shall not apply to the District Operating Mill Levy Tax Increment Revenues, the disbursement of which shall be governed solely by this Section 3.3 and any subsequent writing executed by the BID and the Authority.

3.4. Metro Districts. The boundaries of the Metro Districts are substantially identical to the boundaries of the Area and the BID. Pursuant to the City’s Resolution No. 107-17 and the Service Plan, the Metro Districts’ primary purpose is to provide for the public improvements described on Exhibit D to the Service Plan for the use and benefit of all anticipated inhabitants and taxpayers of the Metro Districts and to finance such public improvements. In furtherance thereof, the Service Plan authorizes each of the Metro Districts to impose a debt service mill levy not to



exceed 50 mills and an operations and maintenance mill levy not to exceed 10 mills. In furtherance of the objectives of the Plan and the Project, pursuant to the Taxing Entity Agreement between the Metro Districts and the Authority, the Property Tax TIF generated by the Metro Districts' mill levies shall not be included in the Pledged Revenues but shall be applied by the Metro Districts in accordance with the Service Plan. Pursuant to the Indentures or the Metro District Pledge Agreement, the Metro Districts may be required to deliver all or a portion of such Property Tax TIF revenues to the BID or the Trustee in support of the BID Bonds, but the Authority shall have no liability to the Developer, the BID or the Trustee or any bondholders with regard to any such Property Tax TIF revenues delivered to the Metro Districts by the Authority.

#### **4. DESCRIPTION OF DEVELOPMENT AND PUBLIC IMPROVEMENTS**

4.1. Development of the Property may occur in phases (each a "Phase"). Development will consist of (i) the Private Improvements, which shall consist of the commercial and residential uses more particularly described in the Concept Plan and (ii) the Public Improvements on or benefitting the Property (collectively, the "Improvements"). Development shall take place as depicted on the Concept Plan, as updated and completed by agreement of the Parties, and as contemplated in any development plan approved as provided in this Agreement (each a "Development Plan"), the Operating Plan and the provisions of this Agreement, as applicable.

4.2. It is the goal of the Developer and the BID to construct on the Property the Improvements required to implement the Concept Plan as it applies to the Property. Specifically, with respect to the first Phase of the Project,

The private, vertical construction envisioned for Phase 1 includes the following:

- (a) A residential development, consisting of approximately 300 units, and generally referred to as "Parkside;"
- (b) An office building, consisting of approximately 180,000 square feet; and
- (c) A hotel, which may consist of approximately 240 rooms.

4.3. Subject to the terms and conditions of this Agreement, if the Developer elects to undertake all or a portion of the Improvements, the Developer agrees to finance and to construct, or, cause to be constructed, all Improvements necessary to develop the Property in accordance with the Concept Plan. All construction required of the Parties by this Agreement shall be undertaken and completed in accordance with all applicable laws and regulations, including City codes and ordinances, and the Urban Renewal Plan and shall be performed in accordance with and subject to the terms and conditions of this Agreement.

#### **5. PREPARATION OF THE PROJECT FOR DEVELOPMENT**

5.1. Zoning. The Authority is not requiring the Developer to rezone the Property, but the Developer agrees to comply with all applicable City codes, ordinances and planning requirements with regard to development of the Property and construction of the Improvements, including if required by the City, to rezone part of the Property.

5.2. Public Improvements. The Developer or the BID, as applicable, shall design and construct or cause the designing and construction of the Public Improvements for the Property.

The Developer or BID as applicable shall construct, in the public right-of-way and/or easements, all mains and lines necessary for the Public Improvements and necessary to provide water, sanitary sewer, storm sewer, natural gas and electricity for the Improvements. The construction and installation of such utilities shall conform with the requirements of all applicable laws and ordinances. The Developer or BID as applicable shall also be responsible for the relocation, design and construction of all new public streets, utilities, sidewalks, alleys, changes for handicap accessibility and accommodation including, without limitation, parking facilities, costs incurred in connection with Taxing Entity Agreements, excavation for and design and construction of parking facilities, landscaping and street lighting within the public right-of-way shown in the Concept Plan, as it may be refined and updated. The Developer or the BID as applicable shall be responsible for the design, construction and cost, if any, of utility and service lines necessary for the construction of the Public Improvements within the Property, tap connection fees and other City requirements, including the cost of extending such utility lines from the Public Improvements to the mains in the public right-of-way. The Developer or the BID as applicable shall be responsible for construction of improvements to existing facilities or improvements and construction of new facilities or improvements on locations outside the boundaries of the Property as may be required by agreement between the Developer or BID as applicable and applicable governmental authorities.

5.3. Replat and Dedications. The Authority is not requiring the Developer to replat or resubdivide the Property, but the Developer agrees to comply with all applicable City codes, ordinances and planning requirements with regard to development of the Property and construction of the Public Improvements, including if required by the City, to replat or resubdivide part of the Property. The Developer or BID shall dedicate, as appropriate, such utility and drainage easements required to properly carry out and maintain the Public Improvements.

5.4. Antidiscrimination. The Developer or BID as applicable, for itself and its successors and assigns, agrees that in the construction of and in the use and occupancy of the Property, it will not discriminate against any employee or applicant for employment because of race, color, creed, gender, religion, sexual orientation, disability, marital status, ancestry or national origin.

5.5. Signage. As soon as reasonably practicable, and until completion of construction, the Developer shall display temporary signage at the Property approved by the Authority and relating to the Authority's participation in the redevelopment of the Property. Such signage shall be connected to the primary signage identifying the redevelopment and visible to the general public. In addition, the Developer shall attach to the Improvements, at street level, or in or adjacent to a primary entrance to the Property, a permanent sign acceptable to the Authority not less than ninety (90) square inches acknowledging that the redevelopment was financed and constructed in cooperation with the Authority. Developer shall have final authority over the ultimate design of any signage installed on the Property pursuant to this Agreement.

5.6. Access to Property. At reasonable times within business hours, and following notice and coordination, the Developer shall permit representatives of the other to have access to the Property for the purpose inspecting the Property in order to determine compliance with this Agreement, the Urban Renewal Plan or any City code or ordinance, including, but not limited to, inspection of any work required to construct the Improvements on the Property. Any such access or inspection shall not interfere with the use of the Property or any construction on the Property.

No compensation shall be payable to the Parties nor shall any charge be made in any form by any Party for the access provided in this section. The Authority shall indemnify and hold harmless the Developer for any loss or damage or claim for loss or damage (including reasonable legal fees) resulting from any such entrance, (but this indemnity shall not apply to conditions existing on such Property at the time of such entry, even where such condition was discovered by virtue of the entry).

## **6. TAXING ENTITY AGREEMENTS**

6.1. Cooperation Agreement. The Authority and the City have entered into the Cooperation Agreement. The Cooperation Agreement provides for, among other things, allocation by the City of (i) 87.5% of the City Sales Tax TIF (i.e., 1.75%) collected on or within the Property and (ii) 50% of the City Use Tax TIF (i.e. 1.00%) paid solely on construction materials used within the Area to the Authority for the Duration. In the interest of providing part of the financing of the redevelopment of the Area and accomplishing the goals of the Urban Renewal Plan and this Agreement, the Authority, the Developer and the BID agree to work with the City and dedicate such time and resources as may be required to implement this agreement to facilitate the timely planning and development of the Improvements. The primary purpose of the Cooperation Agreement is to pledge to distribute to or on behalf of the Developer, sufficient City Sales Tax TIF and City Use Tax TIF in order to meet a portion of the requirements of the BID Bonds and such other reasonable and necessary terms reasonably acceptable to the Parties to carry out the Concept Plan and in furtherance of the Urban Renewal Plan. Developer and the BID acknowledge that the Cooperation Agreement includes certain limitations on the use of City Sales Tax TIF and City Use Tax TIF and agrees to comply with such limitations.

6.2. County Agreement. The Authority and the County have entered into the County Agreement. The County Agreement provides for, among other things, allocation by the County of 100% of the County Sales Tax TIF (i.e., 1.00%) for the Duration. The County Sales Tax TIF shall be included in TIF Revenue and Pledged Revenue when and as received by the Authority pursuant to the County Agreement.

6.3. Taxing Entity Agreements. The Authority has entered into the Taxing Entity Agreements with each of the Taxing Entities pursuant to C.R.S. § 31-25-107(9.5). Pursuant to the Taxing Entity Agreements, each of the Taxing Entities has agreed to allocate some or all of its portion of the Property Tax TIF to the Authority pursuant to the Urban Renewal Plan in support of the Project. The Authority shall establish separate accounts for and make all payments of TIF Revenue, but not Pledged Revenues, required to be made to Taxing Entities pursuant to the Taxing Entity Agreements. Each of the Developer and the BID has reviewed each of the Taxing Entity Agreements and agrees that it will not knowingly take any action that would be inconsistent with any of the Taxing Entity Agreements or would cause the Authority to be in breach of any of the Taxing Entity Agreements.

6.4. CSDDA Agreement. Developer and the BID acknowledge that the Taxing Entity Agreement between the Authority and the CSDDA requires, among other things, the incremental revenues retained by the Authority thereunder to be used to construct Public Improvements on streetscapes to Vermijo Street and Sierra Madre Street northward from Cucharras Street (the “Vermijo and Sierra Madre Improvements”) that are outside the boundaries of the Area, but which

are within the boundaries of the CSDDA, with any remainder retained for other Public Improvements within the Area. CSDDA has the right to review and comment on streetscape design and implementation and approve eligible improvements. If the Vermijo and Sierra Madre Improvements are not constructed, the Authority is obligated to reimburse CSDDA for the incremental revenues derived from the 3 mill levies initially retained by the Authority. Developer and the BID hereby agree, in cooperation with CSDDA, to incorporate the Vermijo and Sierra Madre Improvements into the Concept Plan and Developer or the BID as appropriate will use commercially reasonable efforts to timely construct such improvements in satisfaction of the obligations under the Taxing Entity Agreement with the CSDDA.

## **7. PROJECT FINANCING**

7.1. Authority Financing. The sole financing provided by the Authority for the redevelopment of the Property shall be the reimbursement of actual Reimbursable Project Costs from the Pledged Revenues. Reimbursable Project Costs are estimated on Exhibit B. The Property Tax TIF revenues shall be those revenues, if any, from the property tax levy of those taxing bodies that levy such taxes against the increment portion of the property tax assessment roll attributable to the Property as calculated and allocated by the Authority to the Property each year as part of the total property tax increment revenue, if any, received by the Authority from the entire Area described in the Urban Renewal Plan in accordance with the Act and applicable regulations. The Sales Tax TIF revenues shall be those revenues, if any, described in the Cooperation Agreement and the County Agreement generated from taxable sales on or from the Property and Improvements thereon, if any, as calculated and allocated by the Authority to the Property and Improvements each year as part of the total municipal and county sales tax increment revenue, if any, received by the Authority from the entire Area described in the Urban Renewal Plan, as well as municipal use tax increment revenue paid solely on construction materials used within the Area, if any, received by the Authority, all in accordance with the Act, the Cooperation Agreement and the County Agreement.

7.2. BID Bonds. In furtherance of the foregoing, for the purpose of financing a portion of the Public Improvements (including paying amounts due under the District Reimbursement Agreement), the BID has agreed to issue its Limited Tax Supported and Special Revenue Senior Bonds, Series 2020A (the “BID Bonds”) pursuant to a Trust Indenture to be dated on or about the date hereof (the “Master Indenture”) between the BID and UMB Bank, N.A., as trustee (the “Trustee”), and a Series 2020A Supplemental Trust Indenture to be dated on or about the date hereof (the “Series 2020A Supplemental Indenture,” and together with the Master Indenture, the “Indentures”) by and between the BID and the Trustee. In connection with the BID Bonds, the BID has pledged the Pledged Revenues for payment of the BID Bonds. Developer and the District hereby agree to comply with all obligations of the Developer and the District, as applicable, in the Bond Documents and otherwise reasonably cooperate with the Authority as necessary and appropriate to allow the Authority to comply with its obligations under the Bond Documents, as applicable.

7.3. Payment Requests. The Developer or the BID shall provide the Authority with evidence of its expenditure of bond proceeds supported by Pledged Revenues on Reimbursable Project Costs. Such evidence shall include a certification by an engineering professional agreed to by the Parties that all Reimbursable Project Costs were actually incurred and not previously

reimbursed to the Developer or the BID and that the Improvements made or the costs incurred therewith were constructed or incurred in compliance with applicable laws, ordinances and regulations, this Agreement and the Urban Renewal Plan. Prior to payment, the Authority has the right to require adequate documentation of expenditures from the Developer and/or the BID to include lien releases from contractors completing the work and included on the payment request. For so long as the BID Bonds are outstanding, the Parties agree that reasonable documentation and certification requirements acceptable to the Authority that satisfy the requirements of the BID and the Bond Documents will be substituted for the requirements of this Section, provided that the Parties agree to jointly engage an engineering professional to provide the certifications described above on a continuing basis. In such event, prior to disbursement of bond proceeds, the BID agrees to provide the documentation and certifications that satisfy the requirements of the Trustee, the Authority, the BID and the Bond Documents. The Authority agrees to promptly review and approve such payment requests that comply with the requirements of this Section 7.3.

7.4. Appointment of Trustee or Escrow Agent. Authority may, from time to time, designate one or more trustees or escrow agents to act as its collection and disbursing agent for the Pledged Revenues.

7.5. Authority's Reimbursement Obligation. The Authority's payment obligation to the Developer or the BID, as applicable, under this Agreement shall be limited to the aggregate amount of Pledged Revenues actually received and legally available for such purpose (the "Authority's Reimbursement Obligation"), which Pledged Revenues the Authority shall take all commercially reasonable steps to calculate, review, and collect each year, including enforcement of available remedies in connection therewith as described in this Section 7.5. If, after exhaustion of such remedies, there are insufficient Pledged Revenues to pay the Authority's Reimbursement Obligation in any one year, those certified, approved but unpaid Reimbursable Project Costs shall accrue and payment shall be made to the Developer or the BID, as applicable, when and as such Pledged Revenues are available to pay such unpaid Reimbursable Project Costs. If so directed in writing pursuant to the Bond Documents, the Authority shall make payment of the Authority Reimbursement Obligation directly to the Trustee, and such direction shall supersede the other payment provisions of this Agreement. Nothing in this Agreement shall be construed to require the Authority to make any payments to the Developer or the BID on a periodic and aggregate basis, in excess of such amount, or, in the aggregate, in excess of the Pledged Revenues described in this Agreement. The Authority's Reimbursement Obligation hereunder shall terminate on the first to occur of (a) payment in full of the Authority's Reimbursement Obligation or (b) the right of the Developer or BID to receive the Pledged Revenues under the Act or any revenues legally available as a payment obligation in lieu of or as replacement of such Pledged Revenues. The Developer and the BID acknowledge that the generation of Pledged Revenues is totally dependent upon the production and collection of Pledged Revenues from the Area in accordance with the Act, and agrees that the Authority is in no way responsible for the amount of Pledged Revenues actually generated; provided, however, the Authority shall be responsible for monitoring and working with the City, the County and the El Paso County Assessor to correct mistakes in calculating Pledged Revenues and payment of the Authority's Reimbursement Obligation available each year and to comply with reasonable requirements and covenants in connection with the BID Bonds. The Parties acknowledge that the right to amend or modify the Urban Renewal Plan is the legal right and responsibility of the City, but the Authority shall not request, support, suffer or recommend such an amendment or modification be made unless the Authority shall have received an opinion

of qualified bond counsel to the effect that such amendment or modification would not (a) result in a failure of the Urban Renewal Plan, as so amended or modified, to comply with the requirements of this Agreement, (b) result in an Event of Default by the Authority under this Agreement, or (c) adversely and materially affect the Pledged Revenues and the Authority's Reimbursement Obligation. To the extent permitted by law, the Authority covenants and agrees to preserve and protect the Pledged Revenues and the rights of the Developer and the BID and any approved successors in interest of the right to receive payment of the Pledged Revenues, and to defend such rights with respect to receipt of the Pledged Revenues under and against all claims and demands of third parties not authorized to receive such Pledged Revenues in accordance with this Agreement and the Act as in effect on the date of this Agreement. The Authority covenants and agrees to take no action which would result in Pledged Revenues required to be paid hereunder to be withheld from the Developer, the BID or any authorized bond trustee. Subject to the foregoing, the Developer and the BID therefore agree to assume the risk that insufficient Pledged Revenues will be generated to reimburse all Reimbursable Project Costs.

7.6. Cooperation Regarding Financing. The Parties agree to cooperate with one another in obtaining financing necessary to execute the Project by providing one another with such information, certifications, assurances, opinions and by amending or modifying agreements, including this Agreement, as may be reasonably required in connection with such financing, provided, that no Party shall be required to make amendments or modifications that substantially or materially change the rights or obligations of the Parties under this Agreement.

7.7. Opinion. At the time of any issuance of the BID Bonds, the Authority shall deliver an opinion of counsel addressed to the BID, which opinion shall state in substance that this Agreement has been duly authorized, executed, and delivered by the Authority, constitutes a valid and binding agreement of the Authority, enforceable according to its terms, subject to any applicable bankruptcy, reorganization, insolvency, moratorium, or other law affecting the enforcement of creditors' rights generally and subject to the application of general principles of equity.

7.8. Special Fund; Developer's Account. In accordance with the provisions of this Agreement and the Act, except as otherwise provided in this Agreement, the Authority agrees to establish and make deposits of all tax increment revenue it receives pursuant to the Urban Renewal Plan, the Cooperation Agreement and the Taxing Entity Agreements, including the Pledged Revenues, into the special fund as provided in the Act (the "Special Fund"). In addition, the Authority shall establish an account (the "Developer's Account") and shall segregate and pay into the Developer's Account all of the Pledged Revenues described in this Agreement, when and as received by the Authority. The Developer's Account shall be applied to payments in accordance with this Agreement, the Cooperation Agreement and the other Taxing Entity Agreements, and shall be used for no other purpose. Unless the Parties otherwise agree in writing or as otherwise directed pursuant to Section 7.9, all Pledged Revenues in the Developer's Account shall be paid to the Developer or BID on or before the last day of each month up to the full amount of any and all amounts due and owing on any payment requests certified and approved in accordance with Section 7.3.

7.9. Pledge of TIF Revenue. The Authority hereby irrevocably pledges the Pledged Revenues to payment of the Authority's Reimbursement Obligation. The Pledged Revenues, when

and as received by the Authority shall be subject to the lien of such pledge without any physical delivery, filing, or further act. The Authority shall transfer the amounts in the Developer's Account as specified in Section 7.8 or to the Trustee if so directed in writing pursuant to the Bond Documents. The Authority shall keep, maintain, and apply the Pledged Revenues as required to payment of the Authority's Reimbursement Obligation. The Authority's Reimbursement Obligation established by this Agreement is and shall be an obligation of the Authority pursuant to Section 31-25-107(9), C.R.S. The Authority has elected to apply the provisions of Section 11-57-208, C.R.S., to this Agreement. Creation, perfection, enforcement and priority of the pledge of the Pledged Revenues as provided herein, shall be governed by Section 11-57-208, C.R.S. and this Agreement. The lien of such pledge on the Pledged Revenues and the obligation to perform the contractual provisions made herein shall have priority over any of all other obligations and liabilities of the Authority with respect to the Pledged Revenues.

7.10. Books and Accounts; Financial Statements. The Authority will 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 Pledged Revenues and such other calculations required by this Agreement, and Bond Documents, and any applicable law or regulation. The Authority shall prepare after the close of each fiscal year, a complete financial statement prepared in accordance with generally accepted accounting principles accepted in the United States of America for such year in reasonable detail covering the above information, by a certified public accountant, and shall furnish a copy of such statement to the Developer (or BID as applicable) within 270 days after the close of each fiscal year of the Authority or upon such earlier date as may be required by the Bond Documents.

7.11. Inspection of Records. All books, records and reports (except those allowed or required by applicable law to be kept confidential) in the possession of the Authority, including, without limitation, those relating to the Pledged Revenues, the Authority Administrative Fee, the Public Improvements, the Special Fund, and the BID Bonds, including the books and accounts described in this Section 7.11, shall at all reasonable times be open to inspection by such accountants or other agents as the respective Parties may from time to time designate.

7.12. No Impairment. The Authority shall not enter into any agreement or transaction that impairs the rights of the Parties under this Agreement, including, without limitation, the right to receive and apply any revenue to payment of the Authority's Reimbursement Obligation described in this Agreement.

7.13. Authority Administrative Fee; Retainer. Commencing in the calendar year 2020, an administrative fee (the "Authority Administrative Fee") in the amount of \$60,000 of the total annual TIF Revenue, escalating at a rate of two percent (2%) annually in each subsequent year, as more particularly shown on Exhibit C, shall be retained and collected annually by the Authority from the total TIF Revenue initially deposited in the Special Fund, the proceeds of which shall be used, among other things, to defray the Authority's costs of administering the Urban Renewal Plan, including, but not limited to, overhead, administration, accounting and reporting of the collection and disbursement of Pledged Revenues. Notwithstanding the foregoing, until such time as the TIF Revenue is annually in excess of an amount required to fund an Authority Administrative Fee of not less than the applicable amount provided on Exhibit C, Developer will pay to the Authority an Authority Administrative Fee in such amount annually not later than June 30 of each year. The

Authority shall determine the extent to which the Authority Administrative Fee is available from TIF Revenue based on calculations provided by the El Paso County Assessor. Any Authority Administrative Fee paid by Developer (a) shall be a Reimbursable Project Cost; and (b) shall bear interest at the rate of eight percent (8%) per annum from the date it is paid. Any accrued but unpaid balance of the Authority Administrative Fee owing to the Authority by Developer shall bear interest at the rate of eight percent (8%) per annum from the date it became due. In addition to the Authority Administrative Fee, Developer agrees to fund and maintain on retainer with the Authority an amount equal to \$15,000, to be used by the Authority to pay extraordinary direct expenses of the Authority relating to Developer's project, not included in the cost of issuance of Bonds or are outside the normal duties of the Authority in administering this Agreement, such extraordinary direct expenses include, but are not limited to, the costs associated with the engineer's certification of costs, any accounting costs in excess of \$3,000 associated with the certification of costs, legal and accounting costs related to any future financing of project costs, legal costs associated with defending the Authority's ability to collect the Pledged Revenue, legal costs associated with defending the terms of this Agreement, costs incurred in connection with the winding down of this Agreement and the Project upon the expiration of the Urban Renewal Plan (which obligation to fund such costs shall survive the termination or expiration of this Agreement) and any other costs incurred that are not outlined by this Agreement (plus 15%). If the Authority applies any funds from such retainer, the Authority will provide an invoice to Developer showing the funds applied and the applicable costs, and Developer agrees to replenish the funds in the retainer account to the initial amount within ten (10) days thereafter.

## **8. PLAN REVIEW PROCEDURE**

No later than the date on which any such Development Plans are submitted to the City for review, the Developer shall submit to the Authority a copy of its Development Plans, design standards, the construction documents, and the uses it proposes for the redevelopment of the Property (collectively, the "Plans and Specifications") for each Phase or component thereof, which shall conform to any plan required for the BID, the Concept Plan and the approvals by the City, as applicable. The Authority shall review the Plans and Specifications and no approval by the Authority shall be required except for any substantial change in the Plans and Specifications which would result in an inconsistency with the Concept Plan. The Authority shall submit its comments to Developer within thirty (10) days after receipt of said Plans and Specifications by the Authority.

## **9. CONSTRUCTION OF IMPROVEMENTS**

9.1. Commencement of Construction. The Parties agree that the Developer has commenced and completed studies and proposed designs in preliminary form required for design and construction of the Public Improvements and has otherwise incurred Reimbursable Project Costs in support of the Urban Renewal Plan and with the prior approval of the Authority (which approval was conditioned upon approval and adoption of the Urban Renewal Plan by the City Council and compliance with the proper documentation and approval of such costs as Reimbursable Project Costs in accordance with Section 7.3). Developer and the BID have already commenced the design and construction of the Improvements described in the Plans and Specifications. Pursuant to the SW Downtown Development Agreement, the Parties have agreed to use commercially reasonable efforts to execute the Project, subject to the conditions and limitations set forth therein.



9.2. Progress Reports. Until completion of construction of the Improvements, the Developer and the BID shall make reports, in such detail and at such times as may reasonably be requested by the Authority, but in any event no more frequently than quarterly, as to actual progress with respect to construction of the Improvements.

## **10. REPRESENTATIONS AND WARRANTIES**

10.1. Representations and Warranties by the Authority. The Authority represents and warrants that:

(a) The Authority is an urban renewal authority duly organized and existing under the Act. Under the provisions of the Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The activities of the Authority in the redevelopment of the Property are undertaken for the purpose of eliminating and preventing the development or spread of blight.

(c) The Urban Renewal Plan has been validly adopted in accordance with the Act and is in full force and effect and has not been repealed.

(d) The Authority knows of no litigation or threatened litigation, proceeding or investigation contesting the powers of the Authority or its officials with respect to the redevelopment of the Property, this Agreement or the Public Improvements.

10.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a duly organized and validly existing limited liability company under the laws of the State of Colorado in good standing under the laws of Colorado, has the power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement.

(b) The consummation of the transactions contemplated by this Agreement and the performance of its obligations hereunder will not violate any provisions of the governing documents of the Developer or constitute a default or result in the breach of any term or provision of any contract or agreement to which the Developer is a party so as to adversely affect the consummation of such transactions.

(c) The Developer knows of no litigation or threatened litigation, proceeding or investigation contesting the powers of the Authority, the Developer with respect to the Property, this Agreement or the Improvements.

10.3. Representations and Warranties by the BID. The BID represents and warrants that:

(a) The BID is a quasi-municipal corporation and political subdivision of the State of Colorado duly organized and existing under the BID Act. Under the provisions of

the BID Act, the BID has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The activities of the BID in the redevelopment of the Property are undertaken in furtherance of its Operating Plan.

(c) The BID knows of no litigation or threatened litigation, proceeding or investigation contesting the powers of the BID or its officials with respect to the redevelopment of the Property, this Agreement or the Public Improvements.

## **11. RESTRICTIONS ON ASSIGNMENT AND TRANSFER**

11.1. Representations as to Development. The Developer represents and agrees that its undertakings under this Agreement are for the purpose of development of the Property. The Developer further represents and agrees that:

(a) the development of the Property is important to the general welfare of the Authority and the City;

(b) upon approval of Reimbursable Project Costs, the Pledged Revenues will be available to make such development possible; and

(c) the qualifications and identity of the Developer and its principals are of particular concern to the Authority. The Developer recognizes that it is because of such qualifications and identity that the Authority is entering into this Agreement with the Developer and is willing to accept and rely on the obligations of the Developer for the faithful performance of all of its undertakings and covenants under this Agreement.

11.2. Restrictions against Transfer of Agreement. The Developer agrees that:

(a) Except for (i) transfer to an Affiliate, for which consent shall not be required provided that the conditions set forth in Section 11.2(b) are satisfied, or (ii) as security for obtaining financing necessary to construct the Project, the Developer will not make, create, or suffer to be made or created, any total or partial sale or transfer in any form of this Agreement, without prior written approval of the other Parties. However, the Developer or its Affiliates may sell, lease or otherwise transfer parcels of the Property to bona fide third party owners and operators in the ordinary course of business without restriction. Any required approval shall not be unreasonably withheld, conditioned, or delayed.

(b) When approval is required, the Parties may require the following as conditions to any such approval, and, in event of a transfer to an Affiliate, the Developer shall submit information to the other Parties thirty days prior to the effective date of such transfer showing that Christopher S. Jenkins serves as manager or general partner or otherwise is in control, directly or indirectly, of such Affiliate and that the Affiliate entity satisfies (i) and (ii) of the following provisions:

(i) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the Authority, necessary to fulfill the

obligations of the Developer under this Agreement (or, if the transfer is of or related to part of the obligations under this Agreement, such obligations to the extent that they relate to such part).

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority, shall assume all of the obligations of the Developer under this Agreement and agree to be subject to the conditions and restrictions to which the Developer is subject (or, if the transfer is part of the Agreement, such obligations, conditions and restrictions as they apply to such part) or such different obligations approved by the other Parties. The fact that any such transferee or successor has not assumed such obligations or so agreed shall not relieve such transferee or successor from such obligations, conditions or restrictions, or limit any rights or remedies of the Authority with respect to the Agreement or the construction of the Improvements. No transfer of ownership in all or any part of the Agreement or the Property, or any interest therein, however occurring and whether voluntary or involuntary, shall limit the Authority's rights, remedies or controls provided in this Agreement.

(iii) The Developer shall submit to the other Parties for review all instruments and other legal documents involved in effecting transfers; and, unless another Party gives notice of disapproval of a transfer within thirty (30) days after such submittal, such transfer shall be deemed approved.

(iv) The Developer and its transferee shall comply with such other reasonable conditions as the other Parties may reasonably require to safeguard the purposes of the Act and the Urban Renewal Plan. Unless the Authority otherwise agrees in writing, upon the written approval of the Authority of a transfer of all or part or any interest in the Property, this Agreement or the Developer, the Developer or any other party bound by this Agreement shall not be relieved of its obligations under this Agreement to the extent of such transfer or the interest in the Property, Agreement or Developer included in such transfer.

## **12. EVENTS OF DEFAULT; REMEDIES**

12.1. Events of Default by Developer. "Default" or an "Event of Default" by Developer under this Agreement shall mean one or more of the following events:

(a) the Developer, in violation of this Agreement, assigns or attempts to assign or transfer this Agreement, or any rights in this Agreement;

(b) a holder of a mortgage or deed of trust exercises any remedy provided by loan documents, law or equity that materially interferes with the construction of the Improvements; or

(c) subject to the grace period described in Section 12.4, Developer fails to observe or perform any material and substantial covenant, obligation or agreement required of it under this Agreement.

12.2. Events of Default by the Authority. “Default” or an “Event of Default” by the Authority under this Agreement shall mean, subject to the grace period described in Section 12.4, the Authority fails to observe or perform any material and substantial covenant, obligation or agreement required of it under this Agreement.

12.3. Events of Default by the BID. “Default” or an “Event of Default” by the BID under this Agreement shall mean, subject to the grace period described in Section 12.4, the BID fails to observe or perform any material and substantial covenant, obligation or agreement required of it under this Agreement.

12.4. Grace Periods. Upon the occurrence of a Default or an Event of Default by either Party which is subject to the grace period described in this section, such party shall, upon written notice from the other, proceed immediately to cure or remedy such Default and, in any event, such Default shall be cured within thirty (30) days (ninety (90) days if the Default relates solely to the date for Completion of Construction of Improvements) after receipt of such notice, or such cure shall be commenced and diligently pursued to completion within a reasonable time, not to exceed sixty (60) days, if curing cannot be reasonably accomplished within thirty (30) days (or ninety (90) days if the Default relates solely to the date for Completion of Construction of Improvements).

12.5. Remedies on Default. Whenever any Default or Event of Default occurs and, if applicable, is not cured under Section 12.4 of this Agreement, the non-defaulting Party may take any one or more of the following actions:

(a) Except as otherwise provided in this Agreement, suspend performance under this Agreement until it receives assurances from the defaulting Party, deemed adequate by the non-defaulting Party, that the defaulting Party will cure its Default and continue its performance under this Agreement (except that, once BID Bonds have been issued, the Authority may not suspend remittance of the Pledged Revenues pursuant to this Agreement); or

(b) take whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce observance or performance, including, but not limited to, specific performance or to seek any other right or remedy at law or in equity, including damages.

12.6. Delays/Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such right or deprive it of or limit such rights in any way; nor shall any waiver in fact made by such Party with respect to any default by another Party under this Agreement be considered as a waiver of rights with respect to any other Default by another Party under this Agreement or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

12.7. Enforced Delay in Performance for Causes Beyond Control of Party. None of the Authority, the BID nor the Developer, as the case may be, shall be considered in Default of its obligations under this Agreement in the event of enforced delay due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal, State or local government, acts of another Party, acts of third parties (including the effect of any litigation or petitions for initiative and referendum), acts or orders of courts, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors or materialmen due to such causes. In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the enforced delay; provided that the Party seeking the benefit of the provisions of this section shall, within thirty (30) days after such Party knows of any such enforced delay, first notify the other Parties of the specific delay in writing and claim the right to an extension for the period of the enforced delay.

12.8. Effect of Termination. If this Agreement is terminated the covenants and obligations of this Agreement that survive such termination shall remain in full force and effect the Parties agree to execute such mutual releases or other instruments reasonably required to effectuate and give notice of such termination. If this Agreement is terminated, the Authority shall retain all TIF Revenues until all obligations of the Authority created pursuant to the Urban Renewal Plan are satisfied and apply those funds to such uses or expenses as the Authority deems appropriate.

12.9. Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement are cumulative and the exercise by any Party of any one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other right or remedies for any other Default by another Party.

### **13. INDEMNITY**

13.1. General Indemnity. The Developer, and, to the extent it legally may, the BID, covenants and agrees, at its expense, to pay, and to indemnify, defend and hold harmless the Authority, and its board of commissioners, officers, agents, employees, engineers and attorneys (collectively, "Indemnified Parties" or singularly, each an "Indemnified Party") of, from and against, any and all claims, damages, demands, expenses (including reasonable attorneys' fees and court costs), and liabilities resulting directly or indirectly from the Developer's development, construction, repair, maintenance, management, leasing, sale, and any other conduct or activities with respect to the Property or the Improvements, unless such claims, damages, demands, expenses, or liabilities, arise solely by reason of the negligent act or omission of the Authority or other Indemnified Parties.

### **14. MISCELLANEOUS**

14.1. Conflicts of Interest. None of the following shall have any interest, direct or indirect, in this Agreement: a member of the governing body of the Authority or of the City, an employee of the Authority or of the City who exercises responsibility concerning the Urban Renewal Plan, or an individual or firm retained by the City or the Authority who has performed consulting services in connection with the Urban Renewal Plan. None of the above persons or

entities shall participate in any decision relating to this Agreement that affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

14.2. Titles of Sections. Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

14.3. Incorporation of Recitals and Exhibits. All Recitals to this Agreement and the exhibits attached hereto are incorporated into and made a part of this Agreement.

14.4. No Third-Party Beneficiaries. No third-party beneficiary rights are created in favor of any person not a party to this Agreement. Notwithstanding the foregoing, the bondholders of the BID Bonds, acting through the Trustee, are hereby made third party beneficiaries of this Agreement to the extent the enforcement or nonenforcement of obligations under this Agreement impairs the obligations of the Parties under the Bond Documents.

14.5. Venue and Applicable Law. Any action arising out of this Agreement shall be brought in the El Paso County District Court and the laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement. In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions hereof, the prevailing party in such litigation or other proceeding shall obtain, as part of its judgment or award, its reasonable attorneys' fees and costs.

14.6. Binding Effect. The Agreement shall be binding on the Parties hereto, and their successors and assigns.

14.7. Integrated Contract; Severability. This Agreement constitutes the entire agreement among the Parties and supersedes any prior agreement, written or oral. The invalidation of any of its provisions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

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

14.9. Notices. A notice, demand, or other communication under this Agreement by any party to the other shall be sufficiently given if delivered in person or if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally or by electronic mail with confirmation of receipt, and

(a) in the case of the Developer, is addressed to or delivered to the Developer as follows:

Interurban Development Company, LLC  
Attn: Christopher S. Jenkins  
111 South Tejon Street, Suite 222  
Colorado Springs, CO 80903

Email: [chrisjenkins@nor-wood.com](mailto:chrisjenkins@nor-wood.com)

with a copy to:

Brownstein Hyatt Farber Schreck, L.L.P.  
Attn: Carolynne C. White, Esq.  
410 Seventeenth Street, Suite 2200  
Denver, CO 80202  
E-mail: [CWhite@BHFS.com](mailto:CWhite@BHFS.com)

(b) in the case of the Authority, is addressed to or delivered personally to the Authority as follows:

Colorado Springs Urban Renewal Authority  
P.O. Box 1575, MC 640  
Colorado Springs, CO 80901-1579  
Attn: Executive Director  
E-mail: [jwalker@springsgov.com](mailto:jwalker@springsgov.com)

with a copy to:

Kraemer Kendall Rupp Deen Neville LLC  
Attn: David M. Neville, Esq.  
430 N. Tejon, Suite 300  
Colorado Springs, CO 80903  
E-mail: [dneville@k2blaw.com](mailto:dneville@k2blaw.com)

(c) in the case of the BID, is addressed to or delivered personally to the BID as follows:

SW Downtown Business Improvement District  
Attn: Christopher S. Jenkins  
111 South Tejon Street, Suite 222  
Colorado Springs, CO 80903  
Email: [chrisjenkins@nor-wood.com](mailto:chrisjenkins@nor-wood.com)

with a copy to:

Spencer Fane, LLP  
Attn: Russ Dykstra, Esq.  
1700 Lincoln Street  
Suite 2000, Denver CO 80203  
E-mail: [rdykstra@spencerfane.com](mailto:rdykstra@spencerfane.com)

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other as provided in this section. Notice is deemed to be given on the date received (if mailed according to this section), or on the date delivered (if

personally delivered or electronically mailed with confirmed receipt in accordance with this section).

14.10. Good Faith of Parties. Except in those instances where the Developer may act in its sole discretion, in performance of this Agreement or in considering any requested 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 required by this Agreement.

14.11. Days. If the day for any performance or event provided for herein is a Saturday, Sunday, or other day on which either national banks or the office of the Clerk and Recorder of El Paso County, Colorado are not open for the regular transaction of business, such day therefor shall be extended until the next day on which said banks and said office are open for the transaction of business.

14.12. Further Assurances. The Parties hereto agree to execute such documents, and take such action, as shall be reasonably requested by the other party hereto to, supplement, define, update, confirm, and clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof, including, without limitation, updating and clarifying the Concept Plan and supplementing or clarifying Reimbursable Project Costs.

14.13. Estoppel Certificate and Approvals. The Parties hereto agree to execute such documents as the other party hereto shall reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder and such other matters as the requesting party shall reasonably request. Any approvals required in this Agreement shall be in writing.

14.14. Amendments. This Agreement shall not be amended except by written instrument. Each amendment hereof, which is in writing and signed and delivered by the Parties hereto shall be effective to amend the provisions hereof, and no such amendment shall require the consent or approval of any other party.

14.15. Non-Liability of Certain Officials, Employees and Individuals. Except for willful and wanton actions, no City Council member, Authority Board member, official, attorney for the Authority or City Attorney, or employee of the Authority or the City shall be personally liable to the Developer or the BID for any Event of Default by the Authority or for any amount that may become due to the Developer or the BID under the terms of this Agreement. Nothing in this Section 14.15 or this Agreement is to be construed as a waiver of any limitations upon or immunity from suits against the City, the Authority, the BID, or City, Authority or BID Board or Council members, officials, above-named agents or employees of the Authority, BID or the City, as may be provided by law. Except for willful and wanton actions, no member or manager, employee or attorney of the Developer shall be personally liable to the Authority for any amount that may become due to the Authority under the terms of this Agreement. Nothing herein is to be construed to limit the liability of any individual, member, manager or transferees who become personal signatories to this Agreement, or any modification thereof.



14.16. Agreement Jointly Drafted. The Agreement shall be construed as if jointly drafted by the Parties.

14.17. Authority Not A Partner; Developer Not Authority's Agent. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, the Authority shall not be deemed or constituted a partner or joint venturer of the Developer or the BID, the Developer shall not be the agent of the Authority or the BID, neither the Authority nor the BID shall be responsible for any debt or liability of the Developer and neither the Authority nor the BID shall be responsible for any debt or liability of the other Party.


14.18. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction. In the event that any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

14.19. Minor Changes. This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The officers executing the Agreement have been authorized to make, and may have made, minor changes in the Agreement. So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of the Agreement shall constitute conclusive evidence of the approval of such changes by the respective Parties.

[Remainder of page intentionally left blank]


IN WITNESS WHEREOF, the Authority and the Developer have caused this Agreement to be duly executed as of the day first above written.

COLORADO SPRINGS URBAN RENEWAL AUTHORITY

By:   
Randle W. Case II, Chair



ATTEST:

  
Jariah Walker, Secretary

INTERURBAN DEVELOPMENT COMPANY, LLC

By: \_\_\_\_\_  
Name: Christopher S. Jenkins  
Its: \_\_\_\_\_

SW DOWNTOWN BUSINESS IMPROVEMENT DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day first above written.

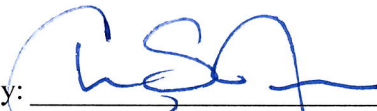
COLORADO SPRINGS URBAN RENEWAL  
AUTHORITY

By: \_\_\_\_\_  
Randle W. Case II, Chair

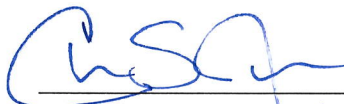
ATTEST:

\_\_\_\_\_  
Jariah Walker, Secretary

INTERURBAN DEVELOPMENT COMPANY, LLC

By:   
Name: Christopher S. Jenkins  
Its: MANAGER

SW DOWNTOWN BUSINESS IMPROVEMENT  
DISTRICT

By:   
Name: CHRISTOPHER S. JENKINS  
Its: PRESIDENT

ATTEST:


  
\_\_\_\_\_  
JEFFREY A FUINN

EXHIBIT A

DEPICTION OF PROPERTY

# Exhibit - Museum + Park URA Boundary

## MUSEUM & PARK URBAN RENEWAL AREA BOUNDARY

Parcels included in the  
Museum & Park Urban Renewal Area

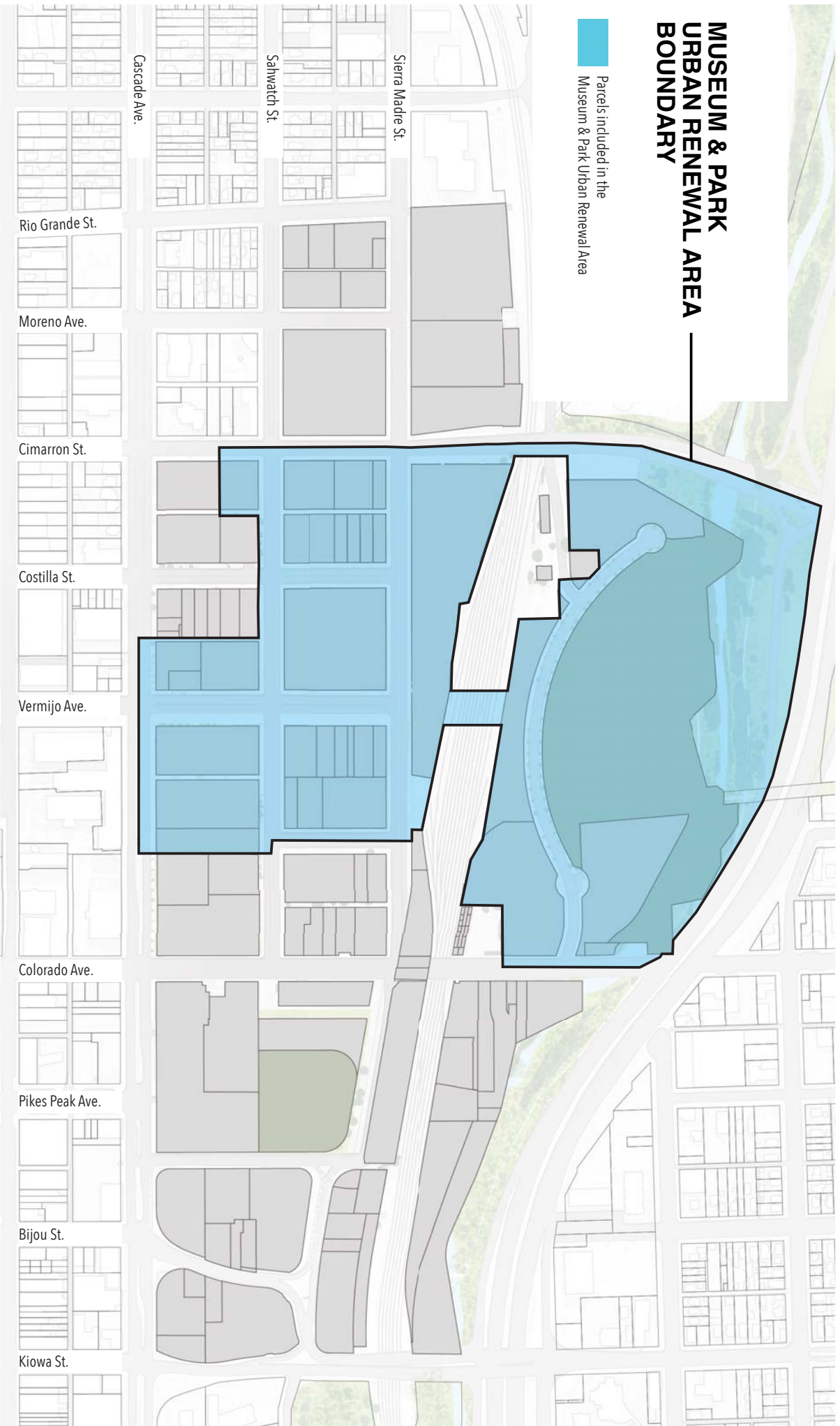


EXHIBIT A1  
CONCEPT PLAN



## **SW Downtown Project Concept Plan for the next 20 years**

5.2M SF of Mixed-Use Urban Development

- 4,500 Residential Units
- 750,000 SF of New Office Space
- 150,000 SF of Retail / Restaurant Spaces
- 500 Hotel Rooms

Estimated \$2B new development / 4 phases

Phase 1 development begins 2019

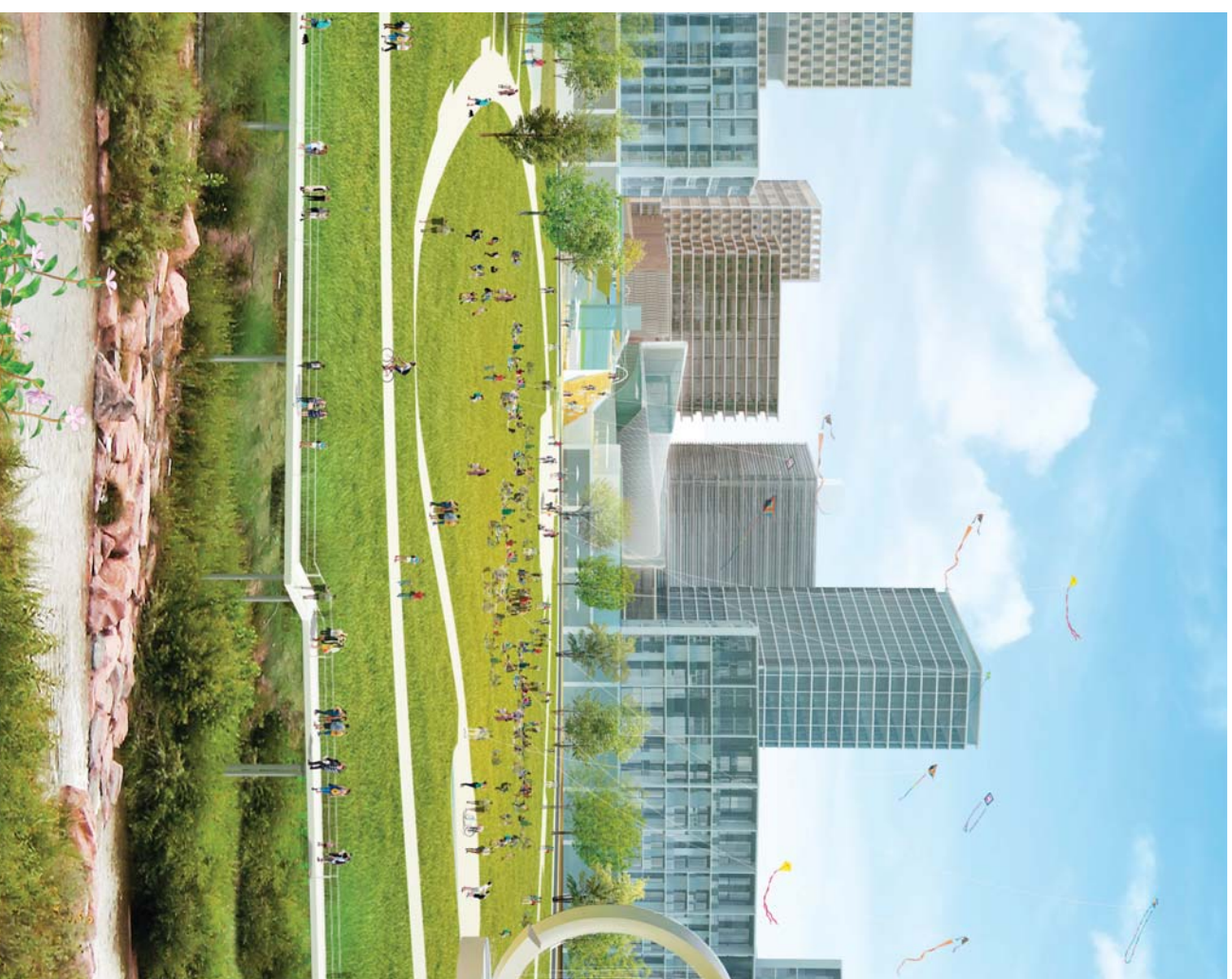




EXHIBIT B

PUBLIC IMPROVEMENTS AND REIMBURSABLE PROJECT COSTS



**Estimated Eligible Improvement**  
 BUILT IN 4 PHASES

- Pedestrian Bridge
- Pedestrian Improvements / Champion's Plaza
- Olympic Museum Site Infrastructure
- District Parking Structures
- America the Beautiful Park Improvements
- Parkside Improvements
- Stormwater Improvements
- District Utility Infrastructure (Electric / Water / Gas / Sewer)
- Data Infrastructure
- Cimino Street Road Extension
- Cimarron / ATBP Trail Connector
- Roads / Curb / Gutter throughout area
- Public Art
- Secondary Streetscapes
- Environmental Remediation
- Repayment of District Expenditures / Advances

**\$259.6M (4-PHASE TOTAL)**

**NORWOOD**  
 111 SOUTH TEJON ST | SUITE 222  
 COLORADO SPRINGS CO 80903  
 719.593.2600

**SW/DOWNTOWN REVITALIZATION**

UNITED STATES OLYMPIC MUSEUM // PEDESTRIAN BRIDGE // PUBLIC REALM IMPROVEMENTS // DISTRICT PARKING STRUCTURE // INFRASTRUCTURE IMPROVEMENTS // URBAN RENEWAL // PRIVATE DEVELOPMENT

EXHIBIT C

SCHEDULE OF AUTHORITY ADMINISTRATIVE FEE

<u>Year</u>	<u>Fee</u>
2020	\$ 60,000.00
2021	\$ 61,200.00
2022	\$ 62,424.00
2023	\$ 63,672.48
2024	\$ 64,945.93
2025	\$ 66,244.85
2026	\$ 67,569.75
2027	\$ 68,921.14
2028	\$ 70,299.56
2029	\$ 71,705.55
2030	\$ 73,139.67
2031	\$ 74,602.46
2032	\$ 76,094.51
2033	\$ 77,616.40
2034	\$ 79,168.73
2035	\$ 80,752.10
2036	\$ 82,367.14
2037	\$ 84,014.49
2038	\$ 85,694.77
2039	\$ 87,408.67
2040	\$ 89,156.84
2041	\$ 90,939.98
2042	\$ 92,758.78
2043	\$ 94,613.96
2044	\$ 96,506.23