

REIMBURSEMENT MEMORANDUM  
SOUTHWEST COLORADO SPRINGS DOWNTOWN INFRASTRUCTURE

THIS REIMBURSEMENT MEMORANDUM (“**Memorandum**”) is made and entered into as of April 1, 2017, by and between the CITY OF COLORADO SPRINGS, COLORADO, a home rule city and Colorado municipal corporation (the “**City**” or “**Applicant**”), its successors and assigns, and the COLORADO SPRINGS URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “**Financing Entity**”). The City and the Financing Entity are referred to herein collectively as the “**Parties**” and each individually as a “**Party**”.

RECITALS

The following recitals are incorporated in and are made part of this Memorandum:

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

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

C. Pursuant to the Resolution, the Financing Entity and the City entered into that certain Agreement Delineating the Relationship and Decision-Making Authority for the City for Champions Project dated as of June 26, 2015 (the “**Cooperation Agreement**”), which Cooperation Agreement, among other things, delineates their relationship and the decision-making authority for the Project, and reserves to the City the power to determine the allocation of the Dedicated Revenue associated with the flexible Sub-Account. Unless otherwise defined herein, all capitalized terms in this Memorandum shall have the meanings set forth in the Cooperation Agreement.

D. The United States Olympic Museum, a Colorado nonprofit corporation (the “**USOM**”), is the Project Element Sponsor for the Project Element known as the U.S. Olympic Museum and Hall of Fame, as more particularly described in Exhibit B to the Resolution (the “**Museum**”).

E. The City and the USOM have entered into that certain Memorandum of Understanding dated as of April 1, 2017 (the “**MOU**”), whereby (i) the City agreed to allocate ten-sixteenths (10/16) of the 16% flexible MEAP, or 10% of the overall MEAP (the “**10% MEAP Allocation**”), to the Southwest Colorado Springs Downtown Infrastructure, (ii) the City and the USOM agreed combine the 42% MEAP associated with the Museum and the 10% MEAP Allocation for a total 52% MEAP to be pledged toward repayment of the Bonds (as

defined below); and (iii) the City and the USOM agreed to allocate proceeds from the Bonds for partial funding of both the Museum and the Southwest Colorado Springs Downtown Infrastructure.

F. Contemporaneously with the execution and delivery of this Memorandum, the Financing Entity is entering into an Indenture of Trust dated as of April 1, 2017 (the “**Indenture**”) with UMB Bank, n.a., as Trustee (the “**Trustee**”), pursuant to which Indenture the Financing Entity will issue an aggregate amount of \$39,000,000 in Bonds (as defined in the Indenture), the proceeds of which will be allocated between the USOM and the City to fund the Eligible Costs of the Museum and the Southwest Colorado Springs Downtown Infrastructure as provided therein.

G. The proceeds of the Bonds allocated to the Southwest Colorado Springs Downtown Infrastructure are insufficient to fund all the Eligible Costs associated with the Southwest Colorado Springs Downtown Infrastructure and there will be substantial Eligible Costs paid from sources other than proceeds of the Bonds.

H. Subject to the terms and conditions of the Resolution, Eligible Costs incurred in connection with the Southwest Colorado Springs Downtown Infrastructure are eligible for reimbursement from the Dedicated Revenue allocated pursuant to the 10% MEAP Allocation.

I. The Financing Entity has agreed to reimburse the City or such other Developer (as defined in the Resolution) which incurs Eligible Costs relating to the Southwest Colorado Springs Downtown Infrastructure designated by, or under agreement with, the City (each an “**Infrastructure Developer**” and, collectively, the “**Infrastructure Developers**”) for Eligible Costs paid by such Infrastructure Developer from the Dedicated Revenue allocated to the Southwest Colorado Springs Downtown Infrastructure to the extent permitted by the Resolution and the Act, all on the terms and conditions set forth herein.

## TERMS

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

### **Section 1. Duties of City.**

(a) Pursuant to the Indenture, the City is required to document, certify and submit to the Financing Entity documentation of all Eligible Costs for which the City seeks disbursement of funds from proceeds of the Bonds. In furtherance thereof, and to permit the Financing Entity to deliver to the Trustee the requisitions required by the Indenture, the City agrees to deliver to the Financing Entity payment requests for each requested disbursement and evidence substantiating any and all of the Eligible Costs indicated in such request, together with other documents as the Financing Entity may reasonably request, including, but not limited to, all documents required by the Indenture which are under the purview of the City.

(b) The City shall, or shall designate an Infrastructure Developer to, as applicable, design, construct, own and maintain the Southwest Colorado Springs Downtown Infrastructure

in accordance with the terms of the Resolution. Any such designation of an Infrastructure Developer may be for any portion or all of the Southwest Colorado Springs Downtown Infrastructure, as City may, in its sole discretion, determine.

(c) The City will, and will cause any Infrastructure Developer to, comply with all federal, state and local statutes, laws, ordinances and regulations applicable to the design, construction, ownership and maintenance of the Southwest Colorado Springs Downtown Infrastructure, including, without limitation, all applicable City codes, ordinances and planning requirements with regard to development and construction of the Southwest Colorado Springs Downtown Infrastructure, except for those for which the City is exempt under law or regulation..

## **Section 2. Reimbursement of Eligible Costs.**

(a) Reimbursement Obligation. Provided that the City or other applicable Infrastructure Developer has complied and is in compliance with the terms and conditions of this Memorandum, the Financing Entity shall reimburse the City for Eligible Costs, but solely from Pledged Revenues, plus interest thereon as provided herein (the “**Reimbursement Obligation**”). For purposes of this Memorandum, “**Pledged Revenues**” means the dollar amount equal to ten percent (10%) of the Dedicated Revenue paid to the Financing Entity by the State less amounts transferred to the Financing Entity’s administrative account; provided that in no event shall the Pledged Revenues exceed \$12,050,000 (i.e., 10% of the aggregate cap of \$120,500,000 as provided in the Resolution) (the “**Infrastructure Cap**”), and provided further that the Pledged Revenues may be subject to adjustment pursuant to the terms of the Resolution, by mandatory redemption or otherwise.

(b) Subordination of Obligation. The City acknowledges that the Pledged Revenues constitute a portion of the revenue available for repayment of the Bonds pursuant to the Indenture. The Parties acknowledge and agree that the Reimbursement Obligation and the pledge of the Pledged Revenues as set forth below are subject and subordinate at all times to the terms and conditions of the Indenture, the payment obligation of the Bonds and the lien of the pledge of the Pledged Revenues under the Indenture. The Parties further acknowledge and agree that the Pledged Revenues available for payment of the Reimbursement Obligation shall be reduced by the amount of the Pledged Revenues paid in repayment of the Bonds. So long as any Bonds remain outstanding, no payments shall be made toward the Reimbursement Obligation. The provisions of this paragraph shall apply to any bonds issued in refunding or refinancing the Bonds and any amendments, restatements, supplements, extensions, replacements or other modifications of the Indenture from time to time.

(c) Certification of Eligible Costs. The City or applicable Infrastructure Developer agrees to provide all documentation reasonably requested by the Financing Entity to certify and document the Eligible Costs in satisfaction of Financing Entity’s obligations under the Resolution and the Indenture. The Parties acknowledge that the requisition procedures set forth in the Indenture were intended to satisfy the requirements in the Resolution regarding certification and approval of Eligible Costs. Eligible Costs requisitioned and certified pursuant to the Indenture and paid out of the Southwest Infrastructure Project Fund will be presumed to be Eligible Costs for purposes of the Reimbursement Obligation. Any costs incurred by an Infrastructure Developer relating to the Southwest Colorado Springs Downtown Infrastructure

and paid from funds other than proceeds of the Bonds must be certified through the Financing Entity as Eligible Costs pursuant to the Resolution in order to be eligible for reimbursement pursuant to this Memorandum.

(d) Records. The Reimbursement Obligation shall begin to accrue simple per annum interest at the rate applicable to the Bonds plus one-half of one percent (0.50%) from the time the applicable Eligible Costs are certified. The Financing Entity will keep records of the certified Eligible Costs and the amounts owing under the Reimbursement Obligation. In the event of any dispute regarding the amount owing under the Reimbursement Obligation, the records of the Financing Entity will be controlling, provided that, in the event of any dispute over amounts owing under the Reimbursement Obligation, the Financing Entity shall give good faith consideration to materials and records provided by the City or applicable Infrastructure Developer to substantiate and certify previously uncertified Eligible Costs. The Financing Entity will make its records of certified Eligible Costs and amounts owing under the Reimbursement Obligation available to the City or such Infrastructure Developer upon reasonable request. Payment of interest on the Reimbursement Obligation is subject to receipt of an opinion from the External Financial Advisor as provided in the Cooperation Agreement.

(e) Pledge of Pledged Revenues. The Reimbursement Obligation shall be a special and limited obligation of the Financing Entity payable solely from the Pledged Revenues. The Financing Entity hereby irrevocably pledges the Pledged Revenues to payment of the Reimbursement Obligation. The Pledged Revenues, when and as received by the Financing Entity shall be subject to the lien of such pledge without any physical delivery, filing, or further act. The obligation to reimburse the City or an Infrastructure Developer for Eligible Costs, which obligation is evidenced by this Memorandum, is and shall be a special and limited obligation of the Financing Entity secured by an irrevocable pledge of, and payable as to principal and interest thereon, solely from the Pledged Revenues. No Infrastructure Developer may look to any general or other fund of the Financing Entity for the payment of principal or interest thereon except the Pledged Revenues. Principal of and interest on the Reimbursement Obligation shall not constitute an indebtedness, financial obligation or liability of the City or the State or any county, municipality or public body thereof, and neither the City, the State nor any political subdivision thereof shall be liable thereon, nor in any event shall the principal or interest on the Reimbursement Obligation be payable out of any funds or properties other than the Pledged Revenues. Further, the Reimbursement Obligation shall not constitute a debt, indebtedness, financial obligation or liability of the City within the meaning of any constitutional, statutory or charter debt limitation or provision.

(f) Financial Obligation. The Reimbursement Obligation established by this Memorandum is and shall be a financial obligation of the Financing Entity and constitutes a "Bond" as such term is used under the Resolution. The Authority has elected to apply the provisions of Section 11-57-208, C.R.S., to this Memorandum. 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 Memorandum. Other than the pledge of the Pledged Revenues under the Indenture, the lien of the pledge on the Pledged Revenues under this Memorandum and the obligation to perform the contractual provisions made herein shall have priority over any of all other obligations and liabilities of the Financing Entity with respect to the Pledged Revenues.

(g) Payment of Reimbursement Obligation. So long as the Reimbursement Obligation is outstanding, and subject to the subordination set forth above and the other terms and conditions of this Memorandum, the Financing Entity shall remit to the City or applicable Infrastructure Developer all Pledged Revenues allocated pursuant to the 10% MEAP Allocation on deposit with the Financing Entity in the Flexible Sub-Account of the Special Fund as and when available for payment of the Reimbursement Obligation. Any such Pledged Revenues remitted by the Financing Entity to the City or other applicable Infrastructure Developer shall be applied first to the payment of interest due on the Reimbursement Obligation and then to the payment of principal due on the Reimbursement Obligation. The Financing Entity shall remit the Pledged Revenues to the City or other applicable Infrastructure Developer by wire transfer unless otherwise directed in writing by the City or such Infrastructure Developer.

(h) Termination of Reimbursement Obligation. Notwithstanding any other provision contained herein, any accrued interest and outstanding principal due on the Reimbursement Obligation as of the earlier of (i) the date that is thirty (30) years from the date hereof for which the Financing Entity does not have available Pledged Revenues to pay any Reimbursable Costs, (ii) such time as the Infrastructure Cap is reached, or (iii) such time as Pledged Revenues are otherwise no longer available, will be fully discharged and satisfied as of that date notwithstanding such nonpayment. Any such nonpayment shall not constitute an event of default hereunder. If the Reimbursement Obligation has been discharged pursuant to this paragraph, then the Financing Entity's obligation to reimburse the City or other Infrastructure Developer for Eligible Costs shall be deemed satisfied hereunder and neither the City nor any Infrastructure Developer shall have any further rights to reimbursement under this Memorandum.

**Section 3. Consent to Bond Issue.** Pursuant to Section 4 of the MOU, the City is required to approve of any financing described in Section 1 thereof. Pursuant thereto, by the execution and delivery of this Memorandum, the City hereby consents to the issuance of the Bonds upon the terms and conditions of the Indenture, the Cooperation Agreement dated as of April 1, 2017 by and between the USOM and the Trustee, the MOU and the other documents and instruments executed and delivered therewith and agrees to comply with such documents and instruments in all respects.

#### **Section 4. Insurance.**

(a) Completion of Construction. For purposes of this Section, "Completion of Construction" means construction acceptance in accordance with applicable laws, ordinances and regulations of the City and any other governmental entity or public utility with jurisdiction, subject to any applicable conditions of maintenance and warranty.

(b) Insurance Prior to Completion of Construction. At all times while the City or other Infrastructure Developer is engaged in construction work on the Southwest Colorado Springs Downtown Infrastructure, and until Completion of Construction, the City or other Infrastructure Developer shall require each prime construction contractor to procure and maintain, and upon request, shall provide the Financing Entity with certificates of insurance evidencing, the following insurance coverage:

(i) Comprehensive general liability insurance (including premises and operations, explosions, collapse, and underground hazards, personal/advertising injury, products/completed operations, contractual liability, independent contractors, and Additional Insured Endorsement) and umbrella liability insurance with a per occurrence and general aggregate limit of not less than \$10,000,000. Such insurance may carry a deductible in an amount comparable to deductibles typically required of contractors by the City on liability insurance policies for similar projects.

The policy shall be endorsed to include the following additional insured language on the Additional Insured Endorsements specified above: "City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations".

(ii) Worker's compensation insurance, with statutory coverage, including the amount of deductible permitted by statute.

(c) Insurance after Completion of Construction. From the Completion of Construction of the Southwest Colorado Springs Downtown Infrastructure and until the establishment of a Completion Date, as established pursuant to that certificate to the Trustee described in Section 4.04 of the Indenture (the "**Certificate of Completion**"), the City shall cause the Southwest Colorado Springs Downtown Infrastructure to be insured against loss by fire and other subject to a loss deductible not to exceed \$50,000 per occurrence. In lieu of obtaining such insurance, the City may provide such insurance under a self-insurance program. Upon request of Financing Entity, the City will furnish the Financing Entity with copies of policies or certificates evidencing or stating that such insurance or self-insurance is in force and effect.

(d) Repair or Reconstruction of Southwest Colorado Springs Downtown Infrastructure. The City shall immediately notify the Financing Entity of any damage to the Southwest Colorado Springs Downtown Infrastructure exceeding \$10,000 prior to Completion. If the Southwest Colorado Springs Downtown Infrastructure is damaged or destroyed by fire or other casualty prior to the issuance of a Certificate of Completion, the City, within one hundred eighty (180) days after such damage or destruction, shall proceed forthwith to repair, reconstruct and restore the damaged Southwest Colorado Springs Downtown Infrastructure to substantially the same condition or value as existed prior to the damage or destruction, and the City will apply the proceeds of any insurance relating to such damage or destruction to the payment or reimbursement of the costs of such repair, reconstruction and restoration (unless other terms and disposition are agreed to between the City and the Financing Entity).

**Section 5. Notices.** Written notifications under this Memorandum shall be made by certified mail at the following addresses:

City:

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

With a copy to:

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

FINANCING ENTITY:

Colorado Springs Urban Renewal Authority  
c/o Executive Director  
30 S. Nevada Ave., Suite 502  
Colorado Springs, CO 80903

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

**Section 6. 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 Memorandum. Without limiting the foregoing, the City will cooperate with the Financing Entity to the extent necessary and reasonable to allow the Financing Entity to comply with its obligations under the Indenture.

**Section 7. Miscellaneous.**

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

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

(c) Default. Time is of the essence. In the event of a default hereunder the non-defaulting Party must give the defaulting Party notice of such default and a reasonable opportunity to cure such default. Except as limited by the provisions of Sections 7 (k) and 7 (l), in the event the defaulting Party does not cure such default within the cure period, the default will be deemed a breach and the non-defaulting Party shall be entitled to all available remedies at law and in equity, or, if applicable, this Memorandum. No commissioner, council member, official, employee, attorney, or agent of the Financing Entity or the City shall be personally liable under this Memorandum.

(d) Heading, Captions. The headings or captions of the Sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Memorandum.

(e) Additional Documents or Action. The Parties agree to execute any additional documents or take any additional action that is reasonably necessary to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

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

(g) Waiver. A waiver by any Party to this Memorandum of the breach of any term or provision of this Memorandum shall not operate or be construed as a waiver of any subsequent breach by either Party.

(h) Governing Law. This Memorandum is subject to, and shall be interpreted and performed under, the laws of the State of Colorado. Court jurisdiction for any litigation arising under this Memorandum shall be exclusively in the District Court for the Fourth Judicial District of Colorado, El Paso County, Colorado.

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

(j) Assignment. This Memorandum may not be assigned without the express prior written consent of the Parties, provided that the Financing Entity will not unreasonably withhold, condition or delay consent to assignment by the City to an Infrastructure Developer which agrees in writing to be bound by the terms hereof.

(k) Third Party Beneficiaries. It is specifically agreed between the Parties that this Memorandum is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Memorandum to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Memorandum. Neither the Financing Entity nor City waives or intends to waive any protection, immunity, or other provision of the



Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., as now written or amended in the future.

(l) Fiscal Obligations of City. This Memorandum is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Memorandum, with respect to any financial obligation of the City which may arise under this Memorandum in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Memorandum at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Memorandum, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term “appropriation” shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Memorandum.

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

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

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

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

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

[Remainder of page intentionally left blank]

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

CITY:

CITY OF COLORADO SPRINGS, COLORADO



(SEAL)

By John W. Suthers  
John W. Suthers, Mayor

Attest:

Sarah Johnson  
City Clerk

Approved as to form:

By Wynette Massey  
City Attorney

FINANCING ENTITY:

COLORADO SPRINGS URBAN RENEWAL  
AUTHORITY

By: Wynne Palermo  
Wynne Palermo  
Chair