

RESOLUTION NO. 100 - 23

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AND ADMINISTER AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE PIKES PEAK RURAL TRANSPORTATION AUTHORITY, EL PASO COUNTY, THE CITY OF COLORADO SPRINGS AND COPPER RIDGE METROPOLITAN DISTRICT CONCERNING REIMBURSEMENT FOR THE POWERS BOULEVARD EXTENSION

WHEREAS, the Power Boulevard extension: State Highway 83 to Voyager Parkway is an approved PPRTA regional collaborative priority "A" project; and

WHEREAS, in order to facilitate the financing, design and construction of the Powers Boulevard Extension in advance of the PPRTA's current anticipated schedule the Parties wish to enter into this Powers Boulevard Extension Reimbursement Agreement ("Agreement") to establish the terms and conditions under which PPRTA intends to utilize a portion of the PPRTA Tax to reimburse Copper Ridge Metropolitan District ("District") for Approved Phase 2; and

WHEREAS, City Council believes it is appropriate for the City to enter into this Intergovernmental Agreement with the Parties.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council hereby approves the Powers Boulevard Extension Reimbursement Agreement in substantially the same form as Exhibit A.

Section 2. On behalf of the City, the Mayor is hereby authorized to execute and administer the Agreement between the Parties and to execute amendment(s) of the Agreement that fulfills the intent of Council.

Dated at Colorado Springs, Colorado this 25th day of July 2023

ATTEST:


Sarah B. Johnson, City Clerk





Randy Helms, Council President

POWERS BOULEVARD EXTENSION REIMBURSEMENT AGREEMENT

THIS POWERS BOULEVARD EXTENSION REIMBURSEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of [●], 2023 (the “**Effective Date**”) by and among the PIKES PEAK RURAL TRANSPORTATION AUTHORITY, a body corporate and political subdivision of the State of Colorado (“**PPRTA**”), CITY OF COLORADO SPRINGS, a home rule city and Colorado municipal corporation (the “**City**”), EL PASO COUNTY, a political subdivision of the State of Colorado (the “**County**”) and COPPER RIDGE METROPOLITAN DISTRICT (In the City of Colorado Springs), Colorado, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”). PPRTA, the City, the County and the District are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, capitalized terms used and not defined in these Recitals shall have the meaning assigned to them in Section 1 hereof; and

WHEREAS, PPRTA is a regional transportation authority that was created pursuant to Sections 43-4-601 *et seq.*, C.R.S. by several governments, including the City and the County, upon approval of the voters residing in the respective jurisdictions of such governments at the general election held on November 2, 2004; and

WHEREAS, at the general election held on November 2, 2004, the PPRTA’s voters approved a ballot question authorizing an imposition of a 1% sales and use tax on certain transactions occurring within the boundaries of PPRTA with 55% of the net revenue thereof for specific regional roadway capital improvements (as amended and extended by the PPRTA 2 Authorization and the PPRTA 3 Authorization the “**PPRTA Tax**”) until December 31, 2014 for the purposes of funding certain regional transportation capital improvements included in priority “A” projects, priority “B” projects, and priority “C” projects of the ballot question (the “**PPRTA 1 Authorization**”), provided that priority “A” projects are completely funded prior to the use of funding on priority “B” projects and that priority “B” projects are completely funded prior to the use of funding on priority “C” projects; and

WHEREAS, at the general election held on November 6, 2012, the PPRTA’s voters approved a ballot question authorizing an extension until December 31, 2024 of the PPRTA Tax for the purposes of funding certain regional transportation capital improvements included in priority “A” projects and priority “B” projects of the ballot question (the “**PPRTA 2 Authorization**”), provided that priority “A” projects are completely funded prior to the use of funding on priority “B” projects; and

WHEREAS, at the general election held on November 8, 2022, the PPRTA’s voters approved a ballot question authorizing an extension until December 31, 2034 of the PPRTA Tax for the purposes of funding certain regional transportation capital improvements included in priority “A” projects and priority “B” projects of the ballot question (the “**PPRTA 3 Authorization**”), provided that priority “A” projects are completely funded prior to the use of funding on priority “B” projects; and

WHEREAS, the activities of the PPRTA are governed by, among other things, the PPRTA IGA, the City Comprehensive IGA, and the County Comprehensive IGA; and

WHEREAS, pursuant to the PPRTA 1 Authorization, the PPRTA 2 Authorization, the PPRTA 3 Authorization, and the PPRTA IGA, proceeds of the PPRTA Tax are to be distributed to fund capital projects, maintenance projects, and transit services, the distribution of which is detailed in separate intergovernmental agreements between PPRTA and its member governments, including the City Comprehensive IGA and the County Comprehensive IGA; and

WHEREAS, the District is a quasi-municipal corporation and political subdivision of the State of Colorado, duly organized and existing as a metropolitan district under the constitution and laws of the State of Colorado; and

WHEREAS, the District was created for the purpose of providing certain public improvements and services to and for the benefit of the properties within the District in accordance with Article 1 of the Special District Act; and

WHEREAS, pursuant to Section 32-1-1101(1), C.R.S., the District is authorized to incur indebtedness for the acquisition, construction, relocation, installation and/or completion of improvements and facilities necessary to carry out the purposes of the District; and

WHEREAS, the District is governed by a Service Plan for Copper Ridge Metropolitan District approved by the City Council of the City on March 11, 2008 (as amended from time to time, the “**Service Plan**”); and

WHEREAS, the District financed, designed and constructed Phase 1 of the Project (between Voyager Parkway and Interstate 25, including design and construction of an interchange at State Highway 21 and Interstate 25) and intends to design and construct Phase 2 and finance the same through the issuance of District Debt; and

WHEREAS, each of the City, the County, and the PPRTA determined that Phase 2 is a regional transportation project and that completion of Phase 2 will benefit their residents, promote economic growth and reduce congestion and traffic in the City and County; and

WHEREAS, the PPRTA 2 Authorization included “POWERS BLVD. EXTENSION: I-25 TO SH 83 PHASE I” as a priority “B” project; and

WHEREAS, the PPRTA 3 Authorization included “POWERS BLVD EXTENSION - STATE HIGHWAY 83 TO VOYAGER PKWY” as a regional collaborative priority “A” project; and

WHEREAS, in order to facilitate the financing, design and construction of Phase 2 in advance of the PPRTA’s current anticipated schedule for such financing, design and construction, including, without limitation, the issuance and payment of District Debt, the Parties wish to enter into this Agreement to establish the terms and conditions under which PPRTA intends to utilize a portion of the PPRTA Tax to reimburse the District for Approved Phase 2 Costs.

AGREEMENT

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

1. **Definitions.** As used herein, unless the context expressly indicates otherwise, the words capitalized in the text of this Agreement shall have the respective meanings set forth below.

“**Agreement**” means this Powers Boulevard Extension Funding Agreement and any amendment or supplements hereto made in accordance herewith.

“**Annual City Portion**” means an amount equal to approximately 1/10 of the City Portion, as it may be adjusted pursuant to Section 5 hereof.

“**Annual County Portion**” means an amount equal to approximately 1/10 of the County Portion, as it may be adjusted pursuant to Section 5 hereof.

“**Annual PPRTA 2 Authorization Allocation**” means an amount, if any, that is determined to be available from the PPRTA 2 Authorization for reimbursement of Approved Phase 2 Costs pursuant to Section 5 hereof.

“**Appropriation**” or “**Appropriated**” means the action of the Board taken as part of its annual budget process to appropriate funds for specific voter-authorized projects as recommended by its member governments, including the City and the County, to pay the Annual City Portion, the Annual County Portion, the Marksheffel Allocation, and the Annual PPRTA 2 Authorization Allocation.

“**Approved Phase 2 Costs**” has the meaning assigned to it in Section 6 hereof.

“**Board**” means the PPRTA Board of Directors.

“**Business Day**” or “**Business Days**” means any day other than a Saturday, Sunday or Colorado or federal legal holiday.

“**City**” has the meaning assigned to it in the preamble and includes its successors and assigns.

“**City Comprehensive IGA**” means the Second Amended and Restated Intergovernmental Agreement for Pikes Peak Rural Transportation Authority Funded Capital Projects, Maintenance Programs and City Sponsored Transit Activities by and between the PPRTA and the City, as it may be further amended or supplemented from time to time.

“**City Portion**” means an amount of up to \$72,000,000 representing a portion of the Total Funding Amount which the City will recommend be budgeted and allocated by the PPRTA from the City’s share of the capital funds from the PPRTA 3 Authorization to reimburse a portion of Approved Phase 2 Costs, as such amount may be increased in accordance with Section 5.

“**City Representative**” means the Director of Public Works, the City Engineer, or any alternate or alternates designated in writing by the Director of Public Works or City Engineer and provided to the District, the County and PPRTA.

“**County**” has the meaning assigned to in the preamble and includes its successors and assigns.

“**County Comprehensive IGA**” means the Second Amended and Restated Intergovernmental Agreement for Pikes Peak Rural Transportation Authority Funded Capital Projects and Maintenance by and between the PPRTA and the County, as it may be further amended or supplemented from time to time.

“**County Portion**” means an amount of up to \$31,000,000 representing a portion of the Total Funding Amount which the County will recommend be budgeted and allocated by the PPRTA from the County’s share of the capital funds from the PPRTA 3 Authorization to reimburse a portion of Approved Phase 2 Costs.

“**County Representative**” means the County Engineer, or any alternate or alternates designated in writing by the County Engineer and provided to the District, the City and PPRTA.

“**C.R.S.**” means Colorado Revised Statutes, as amended.

“**District**” has the meaning assigned to it in the preamble and includes its successors and assigns.

“**District Debt**” means any bonds, notes, debentures, contracts, or other financial obligations issued or incurred by the District for the purpose of paying all or any part of the costs of financing, refinancing, paying, or reimbursing Phase 2 Costs, including without limitation obligations issued or incurred by the District for the purpose of refinancing or refunding any such obligations. District Debt may be issued in an amount sufficient to fund capitalized interest, reserve funds, surplus funds, and similar funds, and to pay all issuance costs in connection therewith, including legal fees and expenses, the costs of bond insurance, credit enhancements, interest rate exchange agreements, underwriting discounts, placement agent fees, trustee and paying agent fees and expenses, and similar costs and expenses in such amounts as may be determined by the District. District Debt shall also include any bonds, notes, debentures, contracts or other obligations issued or incurred by the District to refund the District’s Tax Increment and Sales Tax Supported Revenue Bonds, Series 2019.

“**District Representative**” means the District President or the person or persons at the time designated to act on behalf of the District by resolution of the District Board of Directors or as designated by written certificate furnished to the City, the County and PPRTA containing the specimen signatures of such person or persons and signed on behalf of the District Board of Directors by its President and any alternate or alternates designated as such therein.

“**Effective Date**” has the meaning assigned to it in the preamble.

“**Marksheffel Allocation**” means an amount of up to \$18,500,000 that is

determined by the City and the Board to be available from the Marksheffel Designation for reimbursement of Approved Phase 2 Costs pursuant to Section 5 hereof.

“Marksheffel Designation” has the meaning assigned to it in Section 5 hereof.

“Phase 2” means the design, construction and improvement of a portion of the Project between Voyager Parkway and State Highway 83, together with any and all related and ancillary public regional transportation improvements consistent with the voter-approved regional collaborative priority “A” project listed as “POWERS BLVD EXTENSION - STATE HIGHWAY 83 TO VOYAGER PKWY” in the PPRTA 3 Authorization.

“Phase 2 Costs” means the reasonable expenditures for designing, acquiring, constructing and improving Phase 2, including reasonable soft and hard costs, such as, but without limitation, design work, wetlands remediation, easement relocations, drainage and similar activities useful in Phase 2, professional, technical and construction management services related to the design, acquisition, construction and improvement of Phase 2, and fees and charges imposed by the City, the County, any agency of the State or other jurisdiction. For the avoidance of doubt, Phase 2 Costs shall not include any expenses incurred by the District to finance Phase 2, such as interest on District Debt or any issuance costs related to District Debt.

“Project” means the design, construction and improvement of North Powers Boulevard from Highway 83 to Interstate 25, together with any and all related and ancillary public regional transportation improvements.

“PPRTA” has the meaning assigned to it in the preamble and includes its successors and assigns.

“PPRTA IGA” means the Fifth Amended and Restated Intergovernmental Agreement among the County, the City, the City of Manitou Springs, the Town of Green Mountain Falls, the Town of Ramah, and the Town of Calhan Regarding the Pikes Peak Rural Transportation Authority, as it may be further amended or supplemented from time to time.

“PPRTA Tax” has the meaning assigned to it in the Recitals.

“PPRTA 2 Authorization” has the meaning assigned to it in the Recitals.

“PPRTA 2 Authorization Allocation” means an amount of up to \$18,500,000 that is determined by the Board to be available from the PPRTA 2 Authorization for reimbursement of Approved Phase 2 Costs pursuant to Section 5.

“PPRTA 3 Authorization” has the meaning assigned to it in the Recitals.

“State” means the State of Colorado.

“Statement” has the meaning assigned to it in Section 6 hereof.

“Term” means the period of time during which this Agreement remains in effect as described in Section 4 hereof.

“**Total Funding Amount**” means a maximum amount of \$103,000,000 comprising the County Portion and City Portion, as such amount may be adjusted in accordance with Section 5 hereof.

2. Interpretation.

(a) the terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar term, refer to this Agreement as a whole and not to any particular article, section, or subdivision hereof; the term “heretofore” means before the date of execution of this Agreement, and the term “hereafter” means after the date of execution of this Agreement;

(b) words of the masculine gender include correlative words of the feminine and neuter genders; words importing the singular number include the plural number and vice versa; and the word “person” or similar term includes, but is not limited to, natural persons, firms, associations, corporations, partnerships, and public bodies;

(c) the captions or headings of this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision, article, or section of this Agreement;

(d) all exhibits referred to herein are incorporated herein by reference;

(e) all of the recitals set forth at the beginning of this Agreement are hereby incorporated in this Agreement as if fully set forth herein.

3. Authority. This Agreement is made and entered into under authority of the Colorado Constitution, Article XIV, Section 18(2)(a) and Article XX, Section 6, Section 29-1-203, C.R.S., Sections 43-4-601 et seq., C.R.S., and the PPRTA IGA.

4. Term. This Agreement shall commence on the Effective Date and, unless this Agreement is sooner terminated by written agreement of the Parties, shall terminate on December 31, 2023 and shall automatically renew on January 1, 2024 for a one-year term and shall thereafter automatically renew each January 1 until the earlier of (i) the date on which PPRTA has collected and spent all of the PPRTA Tax received pursuant to the PPRTA 3 Authorization and, if determined to be available to fund Approved Phase 2 Costs pursuant to Section 5 hereof, the PPRTA 2 Authorization or (ii) the date all Approved Phase 2 Costs up to the Total Funding Amount have been reimbursed to the District in full.

5. Determination of Total Funding Amount. As of the Effective Date, the Total Funding Amount (up to \$103,000,000) represents the sum of following: (i) the City Portion (\$72,000,000) and (ii) the County Portion (\$31,000,000). The Total Funding Amount may be adjusted as follows:

(a) The Project (including Phase 2) was included in the priority “B” list of the PPRTA 2 Authorization and pursuant to such authorization, priority “B” projects may not be funded until priority “A” projects are completely funded. As of the Effective Date, priority “A” projects in the PPRTA 2 Authorization have not been completely funded. Once priority “A” projects of the PPRTA 2 Authorization have been completely funded, it is possible that up to \$18,500,000 of the

PPRTA 2 Authorization will be available and that the PPRTA may allocate all or a portion thereof to the PPRTA 2 Authorization Allocation. Accordingly, contemporaneously with, or not later than the next budget amendment meeting after the Board's determination that the funding of all priority "A" projects of the PPRTA 2 Authorization has been completed, the Board shall determine the amounts, if any, available from the PPRTA 2 Authorization and the amount thereof, if any, that will be used for the PPRTA 2 Authorization Allocation. In the event that a determination is made that any amounts from the PPRTA 2 Authorization are available to fund Phase 2 through the PPRTA 2 Authorization Allocation, and the Board includes those amounts in one or more Appropriations (each an Annual PPRTA 2 Authorization Allocation), the Total Funding Amount shall correspondingly increase. Within five (5) Business Days of such determination, PPRTA shall provide a written notice thereof to all other Parties.

(b) The PPRTA 3 Authorization included "MARKSHEFFEL RD IMPROVEMENTS – WOODMEN RD TO N CAREFREE CIR" (the "**Marksheffel Project**") as a priority "A" project and the City has designated a portion of the PPRTA Tax for the Marksheffel Project (the "**Marksheffel Designation**"). To the extent all or a portion of the Marksheffel Designation is not needed to fund the Marksheffel Project, the City intends to request the Board to apply such amount to fund Approved Phase 2 Costs on an annual basis. Accordingly, if the City funds the Marksheffel Project from other sources or otherwise determines that all or a portion of the Marksheffel Designation is not needed to fund the Marksheffel Project, the City agrees to include in its annual budget proposals a request that the Board reallocate the full unused amount of the Marksheffel Designation to fund the Approved Phase 2 Costs, up to a total amount not to exceed \$18,500,000. If the Board approves such request, it shall include the requested amount in the related one or more Appropriations and the Total Funding Amount and the Annual City Portion shall correspondingly increase. Within five (5) Business Days of such determination, PPRTA shall provide a written notice thereof to all other Parties.

(c) The Parties further acknowledge and agree that in order to fund Phase 2 Costs the District will be incurring District Debt and that it will rely on the availability and amount of the Total Funding Amount to incur such debt and pledge to its repayment the Appropriated PPRTA Tax (up to the Total Funding Amount) received by the District pursuant to this Agreement. Accordingly, the City and the County agree not to reduce the City Portion and the County Portion, respectively, as part of their budgetary process and PPRTA agrees not to reduce the amount of the PPRTA 2 Authorization Allocation, if any, and the Marksheffel Allocation, if any, that it determines to be available for reimbursement of Approved Phase 2 Costs, provided however, that the payment of the City Portion, the County Portion, the PPRTA 2 Authorization Allocation, if any, and the Marksheffel Allocation, if any, is subject to Appropriation by the Board as described in Section 7 hereof and subject to the limitations described in Section 12 hereof.

6. Approval of Phase 2 Costs.

(a) The District shall provide or cause to be provided to the City, with a copy to the County, a written statement (each, a "**Statement**") with reasonably sufficient information and background material relating to each Statement to allow the City to verify that the amounts described in the Statement (1) were applied by the District to pay or reimburse Phase 2 Costs, (2) are reasonable and are comparable for similar projects as constructed in the Colorado Springs Metropolitan Area, and (3) are eligible for reimbursement from the PPRTA Tax. In addition, the

District shall attest that the amounts of Phase 2 Costs described in the Statement are eligible for reimbursement pursuant to this Agreement. Upon receipt of the Statement and supporting documentation, the City may, within fifteen (15) Business Days, request additional information which the City reasonably determines is needed in order to verify that the amounts requested in the Statement are being applied to reimburse the Phase 2 Costs. Within fifteen (15) Business Days from the later of (i) receipt of the Statement or (ii) receipt of any requested additional information pursuant to this subparagraph, the City Representative shall either approve the Statement by signing the same and sending the executed original to the District (with a copy to PPRTA) or provide to the District (with a copy to PPRTA) a written objection to all or any portion of the Phase 2 Costs in the related Statement, together with a detailed explanation of the basis upon which the City Representative objects to the validity of all or a portion of the Phase 2 Costs included in the Statement. If the City Representative does not deliver a timely executed approval of the Statement or a written objection as set forth above, such failure to provide a timely executed approval of the Statement or a written objection shall be deemed an approval of the Phase 2 Costs included in the Statement by the City.

(b) If the District and the City have not satisfactorily resolved any such objection within fifteen (15) Business Days from the date when the District received the timely objection from the City in accordance with subsection (a) above, then within the following five (5) Business Days, the District Representative and the City Representative shall jointly select and engage an independent engineer to resolve the dispute and make a determination regarding the Phase 2 Costs, which shall be rendered within ten (10) Business Days from the date of the engagement and shall be final and binding on the Parties. The District and the City shall equally share in the costs of the independent engineer review.

(c) Any Phase 2 Costs in the Statement that are approved, deemed approved, approved as a result of the independent engineer's determination or are not subject to objection pursuant to this Section 6 shall constitute "**Approved Phase 2 Costs**" and shall be subject to reimbursement by PPRTA from the PPRTA Tax up to the Total Funding Amount, subject to Appropriation by the Board as set forth in Section 7 hereof and subject to the limitations described in Section 12 hereof.

7. Budgeting and Appropriation of the Total Funding Amount.

(a) The Parties acknowledge and agree that Approved Phase 2 Costs are PPRTA costs which are eligible to be funded with the PPRTA Tax up to the Total Funding Amount. Commencing in 2024 (for the budget year 2025) and in each year thereafter during the Term, the officers of the City and the County charged with the responsibility of formulating budget proposals for the PPRTA are hereby directed to include in the annual budget proposals the total amounts of the Annual City Portion and the Annual County Portion, respectively, and the City shall additionally include in its annual budget proposal the annual amount of the Marksheffel Allocation, if any, and submit the same for review and approval to the Board. Notwithstanding this directive regarding the formulation of budget proposals, it is the intention of the Parties that any decision to effect an Appropriation for the Annual City Portion and the Annual County Portion, respectively, the Marksheffel Allocation (if any), and the Annual PPRTA 2 Authorization Allocation (if any) shall be made solely by the Board in its absolute discretion and shall be subject to the availability of funds and appropriations thereof. The Board shall furnish the District with copies of its annual budget promptly after the budget is adopted. For the avoidance of doubt, funds

for which the Appropriation has been effected are not subject to further appropriation by the City or the County.

(b) PPRTA shall disburse the PPRTA Tax for which an Appropriation has been effected by the Board, up to the Total Funding Amount, directly to the District or its designee, provided however that such disbursement shall be made only with respect to (and up to) the then-current Approved Phase 2 Costs in accordance with Section 7(c) below. Subject to Section 7(c) below, such payments shall be made in monthly installments by the end of each calendar month commencing in the first calendar month in which PPRTA receives the first PPRTA Tax attributable to the Total Funding Amount, for which an Appropriation has been effected by the Board until such Appropriated amounts are fully paid.

(c) The Parties acknowledge and agree that while it is not necessary for the Approved Project 2 Costs to be equal to or exceed the amounts that are included in the annual budget proposals for appropriation by the Board or at the time such amounts are Appropriated by the Board, the actual disbursement of the PPRTA Tax for which an Appropriation has been effected by the Board shall be made only for the Approved Phase 2 Costs. In the event that the PPRTA Tax for which an Appropriation has been effected by the Board exceeds the Approved Phase 2 Costs, PPRTA shall hold such PPRTA Tax in its account and disburse it to the District or its designee in the first month following the month in which there are sufficient Approved Phase 2 Cost.

(d) Upon written confirmation by the District Representative and the City Representative that Phase 2 is complete and the written confirmation by the District Representative that the District has submitted Statements for all Phase 2 Costs and that the review and approval process set forth in Section 6 hereof has been completed with respect to all such Statements, the Board may reallocate and reappropriate to other projects that portion of the PPRTA Tax, if any, for which Appropriations have been effected by the Board and which exceeds the Approved Phase 2 Costs.

8. Contracting for Phase 2; IGA. Each of the PPRTA, the City and the County acknowledge and agree that the District will enter into contracts for the design and construction of Phase 2 in its name and administer such contracts in accordance with all applicable federal, State, or local laws and regulations, including but not limited to those of the Colorado Department of Transportation, and that the District and the City intend to enter into an intergovernmental agreement (the "IGA") with respect to construction of Phase 2, and that except for the City's rights to be set forth in the IGA, none of the PPRTA, City or County shall have a right to consent to or approve such contracts or the administration thereof, it being agreed that the only right such Parties have is to approve the Phase 2 Costs in connection with the reimbursement thereof with the PPRTA Tax as provided in this Agreement. The IGA shall require Phase 2 construction to follow the City project acceptance inspections, documentation, as-builts, certificates and warranty necessary for final project acceptance. The IGA will also set forth other procedures for constructing Phase 2 which may include the City's right to construct portions of Phase 2 in certain circumstances. In the event that pursuant to the IGA the City undertakes construction of portions of Phase 2 which have not been financed with the District Debt, the Parties agree to cooperate in amending this Agreement to provide for the funding or reimbursement of the Phase 2 Costs incurred by the City from the PPRTA Tax in accordance with the reimbursement obligations running to the District as

set forth herein, provided that the amount of such PPRTA Tax shall not reduce the Total Funding Amount by more than the amount representing the difference between then applicable Total Funding Amount (as determined pursuant to Section 5 hereof) and the sum of the Approved Phase 2 Costs and Phase 2 Costs financed with proceeds of the District Debt for which Statements have been or are reasonably expected to be submitted by the District.

9. Application of PPRTA Tax by the District. The Parties acknowledge and agree that the District may pledge and apply all or any portion of the PPRTA Tax received from PPRTA hereunder to the payment of the District Debt, including, without limitation, interest, fees, replenishment of reserves or any amount due from the District in connection with the District Debt.

10. Books and Records; Auditing.

(a) PPRTA shall maintain and make available to the other Parties upon reasonable request, (1) true and complete records of PPRTA Tax received by the PPRTA as part of the PPRTA 2 Authorization and PPRTA 3 Authorization (separately and cumulatively), provided that the information regarding PPRTA Tax may be provided on an aggregate basis without identifying individual taxpayer information, (2) the status of funding priority "A" projects on the PPRTA 2 Authorization list, (3) the status of funding of priority "B" projects on the PPRTA 2 Authorization list, (4) annual budgets, (5) detail on funding of each project in the PPRTA 2 Authorization and PPRTA 3 Authorization, including budgeting information, and (6) the amount of the total PPRTA Tax paid to the District. PPRTA shall provide, within twenty (20) Business Days from its receipt of a written request therefor from any other Party, a balance sheet, income statement, and audited financial statements.

(b) The District shall maintain and make available, or cause to be maintained and be made available, to the other Parties upon reasonable request, true and complete records of the PPRTA Tax received by the District from PPRTA, the Phase 2 Costs, the Statements and all supporting documentation provided in connection with each Statement, the Approved Phase 2 Costs, and copies of contracts and documentation pertaining to design, construction, and improvement of Phase 2, as well as transcripts related to District Debt payable in whole or in part from the PPRTA Tax.

(c) The City and the County each shall maintain and make available to the other Parties upon reasonable request, true and complete records of budget recommendations made to the PPRTA.

(d) The Parties' authorized representatives shall have access during reasonable business hours upon reasonable notice to all of the foregoing records and information and may make copies of any of the foregoing information.

11. Representations.

(a) PPRTA represents and warrants that: PPRTA is a body corporate and political subdivision of the State of Colorado organized pursuant to the provisions of Sections 43-4-601 et seq., C.R.S., and has duly authorized the execution, delivery, and performance of this Agreement by proper action, which Agreement is a legal, valid, and binding obligation of PPRTA, enforceable against PPRTA in accordance with its terms; the consummation of the transactions contemplated

by this Agreement will not violate any provisions of its governing laws or PPRTA IGA or constitute a default or result in a breach of any term or provision of any contract or agreement to which PPRTA is a party or by which it is bound; there is no litigation or administrative proceeding or investigation pending or, to the knowledge of PPRTA threatened, seeking to question the power or authority of PPRTA to enter into or perform this Agreement or any action taken by PPRTA with respect to this Agreement, the validity or enforceability of the general elections approving the PPRTA Tax, the PPRTA 2 Authorization or the PPRTA 3 Authorization, or the PPRTA's authority to impose the PPRTA Tax; PPRTA has the power to enter into this Agreement, and to fully perform all of the obligations and undertakings of PPRTA hereunder.

(b) The City represents and warrants that: the City is a municipal corporation organized and existing as a home rule city under and pursuant to Article XX of the Colorado Constitution and the charter of the City; the City has duly authorized the execution, delivery, and performance of this Agreement by proper action, which Agreement is a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms; the consummation of the transactions contemplated by this Agreement will not violate any provisions of the applicable State laws, the City Code or City Charter or constitute a default or result in a breach of any term or provision of any contract or agreement to which the City is a party or by which it is bound; there is no litigation or administrative proceeding or investigation pending or, to the knowledge of the City threatened, seeking to question the power or authority of the City to enter into or perform this Agreement or any action taken by the City with respect to this Agreement; the City has the power to enter into this Agreement, and to fully perform all of the obligations and undertakings of the City hereunder.

(c) The County represents and warrants that: the County is a legally and duly created and validly existing political subdivision of the State, organized and operating under the laws of the State; the County has duly authorized the execution, delivery, and performance of this Agreement by proper action, which Agreement is a legal, valid, and binding obligation of the County, enforceable against the County in accordance with its terms; the consummation of the transactions contemplated by this Agreement will not violate any provisions of the applicable State laws or constitute a default or result in a breach of any term or provision of any contract or agreement to which the County is a party or by which it is bound; there is no litigation or administrative proceeding or investigation pending or, to the knowledge of the County threatened, seeking to question the power or authority of the County to enter into or perform this Agreement or any action taken by the County with respect to this Agreement; the County has the power to enter into this Agreement, and to fully perform all of the obligations and undertakings of the County hereunder.

(d) The District represents and warrants that: the District is a quasi-municipal corporation and political subdivision of the State created pursuant to Article 1 of Title 32, C.R.S.; the District is not, to its knowledge, in violation of any provisions of its Service Plan or applicable laws of the State; the District has the power and legal right to enter into this Agreement and has duly authorized the execution, delivery, and performance of this Agreement by proper action, which Agreement is a legal, valid, and binding obligation of the District; the consummation of the transactions contemplated by this Agreement will not violate any provisions of the applicable State laws, its Service Plan, or constitute a default or result in a breach of any term or provision of any contract or agreement to which the District is a party or by which it is bound; that it has the

authorization, authority, and power to carry out all activities associated with Phase 2; there is no litigation or administrative proceeding or investigation pending or, to the knowledge of the District threatened, seeking to question the power or authority of the District to enter into or perform this Agreement or any action taken by the District with respect to this Agreement.

12. Nature of Obligations. It is hereby agreed and acknowledged that while this Agreement evidences an intent of the PPRTA to reimburse the District for the Approved Phase 2 Costs incurred by the District for the planning, design, construction and/or completion of Phase 2 all as further set forth herein, this Agreement shall not constitute or be interpreted as constituting a general obligation, debt or indebtedness of the PPRTA within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation of the PPRTA, and the appropriation and expenditure of PPRTA Tax and the making of any reimbursement hereunder shall be at all times subject to the annual appropriations by Board. The PPRTA may reimburse the District for Approved Phase 2 Costs, if any, consistent with the provisions of this Agreement, with any legally available funds of the PPRTA. Nothing herein is intended to be or shall be deemed or construed to create a “bond” within the meaning of Section 7.11 of the PPRTA IGA. No provision of this Agreement shall be construed to pledge or to create a lien on PPRTA Tax or any other PPRTA assets or funds.

13. Manner of Payments. Payments up to the Total Funding Amount, for which an Appropriation has been effected by the Board, shall be made by PPRTA to the District or its designee (such as a trustee or a lender of District Debt) at its designated office by wire transfer of federal funds, certified funds or other method of payment acceptable to the District or its designee in lawful money of the United States of America.

Except as otherwise specified herein, no action or inaction on the part of the District shall affect the PPRTA’s obligation to pay any portion of the Total Funding Amount, for which an Appropriation has been effected by the Board for such purpose.

14. Prohibition of Adverse Budget or Appropriation Modification. To the extent permitted by law and subject to Appropriation by the Board as described in Section 7 hereof and the limitations described in Section 12 hereof, PPRTA shall not, during any calendar year while this Agreement is in effect, make any budgetary transfers or other modifications to its then existing budget and appropriation measures relating to reimbursement of Approved Phase 2 Costs which would adversely affect PPRTA’s ability to meet its obligation to pay duly Appropriated PPRTA Tax for that budget year up to the Total Funding Amount.

15. Indemnification. To the extent permitted by law, the District shall indemnify, defend, and hold harmless PPRTA and each of the governmental entities that is now or may in the future become a party to the PPRTA IGA, and each of their directors, employees, agents, and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys’ fees), and liabilities, of, by, or with respect to third parties (“Any Claims”) to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the District or any of its subcontractors, material suppliers, agents, representatives, or employees, or the agents, representatives, or employees of any subcontractors or material suppliers, in connection with this Agreement including, without limitation, any claims

which cause or allow to continue a condition or event which deprives the PPRTA or any of the governmental entities that is now or may in the future become a party to the PPRTA IGA, or any of their directors or employees of their sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes. Provided, however, that the District shall not be liable for any claim, loss, damage, injury, or liability arising out of the negligence of the PPRTA, its directors, employees, agents, and consultants. The District's defense, indemnification, and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the District to defend in litigation, indemnify, or insure the PPRTA against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of the PPRTA or any third party under the control or supervision of the PPRTA. The obligations of the indemnifications extended by the District under this Section shall survive termination or expiration of this Agreement.

16. Events of Default and Remedies. Upon a default of this Agreement, the non-defaulting party's remedies shall be limited to the right to enforce the defaulting Party's obligations hereunder by an action for equitable relief or specific performance, or by an action to collect and enforce payment of sums owing hereunder, and no other remedy, and no Party shall be entitled to or claim any other monetary damages.

17. Notices. All notices shall be deemed given when personally delivered, or five (5) Business Days following their mailing by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

- If to PPRTA: Rick Sonnenburg, Secretary
Pikes Peak Rural Transportation Authority
15 S. 7th Street
Colorado Springs, Colorado 80905

- With a copy to: Jennifer L. Ivey
Icenogle Seaver Pogue, P.C.
4725 S. Monaco Street, Suite 360
Denver, Colorado 80237

- If to the County: Joshua Palmer, County Engineer
El Paso County Department of Public Works
3275 Akers Drive
Colorado Springs, Colorado 80922

- With a copy to: Lori L. Seago, Sr. Asst. County Attorney
El Paso County Attorney's Office
200 S. Cascade Ave.
Colorado Springs, CO 80903

- If to the City: Gayle Sturdivant, City Engineer
30 South Nevada, Suite 401
Colorado Springs, CO 80901

With a copy to: Office of the City Attorney
30 South Nevada, Suite 501
Colorado Springs, CO 80901

If to District: Gary Erickson, Secretary
Copper Ridge Metropolitan District
13540 Meadowgrass Court, Suite 200
Colorado Springs, CO 80921

With a copy to: Megan Becher
McGeady Becher, P.C.
450 East 17th Avenue, Suite 400
Denver, Colorado 80203

18. Amendments. This Agreement may be modified, amended, or changed, in whole or in part, only by an agreement in writing duly authorized and executed by the Parties with the same formality as this Agreement.

19. Assignment. PPRTA, the City and the County each hereby consents to the assignment by the District of all or any part of the District's right, title, and interest in this Agreement to any trustee or lender with respect to any District Debt, including without limitation assignment of the District's rights to enforce this Agreement. The District shall provide PPRTA, the City, and the County written notice of any such assignment not later than three (3) Business Days from the effective date of the assignment. No further assignment of this Agreement, nor any Party's rights, obligations, duties, or authorities hereunder, in whole or in part, may be made without the prior written consent of the other Parties, and any purported assignment otherwise shall be void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to not consent to such subsequent assignment.

20. Legal Opinions. Each Party shall, at the request of any other Party and at the expense of such requesting Party, deliver an opinion or opinions of counsel with respect to the validity and enforceability of this Agreement against such Party whose counsel is delivering the opinion and such other opinions as may be reasonably requested under the circumstances. Such opinions shall be addressed to the requesting Party, or the requesting Party shall receive a reliance letter from the opining counsel indicating that such opinions may be relied upon by such Party as if addressed to such Party.

21. Governing Law and Venue. This Agreement shall be governed by the laws of the State, and any legal action concerning the provisions hereof shall be brought in El Paso County, Colorado.

22. Third Party Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than the Parties any right, remedy, or claim under or by reason of this Agreement or any covenant, condition, or stipulation hereof; and all the covenants, stipulations, promises, and agreements in this Agreement by and on behalf of any Party shall be for the sole and exclusive benefit of the Parties. It is the

intent of the Parties hereto that there shall be no third party beneficiaries of this Agreement.

23. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the any Party shall not constitute a waiver of any of the other terms or obligations of this Agreement.

24. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior oral or written communications.

25. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful for any reason, the remaining provisions hereof shall remain in full force and effect.

26. Relationship of the Parties. The Parties shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with each other, other than as contracting parties.

27. No Waiver of Governmental Immunity. Nothing in this Agreement or in any actions taken by the Parties or their respective elected officials, directors, officers, agents and employees pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

28. Counterparts; Copies of Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

29. Electronic Signatures. The Parties consent to the use of electronic signatures pursuant to the Uniform Electronic Transactions Act, Sections 24-71.3-101, *et seq.*, Colorado Revised Statutes, as may be amended from time to time. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the date first above written. [all signature blocks to be confirmed, as to attestation, etc.]

**PIKES PEAK RURAL
TRANSPORTATION AUTHORITY**

By: _____
Chair

**CITY OF COLORADO SPRINGS,
COLORADO**

By: _____
Mayor

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

By: _____
Cami Bremer, Chair

ATTEST:

Steve Schleiker
County Clerk & Recorder

Approved as to form:

County Attorney's Office

**COPPER RIDGE METROPOLITAN
DISTRICT**

By: _____

