
CUSTODIAL AGREEMENT

BETWEEN

**GOLD HILLS MESA METROPOLITAN DISTRICT No. 2
EL PASO COUNTY, COLORADO**

AND

U.S. BANK NATIONAL ASSOCIATION

RELATING TO

**A PROMISSORY NOTE
IN THE AGGREGATE PRINCIPAL AMOUNT OF
\$[6,360,000]**

DATED AS OF DECEMBER [__], 2015

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CUSTODIAL AGREEMENT

THIS CUSTODIAL AGREEMENT (this “Custodial Agreement”) is made and dated as of December [___], 2015, by and between **GOLD HILL MESA METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as custodian (in such capacity, the “Custodian”). Capitalized terms used in the following recitals but not defined therein shall have the meanings set forth in this Custodial Agreement.

RECITALS

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 has determined in a resolution dated [January __], 2015 (the “Authorizing Resolution”) that it is in the best interests of the District, the residents, and taxpayers thereof, to incur a loan in the total maximum aggregate principal amount of \$[6,360,000] (the “Loan”), through the execution of that certain Loan Agreement (the “Loan Agreement”) between the District and U.S. Bank National Association, in its capacity as lender thereunder (the “Bank”), and the issuance to the Bank of a promissory note as set forth in the Loan Agreement (collectively, the “Note”); and

WHEREAS, under the terms of the Authorizing Resolution and the Loan Agreement, certain funds created in connection with the Loan are to be held, invested, and disbursed pursuant to the terms of this Custodial Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained in this Custodial Agreement, the Loan Agreement, and in the Authorizing Resolution, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Loan Agreement. In addition, the following terms as used in this Custodial Agreement shall have the following meanings, unless the context otherwise requires. These definitions shall be equally applicable to both the singular and the plural forms of the terms so defined.

“*Costs of Issuance Fund*” means the “Gold Hill Mesa Metropolitan District No. 2 Costs of Issuance Fund 2015” created pursuant hereto for the purposes described herein.

“*Debt Service Reserve Fund*” means the “Gold Hill Mesa Metropolitan District No. 2 Debt Service Reserve Fund 2015” created pursuant hereto for the purposes described herein.

“*Loan Payment Fund*” means the “Gold Hill Mesa Metropolitan District No. 2 Loan Payment Fund 2015” created pursuant hereto for the purposes described herein.

“*Loan Year*” means the period from December 2 of any calendar year to December 1 of the following calendar year.

“*Owner*” means the registered owner of the Note.

“*Parity Debt*” means any Debt having a lien upon the Pledged Revenue or any part thereof on a parity with the lien thereon of the Loan. For purposes of this definition, obligations payable in whole or in part from, or having a lien upon, the District’s ad valorem tax revenues, shall be considered obligations having a lien upon the Pledged Revenue or any part thereof. Any Parity Debt hereafter issued may be issued pursuant to such resolutions, indentures, or other documents as may be determined by the District; provided that it is acknowledged by the District that the Loan Agreement restricts the District’s right to issue Debt without the Bank’s prior written consent.

“*Permitted Investments*” means any investment or deposit permissible under then applicable law.

“*Permitted Subordinate Debt*” has the meaning set forth in the Loan Agreement.

“*Pledged Revenue Fund*” means the “Gold Hill Mesa Metropolitan District No. 2 Pledged Revenue Fund 2015” created pursuant hereto for the purposes described herein.

“*Project*” means the acquisition, construction, and installation of any facilities the debt for which was approved by the 2004 Election, including without limitation necessary or appropriate equipment.

“*Project Costs*” means the District’s costs properly attributable to the construction, acquisition, or other provision of the Project or any part thereof, including without limitation:

- (a) the costs of labor and materials, of machinery, furnishings, and equipment, and of the restoration of property damaged or destroyed in connection with construction work;
- (b) the costs of insurance premiums, indemnity and fidelity bonds, financing charges, bank fees, taxes, or other municipal or governmental charges lawfully levied or assessed;
- (c) administrative and general overhead costs;
- (d) the costs of reimbursing funds advanced by the District in anticipation of reimbursement from Loan proceeds, including any intrafund or interfund loan, and amounts due under any reimbursement agreement or other arrangement with third parties pertaining to the Project;
- (e) the costs of surveys, appraisals, plans, designs, specifications, and estimates;
- (f) the costs, fees, and expenses of printers, engineers, architects, financial consultants, legal advisors, or other agents or employees;
- (g) the costs of publishing, reproducing, posting, mailing, or recording documents;

- (h) the costs of contingencies or reserves;
- (i) [the costs of incurring the Loan, including without limitation amounts due to the D.A. Davidson & Co., pursuant to that certain Placement Agent Agreement dated as of December __, 2015, between the District and D.A. Davidson & Co.];
- (j) the costs of amending any resolution or other instrument relating to the Loan or the Project;
- (k) the costs of repaying any short-term financing, construction loans, and other temporary loans, and of the incidental expenses incurred in connection with such loans;
- (l) the costs of acquiring any property, rights, easements, licenses, privileges, agreements, and franchises;
- (m) the costs of demolition, removal, and relocation; and
- (n) all other lawful costs as determined by the Board.

“*Project Fund*” means the “Gold Hill Mesa Metropolitan District No. 2 Project Fund 2015” created pursuant hereto for the purposes described herein.

“*Subordinate Debt Documents*” means, collectively, (a) the Indenture of Trust dated as of September 16, 2011 between the District and UMB Bank, n.a., as trustee, pursuant to which the District’s Subordinate Tax-Supported Revenue Bonds, Series 2011C in the original aggregate principal amount of \$2,160,000 were issued, (b) the Indenture of Trust dated as of September 16, 2011, between the District and UMB Bank, n.a., as trustee, pursuant to which the District’s Second Subordinate Tax-Supported Revenue Bonds, Series 2011D in the original aggregate principal amount of \$3,423,000 were issued, and (c) any instrument authorizing additional Permitted Subordinate Debt.

“*Subordinate Debt Trustee*” means UMB Bank, n.a., or any successor thereof, as trustee under the Subordinate Debt Documents.

Section 2. Creation of Funds. The following funds are hereby created and established, each of which shall be administered and maintained by the Custodian in accordance with the provisions hereof:

- (a) the Project Fund;
- (b) the Pledged Revenue Fund;
- (c) the Loan Payment Fund;
- (d) the Debt Service Reserve Fund; and
- (e) the Costs of Issuance Fund.

The foregoing funds will be funded on the Closing Date if and to the extent provided in the Loan Agreement.

Section 3. Project Fund.

(a) *In General* - The Project Fund shall be maintained by the Custodian in accordance with the terms of this Section. Upon the receipt by the Custodian of a resolution of the District determining that all Project Costs have been paid, any balance remaining in the Project Fund shall be credited to the Loan Payment Fund. In addition, upon the District's determination that the funds in the Project Fund exceed the amount necessary to pay all Project Costs, such excess amount shall be credited to the Loan Payment Fund in the amounts determined by the District and communicated to the Custodian in writing. The Project Fund shall terminate when (i) no further moneys remain therein, and (ii) the District informs the Custodian in writing that the Unfunded Advance Amount is zero.

(b) *Draws From Project Fund* - Except as otherwise provided in this Section, amounts in the Project Fund shall be released by the Custodian to the District in accordance with requisitions in substantially the form set forth herein as Exhibit A, signed by any District Board member. The Custodian shall have no duty to know or determine if any requisition submitted by the District constitutes properly attributable Project Costs and may conclusively rely on such requisition. The District acknowledges that the Custodian cannot process any such requisition until the Custodian is in receipt of a valid Form W-9 or Form W-8, as applicable, from each payee, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

(c) *Insufficiency of Revenue* - In the event the moneys in the Loan Payment Fund and the Reserve Fund are ever insufficient to pay the principal of or interest on the Loan when due and there are moneys in the Project Fund, the Custodian shall transfer from the Project Fund such amounts as may be necessary to remedy such insufficiency, or such lesser amount as may be in the Project Fund.

(d) *Use of Unspent Moneys in Project Fund* - Amounts on deposit in the Project Fund on the Maturity Date, if any, shall be applied to the payment of the Loan, except as may be otherwise agreed to in a writing between the Bank and the District which is provided to the Custodian.

Section 4. Pledged Revenue Fund; Flow of Funds.

(a) The District shall transfer all amounts comprising Pledged Revenue to the Custodian as soon as may be practicable after the receipt thereof by the District, and the Custodian will credit all such moneys to the Pledged Revenue Fund. After setting aside fees or other amounts due to the Custodian pursuant to the terms of this Agreement and the Resolution, or to the Bank pursuant to the Loan Agreement, the Custodian shall apply the Pledged Revenue in the Pledged Revenue Fund in the following order of priority. For purposes of the following: (i) when credits to more than one fund, account, or purpose are required at any single priority level, such credits shall rank *pari passu* with each other, and (ii) when credits are required to go to funds or accounts which are not held by the Custodian under this Custodial Agreement, the

Custodian may rely upon the written instructions of the District with respect to the appropriate funds or accounts to which such credits are to be made, and in the absence of any such written instructions, the Custodian may assume that no such other funds or accounts are to be funded.

FIRST: To the credit of the Loan Payment Fund, the amounts required by the Section hereof entitled "Loan Payment Fund", and to the credit of any other fund or account established for the periodic payment of any other Parity Debt, the amounts required by the resolutions, indentures, contracts, or other documents pertaining to or authorizing the issuance of such other Parity Debt;

SECOND: To the credit of the Reserve Fund, the amounts required by the Section hereof entitled "Reserve Fund", and to the credit of any other similar fund or account established as additional security for the payment of any other Parity Debt, the amounts required by the resolutions, indentures, contracts, or other documents pertaining to or authorizing the issuance of such other Parity Debt;

THIRD: To the Subordinate Debt Trustee, an amount equal to the annual interest due and owing in the then current calendar year pursuant to an invoice provided by the Subordinate Debt Trustee to the Custodian, for application to the payment of interest on the Permitted Subordinate Debt in accordance with the Subordinate Debt Documents; *provided, however*, that if the Custodian is in receipt of a notice from the Bank or the District that a Default or Event of Default has occurred (and has not received subsequent notice from the Bank that such default has been cured to the satisfaction of the Bank), *no* credits shall be made by the Custodian pursuant to this clause THIRD and, instead, moneys shall be applied pursuant to clause FOURTH below; and

FOURTH: To the credit of any other fund or account as may be designated by the District, to be used for any lawful purpose, any Pledged Revenue remaining after the payments and accumulations set forth above.

Section 5. Loan Payment Fund.

(a) The Custodian shall hold and administer the Loan Payment Fund so long as the Loan is outstanding in whole or in part. The Loan Payment Fund is held for the benefit of the Bank and the Owner of the Note and the money in such fund shall be disbursed only in accordance with this Custodial Agreement.

(b) Subject to the receipt of sufficient Pledged Revenue, each Loan Year there shall be credited to the Loan Payment Fund an amount of Pledged Revenue which, when combined with other legally available moneys in the Loan Payment Fund, will be sufficient to pay the

principal of and interest on the Loan which has or will become due in the Loan Year in which the credit is made.

(c) Moneys in the Loan Payment Fund shall be used by the Custodian solely to pay the principal of and interest on the Loan, in the following order:

- (i) First, to the payment of interest due in connection with the Loan (including without limitation current interest, accrued but unpaid interest, and interest due as a result of compounding, if any); and
- (ii) Second, to the extent any moneys are remaining in the Loan Payment Fund after the payment of such interest, to the payment of the principal of the Loan, whether due at maturity or upon prior redemption or prepayment.

(d) The payments of principal of and interest on the Loan shall be made by the Custodian in accordance with the provisions of Section 2.02 of the Loan Agreement. The Custodian may request from the Bank, and conclusively rely upon, written confirmation of the amounts to be paid as principal, prepayment fee, if any, and interest on the Loan.

Section 6. Debt Service Reserve Fund.

(a) The Custodian shall hold and administer the Reserve Fund so long as the Loan is outstanding in whole or in part. The Reserve Fund is held for the benefit of the Bank and the Owner of the Note and the money in such fund shall be disbursed only in accordance with this Custodial Agreement.

(b) Moneys in the Reserve Fund shall be used by the Custodian, if necessary, only to prevent a default in the payment of the principal of or interest on the Loan, and the Reserve Fund is hereby pledged to the payment of the Loan. In the event the amounts credited to the Loan Payment Fund are insufficient to pay the principal of or interest on the Loan when due, the Custodian shall transfer from the Reserve Fund to the Loan Payment Fund an amount which, when combined with moneys in the Loan Payment Fund, will be sufficient to make such payments when due. In the event that moneys in the Loan Payment Fund and the Reserve Fund are together insufficient to make such payments when due, the Custodian will nonetheless transfer all moneys in the Reserve Fund to the Loan Payment Fund.

(c) Subject to the receipt of sufficient Pledged Revenue, the Reserve Fund shall be maintained in the amount of the Reserve Requirement for so long as the Loan is outstanding, provided that the foregoing shall not prevent the amounts in the Reserve Fund from being used in whole or in part to fund the payment or defeasance of the entire Loan. If at any time the Reserve Fund is drawn upon or valued so that the amount of the Reserve Fund is less than the Reserve Requirement, then the District shall deposit to the Reserve Fund amounts sufficient to bring the amount credited to the Reserve Fund to the Reserve Requirement. Such deposits and payments shall be made at the earliest practicable time, but in accordance with and subject to the limitations of the Section hereof entitled "Pledged Revenue Fund; Flow of Funds". For purposes of this Section, investments credited to the Reserve Fund shall be valued on the basis of their current market value, as reasonably determined by the Custodian, which value shall be

determined at least annually no later than December 1 of each year, and any deficiency resulting from such evaluation shall be replenished as aforesaid. In making any valuation of the Reserve Fund, the Custodian may use and conclusively rely upon securities pricing and valuation services available to the Custodian, including the accounting system used by the Custodian for the funds maintained by the Custodian under this Custodial Agreement. Nothing herein shall be construed as requiring the District to impose an ad valorem mill levy for the purpose of funding of the Reserve Fund in excess of the Required Mill Levy.

(d) The amount credited to the Reserve Fund shall never exceed the amount of the Reserve Requirement. In the event that a valuation of the Reserve Fund as described herein results in the conclusion that the amount thereof exceeds the Reserve Requirement, the excess shall be credited to the Loan Payment Fund.

(e) All amounts on deposit in the Reserve Fund on the Maturity Date shall be used for payment of the Loan except as may be otherwise agreed to in a writing between the Bank and the District which is provided to the Custodian.

Section 7. Costs of Issuance Fund. The Costs of Issuance Fund shall be administered and maintained by the Custodian in accordance with this Section. The Custodian shall disburse amounts in the Costs of Issuance Fund for the payment of the fees, costs, and expenses incurred in connection with the Loan pursuant to invoices provided to the Custodian and in accordance with a closing memorandum approved by the District. The District's signature on such closing memorandum shall constitute authorization to the Custodian to disburse moneys in accordance therewith. On the date which is one hundred twenty (120) days after the date of the closing and funding of the Loan, the Custodian shall transfer all amounts then remaining, if any, in the Costs of Issuance Fund to the [Project Fund], and the Costs of Issuance Fund shall thereafter be terminated.

Section 8. Investment of Funds.

(a) The Custodian shall, at the written direction of the District, invest amounts held by it pursuant to this Custodial Agreement only in Permitted Investments. The Custodian may conclusively rely upon the District's determination as to whether an investment is a Permitted Investment, and shall not be responsible for making such determination. The Custodian shall have no liability or responsibility for any loss or for failure to maximize earnings resulting from any investment made in accordance with the provisions of this Section. The Custodian shall be entitled to assume, absent receipt by the Custodian of written notice to the contrary, that any investment that at the time of purchase is a Permitted Investment remains a Permitted Investment thereafter. Absent written direction, the Custodian will hold such amounts uninvested.

(b) Any investment income derived from the investment and reinvestment of any moneys in any fund held by the Custodian hereunder shall be credited to the fund from which the moneys invested were derived.

(c) The Custodian may make any and all investments permitted by the provisions of this Section through its own investment department or that of its affiliates. As and when any amount invested pursuant to this Section may be needed for disbursement, the Custodian may

cause a sufficient amount of such investments to be sold and reduced to cash to the credit of such funds.

(d) The parties acknowledge that to the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions of the escrow, the parties waive receipt of such confirmations, to the extent permitted by law. The Custodian shall furnish a statement of security transactions on its regular monthly reports.

Section 9. Security.

(a) The District hereby pledges, assigns, and grants to the Bank a first priority security interest in and to all amounts in the funds held by the Custodian under this Custodial Agreement to secure the payment of the principal of and interest on the Loan. The District represents and warrants that such funds are not and shall not be subject to any other lien or encumbrance except as permitted by the Loan Agreement.

(b) The creation, perfection, enforcement, and priority of the pledge of the funds held by the Custodian for the benefit of the Bank under this Custodial Agreement to secure the payment of the principal of and interest on the Loan shall be governed by §11-57-208 of the Supplemental Public Securities Act, the Loan Agreement, and this Custodial Agreement. The amounts pledged to the payment of such obligations shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described herein and in the Loan Agreement. The lien of such pledge shall be valid, binding, and enforceable as against all Persons having claims of any kind in tort, contract, or otherwise against the District irrespective of whether such Persons have notice of such liens.

Section 10. Events of Default. The occurrence of the following shall constitute an “Event of Default” hereunder (subject to any applicable cure period):

(a) the Custodian’s receipt of notice from the Bank of the occurrence of any event of default under the Loan Agreement; and

(b) default in any obligation of the District hereunder.

The District agrees to give notice of any Event of Default of which it has knowledge to the Custodian promptly upon obtaining such knowledge, and the Custodian shall promptly forward such notice to the Bank.

Section 11. Remedies. While any Event of Default remains uncured, the Bank shall have all of the following rights and remedies, subject however, to any limitations in the Loan Agreement:

(a) to foreclose its security interest in the funds held hereunder by any available judicial procedure or without judicial process;

(b) to exercise all rights and remedies available to the Bank upon the occurrence of an event of default under the Loan Agreement;

(c) to cause the Custodian to transfer all amounts in the funds held hereunder to the Bank pursuant to the terms of this Custodial Agreement and the Loan Agreement; or

(d) to exercise any and all other rights and remedies that the Bank may have by law or under any applicable agreement, including without limitation, all rights and remedies of a secured party under any applicable commercial code.

Section 12. Cumulative Remedies. The Bank's and the District's rights and remedies hereunder, under the Loan Agreement and under the Authorizing Resolution are cumulative and in addition to all rights and remedies provided by law or otherwise from time to time, and each such right or remedy may be exercised concurrently or independently and as often as the Bank or the District deems advisable.

Section 13. No Implied Waivers. No waiver of any default shall be implied from any omission by any party to this Custodial Agreement to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of any Financing Document shall be construed as a waiver of any subsequent breach of the same provision.

Section 14. Custodian's Costs and Expenses. The District shall from time to time, subject to any agreement then in effect with the Custodian, pay the Custodian compensation for its services and reimburse the Custodian for all its advances and expenditures hereunder, including but not limited to advances to and fees and expenses of accountants, agents, appraisers, consultants, legal counsel or other experts employed by it in the observance and performance of its rights and obligations hereunder; provided that the Custodian shall not have any lien for such compensation or reimbursement against any money held by it in any fund established hereunder, although the Custodian may take whatever legal actions are available to it directly against the District to recover such compensation or reimbursement.

Section 15. Indemnification; No Discretionary Authority.

(a) The District hereby agrees, to the extent permitted by law, to indemnify the Custodian and its agents, employees, officers, and directors for, and to hold it harmless against any loss, liability, or expense incurred in connection with the Custodian's duties hereunder to the extent of the absence of negligence or misconduct on the part of the Custodian, including, without limitation, legal or other fees arising out of or in connection with the Custodian entering into this Custodial Agreement and carrying out its duties hereunder and costs and expenses of defending itself against any claim of liability or any action for interpleader. The Custodian shall be under no obligation to institute or defend any action, suit, or legal proceeding in connection herewith, unless first indemnified and held harmless to its satisfaction in accordance with the foregoing, except that the Custodian shall not be indemnified against any loss, liability, or expense arising out of its own negligence or misconduct. Such indemnity shall survive the termination or discharge of this Custodial Agreement or resignation of the Custodian.

(b) The District and the Custodian acknowledge that, except to the extent set forth in any separate instrument signed by the parties with respect to this Custodial Agreement, the

Custodian's duties hereunder do not include any discretionary authority, control, or responsibility with respect to the management or disposition of any asset or funds; that the Custodian has no authority or responsibility to render investment advice with respect to any asset or funds; and that the Custodian is not a fiduciary with respect to the District. In addition, it is agreed that the Custodian shall not be liable for any loss or diminution of assets or funds by reason of investment experience or for its actions taken in reliance upon an instruction from the District. The Custodian shall only be responsible for the performance of such duties as are expressly set forth herein or in instructions of the District that are not contrary to the provisions of this Custodial Agreement. The Custodian shall exercise reasonable care in the performance of its services hereunder. In no event shall the Custodian be liable for indirect or consequential damages. Custodian shall not be responsible or liable for any failure or delay in performance of its obligations under this Custodial Agreement arising out of or caused, directly or indirectly, by instructions, actions, or omissions of the District or by circumstances beyond the Custodian's reasonable control, including, without limitation, loss or malfunctions of utility, transportation, computer (hardware or software) or communication service; nor shall any such failure or delay give District the right to terminate this Custodial Agreement, it being agreed that the termination of this Custodial Agreement is subject to the Section hereof entitled "Amendment and Termination."

Section 16. Miscellaneous. Presentment, protest, notice of protest, notice of dishonor, and notice of nonpayment are hereby waived with respect to any proceeds to which any Bank is entitled hereunder.

Section 17. Successors and Assigns. Subject to any applicable restrictions on assignment contained herein, in the Loan Agreement, or in the Authorizing Resolution, this Custodial Agreement shall bind and shall inure to the benefit of, the successors and assigns of the District, the Custodian, and the Bank; provided that this Custodial Agreement may only be assigned to the Persons to which the Loan Agreement and Note may be assigned under Section 8.02 of the Loan Agreement, and shall be subject to the same limitations, restrictions, and provisions which would apply to the assignment of the Loan Agreement and Note.

Section 18. Notices, Etc.

(a) Except as otherwise provided herein, all notices, certificates, or other communications required to be given to any of the Persons set forth below pursuant to any provision of this Custodial Agreement shall be in writing, shall be given either in person or by certified or registered mail, and if mailed, shall be deemed received three (3) days after having been deposited in a receptacle for United States mail, postage prepaid, addressed as follows:

District: Gold Hill Mesa Metropolitan District No. 2
c/o

Attention:
Facsimile:
Email:

with a copy to:

Susemihl, McDermott & Cowan, P.C.
660 Southpointe Court #210
Colorado Springs, Colorado 80906
Attention: Peter M. Susemihl, Esq.
Facsimile: (719) 579-9339
E-mail: psusemihl@smmclaw.com

Bank: U.S. Bank National Association
Commercial Banking
8th Floor
950 17th Street
Denver, Colorado 80202
Attention: Jason Edrington
Facsimile: NONE
E-mail: Jason.edrington@usbank.com

Custodian: U.S. Bank National Association
DN-CO-T12CT
950 17th Street, 12th Floor
Denver, Colorado 80202
Attention: Kathleen Connelly
Facsimile: (303) 585-6865
E-mail: kathleen.connelly@usbank.com

**Subordinate Debt
Trustee:** UMB Bank, n.a.
1670 Broadway
Attention: Corporate Trust and Escrow Department
Denver, Colorado 80202
Telephone: (303) 764.3603
Facsimile: (303) 764.3699

(b) In lieu of mailed notice to any Person set forth above, the Persons designated above may provide notice by email to any email address set forth above for any other Person designated above, or by facsimile transmission to any facsimile number set forth above for such Person, and any such notices shall be deemed received upon receipt by the sender of an email or facsimile transmission from such Person confirming such receipt, or upon receipt by the sender of such other confirmation of receipt as may be reasonably reliable under the circumstances.

(c) The Persons designated above may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent.

(d) Where this Custodial Agreement provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice.

Section 19. Integration; Modification; Waiver; Third Party Beneficiary. This Custodial Agreement, together with any other documents referred to herein, constitutes the entire agreement among the District, the Custodian, and the Bank with respect to the matters set forth herein. No modification of this Custodial Agreement (including waivers of rights) shall be effective unless in writing and signed by each party hereto. In addition, this Custodial Agreement may not be modified or amended without the prior written consent of the Bank. The Bank is hereby designated as a third party beneficiary of this Custodial Agreement and is entitled to enforce the Custodial Agreement and benefit from the rights and remedies provided to it herein.

Section 20. Counterparts. This document may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof.

Section 21. Severability. In the event any provision of this Custodial Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, the intent being that such remaining provisions shall remain in full force and effect.

Section 22. Time. Time is of the essence in the performance of all obligations under this Custodial Agreement.

Section 23. Governing Law. This Custodial Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Colorado.

Section 24. Waiver of Jury Trial. Each of the parties hereto irrevocably waives, to the fullest extent permitted by law, any and all rights to trial by jury in any legal proceeding arising out of or relating to this Custodial Agreement or the transactions contemplated hereby. The District, the Bank and the Custodian each further agree that, in the event of litigation, it will not personally or through its agents or attorneys seek to repudiate the validity of this Section and it acknowledges that it freely and voluntarily entered into this Custodial Agreement to waive trial by jury in order to induce the Bank to enter into the Loan Agreement.

Section 25. Headings. Section headings used in this Custodial Agreement are for convenience of reference only and shall not affect the construction of this Custodial Agreement.

Section 26. Amendment and Termination.

(a) This Custodial Agreement may be amended only upon written agreement by all of the parties hereto.

(b) This Custodial Agreement shall terminate on the date when the District has paid all amounts due and owing to (i) the Bank under the Loan Agreement (as evidenced by a written certification of the Bank to the Custodian, with a copy to the District) and (ii) the Custodian under this Custodial Agreement.

Section 27. Patriot Act Notice. The Custodian hereby notifies the District that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the District, which information includes the name and address of the District and other information that will allow the Custodian to identify the District in accordance with the Patriot Act. The District hereby agrees that it shall promptly provide such information upon request by the Custodian.

[The remainder of this page left blank intentionally]

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

U.S. BANK NATIONAL ASSOCIATION
as Custodian

By: _____

Name: _____

Title: _____

(S E A L)

Attest:

**GOLD HILL MESA METROPOLITAN
DISTRICT NO. 2, EL PASO COUNTY,
COLORADO**

By: _____

Name: _____

Title: Secretary or Assistant Secretary

By: _____

Name: _____

Title: President

EXHIBIT A

to

CUSTODIAL AGREEMENT

[Form of Project Fund Requisition]

Requisition No. ____

GOLD HILL MESA METROPOLITAN DISTRICT NO. 2

CUSTODIAL AGREEMENT

DATED _____, 2015

The undersigned Authorized Officer (capitalized terms used herein shall have the meanings ascribed thereto by the above Custodial Agreement) hereby makes a requisition from the Project Fund held by UMB Bank, n.a., as the Custodian under the Custodial Agreement, and in support thereof states:

1. The amount to be paid or reimbursed pursuant hereto is \$_____.

2. The name and address of the Person, firm, or corporation to whom payment or reimbursement is due or has been made is as follows:

3. Payment is due to the above Person for (describe nature of the Project Costs being paid or reimbursed by this requisition):

4. Unless previously provided, attached is a valid Form W-9 or Form W-8, as applicable, with respect to each payee set forth above.

5. The amount to be paid or reimbursed pursuant hereto shall be transmitted by the Custodian as follows (wire transfer or other transmission instructions):

[The remainder of this page left blank intentionally]

6. The above payment obligations have been or will be properly incurred, is or will be a proper charge against the Project Fund, and have not been the basis of any previous withdrawal. The disbursement requested herein will be used solely for the payment of Project Costs.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20__.

By: _____

As: Authorized Officer