



**TRI-PARTY AGREEMENT
Highway 42 Revitalization Area**

This Agreement (the Agreement) is made as of December 5, 2006, by and among the LOUISVILLE REVITALIZATION COMMISSION, a body corporate and politic of the State of Colorado (the Commission), the CITY OF LOUISVILLE, a Colorado municipal corporation (the City), and the COUNTY OF BOULDER, a political subdivision of the State of Colorado (the County), collectively, the Parties and individually a Party.

RECITALS

A. Pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et seq., C.R.S. (the Act), the City Council of the City passed and adopted Resolution No. 37 approving the Highway 42 Revitalization Area Urban Renewal Plan (the Plan) to carry out the urban renewal project (the Urban Renewal Project) described in the Plan for the area described therein (the Urban Renewal Area).

B. The Act provides, and the Plan contains, a provision authorizing the financing of the Urban Renewal Project (TIF Financing). TIF Financing provides that taxes, if any, levied after the effective date of the approval of the Plan upon taxable property in the Urban Renewal Area each year shall be divided for a period not to exceed twenty-five (25) years from the effective date of the Plan and that a portion of said property tax revenues (the TIF Revenue) shall be allocated to and paid into a special fund of the Commission to pay the principal of, interest on, and any premiums due in connection with bonds of, loans or advances to, or indebtedness incurred by, the Commission to carry out the Urban Renewal Project.

C. Section 31-25-107(11) of the Act permits and authorizes the Parties to enter into agreements "for allocation of responsibility among the parties to the agreement for payment of the costs of any additional county infrastructure or services necessary to offset the impacts of an urban renewal project and for the sharing of revenues."

D. Pursuant to Section 31-25-107(3.5), the City and Commission submitted an urban renewal impact report for the Plan to the County and the County submitted its response thereto, including, as provided in subparagraph (a)(III), information on the estimated impact of the urban renewal plan on county revenues, and the Parties desire to enter into the Agreement to address issues raised in discussion of the urban renewal impact report.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing the Parties agree as follows:

1. County TIF Account. Commencing on January 1, 2015 (the Effective Date), the Commission agrees to pay to the City, within ten (10) days of receipt thereof, and the City shall deposit into a separate account created and maintained exclusively for such purpose (the County

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TIF Account), that portion of the TIF Revenue equal to 14.3% of the increase in property tax revenues calculated, produced, and allocated to the Commission from the County's levy on taxable property in the Urban Renewal Area pursuant to and in accordance with the TIF Financing provisions of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado. The deposits in the County TIF Account are designated as the County TIF Revenue.

2. Payments to County. Subject to Section 5 and provided this Agreement has not been terminated in accordance with Section 4, commencing on the Effective Date and continuing until the first to occur of (a) the twenty-fifth (25th) anniversary of the date of approval of the Plan, (b) payment to the County of a total of Six Million One Hundred Fifty Thousand Dollars (\$6,150,000.00), or (c) a Termination Event described in Section 4 (the Term), the City shall pay to the County on or before the 10th day of each month, all of the County TIF Revenues in the County TIF Account. In no event shall the total of payments of County TIF Revenues to the County exceed \$6,150,000.00.

3. Repayment Right. The Commission and the City shall have the unrestricted right, but not the obligation, to prepay the County TIF Revenues, in whole or in part at any time.

4. Termination Event. The Commission or the City may terminate this Agreement by delivering to the County written notice of the termination of the Urban Renewal Plan, including its TIF component (the Termination Event).

5. Renegotiation Event. Additionally, the City and Commission may elect to reopen the terms of this Agreement to renegotiation upon the occurrence of any of the following events (each of which is a Renegotiation Event):

a. There is, as a result of legislation or regulation, a reduction of twenty percent (20%) or more in the annual amount of TIF Revenue allocated to the Commission; or

b. Legislation or regulation applicable to the Plan reduces the twenty-five (25) year statutory period set forth in the Plan and Section 31-25-107(9) of the Act; or

c. Within seven (7) years after the date of this Agreement, the County fails to enter into at least one TIF revenue allocation agreement with another municipality in Boulder County that approves an urban renewal plan or substantial modification thereof after the effective date of the Plan, and such plan or modification contains the property tax TIF Financing provisions of the Act described in Recital B hereof. An agreement under which a municipality commits not to utilize property tax TIF Financing for the term of such plan or modification shall be deemed acceptable for purposes of avoiding a Renegotiation Event. The County shall deliver to the Commission and City copies of all such agreements entered into by the County promptly upon their execution.

In case of a Renegotiation Event, the City and Commission may elect to reopen the terms of this Agreement for renegotiation by providing written notice to the County. Within ninety



(90) days after notice of such an election by the City, the Parties shall execute an amendment to this Agreement setting forth such revised terms as are agreed upon by the Parties. If the Parties fail to execute an amendment within such ninety (90) day period, then this Agreement shall remain in effect in accordance with its terms except that, effective as of the 91st day after such notice and for the remainder of the Term, the rate and total maximum amount of County TIF Revenue paid to the County shall each be reduced by one-half (that is, reduced from, respectively, 14.3% to 7.15%, and \$6,150,000 to \$3,075,000).

6. Use of County TIF Revenue. The County TIF Revenue shall be used solely in accordance with the requirements of Section 31-25-107(11) to address the impacts of the Urban Renewal Plan on County revenues and on infrastructure and services necessary to serve the Urban Renewal Plan area.

7. Other Municipal Urban Renewal Plans. In future negotiations with other municipalities concerning any plans for approval of one or more urban renewal plans, Boulder County will utilize the terms of this Agreement as a guide for said negotiations, and will work in good faith to arrive at agreements which preserve to the County a significant portion of the incremental property tax revenues produced by the County's Funds mill levies. The City and Commission will in good faith cooperate with the County in the County's efforts to arrive at such agreements with other municipalities. This Section shall not be construed to limit the City and Commission's rights under Section 5 above.

8. Agreement Confined to County TIF Revenue. This Agreement applies only to the County TIF Revenue collected in the Urban Renewal Area during the Term, and does not include any other revenues of the City or the Commission, including, without limitation, TIF Revenue produced by the levy of the County each year in the Urban Renewal Area in excess of the County TIF Revenue. The City and County agree that the County TIF Revenue collected and paid by the City under this Agreement are collections for the County within the meaning of Colorado Constitution Article X, Section 20(2)(e).

9. Obligation Subordinate. The obligation of the Commission to pay the designated County TIF Revenue to the City is and shall be subordinate to any payment of the principal of, the interest on, and any premiums due in connection with bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, the Commission for financing or refinancing, in whole or in part, the Urban Renewal Project. Notwithstanding the foregoing, the Commission will use reasonable good faith efforts, consistent with its obligations to carry out the Urban Renewal Project, to structure any such financing or refinancing in a manner to accommodate and provide for the payment of the County TIF Revenue in accordance with this Agreement.

10. Books and Accounts; Financial Statement. During the Term, the City and the Commission will keep, or cause to be kept, proper and current books and accounts in which complete and accurate entries shall be made of the County TIF Revenue received by the Commission and the City and the amounts deposited into and paid out from the County TIF Account. Subject to reasonable notice, at the sole expense of the County, all such books and

accounts related to the County TIF Revenue and the County TIF Account shall be open to inspection during normal business hours by such accountants or other agents as the County may from time to time designate.

11. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally served, or sent by certified mail or registered mail, or by reputable overnight courier service, all postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other Party or Parties. Notices shall be deemed given upon such personal, courier or express mail delivery or on the third business day following deposit in the U.S. mail as provided above.

12. Delays. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, acts of public enemy, acts of the Federal, state or local government, acts of any other Party, acts of third parties, litigation concerning the validity of this Agreement or relating to transactions contemplated hereby, fire, floods, strikes, labor disputes, accidents, regulations or order of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party. Notwithstanding the foregoing, where any of the above events shall occur which temporarily interrupt the ability of the Commission and/or the City to transfer or pay the County TIF Revenues, as soon as the event causing such interruption shall no longer prevail, the Commission and the City shall transfer and pay the total amount of County TIF Revenues that have been received by the Commission and the City and are then owing to date, as determined according to the provisions of Sections 1 and 2, above.

13. Default. Time is of the essence, subject to Section 12, above. If any payment or any other material condition, obligation, or duty is not timely made, tendered, or performed by any Party, then any other Party may exercise any and all rights available at law or in equity, including damages, but such damages shall be limited to the actual amount that such Party is entitled to receive or retain under this Agreement. No special or punitive damages shall be payable hereunder.

14. Section Captions. The 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 Agreement.

15. Integration and Amendment. This Agreement represents the entire agreement among the Parties with respect to the subject matter and there are no oral or collateral agreements or understandings with respect to the subject matter. This Agreement may be amended only by an instrument in writing signed by the Parties.

16. Waiver. The County waives any right to contest in any manner the validity of the Plan, or any of the provisions of the Plan, including, without limitation, the right of the Commission to use the TIF Financing provisions described in Recital B. A waiver by any Party



to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

17. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and venue shall lie in the County of Boulder.

18. No Third-party Beneficiaries. This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto.

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

20. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Further, in the event of any such holding of invalidity, illegality or unenforceability (as to any or all Parties hereto), the Parties agree to take such action(s) as may be necessary to achieve to the greatest degree possible the intent of the affected provision of this Agreement.

21. Execution Required. This Agreement shall not be binding upon any Party hereto unless and until the Parties have each executed and delivered this Agreement to each of the other Parties.

22. Parties Not Partners. Notwithstanding any language in this Agreement 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.

23. Support of Plan. The Board of County Commissioners as an entity will support the Plan publicly and at the public hearing of the City Council held to consider its adoption, and the County will not formally or legally object to the adoption of the Plan.

24. No Assignment. No party may assign any of its rights or obligations under this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto in their respective names as of December 5, 2006.



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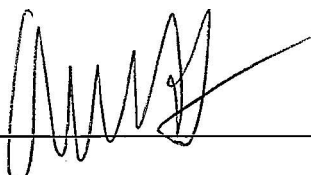
Boulder County Clerk, CO AG

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LOUISVILLE REVITALIZATION
COMMISSION


ATTEST:

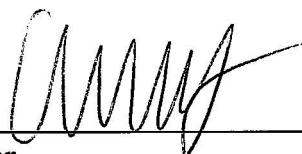

Secretary Vice Chairman


Chair
749 Main Street
Louisville, CO 80227

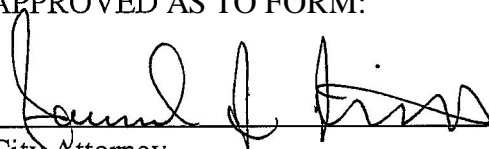
CITY OF LOUISVILLE




City Clerk


Mayor
749 Main Street
Louisville, CO 80227

APPROVED AS TO FORM:

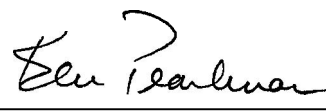

City Attorney

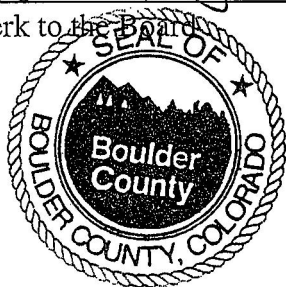
COUNTY OF BOULDER

By: BOARD OF COUNTY COMMISSIONERS

ATTEST:


Clerk to the Board

 12/5/06
Ben Pearlman, Chair
P. O. Box 471
Boulder, CO 80306-0471



APPROVED AS TO FORM:


County Attorney