AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Tax Refund Agreement; Reserve Metropolitan Distric

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: The Board of County Commissioners for Gunnison County, Colorado and RMD2

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

A settlement document for the Board's signature

Fiscal Impact:

Submitted by: Joseph Otsuka **Submitter's Email Address:** jotsuka@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Tax refunds described in document to be covered by reimbursement to the County from proceeds of Bonds to be issued by RMD2. No county funds involved. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 6/30/2016

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 6/29/16

Reveiwed by: Discharge Date: 6/29/2016 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 7/1/2016

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 5 minutes

Agenda Date: 7/5/2016

Revised April 2015

TAX REFUND AGREEMENT

THIS TAX REFUND AGREEMENT (this "Agreement") is dated as of _____, 2016, and is made by and between BOARD OF COUNTY COMMISSIONERS of GUNNISON COUNTY, a county duly organized and existing under the laws of the State of Colorado (the "County") and RESERVE METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and subdivision duly organized and existing under the laws of the State of Colorado (the "District").

RECITALS

A. Pursuant to C.R.S. §39-10-114, certain property owners in the District have timely filed petitions for the refund of taxes (the "Petitions") as follows:

Tax Year	Number of Petitions filed	Dollar amount of taxes
2012	51	$11,524.56
2013	94	$343,462.00
2014	92	$439,812.60

B. The County expects, after notice and hearing pursuant to C.R.S. §39-1-113, to grant the Petitions.

C. Forty-nine property owners have yet to file a petition for $113,734.80 of taxes levied in tax year 2014 (the "Remaining Refunds") and pursuant to C.R.S. §39-10-114, such property owners have until January 2, 2017 to file a petition for a refund.

D. Pursuant to C.R.S. §39-10-114, any taxes to be refunded pursuant to a petition filed with the County are to be refunded with interest at the rate of 1% per month from the date the taxes were paid to the date of the refund.

E. The District intends to issue its Limited Tax General Obligation Bonds, Series 2016A, Series 2016B and 2016C (the "Bonds") in order to refinance its outstanding debt. In order to avoid the County intercepting the District's tax revenues intended to pay the debt service on the Bonds in order to pay tax refunds which are or may become due as described above, the District wishes to agree with the County on a procedure to use a portion of the proceeds of the Bonds to pay tax refunds which are or may become due as described above together with interest thereon.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DISTRICT DEPOSIT OF BOND PROCEEDS FOR REFUNDS. On the date of the delivery of the Bonds to the purchasers thereof (the "Closing Date"), the District will cause to be deposited in an account held by UMB Bank, n.a. acting as the trustee for the Bonds (the "Trustee") to be known as the Tax Refund Fund an amount of Bond proceeds equal to $1,052,812.27.

2. PAYMENT OF REFUNDS RELATED TO PETITIONS. On or after the Closing Date, the County will provide written notice to the District summarizing the Petitions which have been granted, including the amount of taxes to be refunded and the interest due thereon, and certifying that the Petitions were granted after notice and hearing pursuant to C.R.S. §39-1-113. The County will in the notice provide wire transfer instructions. The District agrees to immediately to provide written direction the Trustee to pay to the County the amount of specified in the notice.

3. PAYMENT OF REMAINING REFUNDS. No later than January 9, 2017, the County shall provide written notice to the District setting forth the number of petitions which the County received on or before January 2, 2017, for refund of the Remaining Refunds. The notice shall also set forth the dollar amount of the Remaining Refunds for which petitions have been timely received by the County. In order to minimize the amount of interest paid in connection with such refunds, the County agrees to hold the hearings required by C.R.S. §39-1-113 on the earliest practicable date. When, after notice and hearing as required by C.R.S. §39-1-113, the County has approved any refund of the Remaining Refunds, the County shall provide written notice to the District summarizing the Remaining Refunds which have been granted, including the amount of taxes to be refunded and the interest due thereon, and certifying that the Petitions were granted after notice and hearing pursuant to C.R.S. §39-1-113. The County will in the notice provide wire transfer instructions. The District agrees to immediately provide written direction the Trustee to pay to the County the amount specified in the notice. No refunds shall be processed pursuant to this Agreement on or after July 1, 2017. On July 1, 2017, the Trustee has been instructed to transfer any amounts remaining in the Tax Refund Fund to pay debt service due on the Bonds.

4. COUNTY AGREEMENT NOT TO INTERCEPT DISTRICT TAXES. The County agrees that if the District complies with the provisions of this Agreement, the County shall not intercept any of the District's tax revenues to pay refunds described in Sections 2 and 3 of this Agreement. This section shall survive the termination of this Agreement unless this Agreement terminates on October 1, 2016, because the Closing Date has not occurred.

5. NOTICES. All demands, notices, offers, acceptances, waivers and other communications required or permitted by this Agreement shall be in writing (including telegraphic, facsimile or telex communication) and shall be effective and deemed delivered only when received by the party to which it is sent; *provided, however,* that a facsimile transmission

shall be deemed to be received when transmitted so long as the transmitting machine has provided an electronic confirmation of such transmission and a written copy is sent by first class or express mail, postage prepaid or by overnight courier. Any such notice shall be sent to a party at the following address or facsimile number (or such other address or facsimile number as may hereafter be furnished to the other parties hereto, in writing, by such party wishing to change its address or facsimile number).

(i) If to DISTRICT:

Reserve Metropolitan District No. 2
PO Box 3384
Crested Butte, CO. 81224-9608
Attention: Board Chairman
Fax No.:

With copy to: Mullans, Piersel & Reed P.C.
1311 N. Greenwood St.
Pueblo, CO 81003
Attn: Tom Mullans
Fax No.: (719) 543-6538

(ii) If to the County:

Gunnison County
200 E. Virginia
Gunnison, CO 81230
Attn: Matthew Birnie
Fax No.: (970) 641-7696

With copy to: Gunnison County Attorney
200 E. Virginia
Gunnison, CO 81230
Attn: David Baumgarten
Fax No.: (970) 641-7696

6. APPLICABLE LAW. The substantive laws of the State of Colorado shall govern the construction of this Agreement and the rights and remedies of the parties hereto, without regard to its choice of laws principles.

7. SEVERABILITY OF PROVISIONS. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

8. ENFORCEMENT; ATTORNEYS' FEES. The agreements and obligations of the parties under this Agreement may be enforced by any remedies available at law or equity,

including, without limitation, the recovery of damages and sums owing, as well as injunctive, declaratory or other appropriate equitable relief, and all such remedies shall be cumulative with and without limitation upon the rights and remedies otherwise expressly provided for herein. In the event any litigation arises out of this Agreement and is prosecuted to final judgment, the prevailing party or parties shall be entitled to recover from the other party or parties all of the prevailing party(ies)' costs and expenses incurred in connection therewith, including reasonable attorneys' fees.

9. ENTIRE AGREEMENT. This Agreement and the other agreements referenced herein contain the entire agreement and understanding concerning the subject matter hereof between the parties, and supersede and replace all prior negotiations, proposed agreements and agreements written or oral. Each of the parties to this Agreement acknowledges that no other party to this Agreement, nor any agent or attorney of any such party, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement, to induce it to execute this Agreement. Each of the parties further acknowledges that it is not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement.

10. NO ORAL AGREEMENTS. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. This Agreement may not be modified orally but only by a written agreement executed by parties, and designated as an amendment or modification of this Agreement. No right or obligation of any party hereto, or any term or provision hereof, may be waived to any extent except by a written instrument signed by the party against whom enforcement of such waiver is sought, and then only to the extent expressly set forth therein.

11. GENDER; CAPTIONS. Whenever, in this Agreement, the context may so require, the masculine or neuter gender shall be deemed to refer to and include the feminine, masculine, and neuter, and the singular to refer to and include the plural. The captions or headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or interpretation of any provision hereof.

12. SUCCESSORS AND ASSIGNS. This Agreement will be binding upon and for the benefit of the parties hereto and their respective heirs, devisees, executors, representatives, successors and assigns.

13. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original and enforceable against any party who signed it, and all of which together shall constitute one and the same document. Any signed signature page from one counterpart may be physically detached from and incorporated into another counterpart containing other signatures. Any party hereto may make legal delivery of such party's signed counterpart by facsimile or email transmission of a copy of such signed counterpart.

14. TIME IS OF THE ESSENCE. Time is and shall be of the essence in this Agreement.

15. TERMINATION. This Agreement terminates upon the earlier of the date when all amounts due pursuant to Sections 2 and 3 of this Agreement have been paid or July 1, 2017; provided that if the Closing Date has not occurred by September 30, 2016, this Agreement shall terminate on October 1, 2016.

16. WAIVER OF JURY TRIAL; VENUE. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF THIS AGREEMENT. THE PARTIES FURTHER AGREE THAT THE EXCLUSIVE VENUE FOR RESOLVING ANY DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE IN STATE COURT SITTING IN THE GUNNISON COUNTY, COLORADO, AND EACH PARTY SUBMITS TO THE JURISDICTION OF SUCH COURTS.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the District and the County have executed this Agreement as of the day, month and year first above written.

RESERVE METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado

By:_____
Name:_____
Title:_____

GUNNISON COUNTY, a Colorado county

By:_____
Name:_____
Title: _____