

**AGREEMENT REGARDING THE COLLECTION, TRANSFER,  
AND DISTRIBUTION OF THE ½% SALES & USE TAX  
FOR EDUCATIONAL PURPOSES EXTENDED BY THE CITY'S REGISTERED  
ELECTORS ON NOVEMBER 4, 2008**

THIS AGREEMENT, is entered into effective as of the 15<sup>th</sup> day of December, 2009, by and between the City of Steamboat Springs, Colorado, a body corporate and politic organized under and existing by virtue of the laws of the State of Colorado, hereinafter referred to as "City," and the Steamboat Springs Education Fund, a Colorado Nonprofit Corporation, hereinafter referred to as the "Fund."

**RECITALS:**

- A. The City placed a question on the November 1993 ballot seeking a ½ % increase in sales and use tax (to 4 ½%), with the ½% increase to be used for "educational purposes" with the original stated intent that the revenue generated from such tax be used "for the purpose of supporting, local, public k-12 education."
- B. The citizens approved the ½% sales/use tax increase in 1993 and approved extensions of that ½% sales/use tax for "educational purposes" in November of 1996, 1999, and 2008. The most recent extension of the ½% sales/use tax for "educational purposes" sunsets on December 31, 2019.
- C. In November 2008 the voters in Steamboat Springs also approved an advisory question that authorized the "Steamboat Springs Education Fund to share, in its sole discretion, some portion of the proceeds of the ½ cent sales tax with the other school districts in Routt County in addition to the Steamboat Springs RE-2 School District."
- D. From December 1, 1993, the day on which the City began collecting the ½% sales/use tax for "educational purposes", through this date, the City and the RE-2 School District have operated under several consecutive Intergovernmental Agreements that set forth the procedures by which the sales/use tax would be collected, transferred to the Fund, and then disbursed by the Fund pursuant to the intent of the ballot questions.
- E. The City and the RE-2 School District have mutually agreed to terminate the current intergovernmental agreement, dated January 16, 1997, concerning the collection, transfer, and disbursement of the ½% sales/use tax for "educational purposes" and to endorse this agreement between the City and the Fund.
- F. Article 9 of the Charter of the City authorizes the City Council to levy and impose taxes and to spend general funds for municipal purposes, provided that any

new sales/use tax or increase in the rate of any existing sales/use tax has been approved by the qualified electors of the City at a regular or special election.

G. The City Council has made a legislative determination, as ratified by the citizens in the various November elections, that imposing a tax and distributing that tax for "educational purposes" is a valid municipal purpose.

H. The City Council has also determined that it is appropriate and desirable to delegate the re-granting of the public funds generated by the ½% sales/use tax for "educational purposes" to the Fund, which has the expertise, the community support, and the volunteers to accomplish that task in a professional and community-minded environment while maintaining the highest standards of accountability for the expenditure of those tax dollars.

I. The Fund is a Colorado nonprofit corporation, which has obtained and maintains an Internal Revenue Code designation as a Section 501(c)(3) organization being operated exclusively for educational and charitable purposes.

NOW THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the City and the Fund, as follows:

**SECTION 1. TERM**

This Agreement shall take effect upon the termination of the current IGA between the City and the RE-2 School District, dated January 16, 1997, and shall terminate two years following the termination of the ½% sales/use tax, which is currently scheduled to sunset on December 31, 2019. If the ½% sales/use is extended by the voters beyond December 31, 2019, this Agreement shall also be extended without further action on the part of the City Council or Fund to a date two years following the sunset of the ½% sales/use tax. The section shall be in effect unless this Agreement is otherwise terminated pursuant to other provisions set forth below. The intent of the parties in extending the term of this Agreement for two years beyond the termination of the ½% sales/use tax is to allow for the completion of the funding of existing grants and to wrap up the affairs of the Fund.

**SECTION 2. THE STEAMBOAT SPRINGS EDUCATION FUND SHALL REMAIN IN GOOD STANDING AND QUALIFIED AS A 501(c)(3) ORGANIZATION**

The Steamboat Springs Education Fund ("Fund"), a Colorado nonprofit corporation, is an organization that has been formed and is being operated exclusively for educational and charitable purposes pursuant to Section 501(c)(3) of the Internal

Revenue Code. The Fund shall remain in good standing as a Colorado nonprofit corporation and shall maintain its designation as an Internal Revenue Service organization qualified under Section 501(c)(3) as an educational and charitable organization. If for any reason the Fund shall either (a) fail to maintain its good standing as a Colorado nonprofit corporation after reasonable efforts, or (b) lose its designation under IRS Section 501(c)(3) as an education and charitable organization after reasonable efforts to maintain that designation, the Fund shall notify the City of such change in status, and the City may terminate this Agreement and seek another re-granting agency for the ½% sales/use tax. The City shall consult with the RE-2 School District as to the successor entity and the City shall not enter into an agreement with a successor entity without the consent of the RE-2 School District. The City shall extend all reasonable opportunity to the Fund to correct either of the two situations set forth in the preceding sentence prior to terminating this Agreement.

**SECTION 3. PAYMENT OF TAX INCREASE PROCEEDS TO FUND AND ADMINISTRATIVE FEE**

(a) The City shall, on a monthly basis, pay over to the Fund the revenue collected as a result of increasing the City's sales and use tax from four (4%) percent to four and one-half (4 ½%) percent, less a 1% administrative fee, as described below, which may be retained by the City. The funds paid over to the Fund shall be deposited in an interest bearing account or accounts to be maintained by the Fund. The City shall be obligated to pay over to the Fund only revenue actually collected, less the Administrative Fee discussed below. City shall make reasonable efforts to collect all outstanding sales and use taxes owing to the City.

(b) The City will deduct from the revenue collected, an Administrative Fee ("Fee") equal to one (1%) percent of total sales/use tax collected from the ½% sales/use tax for "educational purposes." The Fee is intended to include, without limitation, all ongoing costs related to Revenue Collection efforts, a share of Billing and Mailing costs and a share of accounting, remittances and additional Auditing efforts.

**SECTION 4. USE OF TAX INCREASE PROCEEDS**

(a) The funds remitted to the Steamboat Springs Education Fund shall be used exclusively for educational purposes and for the costs associated with administering the Fund, insuring the payment and receipt of the Funds and retaining its 501(c)(3) status, which expenditures shall include, without limitation, costs for preparing annual tax returns for the Fund, and preparing annual audit reports for the Fund. The Fund shall make every reasonable effort to keep the costs of administration at a minimal level to ensure the maximum use of the tax revenue for educational purposes.

(b) Pursuant to the ballot question approved by the registered electors in Steamboat Springs on November 4, 2008, the City has authorized the "Steamboat Springs Education Fund to share, in its sole discretion, some portion of the proceeds of the ½ cent sales tax with the other school districts in Routt County in addition to the Steamboat Springs RE-2 School District." Therefore, the Fund may consider grant applications from the South Routt County School District and the Hayden School District, in addition to those grant applications submitted on behalf of the RE-2 School District. The City and the Fund interpret this authorization to mean, in conjunction with legislative acts passed by the City in authorizing the various ballot questions since 1993, that the Fund may approve grant requests for "public k-12 education" but is not obligated to adhere to any formula allocation based on any criteria. The parties share the belief that the primary goal of the ½% sales/use tax for "educational purposes" was, and should continue to be, directed toward the educational needs of the students in the RE-2 School District, but not to the exclusion of the students in other public k-12 schools within the county.

(c) Funds deposited in the Fund shall be accounted for separately and shall not be commingled with any gifts and shall be maintained in a separately numbered bank account to assure separate accounting. An annual audit report shall be prepared by the Fund setting forth the source and disposition of all payments and the Fund shall cause the report to be filed with the City, and an executive summary or similar consolidated report (which may be prepared by the Fund and does not have to be prepared by its auditors), all of which shall be available to the public on a website maintained by the Fund or the City, or both. The audit report shall be completed and tendered to the City no later than 180 days following the end of the Fund's fiscal year of operations, which is July 1 to June 30. In addition, the Fund and its accountants or auditors or both shall provide such additional financial information as the City Finance Director may request from time to time. The parties acknowledge that the expenditure of public funds requires the highest degree of transparency so that the public maintains confidence in the integrity of the system.

**SECTION 5. CHANGES IN THE CORPORATE STRUCTURE OF THE FUND;  
NOTICE TO THE CITY**

The Fund shall provide copies of its current Articles of Incorporation and By-Laws, and IRS designation of the Fund as a 501(c)(3) entity, to the City at the time of executing this Agreement and further promises to provide copies of any amendments to the Articles of Incorporation or By-Laws as those may be amended from time to time.

**SECTION 6. NOTICE**

If notice, including any documents, is required to be delivered to the City or the Fund by the other party, notice, or delivery of any documents, shall be deemed completed upon delivery of the notice or document to the following:

If to the City:

Copies to the City Manager, the City Attorney, AND the City Finance Director by hand delivering the notice and/or document to their respective offices located at

124 10<sup>th</sup> St.  
Steamboat Springs, Colorado

If to the Fund:

Notices and or documents should be hand delivered to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AND to:

Michael J. Holloran, attorney for the Fund  
Sequoia Building  
P.O. Box 773600  
Steamboat Springs, Colorado 80477

## SECTION 7. ARBITRATION

If the City, by and through the City Council, and after receiving reports from the City Manager, City Attorney, or Finance Director, concludes in its sole discretion, that there are significant irregularities in any financial reporting, including financial statements or audits, or that the Fund is deviating from the use of the tax increase proceeds as approved by the voters, the City may, after Notice to the Fund, and the expiration of ten (10) days during which time the Fund has not corrected such irregularity or deviation, unilaterally withhold payments to the Fund of the tax revenues collected until such time as the City and the Fund have resolved any issues as to any such irregularities or deviations. Such withholding shall be in an amount reasonably necessary to correct such irregularity or deviation. In the event the City notifies the Fund of any perceived

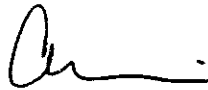
irregularities or deviations, the parties agree to submit any and all disagreements as to the operation of the Fund to arbitration as soon as practicable, but in no event later than ninety days following the date of the Notice referenced above in this paragraph. Unless the parties mutually agree to a less formal mediation of the dispute, the arbitration shall be conducted in accordance with the Uniform Arbitration Act contained in Colorado Revised Statutes § 13-22-201 et seq. (the "Act"). In the event of such arbitration or mediation, all costs of the arbitration or mediation shall be paid from the administrative 1% retained by the City and described in paragraph no. 3, above. The City may be represented by City Staff and the Fund by members of its Board or paid support staff, or both. Notwithstanding the language of the Act, the parties agree that neither the City nor the Fund shall be represented by an attorney during the arbitration or mediation, so neither party shall incur legal fees. The City and the Fund agree that the arbitrator(s) or mediator(s) will be a person(s) experienced with and knowledgeable in the area of dispute that requires the arbitration or mediation.

**SECTION 8. SEVERABILITY**

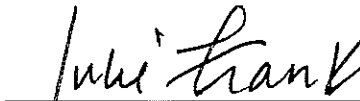
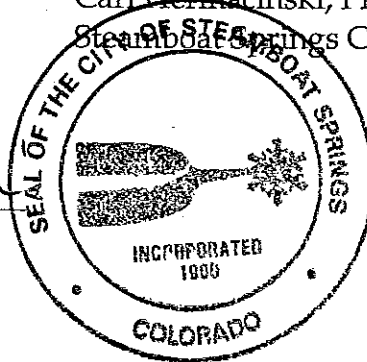
If any section, paragraph, subparagraph, phrase, sentence, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be in full force and effect the day and year first above written.


APPROVED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, this 15th day of December, 2009.



Cari Hermacinski, President  
Steamboat Springs City Council


  
Julie Franklin, City Clerk

APPROVED BY THE BOARD OF DIRECTORS OF THE STEAMBOAT SPRINGS  
EDUCATION FUND, ROUTT COUNTY, COLORADO, this 23 day of  
DECEMBER, 2009.



Mark Andersen, President, Board of Directors  
Steamboat Springs Education Fund

ATTEST:



Secretary