

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____ 2008, by and between El Paso County, Colorado, acting by and through the Board of County Commissioners of El Paso County, Colorado, hereinafter referred to as the County, and the Pikes Peak Regional Building Department, acting by and through its governing body, the Pikes Peak Regional Building Commission, hereinafter referred to as Regional Building or as the Regional Building Department.

RECITALS

WHEREAS, pursuant to Board of County Commissioner Resolution No. 87-182, General-52, hereinafter referred to as Resolution No. 87-182, and pursuant to subsequent voter approval thereof, the County enacted a Countywide Use Tax of one percent (1%), effective January 1, 1988, for the privilege of using or consuming in the County any construction and building materials purchased at retail; and,

WHEREAS, Section 29-2-106(3)(a), C.R.S., provides that the aforementioned Countywide Use Tax for construction and construction and building materials shall be collected, administered, and enforced by the County as provided by resolution; and,

WHEREAS, furthermore, Paragraph 34 of Resolution No. 87-182 provides that, with the exception of the voter-approved tax rate, the Resolution may be amended from time to time and without submission to the voters for approval; and,

WHEREAS, given the Regional Building Department's experience in the administration and collection of fees, not only for itself but also for other local government entities, the County desires to contract with the Regional Building Department for the administration and collection of the County's Use Tax on construction and building materials; and,

WHEREAS, the Agreement supports the mission of the Regional Building Department that, whenever possible, the Department should provide efficiency and support to the local construction industry by providing a one-stop location for the payment of fees and the obtaining of permits; and,

WHEREAS, the Regional Building Department desires to provide such services to the County pursuant to the terms and conditions of this Agreement, and which terms and conditions are set forth, below; and,

WHEREAS, in addition to the foregoing, it is reasonable and necessary for the County to impose and for Regional Building to collect and remit to the County a moderate fee in conjunction with the issuance of all building permits issued in El Paso County in order to help defray the costs of providing services to the building public, including, but not limited to, defraying the County's costs of administering the Use Tax accounting process for construction and building materials.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and promises contained herein, the Parties agree as follows:

1. Regional Building Obligations: Regional Building agrees to provide the following services:

a. Collect, pursuant to the collection methods in Section 4, below, at the Regional Building Department and by its on-line services, administer, and keep and maintain accurate books and records for the collection of the Countywide Use Tax of one percent (1%) for the privilege of using or consuming in the County any construction and building materials purchased at retail, in accordance with and pursuant to Resolution No. 87-182, as amended by this Agreement, and pursuant to Sections 29-2-101, et seq., C.R.S.

b. Produce and provide all necessary systems, available at the Regional Building Department, both in a traditional paper and in an electronic format on its database and also available 24 hours per day, seven (7) days per week by its on-line services, for the payment of the subject County Use Tax to all licensed contractors and to all other persons who are required to obtain a building permit under the Pikes Peak Regional Building Code anywhere within El Paso County, including its incorporated and unincorporated areas within Regional Building Department's jurisdiction.

c. Provide all labor, supervision, equipment and supplies necessary to perform the services contemplated under this Agreement.

d. Review all building/construction permits issued within its jurisdiction to ensure compliance with the County Use Tax within all areas of the County, including its incorporated and unincorporated areas, and including, but not limited to, Regional Building's obligation to withhold issuance of a certificate of occupancy and/or any final inspection unless and until Regional Building's system for administering collection of the Use Tax indicates that the customer has complied with any of the methods of providing an affidavit or payment as set forth in Paragraph 4 of this Agreement.

e. Disseminate to the general public all necessary information as provided to it by the County concerning the subject County Use Tax, and to answer inquiries regarding the same, including inquiries from third party vendors concerning whether the vendor is obligated to collect the County Use Tax on construction and building materials for a particular project.

f. Deposit all gross tax revenues collected pursuant to the County Use Tax, and provide an accounting thereof, within a segregated account to be designated by the Regional Building Department.

g. Remit all gross tax revenues collected pursuant to the County Use Tax to the County once per month, and without deduction for any collections fees or expenses owed by

the County to Regional Building, pursuant to instructions to be provided by the Office of the El Paso County Treasurer (hereinafter referred to as the County Treasurer or as the Treasurer). Any errors discovered after the remittance by Regional Building to the County shall be adjusted by the addition or subtraction of the appropriate amounts on the next remittance to the County.

h. Provide to the County in an electronic format and once per month a listing of all building permits issued in El Paso County, including any building permits in any incorporated or unincorporated area of the County, within Regional Building Department's jurisdiction.

i. Periodically meet with designated County personnel for the purpose of updating the County as to each Party's mutual performance of this Agreement, and to address and resolve any problems associated therewith.

j. Cooperate with the County in any enforcement action by providing necessary books and records, by providing personnel for testimony in any judicial or administrative proceeding, and, cooperate with the County's request to withhold the issuance of any building permit, withhold the issuance of any certificate of occupancy, and/or to cooperate with the County in the revoking of any building permit or certificate of occupancy as a result of any violation of the County's Use Tax resolution. Other than what is set forth in this paragraph, Regional Building has no obligation of whatsoever kind or nature under this Agreement to initiate or prosecute an enforcement action under the County's Use Tax system.

k. Cooperate with all County Offices and Departments in order to carry out the intent and purposes of this Agreement.

l. Cooperate with the County to mutually develop a "Guide to the County Use Tax System" in advance of the April 1, 2009 implementation date. In developing this Guide it shall be Regional Building's primary responsibility to set forth and explain the development and application of the Job Material Valuation Method.

m. Cooperate with the County and community representatives to develop and recommend to the Board of County Commissioners a moderate fee in conjunction with the issuance of all building permits issued in El Paso County in order to help defray the County's cost of providing services to the building public, including, but not limited to, defraying the County's costs of administering the Use Tax accounting process for construction and building materials. .

2. County Obligations: The County agrees to provide the following services:

a. Make all refunds resulting from an error or overpayment of the County Use Tax after review and examination by the County.

b. Conduct all audits and conduct and prosecute all actions necessary to enforce the County's Use Tax, including, but not limited to, the certification of tax liens to the County Treasurer.

c. Designate and make available during regular business hours to Regional Building Department and to all persons making inquiries to Regional Building a County Use Tax representative.

d. Periodically meet with designated Regional Building Department personnel for the purpose of updating Regional Building as to each Party's mutual performance of this Agreement, and to address and resolve any problems associated therewith.

e. Cooperate with all Regional Building Department Personnel in order to carry out the intent and purposes of this Agreement, including, but not limited to, provide Regional Building with information in the County's possession that may be useful or necessary to assist Regional Building in the collection of the County Use Tax.

f. Establish a process whereby a person applying for a building permit can obtain in advance a written determination from the County that the project in question is exempt from the County's Use Tax. The written exemption from the County shall be sufficient so as to put Regional Building on notice, both for purposes of obtaining a building permit in person or on-line, that the County's Use Tax is not required and shall likewise be sufficient so as to put third party vendors on notice that the County Use Tax is not required on the purchase of construction and building materials.

g. Develop and provide to Regional Building materials to educate the public and third party vendors about the collection system for the County's Use Tax on construction and building materials as established in this Agreement.

h. Cooperate with Regional Building to mutually develop a "Guide to the County Use Tax System" in advance of the April 1, 2009 implementation date. In developing this Guide it shall be the County's primary responsibility to explain its processes for the Actual Valuation Method, the audit process, the refund and underpayment process, the dispute resolution process, and the enforcement process.

i. Cooperate with Regional Building and community representatives to develop and recommend to the Board of County Commissioners a moderate fee in conjunction with the issuance of all building permits issued in El Paso County in order to help defray the County's cost of providing services to the building public, including, but not limited to, defraying the County's costs of administering the Use Tax accounting process for construction and building materials. .

3. Compensation: The County agrees to pay Regional Building one percent (1%) of all gross Use Taxes collected on behalf of the County, and to reimburse Regional Building for any vendor fees associated with collecting the County's Use Tax by its credit card collection system. Regional Building shall provide monthly a detailed and itemized invoice to the County for collection fees and reimbursements owed by the County to Regional Building, and the County shall pay all amounts owed pursuant to this Agreement within 30 days of receipt of said invoice. In the event of any dispute as to an amount owed, the County

and Regional Building shall cooperate toward a mutually acceptable resolution.

4. Use Tax Collection System:

a. Overview: At the time a building permit is issued within the jurisdiction of Regional Building Department anywhere in the County, regardless of whether in an incorporated or unincorporated area, the person obtaining the permit (hereinafter referred to as the customer) shall be given three choices at the time of obtaining the permit for the payment of the County's Use Tax. The three choices are the affidavit method, the job materials valuation method and the actual method. The customer who selects the affidavit method shall submit an affidavit stating that regardless from where they purchase construction and building materials they agree and understand that they will pay all applicable Sales or Use Taxes, that they shall maintain records demonstrating payment of the applicable Sales and Use Taxes, and that the affiants agree and understand that they may be subject to an audit of those books and records by the County or any other government entity with jurisdiction. If the customer selects to pay Use Taxes by the job material valuation method, then the customer pays 50% of the estimated amount of Use Tax to the Regional Building Department at the time the permit is issued and the remaining 50% as a condition for the issuance of the certificate of occupancy or final inspection, whichever occurs later. If the customer selects the actual method, then the customer pays, prior to the tax payment reconciliation meeting that occurs after the final inspection or the certificate of occupancy has been issued, the actual amount of the Use Tax on construction and building materials to the County in an amount equal to the amount of County Use Tax determined under the job material valuation method to the County as a condition of receiving final inspection or a certificate of occupancy, whichever event is to occur last.

b. Affidavit Method: The customer may submit an affidavit stating that regardless from where they purchase construction and building materials they agree and understand that they will pay all applicable Sales or Use Taxes, that they shall maintain records demonstrating payment of the applicable Sales and Use Taxes, and that the affiants agree and understand that they may be subject to an audit of those records by the County or any other government entity with jurisdiction. Every customer who utilizes this procedure shall maintain and preserve detailed purchase and receipt records which shall be subject to inspection and audit and any unpaid taxes shall be paid.

c. Job Material Valuation Method: The customer pays the County's Use Tax on construction and building materials based upon a formula as set forth below on projects that are not exempt from the County's Use Tax. The County resolution establishing the County Use Tax sets forth the criteria to determine whether a project is exempt. Unless the person requesting an exemption has obtained the written exemption from the County prior to requesting the issuance of a building permit, Regional Building does not have any authority to establish the exemption and, therefore, must collect the tax. The Regional Building Department, for the purpose of collecting the Use Tax, shall use the following formula: Total Square Footage X the International Code Council ("ICC") Building Valuation Data ("BVD") figure established by the Regional Building Commission X 40% X 1%. The BVD figure may be adjusted annually by the El Paso County Board of County Commissioners following any

adjustment by the Regional Building Department.

The customer pays 50% of the amount of the County's Use Tax as determined under this method at the time the permit is issued and the remaining 50% prior to the issuance of a certificate of occupancy or final inspection, whichever is the final step for any project within the jurisdiction of Regional Building Department.

At the time of application and payment of 50% of the County's Use Tax, the Regional Building Department issues to the customer the appropriate document that will inform third party vendors that the project has paid the County Use Tax on construction and building materials, thereby relieving the vendor from the obligation to charge the County's Sales and Use Tax on construction and building materials.

d. Adjustment Process for Job Material Valuation Method: No later than one hundred and eighty (180) days from completion of the project, which is defined as issuance of a certificate of occupancy or final inspection, whichever occurs later, the customer may apply to the County for a refund of any overpayment of the County Use Tax on construction and building materials. The application shall be made on a form developed and provided by the County, and shall be supported by receipts showing the payment of the Sales or Use Tax for the project. The County shall have 30 days from receipt of a completed application to provide a written decision whether a refund will or will not be issued and the County shall pay the refund no later than 30 days from the date of the County's written determination. If the County denies the request for a refund, the customer may appeal that decision to an independent board that is to be appointed by the Board of County Commissioners. The application for refund shall be received at the El Paso County Budget and Economic Development Department, 27 E. Vermijo Avenue, 5th Floor, Colorado Springs, Colorado 80903.

e. Actual Valuation Method: The customer selects this method at the time of issuance of a building permit, and Regional Building issues the same type of third party vendor notification as set forth in Section 4(c), above. The customer seeking a certificate of occupancy or final inspection shall make an appointment for a tax payment reconciliation conference with the County to review receipts demonstrating the payment of the County Sales or Use Tax on construction and building materials and deposit a payment with the County in an amount equal to the amount of County Use Tax determined under the job material valuation method as a condition of receiving a certificate of occupancy or final inspection. The deposit may be in the form of cash or, if the amount of the Use Tax as determined exceeds Five-hundred Dollars (\$500), a letter of credit issued for a term of at least one (1) year by a financial institution in good standing with state and federal regulators shall be payable on sight at a location no more than 75 miles from 27 E. Vermijo Avenue, Colorado Springs, CO 80903. The County personnel assigned this duty shall schedule a meeting no more than sixty (60) calendar days from the date the request is received. In the event the County personnel and the customer are not able to agree as to the amount of Use Tax, the customer shall pay the amount due under the job material valuation method, and the matter shall be scheduled before an independent board that is to be appointed by the Board of County Commissioners for final decision. The County shall develop a process for the filing of

a request for appeal and conducting such appeals.

f. All Projects Subject to Audit: All projects, except exempt, are subject to random audit by the County for eighteen (18) months after a certificate of occupancy is issued or final inspection occurs. All invoices and cost reports pertaining to the project shall be kept for at least eighteen (18) months after the later of the issuance of the certificate of occupancy or the final inspection. If an audit reveals an underpayment of the Use Tax, the tax, along with any interest and penalties thereon, will be assessed to the customer. Furthermore, to the extent any person who pulled a building permit, or that person's successor or assign, requests an audit within eighteen (18) months of the issuance of the certificate of occupancy or the final inspection, the County will perform the audit to the extent of available resources, to be determined in the exercise of its discretion, and may require the person requesting the audit to pay the costs of the audit in advance before commencing performance of the audit.

g. Penalty Interest For Underpayment of Use Tax. The interest and penalty interest rate for underpayment of the due and owing Use Tax ("Underpayment") regardless of the method of payment chosen by the customer will pay to the County the amount of the Underpayment, shall be the same as allowed under Section 39-26-207, C.R.S., 2008, as amended. The amount of interest shall accrue from the date due, which is the date certificate of occupancy is issued or final inspection, whichever occurs later, and shall continue to accrue until paid. Upon written notification by the County of the amount of the underpayment, the customer may immediately pay the amount of the underpayment to stop interest from accruing while an appeal is undertaken.

5. Appeal Procedure. Any appeal under the Use Tax system shall occur pursuant to the following procedure. Completion of this procedure is necessary and statutorily required in the event an appellant desires to appeal a Use Tax matter to the Executive Director of the Colorado Department of Revenue. All decisions of County staff as they relate to the Use Tax that are believed to be erroneous or inapplicable may be appealed by the aggrieved party to an independent board appointed by the Board of County Commissioners, hereinafter referred to as the Use Tax Appeals Board. The appeal shall be made in accordance with the following procedures:

a. The aggrieved party may appeal within thirty (30) days following the written decision by County staff.

b. Any appeal shall be initiated by the filing of a written notice of appeal with the County Attorney's Office setting forth in detail the name and interest of the appealing party, the nature of the appeal, the reasons for the appeal, and any written documentation supporting the appeal, and any other information as may be required. In the case of an alleged deficiency, the appellant shall provide the amount of the alleged deficiency in good funds or letter of credit. Any letter of credit shall be issued for a term of at least one (1) year by a financial institution in good standing with state and federal regulators and shall be payable on sight at a location no more than 75 miles from 27 E. Vermijo Avenue, Colorado Springs, CO 80906.

c. Upon receipt of an appeal, the County Attorney's Office shall refer such appeal to the appropriate County departments and agencies for their review and recommendations, and shall schedule the appeal to be heard before the Use Tax Appeals Board within thirty-five (35) days of the date of filing.

d. Written notice of the date, time and place of the appeal hearing shall be given no later than ten (10) days prior to the hearing, to the appellant, appropriate County departments or agencies, and any other person or entity expressing an interest therein.

e. The appellant shall have the burden of proof of establishing that the interpretation or application made by the County staff was erroneous or inapplicable.

f. The Use Tax Appeals Board shall consider the evidence submitted in support of or opposition to the appeal, the recommendations of the appropriate County departments and agencies, and any additional evidence which it deems relevant and appropriate. The Board shall either grant or deny the appeal.

g. In the event of denial of an appeal, in whole or in part, the appellant may have a right to further review by the Executive Director of the Colorado Department of Revenue as set forth in Section 29-2-106.1, C.R.S., 2008, as amended.

6. TABOR Savings Clause: Financial obligations of the County, respectively, payable after the current fiscal year are contingent upon funds for the purposes set forth in this Agreement being appropriated, budgeted and otherwise made available.

7. Independent Contractor Status/Status of Regional Building Personnel: Regional Building is an independent contractor to the County for the purposes of performing its obligations under this Agreement. For the purpose of performing the services set forth in this Agreement, every Regional Building Department officer and employee engaged in performing any of the enumerated services shall be deemed to be an officer or employee of the Regional Building while performing the same, and under no circumstances shall be considered an agent or employee of the County. Accordingly, the standards of performance, the discipline of officers and employees, and other matters incident to the performance of such services and the control of personnel so employed, shall remain with Regional Building. In the event of dispute between the parties herein as to the extent of the duties and services to be rendered hereunder, or the minimum level or manner of performance of such services, the determination thereof made by the Regional Building Department shall be final and conclusive as between the parties hereto. Thus, all persons employed in the performance of such services under this Agreement for benefit of the County as provided for herein shall be employees of the Regional Building Department, and no person employed by Regional Building shall have any County pension, civil service or any status or right. Furthermore, the County shall not be called upon to assume any liability for the direct payment of any salaries, wages or other compensation to any Regional Building personnel performing services hereunder for the benefit of County, and nor shall the County be liable for compensation or indemnity to any Regional Building employee for injury or sickness arising out of his/her employment.

8. No Waiver of Governmental Immunity: Nothing in this Agreement expresses or implies a waiver of any protections available to either Party under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., 2008, as amended.

9. Effective Date and Termination: This Agreement shall become effective upon mutual approval of this Agreement, and the Parties shall commence performance so as to assure that Regional Building is able to collect the County's Use Tax as of April 1, 2009 at 12:01 a.m. Unless sooner terminated or unless otherwise renewed, both as provided for herein, this Agreement shall terminate on December 31, 2009 at 11:59 p.m. This Agreement may be renewed for additional one (1) year periods by written agreement of the Parties. Once per year and at the same time as Regional Building submits to the Board of County Commissioners its proposed annual budget, this Agreement may be renewed or amended. Each Party reserves the right to terminate this Agreement for cause, including, by way of example only, any violation of any of the terms, conditions or covenants contained herein by the other party, a judicial determination declaring this Agreement invalid, or in the event the County's or the Regional Building Department's budget, appropriations, or other administrative procedures are altered in such a way to prohibit the continued execution of the terms and conditions of this Agreement. Termination for cause shall be effective upon the giving of thirty (30) days' prior written notice of such termination to the other party stating the reasons therefore. Either party, without cause, may terminate this Agreement upon the giving of sixty (60) days prior written notice of such termination to the other respective party.

10. No Third Party Beneficiaries: This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against either the County and/or the Regional Building Department as a result of any alleged breach hereof or as a result of any terms, covenants, agreements or conditions contained herein.

11. Inspection and Retention of Records: Each Party or its designated representative shall have the right, upon reasonable advance notification and during normal business hours, to inspect and audit the other Party's records, reports and associated materials regarding the other Party's performance of this Agreement. Each Party further agrees to maintain such records, reports and associated materials for a period of three (3) years from the date of termination of this Agreement.

12. Modifications and Waivers in Writing: No modification or waiver of this Agreement or of any covenant, condition, or provision herein contained shall be valid unless in writing and duly executed by the party to be charged therewith.

13. Assignment Prohibited: This Agreement may not be assigned without the mutual written consent of the Parties hereto. This Agreement shall be binding upon the respective parties hereto, their successors or assigns, and may not be assigned by anyone without the prior written consent of the other respective party hereto.

14. Entire Agreement: This Agreement embodies the whole agreement between

the parties hereto and there are no inducements, promises, terms, conditions, or obligations made or entered into by any of the parties hereto other than that contained herein.

15. Severability: All agreements and covenants herein are severable, and in the event that any of them shall be held invalid by a court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.

16. Jurisdiction and Venue: The exclusive jurisdiction and venue for any litigation arising under this Agreement shall be in the District or County Courts in and for the 4th Judicial District of the State of Colorado.

17. Section Headings: Section headings are provided for convenience only, and shall have no bearing on the interpretation of all or part of any such section.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

ATTEST: BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO

By: _____
County Clerk and Recorder

By: _____
Dennis Hisey, Chair

Pikes Peak Regional Building Commission

By: _____
Chairman

ATTEST:
