

**SUBJECT TO CITY COUNCIL CONSIDERATION**

**USOC OLYMPIC TRAINING CENTER  
ESCROW AGREEMENT**

This USOC Olympic Training Center Escrow Agreement (this "**Escrow Agreement**") is effective as of this \_\_\_\_ day of \_\_\_\_\_, 2009, by, between and among the **UNITED STATES OLYMPIC COMMITTEE ("USOC")**, the City of Colorado Springs, Colorado (the "**City**") and \_\_\_\_\_, a \_\_\_\_\_, as escrow agent hereunder (the "**Escrow Agent**"). The USOC, the City and the Escrow Agent shall collectively be referred to herein as the "**Parties**" and individually as a "**Party**."

**RECITALS:**

WHEREAS, the USOC and the City have entered into that certain Economic Development Agreement Regarding USOC Facilities in Colorado Springs, dated \_\_\_\_\_, 2009 (the "**EDA**") which provides for delivery of certain headquarters facilities to the USOC and further provides for the funding of certain improvements at the USOC's Colorado Springs Olympic training center (the "**OTC**"); and

WHEREAS, in conjunction with the execution of the EDA, two escrow funds are being established and will be held by the Escrow Agent under this Escrow Agreement as described herein (collectively, the "**OTC Escrow Accounts**"), and certain moneys are expected to be irrevocably deposited by or at the direction of the City to the OTC Escrow Accounts for the development and improvement of 166 units of housing for athletes, expansion and enhancement of the Athlete Center, including cafeteria facilities contained therein, renovation of the visitor center, and construction of certain infrastructure thereto at the OTC (the "**OTC Improvements**"); and

WHEREAS, the Escrow Agent, the City and the USOC desire that the Escrow Agent hold all of the amounts which are deposited under this Escrow Agreement (the "**Escrowed Assets**") irrevocably in escrow solely for the benefit of the USOC and use such Escrowed Assets for the funding of the OTC Improvement costs in the sole discretion and at the direction of the USOC, and the City hereby acknowledges and agrees to such irrevocable escrow arrangement to be established by this Escrow Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the mutual covenants and agreements hereinafter set forth, and good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Creation of OTC Escrow Fund. There is hereby established and created (a) the "**COP OTC Proceeds Account**"; and (b) the "**Non-COP OTC Account**" (collectively, these constitute the "OTC Escrow Accounts") which shall be special escrow funds held by the Escrow Agent for the benefit of the USOC. Amounts will be deposited from time to time by or at the direction of the City in the OTC Escrow Accounts as provided by the EDA. The amounts on

deposit in the OTC Escrow Accounts shall be disbursed and expended in accordance with Section 2 of this Escrow Agreement. The Escrow Agent is hereby authorized and directed to issue its checks on the OTC Escrow Accounts for each payment pursuant to Section 2 of this Escrow Agreement. The Escrow Agent shall keep and maintain adequate records pertaining to the OTC Escrow Accounts and all investment earnings thereon and all payments therefrom, which shall be open to inspection by the USOC, the City or their duly authorized agents during normal business hours of the Escrow Agent. The Escrow Agent shall provide the USOC and the City with monthly statements with respect to the amounts on deposit hereunder and the interest accrued thereon.

Section 2. Use of OTC Escrow Accounts. The Parties hereto authorize and direct the Escrow Agent to make disbursements from the OTC Escrow Accounts to pay (or to reimburse the USOC for the payment of) costs of the OTC Improvements pursuant to the terms of this Section 2, which shall effective upon the deposit of any moneys into the OTC Escrow Accounts . For purposes of this Escrow Agreement, costs of the OTC Improvements shall mean all design, development, construction and other costs or expenses, including attorneys' fees arising from or relating to the OTC Improvements ("**Permitted Expenses**"). Each such disbursement under this Section 2 shall be made by the Escrow Agent within two business days after receipt by the Escrow Agent of a request for disbursement by the USOC. Requests from the USOC shall be made as follows:

(a) first, all requests by the USOC for payment or reimbursement of Permitted Expenses incurred prior to the issuance of certificates of participation as described in Section 2.3 of the EDA (the "**COP Issuance**"), shall be made by submission of a certificate to the Escrow Agent substantially in the form of the Non-COP OTC Account Requisition Certificate attached hereto as Exhibit A, signed by the Authorized Representative of the USOC, providing the information and the certifications as required in such Non-COP OTC Account Requisition Certificate;

(b) second, requests by the USOC for payment or reimbursement of Permitted Expenses incurred on or after the COP Issuance up to and including until the COP OTC Proceeds Account reaches a balance of \$0.00, shall be made by submission of a certificate to the Escrow Agent substantially in the form of the COP OTC Proceeds Account Requisition Certificate attached hereto as Exhibit B, signed by the Authorized Representative of the USOC, providing the information and the certifications as required in such COP OTC Proceeds Account Requisition Certificate; and

(c) third, all remaining requests by the USOC for payment or reimbursement of Permitted Expenses shall be made by submission of a certificate to the Escrow Agent substantially in the form of the Non-COP OTC Account Requisition Certificate attached hereto as Exhibit A, signed by the Authorized Representative, providing the information and the certifications as required in such Non-COP OTC Account Requisition Certificate.

The Parties agree and acknowledge that the disbursement order of the Permitted Expenses may be influenced by tax rules or regulations that may affect the COP OTC Proceeds Account, and the Parties agree that the disbursement order described above may be modified to

address such tax rules or regulations with the prior written consent of both Parties, such consent to not be unreasonably withheld, conditioned, or delayed.

The USOC hereby appoints \_\_\_\_\_ as the initial Authorized Representative for purposes of this Escrow Agreement, provided however that the USOC may from time to time designate an alternative or additional person as the Authorized Representative hereunder and, upon delivery of written notice to the Escrow Agent of such designation by the USOC, the Escrow Agent shall take actions under this Escrow Agreement taking into account such unilateral designation. The USOC and the City each hereby acknowledges that it has no right to the funds in the OTC Escrow Accounts other than to have the same disbursed by the Escrow Agent in accordance with this Escrow Agreement. Notwithstanding anything to the contrary contained herein, if funds remain in the OTC Escrow Accounts after (i) the termination of the EDA by the USOC pursuant to Section 7.1, therein; or (ii) the dates described in Section 2.7 of the EDA have occurred, then funds that have not been expended by the USOC for OTC Improvements (including interested deposited therein) shall be reimbursed to the contributing entity, first to the COP Account and then to the non-COP Account, within thirty (30) days of such termination; provided, however, the USOC shall have the right to be reimbursed from the OTC Escrow Accounts for all expenses for OTC Improvements actually incurred by third parties by not yet paid by the USOC prior to the date of termination.

Section 3. Investment of Escrow Deposits. Any moneys held as part of the OTC Escrow Accounts shall be invested and reinvested by the Escrow Agent on instructions signed and delivered by the USOC. Any such investments shall be held by or under the control of the Escrow Agent and shall be deemed at all times a part of the OTC Escrow Accounts. Any interest or gain realized as a result of any such investment or reinvestment by the Escrow Agent of moneys in the OTC Escrow Accounts shall be retained in the OTC Escrow Accounts and shall be made available for disbursement only as provided in this Escrow Agreement, unless, with respect to the COP OTC Proceeds Account, the City shall certify to the USOC or the Escrow Agent that rebates with respect to the COP Issuance may rise based on such investment in which case, interest earning thereon in excess of the yield on the COP Issuance shall be paid to the City.

Section 4. Custody of OTC Escrow Accounts. The OTC Escrow Accounts shall be in the custody of the Escrow Agent but in the name of the USOC, and the USOC authorizes and directs the Escrow Agent, upon receipt of a Requisition Form (in the form provided in Exhibit A or Exhibit B, as appropriate, attached hereto and incorporated herein) executed by the Authorized Representative of the USOC as provided in Section 2, to withdraw sufficient funds from the OTC Escrow Accounts to pay costs of the OTC Improvements, which authorization and direction the Escrow Agent hereby accepts. In the event Escrowed Assets remain under this Escrow Agreement after the expiration of the applicable time period described in Section 2.7 of the EDA, the Escrow Agent shall be responsible to distribute such remaining Escrowed Assets pursuant to the terms of Section 2.7 of the EDA.

Section 5. This Escrow Agreement shall remain in full force and effect from the date of delivery hereof until such time as all amounts on deposit in the OTC Escrow Accounts have been disbursed by the Escrow Agent for costs of the OTC Improvements.

Section 6. Escrow Agent Compensation. The City shall pay the Escrow Agent, as full compensation for its services under this Escrow Agreement, a fee of \$\_\_\_\_\_ payable upon execution of this Agreement.

Section 7. Rights and Obligations of the Escrow Agent. The Escrow Agent hereby accepts the escrows imposed on it by this Escrow Agreement and agrees to perform said escrows upon and subject to the terms and conditions of this Escrow Agreement, and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent. The Escrow Agent shall be liable only for its own negligence, willful misconduct or lack of good faith.

Section 8. Replacement of the Escrow Agent. The USOC may, from time to time, remove the Escrow Agent and approve a replacement provided such replacement complies with the requirements of Section 2.3 of the EDA.

Section 9. Moneys to be Held in Escrow. All moneys required to be deposited with the Escrow Agent under this Escrow Agreement shall be held by the Escrow Agent in escrow for the purposes specified in this Escrow Agreement and shall, while held by the Escrow Agent, not be subject to attachment or any lien by any creditor in the event of bankruptcy.

Section 10. Notices. Formal notices, demands and communications between the Parties shall be sufficiently given if dispatched by registered mail postage pre-paid, return receipt requested to the principal offices of the Parties as set forth in this Section 10. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time-to-time designate by mail. Any such notice, demand or communication shall be deemed to have been received 72 hours after having been dispatched.

If to City:

City of Colorado Springs, Colorado  
Attn: City Manager  
30 S. Nevada, Suite 601  
Colorado Springs, CO 80903

With a copy to:

City Attorney  
30 S. Nevada, Suite 501  
Colorado Springs, CO 80903

If to USOC:

United States Olympic Committee  
One Olympic Plaza  
Colorado Springs, CO 80909  
Attention: Chief Executive Officer and General Counsel

With a copy to:

Hogan & Hartson LLP  
One Tabor Center, Suite 1500  
1200 Seventeenth Street  
Denver, CO 80202  
Attn: Helen Atkeson

Section 11. Successors and Assigns. No Party may assign this Escrow Agreement or any of its rights or obligations hereunder, whether by merger, consolidation, sale of all or substantially all of its assets, liquidation, dissolution or otherwise, except as expressly permitted by this Escrow Agreement. If the Escrow Agent merges with or is acquired by any other entity, its successor organization shall become a successor Escrow Agent under this Escrow Agreement without further action by the other Parties. However, any such successor Escrow Agent is subject to all the terms and conditions of this Escrow Agreement, including but not limited to the rights of replacement set forth in Section 8.

Section 12. Miscellaneous. No amendment, change or modification shall be made to this Escrow Agreement without the written approval or direction of the USOC. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event any provision of this Escrow Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable by any other provision hereof. This Escrow Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the USOC, the City and the Escrow Agent have caused this Escrow Agreement to be executed in their respective corporate names and attested by their duly authorized officers, all as of the date first above written.

**UNITED STATES OLYMPIC COMMITTEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF COLORADO SPRINGS, COLORADO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**[ESCROW AGENT]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

NON-COP OTC ACCOUNT REQUISITION CERTIFICATE

Request No. \_\_\_\_\_  
Date: \_\_\_\_\_, 20\_\_

TO: [\_\_\_\_\_] (THE "ESCROW AGENT") AS ESCROW AGENT UNDER THE USOC OLYMPIC TRAINING CENTER ESCROW AGREEMENT, DATED AS OF \_\_\_\_\_, 2009 (THE "ESCROW AGREEMENT"), BY, BETWEEN AND AMONG THE UNITED STATES OLYMPIC COMMITTEE (THE "USOC"), THE CITY OF COLORADO SPRINGS, COLORADO, AND THE ESCROW AGENT.

(1) Requested Disbursement. The undersigned, on behalf of the USOC, hereby requests that the following amounts be paid to the following payee(s) for the following costs of the OTC Improvements (as defined in said Escrow Agreement) (the "Costs"):

Payee: \_\_\_\_\_  
Payee Address: \_\_\_\_\_  
Wiring Instructions: \_\_\_\_\_  
Amount: \$ \_\_\_\_\_  
Describe Nature of Obligation: \_\_\_\_\_

All capitalized terms not otherwise defined herein shall have the meanings set forth in the Escrow Agreement.

(2) Further Certifications. The undersigned Authorized Representative of the USOC hereby further states and certifies that:

- (a) the costs for which this Requisition Certificate is submitted were incurred to fund the OTC Improvements; and
- (b) the costs for which this Requisition Certificate is submitted are valid costs under the Escrow Agreement and no part thereof has been included in any other

Requisition Certificate previously filed with the Escrow Agent under the Escrow Agreement.

\_\_\_\_\_, as Authorized  
Representative of the United States Olympic  
Committee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT B

COP OTC PROCEEDS ACCOUNT REQUISITION CERTIFICATE

Request No. \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

TO: [\_\_\_\_\_] (THE "ESCROW AGENT") AS ESCROW AGENT UNDER THE USOC OLYMPIC TRAINING CENTER ESCROW AGREEMENT, DATED AS OF \_\_\_\_\_, 2009 (THE "ESCROW AGREEMENT"), BY, BETWEEN AND AMONG THE UNITED STATES OLYMPIC COMMITTEE (THE "USOC"), THE CITY OF COLORADO SPRINGS, COLORADO, AND THE ESCROW AGENT.

(1) Requested Disbursement. The undersigned, on behalf of the USOC, hereby requests that the following amounts be paid to the following payee(s) for the following costs of the OTC Improvements (as defined in said Escrow Agreement) (the "Costs"):

Payee: \_\_\_\_\_

Payee Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Wiring Instructions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Amount: \$ \_\_\_\_\_

Describe Nature of Obligation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**All capitalized terms not otherwise defined herein shall have the meanings set forth in the Escrow Agreement.**

(2) Further Certifications. The undersigned Authorized Representative of the USOC hereby further states and certifies that the costs for which this Requisition Certificate is submitted:

- (a) were incurred to fund the OTC Improvements;
- (b) constitute a capital expenditure and not payment of a current expense;

- (c) are an expenditure in furtherance of the 501(c)(3) purpose of the USOC;
- (d) constitute an expenditure made with respect to OTC Improvements located at the Olympic Training Center in Colorado Springs;
- (e) otherwise comply with any obligations with respect to such expenditures contained in any tax documents executed by the USOC in connection with the issuance of the COPs; and
- (f) are valid costs under the Escrow Agreement and no part thereof has been included in any other Requisition Certificate previously filed with the Escrow Agent under the Escrow Agreement.

\_\_\_\_\_, as Authorized  
Representative of the United States Olympic  
Committee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_