

**TAX INCENTIVE PROGRAM AGREEMENT  
(COG RAILWAY)**

THIS TAX INCENTIVE PROGRAM AGREEMENT (the "Agreement") is made and executed effective this 7th day of November, 2018 (the "Effective Date"), by and between the CITY OF MANITOU SPRINGS, COLORADO, a Colorado home rule municipal corporation (the "City") and MANITOU and PIKE'S PEAK RAILWAY COMPANY, a Colorado Corporation with an address of 515 Ruxton Ave. Manitou Springs, CO 80829 (the "Owner") (individually a "Party" and collectively the "Parties").

**W I T N E S S E T H**

WHEREAS, Owner is the owner of a major tourist attraction in the City commonly referred to as the Manitou and Pike's Peak Cog Railway (the "Cog Railway"), which is a source of substantial tax revenue for the City, serves as a draw for visitors to the City, provides employment opportunities within the City, benefits other businesses in the City, and contributes to the historic character of the City;

WHEREAS, the Cog Railway requires substantial and expensive maintenance, repairs, and upgrades of its facilities to resume and continue operating;

WHEREAS, the continued operation of the Cog Railway is vital to health and welfare of the City and its residents and businesses, without which the City's governmental operations would be jeopardized due to substantially reduced revenue, the City would experience less tourist visits, there would be less employment opportunities, and there would be fewer customers for other businesses within the City;

WHEREAS, the term of this Agreement is no longer than the expected life of the repairs and upgrades planned for the Cog Railway and is specifically intended to provide a long-term incentive to the Cog Railway to continue its operations;

WHEREAS, the Parties wish to memorialize all aspects of their agreement regarding a tax incentive program, which is required to ensure the resumed and continued operation of the Cog Railway in a manner that benefits the City residents and businesses; and

WHEREAS, the Parties intend to work jointly to mitigate traffic and parking concerns in the City of Manitou Springs and commit to use their best cooperative efforts, including but not limited to financial cooperation, to address these parking and traffic concerns.

NOW THEREFORE, the Parties hereto, for themselves, their successors and assigns (to the extent this Agreement is assignable, as specified hereinafter), in and for the consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, do hereby covenant and agree as follows:

1. Authority. This Agreement is entered into pursuant to the home rule powers of the City of Manitou Springs under Article XX of the Colorado Constitution and Section 2.2 of the Manitou Springs City Charter.

2. Application. This Agreement shall apply to the Cog Railway and related facilities (including without limitation the gift shop, parking lots, and cafes), which have the mailing address of 515 Ruxton Ave. Manitou Springs, CO 80829 (the “Property”).

3. Term and Termination. This Agreement shall commence on the Effective Date and shall terminate on the earlier of: (i) December 31, 2070; or (ii) Owner abandoning regular operation of the Cog Railway, which Owner may decide to do so in Owner’s sole discretion. Abandonment of regular operation of the Cog Railway shall mean that Owner does not provide regular daily service to the general public of rides on the Cog Railway from April through November (the “Operating Season”) for two (2) consecutive years. The following shall not be considered to constitute an abandonment of regular operation of the Cog Railway for purposes of this Section:

- a. Cessation of daily service during the period of reconstruction of the Cog from Effective Date until substantial completion of the reconstruction;
- b. Cessation of daily service during Operating Season due to a Force Majeure event (as defined in Section 13).

4. Common Cog Railway Name. For branding purposes, the Parties will work collaboratively to affirm the commonly referred name of the Cog Railway as the “Manitou and Pike’s Peak Cog Railway”. Nothing herein is intended to prevent the use of The Broadmoor’s name in association with Cog operations.

5. Excise Tax on Ticket Sales and Admission Fees.

During the term of this Agreement, Owner shall pay the full amount of tax owed to the City pursuant to Chapter 3.16 of the Manitou Springs Municipal Code as it may be amended from time-to-time (the “Excise Tax”), subject to an incentive payment from the City calculated as follows:

a. For calendar years one (1) through fifty (50) (years 2021 through 2070 as shown on **Exhibit A**) of this Agreement, all Excise Tax amounts collected by Owner and paid to the City resulting from activity on the Property in excess of the amounts shown in **Exhibit A** (the “Base Excise Tax”) in each calendar year shall be reimbursed by the City to Owner (the “Excess Excise Tax”) except as further provided in Subsections (b) and (c), below.

b. In calendar years twenty-six (26) through fifty (50) of this Agreement, the City shall reimburse to Owner the lesser amount of (i) the Excess Excise Tax as calculated pursuant to Subsection (a), above, or (ii) the amount of Excise Tax paid by Owner to the City for such calendar year in excess of three and eight-tenths percent (3.8%) of all Owner revenue that was subject to the Excise Tax for such calendar year.

c. All amounts collected by Owner and paid to the City pursuant to Subsection (a), above, resulting from activity on the Property exceeding Three Hundred Seventy-Five Thousand (375,000) riders in any calendar year shall not be subject to reimbursement.

d. Except as provided for use taxes in Section 7 below, Owner shall collect and remit all taxes owed to the City, including without limitation all Excise Tax. Payment to Owner by the City for any amounts owed under this Section 5 shall occur on or before March 1<sup>st</sup> of the year immediately following the applicable calendar year.

6. Parking Facilities and Transportation Management. The Parties agree to work collaboratively to address parking and transportation management issues. In this regard, the Parties agree to attempt to:

a. To create a total of 300 to 400 new parking spaces to adequately augment the existing Cog Railway parking.

b. To meaningfully reduce traffic congestion on Ruxton Avenue and in downtown Manitou Springs. It is currently desired that these parking spaces be located to the east of the intersection of Manitou Avenue, El Paso Blvd and Deer Path Avenue.

c. To serve these parking spaces with convenient shuttle service that goes through downtown Manitou Springs to the Cog Railway, with stop(s) in downtown Manitou Springs.

d. To explore using the new parking spaces and adjacent property as a transportation hub and site for a Cog Railroad history museum.

e. To jointly evaluate and determine the advisability of the location or locations, design, capacity, funding and completion date for parking improvements and shuttle service contemplated in this Section and, if appropriate, to implement one or more of the following options:

i. Upgrading the surface parking facility on the Hiawatha Gardens site.

ii. Creating a surface parking facility at a location other than the Hiawatha Gardens site.

iii. Creating a parking structure either on the Hiawatha Gardens site or a mutually agreed on alternate site.

f. To assist with the property acquisition, design, construction and related costs of a selected option(s). The Parties' individual contributions are expected to be at least \$500,000 each. If the Hiawatha Gardens site is selected as a site, the current market appraised value of the land on which the parking facility is constructed at the Hiawatha Gardens site shall be credited toward the City's minimum contribution referenced in the previous sentence.

g. If the Parties have joint ownership of any such facilities, they shall share pro rata in the profits of same after reasonable expenses including charges for regular care and maintenance and management of the same.

h. Nothing contained herein shall prevent either Party from operating its own parking and shuttle operations at its own cost.

i. If any disputes arise between the City and the Owner regarding any terms associated with the parking facility location, design, capacity, completion, costs or other factors, the Parties shall attempt to resolve those disputes in accord with the “Dispute Resolution” provisions in Section 22 of this Agreement.

7. Volunteer Payments. Owner shall pay to the City two payments of Five Hundred Thousand Dollars (\$500,000.00) each on or before December 1 of 2018 and 2019, and one payment of Two Hundred Fifty Thousand Dollars (\$250,000.00) on or before July 1, 2020.

8. Use Tax. In addition to Section 5 above, the City shall reimburse the payment of all use taxes paid to the City pursuant to Chapter 3.12 of the Manitou Springs Municipal Code or elsewhere for the years of 2018 through 2021, if any, and the City shall reimburse the payment of use taxes paid to the City, if any, for the replacement of Cog Railway rolling stock any time prior to 2042.

9. Periodic Review of Community Impact. The Parties shall periodically, or as requested by either party, jointly review parking utilization, traffic congestion, and visitor satisfaction. If this analysis shows that any factor has a significant negative impact, the City and the Owner shall jointly attempt to develop a plan to mitigate the negative impact.

10. Conditional Use Permit. Owner shall submit an application for a conditional use permit and any other required permits to encompass all of Owner’s planned operations on the Property, which the City shall process pursuant to the applicable provisions of the Manitou Springs Municipal Code.

11. Tap Fee Waiver. To the extent new water or sewer tap fees are owed by Owner due to renovation or reconstruction of the existing depot located on the Property, the City shall waive such fees.

12. Building Permits/Planning Review. The City and Owner shall cooperate on the following matters:

a. Plan submittal and review for the renovation, demolition, and/or expansion of the existing depot and related structures located on the Property, which shall maintain architectural consistency with the historical appearance of the existing depot and related structures; and

b. Donation by Owner of certain historical “rail related” assets to a Cog rail museum.

13. Retained Legislative Authority. Nothing set forth herein is intended to limit or restrict the legislative authority of the City Council, which the City expressly retains to fullest extent permitted by law, including authority pursuant to Article XX of the Colorado Constitution.

14. Force Majeure. Neither Party to this Agreement will be liable for failure to perform any of its obligations hereunder (other than payment obligations) during any period in which such performance is delayed by fire, flood, war, riot, embargo, organized labor stoppage, earthquake, or other similar acts of nature, acts of civil and military authorities, or terrorism, provided,

however, that the Party suffering such delay promptly notifies the other Party of the delay and diligently pursues a resolution to the Force Majeure act resulting in the Party's delayed performance, if commercially practicable.

15. Nonappropriation/Multi-Fiscal Year Obligations. Notwithstanding anything in this Agreement to the contrary, this Agreement is specifically subject to annual appropriation by the City of sufficient funds to pay the Excess Excise Tax, any other reimbursements under Section 5 of this Agreement, or Use Taxes reimbursed as provided by this Agreement. In the event that appropriation of sufficient funds is not made in any year resulting in the inability of the City to pay Excess Excise Tax, any other reimbursements under Section 5 of this Agreement, or reimbursed Use Tax hereunder, the City shall not be obligated to make payment of the non-appropriated amounts in such year. This agreement shall not be construed as a creating a debt or liability owed by the City to Owner.

16. Subordination. Notwithstanding anything in this Agreement to the contrary, Owner shall have no right, claim, lien, or priority in or to the City tax revenue superior to or on parity with the rights, claims, or liens of the holders of any revenue bonds, notes, certificates, or debentures payable from or secured by any excise or use taxes, existing or hereafter issued by the City, and that all rights of Owner are, and at all times shall be, subordinate and inferior to the rights, claims, and liens of the holders of any and all such tax revenue bonds, notes, certificates, or debentures, issued by the City and payable from or secured by any excise or use taxes.

17. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and the Parties shall cooperate to cure any legal defects in this Agreement. Except for the amendments, supplements or changes in writing executed after the execution of this Agreement, this Agreement shall constitute the entire agreement reached by and among the Parties with respect to the subject matter hereof, and shall supersede all prior oral and written consultations, representations and agreements reached with respect to the subject matter of this Agreement. All Recitals set forth in the beginning of this Agreement and all exhibits attached hereto are incorporated herein by this reference.

18. Legal Challenges. Any and all undisbursed "Excess Excise Tax" subject to reimbursement hereunder shall be escrowed in the event there is a legal challenge affecting the obligations of the Parties pursuant this Agreement in general or to this Agreement specifically. In the event of such a legal challenge, Owner may continue to receive reimbursements under this Agreement if it posts a bond or other security, in a form acceptable to the City, for the full amount of such reimbursements. The City shall actively defend against any such legal challenge, and Owner may participate in such defense at its own cost and expense.

19. Assignment. None of the obligations, benefits, and provisions of this Agreement shall be assigned in whole or in any part without the express written authorization of the Manitou Springs City Council. The City shall not be allowed to assign its obligations under this Agreement. In addition, no third party may rely upon or enforce any provision of this Agreement, the same being an agreement solely between the City and Owner, and which agreement is made for the

benefit of no other person or entity. The preceding sentence notwithstanding, this Agreement and Owner's rights hereunder may be assigned to a company under substantially the same ownership as Owner.

20. Modifications. This Agreement shall be subject to amendment only by a written instrument executed by each Party. Any such amendment shall require the approval by the City Council of the City of Manitou Springs at a regular or special meeting of the City Council, and execution thereof by the Mayor and attestation by the City Clerk.

21. Notices. Any written notices provided for or required in this Agreement shall be deemed delivered when either personally delivered or mailed, postage fully prepaid, certified or registered mail, return-receipt requested, to the Parties at the following addresses:

To the City:                   City Administrator  
City of Manitou Springs  
606 Manitou Avenue  
Manitou Springs, Colorado 80829

With a copy to:               Hoffmann, Parker, Wilson & Carberry, P.C.  
511 16th Street, Suite 610  
Denver, CO 80202-4260

To Owner:                     The Broadmoor Hotel,  
c/o Chief Executive Officer  
One Lake Avenue  
Colorado Springs, Colorado 80906

With a copy to:               Anschutz Corporation  
c/o General Counsel  
555 17<sup>th</sup> Street, Ste. 2400  
Denver, Colorado 80202

22. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either Party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in El Paso County, Colorado.

23. Dispute Resolution. The Parties to this agreement value their ongoing working relationship and desire to maintain that relationship in spite of conflicts or disagreements that may from time to time arise. The Parties also recognize that most disputes can be resolved through open and constructive dialogue. The Parties agree to engage in such dialogue informally in the event of any disputes concerning the interpretation or operation of this agreement. In the event that informal dialogue is not successful in resolving the dispute the Parties agree to engage the services of a third-party mediator and to participate in mediation as long as both Parties agree that it is productive. Mediation will be attempted prior to the initiation of any formal claims or lawsuits. The cost of such mediation shall be paid equally by the Parties.

24. Discontinuation of repairs and replacement. Should Owner discontinue its efforts to repair and replace the Cog Railway or its operations generally at any time before completion of same, which Owner may do at any time in its sole discretion, this Agreement shall automatically terminate upon notice to the City. Any and all monies paid by Owner to the City before such time shall be retained by the City and not returned to the Owner, and Owner hereby relinquishes and waives any and all claims to such monies.

25. Headings. The headings of paragraphs in this Agreement are for convenience of reference only, and shall not be deemed to expand, limit, or define any of the provisions hereof.

*[Remainder of page intentionally left blank. Signatures on following page.]*





## EXHIBIT A

### BASE EXCISE TAX SCHEDULE

Year 1	2021	\$507,500	Year 26	2046	\$565,911
Year 2	2022	\$507,500	Year 27	2047	\$650,000
Year 3	2023	\$507,500	Year 28	2048	\$650,000
Year 4	2024	\$507,500	Year 29	2049	\$650,000
Year 5	2025	\$515,113	Year 30	2050	\$650,000
Year 6	2026	\$515,113	Year 31	2051	\$650,000
Year 7	2027	\$515,113	Year 32	2052	\$650,000
Year 8	2028	\$515,113	Year 33	2053	\$675,000
Year 9	2029	\$527,990	Year 34	2054	\$675,000
Year 10	2030	\$527,990	Year 35	2055	\$675,000
Year 11	2031	\$527,990	Year 36	2056	\$675,000
Year 12	2032	\$527,990	Year 37	2057	\$725,000
Year 13	2033	\$535,910	Year 38	2058	\$725,000
Year 14	2034	\$535,910	Year 39	2059	\$725,000
Year 15	2035	\$535,910	Year 40	2060	\$725,000
Year 16	2036	\$535,910	Year 41	2061	\$725,000
Year 17	2037	\$543,949	Year 42	2062	\$750,000
Year 18	2038	\$543,949	Year 43	2063	\$750,000
Year 19	2039	\$543,949	Year 44	2064	\$750,000
Year 20	2040	\$543,949	Year 45	2065	\$750,000
Year 21	2041	\$557,548	Year 46	2066	\$750,000
Year 22	2042	\$557,548	Year 47	2067	\$750,000
Year 23	2043	\$557,548	Year 48	2068	\$775,000
Year 24	2044	\$557,548	Year 49	2069	\$775,000
Year 25	2045	\$565,911	Year 50	2070	\$775,000