CITY OF DURANGO
TAX INCREMENT REVENUE COOPERATION AGREEMENT
(Midtown Urban Renewal Project)

1.0 PARTIES. The parties to this Agreement (the “Agreement”), dated as of April 26, 2021, are the CITY OF DURANGO, a home rule city of the state of Colorado (the “City”) and the DURANGO RENEWAL PARTNERSHIP, an urban renewal authority and body corporate and politic of the State of Colorado (the “Authority”) The City and the Authority are sometimes referred to individually as a “Party” and collectively as the “Parties.”

2.0 RECITALS. The Recitals to this Agreement are incorporated herein by this reference as though fully set forth in the body of this Agreement.

2.1 The Urban Renewal Plan. Pursuant to and in accordance with the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31 of the Colorado Revised Statutes (the “Act”), the City has approved, and the Authority is carrying out the Midtown Urban Renewal Plan (the “Plan”) for the area (the “Urban Renewal Area”) described in the Plan. The Plan was approved by the City Council of the City on March 16, 2021, by Resolution No. 2021-11.

2.2 Tax Increment Financing. Pursuant to Section 31-25-107(9)(a) of the Act, the Plan contains a provision allocating (a) all property tax increment revenue to the Authority and, (b) upon approval of the City Council of the City, all or any portion of the municipal sales taxes collected within the Urban Renewal Area for deposit into a special fund of the Authority (the “Special Fund”) described in Section 31-25-107(9)(a)(II) of the Act to pay the principal of, interest on, and any premiums due in connection with bonds or other financial obligations of the Authority incurred to carry out the Plan.

2.3 Cooperation Agreement. The City and the Authority have determined that it is in the best interest of the Parties to enter into this Agreement to facilitate the redevelopment of the Urban Renewal Area.

3.0 TERMS AND CONDITIONS. In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as set forth in this Agreement.

4.0 PROPERTY TAX INCREMENT REVENUE. The Plan, including the property tax increment provisions included in the Plan, became effective on March 16, 2021. The Authority shall retain all property tax increment revenue described in Section 31-25-107(9)(a)(II) of the Act (the “Property Tax Increment Revenue”) to be deposited in the Special Fund and used for the purposes described in the Act and the Plan. As directed by Section 31-25-107 (9)(a)(I) of the Act, the base value (the “Base Value”) of the Urban Renewal Area for the purpose of calculating ad valorem Property Tax Increment Revenue is the date upon which the total assessed value of the Urban Renewal Area was last certified by the Assessor for La Plata County (the “Assessor”) on December 10, 2020.

4.1 Base Value of Urban Renewal Area. The Parties agree that the Base Value for the Urban Renewal Area as of December 10, 2020 was $163,965.46.

4.2 Property Tax Increment Term. In accordance with the Act, the 25-year right of the Authority to receive property tax increment revenue begins in 2020 (the “Base Year”), and the last year the property tax assessment roll in the Urban Renewal Area will be divided is 2045. The 25th and last year the Authority will receive Property Tax Increment Revenue produced by the 2045 assessment is 2046 (the “Property Tax TIF Term”).

4.3 City Property Tax Revenue. The Parties agree with the following regarding property tax revenue produced by the levy of the City against property subject to property taxes during the Property Tax TIF Term.
4.3.1 **Base Property Tax Revenue.** In accordance with the Act, the City shall collect and retain the revenue produced by its levy against the Base Value of the Urban Renewal Area (as adjusted by the Assessor pursuant to the Act and the regulations of the Property Tax Administrator of Colorado) during the Property Tax TIF Term (the “Base Property Tax Revenue”).

4.3.2 **Annual Appropriation.** Notwithstanding the foregoing each year during the Property Tax TIF Term, the City agrees to consider appropriating and paying to the Authority, a portion of the Base Property Tax Revenue annually in an amount to be determined by the City Council of the City, which revenue shall be used by the Authority to help carry out the Plan. The obligations of the City with respect to the revenue described in this Section 4.3.1 shall be from year to year only and shall not constitute a mandatory payment obligation of the City in any fiscal year beyond the present fiscal year and shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year in which this Agreement shall be in effect. The City Manager (or any other officer or employee at the time charged with the responsibility of formulating City budget proposals) is hereby directed to include in the budget proposals submitted to the City Council of the City, in each year prior to termination or expiration of this Agreement, reasonable amounts sufficient to assist the Authority in carrying out the Plan, it being the intent, however, that the decision as to whether to appropriate such amounts shall be at the discretion of the City Council.

5.0 **CITY SALES TAX INCREMENT REVENUE.** The Parties agree as follows with respect to the City sales tax increment revenue authorized by the Act and the Plan that will be paid to the Authority (the “Available City Sales Tax Increment Revenue”) for the period of the City Sales Tax Increment Term defined below.

5.1 **City Sales Tax Increment Tax Base Value and Term.** As specified in Section 31-25-107(9)(a)(I) of the Act, the City sales tax increment base value (the “City Sales Tax Base Value”) is the total amount of municipal sales tax revenue collected in the Urban Renewal Area during the 12-month period ending on the last day of the month prior to the date the Plan was approved. The Plan was approved on March 16, 2021 and the period for calculating the City Sales Tax Base Value commenced on March 1, 2020 and ended on February 28, 2021. As a result, the City Sales Tax Base Value is $3,737,532.17, subject to adjustment as described in Section 31-25-107(9)(a)(I) of the Act. The 25-year period for calculating the amount and period of time that City Sales Tax Increment Revenue began on March 1, 2021 and will end on February 28, 2046 (the “City Sales Tax Increment Term”).

5.2 **Calculation and Payment of Available City Sales Tax Increment Revenue.** For the period of the Sales Tax Increment Term, the City agrees to pay to the Authority the Available City Sales Tax Increment Revenue consisting of that portion of City sales tax revenues in excess of the City Sales Tax Increment Base Value produced by the percentage of such sales tax levied for general fund purposes only (currently 2.0% of a total levy of 3.5%), but no revenue from City sales taxes levied for and paid into special revenue funds of the City (currently 1.5% of a total levy of 3.5%).

6.0 **DEPOSIT AND USE OF REVENUE.** The Property Tax Increment Revenue, the Base Property Tax Increment Revenue (if any), and the Available City Sales Tax Increment Revenue (collectively, the “Pledged Revenue”) shall be deposited regularly into the Special Fund of the Authority and applied to the lawful purposes of carrying out the Plan.

6.1 **Pledged Revenue.** The Parties agree that the Authority shall have the unqualified right to apply the provisions of Section 11-57-208, C.R.S., to the Pledged Revenue so that, upon such application by the Authority, the Pledged Revenue, when and as received by the Authority, shall be subject to the lien of such pledge without any physical delivery, filing, or further act and shall be an obligation of the Parties pursuant to Section 31-25-107(9) of the Act.

6.2 **Records.** The Parties will cooperate to keep and maintain accurate records of the receipts and expenditures of the Pledged Revenue in which complete entries shall be made in accordance with state and local laws regarding bookkeeping.
7.0 AGREEMENT ONLY APPLIES TO THE PLAN AREA. This Agreement only applies to the Plan and the Urban Renewal Area. It does not include any other urban renewal plan or urban renewal area that may be approved and adopted in the future.

8.0 ENFORCED DELAY. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, pandemics, strikes, labor disputes, accidents, regulations or order or civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party, it being the purpose and intent of this provision that if such delay occurs, the time or times for performance by either party affected by such delay shall be extended for the period of the delay. The Party seeking the benefit of this provision shall give written notice of any such delay to the other Party within thirty (30) days after such Party knows of such delay.

9.0 DEFAULT. Time is of the essence, subject to Section 8.0 above. If any payment or any other material condition, obligation, or duty is not timely made, tendered, or performed by either Party, then either Party may exercise any and all rights available at law or in equity, including damages, but such damages, shall be limited to the actual amount that such Party is entitled to receive or retain under this Agreement. No special or punitive damages shall be payable hereunder.

10.0 NO THIRD-PARTY BENEFICIARIES. Except for any party or bond trustee to whom the Pledged Revenue is pledged as part of a bond or other financing approved by the Authority, neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

11.0 SEVERABILITY. In case any one or more of the provisions contained in this Agreement or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement, or any other application thereof, shall not in any way be affected or impaired thereby.

12.0 GOVERNING LAW AND VENUE. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado and venue shall be in the District Court for La Plata County Colorado.

13.0 HEADINGS. Section headings in this Agreement are for convenience of reference only and shall not constitute a part of this Cooperation Agreement for any other purpose.

14.0 ADDITIONAL OR SUPPLEMENTAL AGREEMENTS. The Parties covenant and agree that they will execute, deliver and furnish such other instruments, documents, materials, and information as may be reasonably required to carry out the Plan and agreements required to implement the Plan, including, without limitation, this Agreement.

15.0 MINOR CHANGES. This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The officers executing the Agreement have been authorized to make, and may have made, minor changes in the Agreement as they have considered necessary. So long as such changes were consistent with the intent and understanding of the parties at the time of approval by the governing bodies, the execution of the Agreement shall constitute conclusive evidence of the approval of such changes by the respective Parties.

16.0 NO WAIVER OF IMMUNITIES. No portion of this Agreement shall be deemed to constitute a waiver of sovereign or governmental immunity that the Parties or their officers or employees may possess, nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this agreement.

17.0 PARTIES NOT PARTNERS. Notwithstanding any language in this Agreement or any
other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint venturers, and no Party shall be responsible for any debt or liability of any other Party.

IN WITNESS WHEREOF, the parties hereto have caused this Cooperation Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

THE CITY OF DURANGO

Mayor

APPROVED AS TO FORM:

DURANGO RENEWAL PARTNERSHIP

Chair

Secretary