PROPERTY TAX INCREMENT REVENUE AGREEMENT

La Plata County (Midtown Urban Renewal Project)

1.0 PARTIES. The parties to this Agreement (the “Agreement”), dated as of Dec 7th, 2021, are THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, whose address for purposes of this agreement is 1101 East Second Avenue, Durango, CO 81301 (the “County”) and the DURANGO RENEWAL PARTNERSHIP, an urban renewal authority and body corporate and politic of the State of Colorado, whose address for purposes of this Agreement is 949 E. 2nd Avenue, Durango, CO 81301 (the “Authority”). The County and the Authority are sometimes referred to individually as a “Party” and collectively as the “Parties.”

2.0 RECITALS. The following recitals are incorporated in and made a part of this Agreement. Capitalized terms are defined in Section 4.0. References to sections and exhibits mean the sections and exhibits of this Agreement, unless otherwise stated.

2.1 The MidTown Urban Renewal Plan. Pursuant to the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31 of the Colorado Revised Statutes (the “Act”), the City Council (the “City Council”) of the City of Durango (the “City”) approved the MidTown Urban Renewal Plan on March 16, 2021, by Resolution No. R-2021-11 (the “Plan”), which contains tax increment financing (“TIF Financing”) provisions allocating Property Tax Increment Revenues to the Authority for the purpose of carrying out the Plan.

2.2 Amended 1348 Requirements. Sections 31-25-107(7) and (9.5) of the Act state that approval of the Plan authorizing TIF Financing requires compliance with certain provisions of the Act, including House Bill 15-1348 enacted in 2015, as amended in 2016, by Senate Bill 16-177, and in 2017 by Senate Bill 17-279 (collectively, the “Amended 1348 Requirements”).

2.3 Purpose of Agreement. The Authority has submitted to the County the Impact Report (defined below) required by Section 31-25-107(3.5) of the Act. The Impact Report describes the estimated benefits and burdens of the TIF Financing provisions of the Plan upon the services and revenues of all taxing entities, including the County, that levy property taxes in the area included in the Plan (the “Urban Renewal Area”). The Parties desire to enter into this Agreement for the purpose of (a) cooperating to carry out the Plan, (b) paying to the County the portion of the Property Tax Increment Revenues described in Section 5.1, and (c) documenting compliance with the Act, including the Amended 1348 Requirements.

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 DEFINITIONS. In this Agreement, unless a different meaning clearly appears from the context:

4.1 “Act” means the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S.
4.2 "Agreement" means this Agreement, as it may be amended or supplemented in writing. References to sections or exhibits are to this Agreement unless otherwise stated. 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.

4.3 "Amended 1348 Requirements" means the legislation described in Section 2.2.

4.4 "Authority" means the Party described in Section 1.0, the Durango Renewal Partnership (Urban Renewal Authority), a body corporate and politic of the State of Colorado.

4.5 "Base Value" means the total assessed value of the Plan Area as of the date last certified prior to approval of the Plan by the City Council and adjusted periodically in accordance with Section 31-25-107(9)(e) of the Act.

4.6 "Bonds" shall have the same meaning as defined in Section 31-25-103 of the Act.

4.7 "City" means the City of Durango, Colorado.

4.8 "City Council" means the governing body of the City.

4.9 "County" means the Party described in Section 1.0, The Board of County Commissioners of La Plata County, Colorado. La Plata County is a political subdivision of the State of Colorado.

4.10 "County Tax Levy Allocation Revenues" means the following portions of Property Tax Increment Revenues to be paid to the County from the Special Fund as specified in Section 5.1: the entire Road and Bridge Mill Levy, the entire Human Services Mill Levy, and 25% of the General Fund Mill Levy. The Parties acknowledge that mill levy allocations to each of the three funds may change from year to year, based on the needs of the County and approval of the Board of County Commissioners.

4.11 "Duration" means the twenty-five-year period that the TIF Financing will be in effect in the Urban Renewal Area as specified in Section 31-25-107(9)(a) of the Act. For the Urban Renewal Area described in the Plan, the Duration extends through 2046, the last year the Authority is authorized to receive Property Tax Increment Revenues.

4.12 "General Fund Mill Levy" means, for the Duration, the mill levy that funds the County’s general operations.

4.13 "Human Services Mill Levy" means, for the Duration, the mill levy that funds County Human Services activities.

4.14 "Impact Report" means the impact report previously submitted to the County setting forth the burdens and benefits of the Urban Renewal Project on the County and other taxing entities.
4.15 "Increment Value" means the the increase in assessed value, if any, above the Base Value of the Urban Renewal Area as adjusted from time to time in accordance with the Act.

4.16 "Party" or "Parties" means the Authority or the County or both and their lawful successors and assigns.

4.17 "Plan" means the urban renewal plan described in Section 2.1, and any modifications thereof approved in accordance with the Act.

4.18 "Property Tax Increment Revenues" means all of the TIF revenues described in Section 31-25-107(9)(a)(II) of the Act allocated to the Special Fund for the Duration of the Urban Renewal Project which were derived from any levy of La Plata County.

4.19 "Remainder of the Property Tax Increment Revenues" means all of the Property Tax Increment Revenues remaining after payment of the County Tax Levy Allocation Revenues pursuant to this Agreement.

4.20 "Road and Bridge (R&B) Mill Levy" means, for the Duration, the mill levy that funds County Road & Bridge construction and maintenance activities.

4.21 "Special Fund" means the fund described in Section 31-25-107(9)(a)(II) of the Act and the Plan into which the Property Tax Increment Revenues will be deposited.

4.22 "TIF" or "TIF Financing" means financing of the costs of the Urban Renewal Project based on the revenue produced from the levy of taxing entities upon the Increment Value of the property tax assessment roll described in Section 31-25-107(9)(a)(II) of the Act and the Plan.

4.23 "Urban Renewal Area" means the area included in the Plan.

4.24 "Urban Renewal Project" means the total of the undertakings and activities, or any combination thereof, required to carry out the Plan pursuant to the Act.

5.0 SHARING OF COUNTY TAX LEVY ALLOCATION REVENUES. In compliance with the requirements of HB 15-1348, the Parties have negotiated and agreed to the sharing of Property Tax Increment Revenues as set forth herein.

5.1 The County Tax Levy Allocation Revenues. The Authority agrees to calculate and pay to the County, the County Tax Levy Allocation Revenues it receives each year from the La Plata County Treasurer for the Duration of the Urban Renewal Project from the Property Tax Increment Revenues produced from the TIF portion of the assessment roll while the provisions of Section 31-25-107(9) of the Act are in effect in the Urban Renewal Area. The County Tax Levy Allocation Revenues to be paid to the County shall be placed in a separate account created for such purpose. Commencing on the date of this Agreement and for a period of twenty-five (25) years that the Authority is authorized to receive Property Tax Increment Revenues pursuant to the Act (the "Duration"), the Authority shall pay all such County Tax Levy Allocation Revenues received into such account to the County on a
regular basis, but no later than ninety (90) days after receipt of such Revenues from the Treasurer.

The Authority will keep and maintain accurate records of the receipts and expenditures of the Property Tax Increment Revenues in which complete entries shall be made in accordance with standard principals of accounting. The County shall be entitled to review these records at all times during the terms of this Agreement.

5.2 Subordination Consent Required. Only with the prior written consent of the County, which consent shall be in the sole discretion of the County, the obligation of Authority to pay all or part of the County Tax Levy Allocation Revenues to the County may be made subordinate to any payment of the principal of, the interest on, and any premiums due in connection with Bonds, including loans or advances to, or indebtedness incurred by Authority for financing or refinancing, in whole or in part, the Urban Renewal Project.

5.3 Default. If any payment to the County 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.

6.0 CONSENTS AND WAIVERS. In consideration of the creation of the account and the transfer of the County Tax Levy Allocation Revenues to or on behalf of the County as described in Section 5.1, this Agreement shall constitute the agreement in writing by the County to the following provisions.

6.1 Pledge of Remainder of Property Tax Increment Revenues. Except for the County Tax Levy Allocation Revenues, which are governed by this Agreement, the County recognizes and agrees that in reliance on this Agreement, the adoption and approval of the Plan includes an irrevocable pledge of all the Remainder of the Property Tax Increment Revenues to pay the Authority’s Bonds and other financial obligations in connection with the Urban Renewal Project. Notwithstanding the foregoing, the Parties agree that any irrevocable pledge shall not extend to (a) additional revenues described in Section 8.0 below, or (b) any taxes that are placed in a reserve fund to be returned to the County for refunds of overpayments by taxpayers. The Authority shall make adequate provision for the return of overpayments, in accordance with Section 31-25-107(9)(a)(III) of the Act.

7.0 NOTIFICATION OF SUBSTANTIAL MODIFICATIONS OF THE PLAN; AGREEMENT NOT PART OF PLAN. The Authority agrees to notify the County of any intended substantial modification of the Plan as required by Section 31-25-107(3.5)(a) of the Act, and the County shall have all rights granted to it under the Act or otherwise in law. This Agreement is not part of the Plan.

8.0 NOTICE AND REPAYMENT. The County agrees to timely notify the Authority in writing of any voter approved mill levy increases or revenue retention measures by February 1 of the year following voter approval thereof. The Authority will not pledge any additional revenues
resulting from an increase in the County’s property tax mill levy approved by voters subsequent to the creation of the Special Fund or from revenues voters have authorized the County to retain pursuant to section 20(7)(d) of article X of the Colorado Constitution subsequent to the creation of the Special Fund and will promptly repay such additional revenues to the County in accordance with the requirements of Section 31-25-107(9)(a)(II) of the Act.

9.0 AGREEMENT CONFINED TO PROPERTY TAX INCREMENT REVENUES GENERATED BY LA PLATA COUNTY. This Agreement applies only to the Property Tax Increment Revenues derived from property tax mill levies of La Plata County, as calculated, produced, collected and paid to the Authority from the Urban Renewal Area by the County Treasurer in accordance with Section 31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado, and does not include any other revenues of the City, County or the Authority.

10.0 MISCELLANEOUS.

10.1 Delays. 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; earthquake; abnormal weather; strikes; labor disputes; accidents; regulation or order of civil or military authorities; shortages of labor or materials; pandemics; or other causes, similar or dissimilar, including economic downturns, which are beyond the control of such Party.

10.2 Subsequent Legislation or Litigation. The Parties agree that in the event legislation is adopted or a decision by a court of competent jurisdiction after the effective date of this Agreement invalidates or materially effects any provisions hereof, the Parties will in good faith negotiate for an amendment to this Agreement that most fully implements the original intent, purpose and provisions of this Agreement, but does not impair any otherwise valid contracts or Authority financial obligations in effect at such time.

10.3 Entire Agreement. This instrument embodies the entire agreement of the Parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the Parties hereto. No modification to this Agreement shall be valid unless agreed to in writing by the Parties.

10.4 Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their successors in interest.

10.5 No Third-Party Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned Parties and nothing in this agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned Parties that any person or entity other than the undersigned Parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

10.6 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.

10.7 Amendment. This Agreement may be amended only by an instrument in writing signed by the Parties.

10.8 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.

10.9 Interpretation. All references herein to Bonds shall be interpreted to include the incurrence of debt by the Authority in any form consistent with the definition of “Bonds” in the Act, including payment of any lawful financing obligation.

10.10 Incorporation of Recitals and Exhibits. The provisions of the Recitals and the Exhibits attached to this Agreement, if any, are incorporated in and made a part of this Agreement.

10.11 No Assignment. No Party may assign any of its rights or obligations under this Agreement.

10.12 Section Captions. The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

10.13 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

10.14 Governing Law. This Agreement and the provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado.

10.15 No Presumption. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

10.16 Notices. Any notice required by this Agreement shall be in writing. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed facsimile transmission or electronic delivery with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than 5 business days thereafter. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was
sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressee did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each Party shall be entitled to change its address for notices from time to time by delivering to the other Party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth in Section 1.0.

10.17 Days. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S., such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

IN WITNESS WHEREOF, the Authority and the County have caused their duly authorized officials to execute this Agreement effective as of the Effective Date.

THE DURANGO URBAN RENEWAL AUTHORITY

[Signature]
Chair

ATTEST:

[Signature]
Director

THE BOARD OF COUNTY COMMISSIONERS
OF LA PLATA COUNTY, COLORADO

[Signature]
By: 

ATTEST:

[Signature]
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