

## **PROPERTY TAX INCREMENT REVENUE AGREEMENT**

(Mitchell Park South Urban Renewal Project)

1.0 **PARTIES.** This Agreement (the “Agreement”) is made and executed effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the PUEBLO URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “Authority”) and \_\_\_\_\_, a political subdivision of the State of Colorado. The foregoing parties are also referred to herein collectively as the “Parties” or individually as a “Party”.

2.0 **RECITALS.** The following recitals are incorporated in and made a part of this Agreement. Capitalized terms are defined in Section 4.0.

2.1 **Urban Renewal Plan.** The Mitchell Park South Urban Renewal Plan was approved by the City Council of the City on \_\_\_\_\_, 20\_\_ by Ordinance No. \_\_\_\_ (the “Plan” or “Urban Renewal Plan”) and includes property tax increment financing (“TIF Financing”) authorized by the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S. (the “Act”). The Plan has been adopted to eliminate conditions of blight that exist in the Urban Renewal Area described in the Plan.

2.2 **Nature of Urban Renewal Project and Purpose of Agreement.** The proposed Urban Renewal Project described in the Plan consists of any and all undertakings and activities authorized in the Plan and the Act to eliminate blighted conditions, including demolition and clearance of existing deteriorated buildings and structures, remediating conditions of blight, designing, developing and constructing improvements necessary for redevelopment of the Urban Renewal Area, and to comply with § 31-25-107(4)(g) of the Act that requires the Plan to afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the Urban Renewal Area by private enterprise. The Plan is subject to the requirements imposed by amendments to the Act contained in HB 15-1348 (as amended by SB 16-177 and SB 17-279) on new urban renewal plans adopted after January 1, 2016.

2.3 **Waiver of Certain Provisions of the Act.** In light of the benefits to the region and the Parties as well as the cost of eliminating blight from the Area, the Parties have agreed that it is in the public interest to enter into this Agreement and to waive certain provisions of the Act, including certain relevant provisions of HB 15-1348, as amended to date.

3.0 **AGREEMENT.** In consideration of the covenants, promises and agreements of the Parties hereto, to be kept and performed by each of them, it is agreed by and between the Parties hereto as set forth herein.

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

4.1 “Act” means the Colorado Urban Renewal Law, §§ 31-25-101, *et seq.*, C.R.S.

4.2 “Administrative Costs” means the reasonable and necessary costs of administering the Project, including collection, allocation, and distribution of Property Tax Increment Revenues.

4.3 “Agreement” means this Agreement, as it may be amended or supplemented in writing. References to sections or exhibits are to this Agreement unless otherwise qualified.

4.4 “Area” and “Urban Renewal Area” mean the area included in the boundaries of the Plan.

4.5 “Authority” means the Party described in Section 1.0, and its successors and assigns.

4.6 “Bonds” means any bonds (including refunding bonds), notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures, redevelopment and reimbursement agreements or other obligations provided in the Act.

4.7 “City” means the Party described in Section 2.1, and its successors and assigns.

4.8 “County” means the Party described in Section 1.0, and its successors and assigns.

4.9 “Duration” means the twenty five-year period that the tax increment or tax allocation provisions will be in effect as specified in § 31-25-109(a) of the Act, and the Plan. The base year for calculating the Duration shall be 2021 as set forth in the Act. Unless all obligations of the Authority are paid sooner as specified in the Act, the last year the assessment roll will be divided for the purposes of TIF financing is 2046 and the last year the Authority will receive Property Tax Increment Revenues is 2047.

4.10 “Eligible Costs” means the costs eligible to be paid or reimbursed from Property Tax Increment Revenues and other pledged revenue pursuant to the Act, including the Bonds and any associated costs of issuance. Eligible Costs only includes those costs that are incurred within the Urban Renewal Area and the costs of off-site improvements required for and directly related to the development, construction, or operation of the Improvements. Eligible Costs attributable to Administrative Costs shall not exceed 8% of the Property Tax Increment Revenues generated on an annual basis.

4.11 “Impact Report” means the impact report submitted to the County and other Taxing Entities by the Authority setting forth the burdens and benefits of the Urban Renewal Project.

4.12 “Improvements” means the improvements required to eliminate blight and facilitate the redevelopment of the Urban Renewal Area.

4.13 “Party” or “Parties” means the parties to this Agreement described in Section 1.0.

4.14 “Plan” and “Urban Renewal Plan” mean the urban renewal plan described in Section 2.1.

4.15 “Project” shall have the same meaning as Urban Renewal Project.

4.16 “Property Tax Increment Revenues” means all the revenues produced by property tax levies of the Taxing Entities on the TIF portion of the property tax assessment roll as described in § 31-25-107(9)(a)(II), of the Act and allocated to the Special Fund for the Duration of the Urban Renewal Project.

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

4.18 “Taxing Entities” means those governmental entities that levy ad valorem property taxes in the Urban Renewal Area, which taxes are divided and a portion of which are allocated to the Special Fund pursuant to § 31-25-107(9)(a)(II) of the Act and the Plan.

4.19 “TIF” means the property tax increment portion of the property tax assessment roll described in § 31-25-107(9)(a)(II) of the Act.

4.20 “Urban Renewal Area” shall have the same meaning as Area.

4.21 “Urban Renewal Plan” shall have the same meaning as the Plan.

4.22 “Urban Renewal Project” means all the undertakings and activities, or any combination thereof, required to carry out the Urban Renewal Plan authorized by and pursuant to the Act.

5.0 COOPERATION. Based on the Impact Report, the redevelopment of the Urban Renewal Area is expected to bring substantial benefits including new housing resources and jobs to the region. In accordance with §§ 31-25-107(9.5) and 112 of the Act, this Agreement shall constitute an agreement in writing by the County to aid the Authority in (1) the elimination of conditions of blight from the Area, and (2) providing necessary infrastructure and other Improvements through the unqualified payment or reimbursement of Eligible Costs of the Project by issuance of Bonds.

5.1 Property Tax Increment Revenues. The Parties agree the Authority may retain and expend in furtherance of the Urban Renewal Project 100% of the Property Tax Increment Revenues it receives from the Pueblo County Treasurer each year for the Duration of time that the provisions of § 31-25-107(9)(a)(II) of the Act are in effect in the Urban Renewal Area.

5.2 Consents and Waivers. The Parties acknowledge that changes to the Act in 2015 through H.B. 15-1348 (as amended by SB 16-177 and SB 17-279) created new requirements applicable to new or modified urban renewal projects. By entering into this Agreement, the Parties intend to resolve all questions concerning the applicability of these statutory changes to the matters described herein and waive the right to pursue judicial or other remedies relating to compliance with said changes except as provided herein. To aid in the timely execution of the Urban Renewal Project, the County hereby (1) consents to the issuance of Bonds by the Authority; (2) waives the right to receive any funds from Property Tax Increment Revenues to finance any additional infrastructure and services required to serve development within the Urban Renewal Area, it being agreed that redevelopment of the Urban Renewal Area will create substantial benefits for the County to adequately provide for such infrastructure and services; (3) the right to enjoin any

activity of the Authority pursuant to the Plan, including the right of the Authority to issue Bonds necessary to finance the Project, as set forth in § 31-25-107 (7.5) of the Act; (4) the right to share in Property Tax Increment Revenues in accordance with the provisions of Sections 31-25-107 (9.5) and (11) of the Act; (5) except as set forth in Section 5.5, the arbitration rights contained in Section 31-25-107 (12) of the Act; and (6) any other right or remedy that would materially interfere with or impair the validity of the Bonds or the rights and remedies of any holder of the Bonds.

5.3 Pledge of Property Tax Increment Revenues. The Parties recognize and agree that in reliance on the Agreement, the Authority intends to and shall have the unqualified right to irrevocably pledge all the Property Tax Increment Revenues it receives to payment of the Eligible Costs of the Urban Renewal Project, including the Authority's Bonds, for the Duration of the Urban Renewal Project. The Authority has elected to apply the provisions of § 11-57-208, C.R.S. to this Agreement. The Property Tax Increment Revenues, when and as received by the Authority shall be subject to the lien of such pledge for the Duration of the Project without any physical delivery, filing, or further act and shall be an obligation of the Parties pursuant to § 31-25-107(9) of the Act. The Parties agree that the creation, perfection, enforcement and priority of the pledge of the Property Tax Increment Revenues shall be governed by § 11-57-208, C.R.S. The lien of such pledge on the Property Tax Increment Revenues shall have priority over any of all other obligations and liabilities of the Parties with respect to the Property Tax Increment Revenues.

5.4 Pro Rata Reimbursement. If all Eligible Costs, including any and all Bonds, and Administrative Costs are paid in full prior to expiration of the Duration, the Agreement shall terminate and each of the Taxing Entities shall receive the pro rata amount of any Property Tax Increment Revenues remaining in the Special Fund produced by its tax levy upon the portion of the property tax assessment roll described in § 31-25-107(9)(a)(II) of the Act.

5.5 Verification of Payments for Eligible Costs. To the Extent the Authority pays for Eligible Costs from proceeds of the Bonds, the Bond Documents shall provide any request for payment of Eligible Costs shall be submitted to and approved or rejected by the Authority or an authorized trustee. All copies of cost certificates approving such requests for payments shall be made available on a quarterly basis by the Authority to the Taxing Entities at no charge to the Taxing Entities. To the extent any dispute arises out of the provisions of this Section 5.5, the Taxing Entities shall provide notice to the Authority of such dispute, which notice may serve as a request for purposes of the Colorado Open Records Act. To the extent such notice provided by the Taxing Entities does not resolve the dispute, the affected parties shall pursue mediation under the procedures set forth in § 31-25-107(9.5)(d)(II) of the Act, the fees and costs of which shall be paid one half by the Authority and one half by any of the relevant Taxing Entities; but any such mediation or any other right or remedy (a) shall not affect the unqualified and irrevocable pledge of Property Tax Increment Revenues as provided in Section 5.3 and (b) may and shall be superseded by the provisions of Bond Documents required for issuance of Bonds by qualified bond counsel.

5.6 Termination and Subsequent Legislation or Litigation. The Parties further agree that in the event legislation is adopted or a decision by a court of competent jurisdiction on or after the effective date hereof that invalidates or materially effects any provisions hereof, the Parties will in good faith negotiate for an amendment to the Agreement that most fully implements the

original intent, purpose, and provisions of the Agreement, but does not impair any otherwise valid contracts in effect at such time.

5.7 Delays. Any delays in or failure of performance by any Party of its obligations under the 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; or other causes, similar or dissimilar, including economic downturns, which are beyond the control of such Party.

6.0 AGREEMENT CONFINED TO URBAN RENEWAL PLAN. This Agreement applies only to the Plan and the Urban Renewal Area and does not include or affect any other urban renewal plan or urban renewal area.

7.0 NO THIRD-PARTY ENFORCEMENT. It is expressly understood and agreed that the enforcement of the terms and conditions of the Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned Parties and nothing in the Agreement shall give or allow any claim or right of action whatsoever by any other person not expressly a Party to the Agreement; provided, however, a bond trustee or lender may enforce its rights as provided under the documents authorizing the issuance or sale of Bonds. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under the Agreement shall be an incidental beneficiary only.

8.0 NO ASSIGNMENT. No Party may assign any of its rights or obligations under the Agreement without the written consent of the other Party.

9.0 MISCELLANEOUS.

9.1 Entire Agreement. This Agreement 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.

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

9.3 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.

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

9.5 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.

9.6 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 Eligible Costs or any other lawful financing obligation.

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

9.8 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.

9.9 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.

9.10 Severability. If any provision of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of the Agreement as a whole.

9.11 Minor Changes. This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The officers executing this Agreement are authorized to make and may have made, minor changes to this 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 the approval of such changes by the respective Parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized officials to execute this Replacement Agreement effective as of the day and year first above written.

ATTEST:

PUEBLO URBAN RENEWAL AUTHORITY

By: \_\_\_\_\_  
Secretary/Executive Director

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

ATTEST:

TAXING BODY

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

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