

**AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF COMMERCE CITY, COLORADO AND THE URBAN  
RENEWAL AUTHORITY OF THE CITY OF COMMERCE CITY  
PERTAINING TO ADMINISTRATIVE AND OTHER MATTERS**

**THIS INTERGOVERNMENTAL AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (this "Agreement") by and between the City of Commerce City, Colorado (the "City"), a home rule municipality, and the Urban Renewal Authority of the City of Commerce City (the "Authority"), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, collectively referred to herein as the "Parties".

**RECITALS:**

**WHEREAS**, the City is a home-rule city and a municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and the Charter of the City (the "Charter");

**WHEREAS**, the City Council of the City of Commerce City adopted Resolution No. 78-17 entitled "Resolution Regarding Creation of Urban Renewal Authority" on June 5, 1978;

**WHEREAS**, the Authority is a body corporate and has been duly created, organized, established and authorized by the City to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et seq., Colorado Revised Statutes (the "Act");

**WHEREAS**, in 1981, the City and the Authority each adopted a Resolution entitled "Resolution of Understanding between the City Council and the Urban Renewal Authority Pertaining to Administrative and Other Matters" on September 21, 1981 (the "1981 MOU");

**WHEREAS**, the City and the Authority entered into an Intergovernmental Agreement dated \_\_\_\_\_ (the "Original IGA");

**WHEREAS**, this Agreement supersedes and replaces the 1981 MOU and the Original IGA in its entirety as to the coordination and operation between the City and the Authority but not as to any loan obligations or tax increment sharing obligations between the City and the Authority which are separate agreements;

**WHEREAS**, the Act, Section 18, Article XIV of the Colorado Constitution, and C.R.S. § 29-1-201, *et. seq.*, authorize and encourage the City and the Authority to enter into cooperative agreements, such as this Agreement, and the Parties may appropriate funds in order to achieve the mutual cooperation set forth in this Agreement; and

**WHEREAS**, the City and the Authority have determined that, for purposes of economy and efficiency of operation, it is in the best interests of the public that the operating staff and resources of the Authority be provided by the City, subject to the terms and conditions of this Agreement.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree to as follows:

### **TERMS AND CONDITIONS**

#### **1. Authority Employees Provided by City.**

A. The City agrees to provide City staff resources, including but not limited to staff of the City Manager's Office, Economic and Community Vitality, Community Development Department, Public Works Department, City Clerk, and Finance Department, and other employees, consultants, and staff (hereinafter collectively referred to as "City Staff") to the Authority on an as-needed basis for the operation and management of Authority activities. While the City Staff may be employees of the City, when serving in their provided role their obligations and duty are to serve the best interests of the Authority.

B. The City Manager of the City shall have the absolute authority to make all determinations over the hiring and discipline of City personnel, as said personnel are employees of the City performing duties in support of, and in the interests of, the Authority.

C. Per Authority Bylaws, the Authority's Executive Director is the City Manager or his or her designee and as such shall have general supervision over the administration of the Authority's business and affairs and shall be authorized to sign agreement, contracts, deeds, conveyances, checks for the payment of money and other documents made by the Authority on behalf of the Authority subject to the direction of the Authority. The Executive Director shall ensure that the Treasurer and Secretary perform the duties of their respective offices.

D. Per Authority Bylaws, the Executive Director may designate a position or positions that shall be charged with the management of the projects of the Authority, shall exercise supervision over the business of the Authority and of those members of the City Staff as may be assigned to Authority business, and shall perform all duties which may from time to time be assigned by the Executive Director. This position may serve as Executive Director Pro-Tem in the absence of the Executive Director or during a vacancy in the office of Executive Director.

E. Per Authority Bylaws, the Authority Treasurer shall be the Director of Finance for the City. The Treasurer shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Authority may select. The Treasurer shall sign all orders and or checks for the payment of money and

shall pay out and disburse such moneys under the direction of the Authority. Except as otherwise authorized by resolution of the Authority, all such orders and checks shall be countersigned by the Executive Director. The Treasurer shall keep regular books of accounts showing receipts and expenditures and shall render to the Authority, at each regular meeting (or more often when requested), an account of the transactions and also of the financial condition of the Authority. The Treasurer shall give such bond for the faithful performance of her/his duties as the Authority may designate. A temporary appointee, in the absence of the Treasurer or during a vacancy in the office of Treasurer, may serve as Treasurer Pro-Tem.

F. Per Authority Bylaws the Authority Secretary shall be the City Clerk for the City. The Secretary shall keep the records of the Authority, shall act as secretary of the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident of her/his office. A temporary appointee, in the absence of the Secretary or during a vacancy in the office of Secretary, may serve as Secretary Pro-Tem.

G. Per Authority Bylaws and this Agreement, the Authority may employ one or more attorneys to provide general legal counsel or special counsel to the Authority, or the Authority may call upon the municipal counsel of the City for such legal services as he Authority may require. The attorney shall provide invoices to the City Attorney and shall be paid by the Authority from its budget.

H. Upon direction from the Authority's Executive Director, City staff time spent on Authority activities may be separately recorded and specifically documented and be charged back to the Authority in accordance with Section 4 below. It is the intention of the Parties that the services performed by such employees on behalf of the Authority shall not interfere with the ability of such employees to carry out their duties and responsibilities for the City.

## **2. Other Services**

In addition to providing staff employees for the Authority, the City agrees to provide the Authority with such other services as may be required in order to perform its public functions, including, but not limited to, accounting, treasury, management, procurement, personnel services, engineering services, technology and website services, agenda publishing platform, budget publishing platform, and planning services, and other consultant services; provided, however, that nothing herein shall be construed as prohibiting the Authority from contracting with third parties to provide all or a portion of such services. It is the intention of the Parties that the Authority's annual or any special financial audits shall be performed by an independent auditor. All costs of any such audit or financial services shall be paid by the City, subject to reimbursement by the Authority as provided in Section 4 below.

## **3. Office Space; Furnishings; Equipment**

City staff working on behalf of the Authority is authorized to utilize City office space, furnishings and equipment, including the telephones, fax machines, printers, photocopiers, computers, office supplies and similar equipment, to carry out Authority business. A prorated share of the expenses associated with use of such office space, furnishings and equipment shall be charged back to the Authority in accordance with Section 4 below. As needed, the City may make available office space to the Authority, and, while not required, if requested by the City, provide such office space pursuant to a lease agreement as may be agreed upon by the City and the Authority.

#### **4. Finances and Accounting**

A. Funds received by the City for purposes, projects, and/or activities of the Authority, less administrative costs incurred by the City on behalf of the Authority as authorized by law and this Agreement, shall be available for use by the Authority as the Authority shall determine and direct.

B. Current accounting of said funds shall be made monthly to the Authority or as otherwise directed by the Authority, according to recognized principles of accounting. Said accounting shall be as current as possible within the procedures implemented by the City's Finance Department.

C. All payments of accrued interest and principal on Authority funds shall be credited as received to the Authority fund balance unless in conflict with law. It is the understanding of the Parties that at the time that the Authority begins to accumulate these recycled funds, the Authority will agree to contribute to the administrative expenses involved in the implementation of any programs funded by these recycled funds. These provisions shall not in any way affect the Authority's obligation to repay direct loans to the City made by the City to the Authority.

D. At such time as the City Manager and the Executive Director of the Authority mutually determine the Authority has sufficient funding source(s), the Authority shall compensate the City for all or a portion of the costs reasonably incurred by the City in providing third party services, office space, furnishings and equipment described herein. At such time, the City shall submit to the Authority, one or more invoices detailing the specific services rendered and other expenses incurred by the City on behalf of the Authority during the specific time period stated in such invoice(s). Such invoices shall be in sufficient detail so that the Authority may properly determine the basis the invoices. Unless the Authority objects to an invoice within thirty (30) days of the date of the invoice, the Authority shall be deemed to approve such invoice for payment to the City and shall make payment to the City within a reasonable time and as funding of the Authority is available.

## **5. City Advance of Funds**

Upon request by the Authority, the City may, from time to time, advance funds to the Authority in support of its activities. Any such advance of funds shall be evidenced in writing in the form of a loan memorialized by a promissory note or a grant, which transaction shall not be valid unless it complies with all other requirements of Colorado law and prior approval is obtained from both the City Council and the Authority Board of Commissioners. Such advance and obligation to repay shall be separate and apart from any obligations or funding pursuant to this Agreement.

## **6. Legal Entity, Ethical Rules, Bylaws**

The Authority constitutes a separate body corporate and politic as established under the statutes of the State of Colorado, and the Authority Board of Commissioners has adopted a set of Bylaws for the purpose of governing the officers and staff, meetings, ethical rules, and powers of the Authority Board of Commissioners. The ethical rules of the Authority Board of Commissioners shall be the same as those which are applicable to the City Council, as long as the City Council is functioning as the Authority Board of Commissioners, in addition to those under the Act at Section § 31-25-104(3). Unless the Authority adopts a separate policy document, processes and policies for open records requests, records retention, procurement, or any other matters shall refer to and utilize the policy document or process in use by the City for such matters.

## **7. Sales and Use Tax Increment**

It is agreed between the City and the Authority that all City sales taxes and use taxes collected in any urban renewal area of the Authority shall accrue to the City until such time, if at all, that the City Council, in its sole discretion, decides to include in an urban renewal plan a provision allocating a portion of said sales tax revenues and / or use tax revenues to the Authority for the purpose of funding Authority projects within a particular urban renewal area.

## **8. Property Tax Increment**

The City agrees to assist the Authority in pursuing its objectives and purposes, including, without limitation, any specific purposes established for a particular urban renewal area, by collecting and paying into a special fund of the Authority any incremental property taxes received by the City for each urban renewal area, for the purpose of paying the principal of, the interest on and any premiums due in connection with the bonds of, loans or advances to or other indebtedness incurred by the Authority for financing or refinancing urban renewal projects within such area.

## **9. Insurance**

The City agrees to include the Authority within the City's existing liability insurance coverages as a part of the services to be provided by the City to the Authority unless and until the City's risk management office and the Authority's Executive Director determine such insurance

coverage is not available or it is more financially advantageous to the Parties for the Authority to obtain separate insurance.

#### **10. Responsibility of Authority**

Nothing in this Agreement shall be interpreted in any manner as constituting the City as the agent of the Authority or the Authority as the Agent of the City. Each party shall remain separate and neither shall hereby assume the debts or obligations of the other. The Authority shall be solely responsible for carrying out its duties and functions in accordance with the Act and other applicable laws and regulations.

#### **11. Termination or Amendment**

This Agreement may be terminated by either Party at any time after giving at least thirty (30) days written notice. This Agreement may be modified, amended, changed or terminated, in whole or in part, only by agreement in writing duly authorized by both of the City Council and the Authority Board of Commissioners.

#### **12. Binding Agreements**

This Agreement represents the total binding Agreement between the Parties and replaces and supersedes any prior oral or written agreement between the City and the Authority.

#### **13. Governing Law**

This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

#### **14. Severability**

If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

#### **15. No Third-Party Beneficiaries**

Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the City and the Authority any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties.

**16. No Waiver of Governmental Immunity**

Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City or to the Authority, their officials, employees, contractors, or agents, or any other person acting on behalf of the City or the Authority and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

IN WITNESS WHEREOF, the City of Commerce City, Colorado and the Urban Renewal Authority of the City of Commerce City have caused their duly authorized officials to execute this Agreement effective as of the Effective Date.

**CITY OF COMMERCE CITY, COLORADO**

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

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Attorney

**URBAN RENEWAL AUTHORITY OF THE  
CITY OF COMMERCE CITY**

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

ATTEST:

APPROVED AS TO FORM:

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

By: \_\_\_\_\_  
Authority Counsel