

**PROJECT FUNDING AGREEMENT**

**DOWNTOWN AREA PLAN**

**THIS PROJECT FUNDING AGREEMENT ("Agreement")** is entered into, effective as of the date set forth on the City's signature page below ("**Effective Date**"), by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation ("**Denver**" or the "**City**") and the **DOWNTOWN DENVER PARTNERSHIP, INC.**, a Section 501(c)(3) Colorado nonprofit corporation ("**DDP**" or "**Partner**"), with an address of 1515 Arapahoe Street, Tower 3, #100, Denver, Colorado 80202, each a "**Party**" and collectively the "**Parties.**"

**RECITALS**

**WHEREAS**, the City desires to procure and direct the work of a consultant team to complete an update and amendment to the Downtown Area Plan (the "**Project**"), with the support and partnership of the DDP; and

**WHEREAS**, the DDP supports the efforts of the City to increase the vibrancy of, and bring people into, the downtown Denver area by contributing to various programs, facilities, and services in the area; and

**WHEREAS**, the City will fund \$500,000 ("**City Share**") of the Project through the use of proceeds from the General Fund. Community Planning and Development's 2024 General Fund Appropriation will be up to \$500,000. Any amount of the City Share remaining after 2024 will be transferred from Community Planning and Development's 2025 General Fund Appropriation in order to continue to fund the Project; and

**WHEREAS**, the DDP has voluntarily elected to contribute \$500,000 ("**DDP Share**") to the efforts of completing the Project because the Project benefits DDP and the Project area, and DDP will share in the management of the project, with DDP having access to all final deliverables and technical studies of the Project;

**WHEREAS**, the City and DDP Shares will be used by the City to procure and direct the work of a consultant team to complete the Project; and

**WHEREAS**, the City agrees to accept the DDP Share, subject to the terms and conditions of this Agreement, into a special revenue fund known as the "Downtown Denver Plan Fund," Auditor's No. 11716-0141000 to receive any authorized fund transfers to implement the Project, in conformance with this Agreement (as established, the "**Downtown Area Plan Fund**"); and

**WHEREAS**, the City and DDP desire to enter into this Agreement to provide funding for an updated and amended vision for the Project area, and to provide for the terms and conditions upon which the City will agree to distribute the funds of the Downtown Area Plan Fund for completion of the Project.

### **AGREEMENT**

**NOW, THEREFORE**, the City and DDP, for the Term specified below and in consideration of the recitals stated above and the terms and conditions stated in this Agreement, hereby enter into this Agreement regarding the funding necessary for the Project as follows:

**1. PURPOSE:**

a. The DDP has voluntarily agreed to contribute the DDP Share and to provide such funds to the City to initiate and/or complete the Project. The scope of the DDP's responsibilities, obligations and rights under this Agreement shall be limited to the fulfillment of certain conditions prior to actual completion of the Project.

b. All rights granted herein to the DDP are not, and shall not be construed as, an interest in any property or intellectual property rights owned, operated, or acquired by the City.

**2. TERM:** The term of this Agreement shall commence as of the Effective Date and shall remain in effect until the earlier of: a) completion of the Project; or b) three years from the Effective Date, unless terminated earlier pursuant to the terms of Section 29, below.

**3. CITY PROPERTY:** The DDP hereby acknowledges and agrees that the existing Downtown Area Plan and any plan or amended plan that may result from the Project are at all times fully owned by the City.

**4. COORDINATION AND LIAISON:**

a. The Executive Director of City's Department of Community Planning and Development (along with any designees, the "Executive Director") is vested with the authority to act on behalf of the City in performing the City's obligations under this Agreement. The

Executive Director may designate certain person(s) to act on the Executive Director's behalf as the authorized representative(s). The Executive Director may change its authorized representative(s) at any time by providing written notice to the DDP of such change.

b. The DDP's Chief Executive Officer will act as the DDP's authorized representative under this Agreement and, as such, is vested with the authority to act on behalf of the DDP in performing DDP's obligations under this Agreement. The DDP may change its authorized representative at any time by providing written notice to the Manager of such change.

**5. BUDGET:** The DDP voluntarily elects to contribute two payments of Two-Hundred Fifty Thousand Dollars (\$250,000.00) to the City for a total of Five Hundred Thousand Dollars (\$500,000.00) ("DDP Share") to assist the City in procuring and completing the Project.

Payment schedule. The first payment of Two-Hundred Fifty Thousand Dollars (\$250,000.00) from the DDP Share will be made within 10 days of notification from the City to DDP that the City has expended a least \$130,000.00 of the City Share. The remaining DDP Share, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) will be due from DDP on March 31, 2025, unless mutually agreed by both parties to advance or delay funds based on the progress made on the project.

In the event of contract termination between the City and the selected consultant team for the Project, DDP will be immediately notified and there will be an accounting to ensure that the total amount expended from the City Share is equal to the total amount expended from the DDP Share ("Project Termination Accounting"), but in no event shall the total Project cost exceed One Million Dollars (1,000,000.00). Any refund due to the DDP as a result of the Project Termination Accounting shall be due to the DDP from the City within 30 days of the DDP's written request for same.

a. Reporting. The DDP may make requests of the city to provide any reasonably pertinent updated information regarding: 1) the status of the Project; and 2) an accounting of funds that have been expended on the Project. Any such fund accounting shall not be requested more than once per quarter.

b. Project Requirements. The DDP acknowledges that notwithstanding the use of the DDP Share to fund the various aspects of the Project, the Project is subject to the City Charter, the lawful use of Bond funds, ordinances regarding selection procedures, and City ordinances

regarding, among others, 1) the payment of prevailing wages (§§ 20-76 through 20-79, Denver Revised Municipal Code ("**D.R.M.C.**")), and 2) for small business enterprise and minority- and women owned business enterprise participation (§§ 28-31 through 28-91, D.R.M.C.), as such ordinances may be amended or re-codified from time to time.

**6. APPROPRIATION:** It is understood and agreed that any payment obligation of the City hereunder, if any, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**7. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the DDP may not to refuse to hire, discharge, promote demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle or disability. The DDP shall insert the foregoing provision in all subcontracts.

**8. FURTHER ASSURANCES:** From time to time, upon the request of the City, the DDP agrees to make, execute and deliver or cause to be made, executed and delivered to the City any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the City, be necessary or desirable in order to effectuate, complete or perfect the City's rights under this Agreement, provided the City is currently in full compliance with the provisions of this Agreement.

**9. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendments to the Agreement will have any force or effect or bind the City.

**10. ASSIGNMENT AND DELEGATION:** The DDP shall not voluntarily or involuntarily assign or delegate any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director's prior written consent. Any assignment, delegation, or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment, delegation, or subcontracting, or to terminate the Agreement because of unauthorized assignment, delegation, or subcontracting. In the event of any subcontracting or unauthorized assignment or delegation: (i) the DDP shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor, assign or delegate.

**11. NO THIRD-PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the DDP receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**12. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The DDP lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and Denver Revised Municipal Code.

**13. SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of City funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

**14. CONFLICT OF INTEREST:**

a. No employee of the City shall have any personal or beneficial interest in the services of property described in the Agreement. The DDP shall not hire, or contract for services with, and employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. § 2-51. et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The DDP shall not engage in any transaction, activity or conduct that would

result in a conflict of interest under this Agreement. The DDP represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the DDP by placing the DDP's own interests, or the interests of any party with whom the DDP has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of any conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the DDP written notice describing the conflict.

**15. NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the City at:

Department of Community Planning and Development  
201 West Colfax Ave.  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

If to the DDP to:

Downtown Denver Partnership  
1515 Arapahoe St, #100  
Denver, CO 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**16. DISPUTES:** All disputes between the City and the DDP arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purpose of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this

Agreement.

**17. GOVERNING LAW; VENUE:** This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the City's Charter, Denver Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

**18. COMPLINACE WITH ALL LAWS:** DDP shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**19. NON-WAIVER:** No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

**20. LEGAL AUTHORITY:** DDP represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of the DDP represents and warrants that he or she has been fully authorized by the DDP to execute the Agreement on behalf of the DDP and to validly and legally bind the DDP to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either the DDP or the person signing the Agreement to enter into the Agreement.

**21. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties and

their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any Party merely because any provisions of the Agreement were prepared by a particular Party.

**22. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

**23. ADVERTISING AND PUBLIC DISCLOSURE:** The DDP shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the DDP's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The DDP shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to the City officials.

**24. CONFIDENTIAL INFORMATION:** The DDP acknowledges and accepts that, in performance of all work under the terms of this Agreement, the DDP may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The DDP agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to the DDP shall be held in confidence and used only in the performance of its obligations under this Agreement. The DDP shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent person or business would to protect its own Proprietary Data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential," or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance and provided or made available to the DDP by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

**25. TAXES, CHARGES AND PENALTIES:** The City is not liable for the



payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, et seq. The DDP shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

**26. EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the DDP's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The DDP shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the DDP to make disclosures in violation of state or federal privacy laws. The DDP shall at all times comply with D.R.M.C. § 20-276.

**27. LIMITATION ON APPLICATION OF AGREEMENT:** The provisions of this Agreement are intended to govern the DDP Share related to the Project and shall not be construed to prohibit, limit, or waive other agreements between the Parties currently existing or entered in the future unrelated to the Project.

**28. STATUS OF THE DDP:** The Parties agree that the status of the DDP shall be that of an independent organization and it is not intended, nor shall it be construed, that the DDP, nor any employee or agent thereof, is an employee, officer, or agent of the City under Chapter 18 of the D.R.M.C. for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

**29. TERMINATION:** Either Party may terminate this Agreement if:

a. The other Party commits a material breach of the Agreement and fails to cure said breach to the non-breaching Party's reasonable satisfaction after receiving thirty (30) days' notice in writing; or,

b. The terminating Party gives thirty (30) days' prior written notice to the other Party.

**30. INUREMENT:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

**31. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**32. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The DDP consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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**[SIGNATURE PAGES FOLLOW]**

**Contract Control Number:** CPLAN-202474722-00  
**Contractor Name:** DOWNTOWN DENVER PARTNERSHIP, INC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

CPLAN-202474722-00  
DOWNTOWN DENVER PARTNERSHIP, INC.

By: DocuSigned by:  
*Kourtny Garrett*  
D722FCECA0B349C... \_\_\_\_\_

Name: Kourtny Garrett  
(please print)

Title: President & CEO  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)