

**AGREEMENT BETWEEN THE UNITED STATES FOREST  
SERVICE AND THE CITY OF PUEBLO  
Pueblo Memorial Airport  
Fire Fighting Reload Base**

This Agreement regarding the Fire-Fighting Reload Base at the Pueblo Municipal Airport (“Agreement”) is entered into this 14<sup>th</sup> day of March, 2022, by and between the City of Pueblo, a Municipal Corporation, (“City”) with an address of 1 City Hall Place, Pueblo, Colorado 81003, and the United States Forest Service (“USFS”), with an address of 240 West Prospect Road, Fort Collins, Colorado 80526, collectively referred to as the “Parties” or individually as a “Party.”

**1. Purpose**

The City and USFS have entered into this Agreement to set forth the understandings and terms of the parties with respect to the Fire Fighting Reload Base, also known as the tanker base reload pit, and consisting of two storage tanks, pumping mechanisms, and associated electrical utilities (“Base”), located adjacent to office space at the Pueblo Memorial Airport (“Airport”) as depicted in Exhibit “A”, attached hereto and made a part hereof. The USFS installed the Base in 2005 to aid the USFS with fire-fighting services in the region and is used to reload airplanes with fire retardant during the fire season. The USFS no longer needs the Base and further wishes to disclaim all interest in the Base.

**2. Mutual Understandings**

2.1 The parties hereby mutually agree as follows:

2.1.1 That with regards to the installation and use of the Base, there was a mutual understanding and agreement between the parties that the USFS had the right to use the Base as long as it needed the Base and in accordance with law and subject to reasonable regulation and involvement by the City.

2.1.2 Upon termination of USFS use of the Base, the USFS retained the right to remove the Base within a reasonable time and restore the Airport property to its original condition at no cost to City.

2.2 Prior to execution of this Agreement, the USFS shall remove all USFS-owned personal property not attached to the Base.

2.3 USFS has removed all fire retardant from the Base and is not aware of any issues at the Base requiring repair as of the date of its execution of this Agreement.

2.4 Upon the effective date of this Agreement, the Base will remain on the Airport and become the sole property of the City at no cost to the City, USFS disclaiming all further interest in the Base. All ownership, control, and possession of the Base will

transfer in full to City upon execution of this Agreement, and USFS will have no further right to use or interest in the Base.

- 2.5 Subject to the other provisions of this Agreement, upon execution of this Agreement, the City shall accept the Base “as is” and relieve the USFS of any obligation to remove the Base or restore Airport property to its original condition.

### **3. Requirements and Regulations**

- 3.1 The USFS covenants and warrants consistent with 42 U.S.C. § 9620(h)(3)(A)(ii) regarding any hazardous substances on the Base:

- 3.1.1 Before the execution of this Agreement, the USFS shall take all remedial action necessary to protect human health and the environment with respect to any hazardous substance on the Base; and

- 3.1.2 After execution of this Agreement, the USFS shall conduct any additional remedial actions related to hazardous substances located on the Base as of the date of this Agreement’s execution necessary to protect human health and the environment and the City shall provide the USFS with access to the Base to take these remedial actions.

### **4. Non-Fund Obligation Document**

Nothing in this Agreement authorizes the parties to obligate or transfer funds. Specific projects or activities that involve the transfer of funds requires execution of separate agreements and are contingent upon the availability of appropriated funds. These activities must be independently authorized by statute. This Agreement does not provide that authority. Negotiation, execution, and administration of these agreements must comply with all applicable law. Each party operates under its own laws, regulations, and policies, subject to the availability of appropriated funds.

### **5. No Third Party Beneficiary Rights**

Except as otherwise stated, this Agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended, nor should it be construed, to create any rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under federal or state law.

### **6. Term of Agreement**

This Agreement will become effective upon receipt of the last required signature.

### **7. Authorized Representatives of The Parties**

Each party shall designate a representative who is authorized to act on its behalf with respect to those functions and responsibilities reserved herein for authorized representatives of the parties. Either party may change the designation of its authorized representative upon oral notice given to the other, confirmed by written notice. Authorized representatives shall not have the authority to change any terms or conditions of this MOU.

## **8. Uncontrollable Forces**

No party shall be considered to be in default in performance of any of its obligations under this Agreement when a failure of performance is due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the party affected, including, but not restricted to, failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority or action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it is involved. Any party rendered unable to fulfill any obligation under this Agreement by reason of uncontrollable force shall give prompt written notice of such fact to the other party and shall exercise due diligence to remove such inability with all reasonable dispatch.

## **9. Notices**

Any notice, demand, or request pursuant to this Agreement shall be in writing and effective when delivered in person, sent by either registered or certified mail, or sent by national overnight delivery service, postage prepaid, and addressed to the other party's principal offices.

9.1 Notices to the USFS shall be sent (by U.S. Postal Service) to: Michael Spink, Zone Aviation Officer, Forest Service, 2840 Kachina Drive, Pueblo, Colorado 81008, or such other person or agency as the USFS might hereafter designate in a signed writing.

9.2 Notices to the City shall be sent (by U.S. Postal Service) to the: City of Pueblo, Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, Colorado 81001, with a copy to the City of Pueblo, Law Department, 1 City Hall Place, Pueblo, CO 81003.

## **10. Waivers**

Any waiver at any time by a party of its rights with respect to a default, or any other matter arising under or in connection with this Agreement, shall not be deemed to be a waiver with respect to any subsequent default or matter.

## **11. Binding Obligations**

All of the obligations set forth in this Agreement shall bind the parties and their successors, and such obligations shall run with the parties' rights, titles, interests, and with all of the interests of each party to this Agreement.

## **12. Integrations, Severability, Amendment, and Counterparts**

This Agreement represents the entire agreement between the parties and supersedes all prior discussions and written agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together constitute one and the same agreement.

## **13. Electronic Signatures**

This Agreement and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more counterparts, each of which shall be: (i) an original, and all of which taken together shall constitute one and the same agreement, (ii) a valid and binding agreement and fully admissible under state and federal law, and (iii) enforceable in accordance with its terms.

## **14. Effect of Section Headings**

Section heading titles appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

## **15. Governing Law**

This Agreement shall be construed and interpreted in accordance with federal law.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the last date of signature.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2022.

[ S E A L ]

CITY OF PUEBLO,  
A MUNICIPAL CORPORATION

ATTEST: \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Nicholas A. Gradisar, Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

UNITED STATES FOREST SERVICE  
ROCKY MOUNTAIN REGION

By \_\_\_\_\_  
James C. Pitts, Deputy Forest Supervisor  
Pike & San Isabel National Forest

**EXHIBIT A**  
**FIRE FIGHTING RELOAD BASE**