

AGREEMENT

THIS AGREEMENT is entered into effective July 11, 2022, between the City of Pueblo, a Colorado municipal corporation (“City”) and the Pueblo Development Foundation, a Colorado nonprofit corporation (“PDF”), City and PDF are sometimes each referred to as a “Party” and collectively “Parties.” WITNESSETH:

WHEREAS, PDF was formed in 1964 as a Colorado nonprofit corporation to promote economic development within the City of Pueblo and the area surrounding the City; and

WHEREAS, for more than fifty years, PDF has assisted new businesses in relocating to Pueblo County and has acquired expertise in economic development; and

WHEREAS, the City has planned the development of three industrial parks, i.e. Pueblo Memorial Airport Industrial Park; Minnequa Industrial Park and the St. Charles Industrial Park (collectively “Industrial Parks”) which are currently available for economic development and the relocation of new businesses to the Pueblo area; and

WHEREAS, Section 14-4-85.5 of the Pueblo Municipal Code (“Criteria Ordinance”) provides that the City Council may authorize the expenditure of monies from the 1992-2026 Sales and Use Tax Capital Improvement Projects Fund (“Half Cent Tax Fund”) for the acquisition of land and construction of so-called shell buildings and for infrastructure improvements within the Industrial Parks; and

WHEREAS, entering into this Agreement with PDF will create employment opportunities justifying the expenditure of public funds.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, the City and PDF agree as follows:

1. City hereby transfers funds from the Half Cent Tax Fund in the amount of up to Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) (the “City Funds”) for use and expenditure by PDF for construction of a shell building, subject to and contingent upon the following conditions and covenants which City and PDF agree to perform and comply with:

(a) Up to Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) for the construction of a shell building within the Pueblo Airport Industrial Park. City is the owner of the real property more particularly described as Lot 12, Pueblo Memorial Airport Industrial Park Subdivision, County of Pueblo, State of Colorado according to the recorded plat thereof (Assessor’s Parcel No. 426005010) (the “Property”). Immediately upon the execution of this Agreement and the related approvals by the City of Pueblo,

City agrees to transfer the Property to PDF, and PDF shall then commence and complete construction of a shell building on the Property. The shell building shall be approximately 70,000 square feet in size. After construction of the shell building, PDF agrees to convey title to the land and the constructed shell building improvements located thereon to the City, free and clear of any liens or encumbrances. The Parties acknowledge and agree that in order to obtain the building permit for the construction of the shell building, PDF will be required: (1) to obtain a Stormwater Discharge Permit from the Colorado Department of Public Health and Environment in compliance with the Colorado Discharge Permit System ("State Permit") and to register the same in its name, as the Responsible Owner in the Colorado Environmental Online Services ("CEOS") and (2) to agree to perform and/or comply with the requirements of the State Permit through completion of construction of the shell building. To the extent that some stormwater requirements are still outstanding, City agrees to accept the re-conveyance of the Property from PDF subject to all such stormwater requirements and obligations as are still outstanding. Upon reconveyance of the Property to the City, City agrees to be responsible and, where required, to pay for, at its sole and separate expense, all costs incurred in establishing and thereafter maintaining compliance with Stormwater Regulations.

(b) Plans and Bidding:

(I) PDF shall use the 70,000 square foot shell building plans by Nakai & Associates and specifications already approved by City Council and the Mayor prepared for the work contemplated by this Agreement.

(II) All construction contracts for the work contemplated by the approved plans and specifications ("Construction Contracts") shall be awarded by competitive bidding. PDF shall invite general contractors holding Building Contractors-A (General Unlimited) licenses having their principal place of business in the City or County of Pueblo who are qualified and experienced to perform construction work for the Project ("Local Contractors") to submit bids. PDF may invite other qualified general contractors with their principal place of business outside of Pueblo County, Colorado to submit bids. PDF shall assure that the same scope of work to be bid is timely furnished to each general contractor invited to bid. For "design-build" or other contractual arrangements, this requirement may be accomplished by a pre-bid conference or other acceptable competitive bidding procedures which allows Local Contractors a reasonable opportunity to participate in the competitive bidding process. PDF will use its best efforts in good faith to award the construction contract to the lowest qualified bidder. A similar provision with respect to local subcontractors and suppliers shall be included as part of the construction contract between PDF and the general contractor who shall use its best efforts in good faith to engage local subcontractors and suppliers for such construction. After ranking the bids received, PDF shall enter into one or more Construction Contracts for the work and cause the construction to be expeditiously completed and PDF shall timely pay all contractors for work upon the Project. PDF shall not allow nor suffer any mechanics liens

to be filed upon the Project and in the event any such liens are filed, shall cause the same to be promptly removed.

(III) City funds will be disbursed by City to PDF solely for the costs of design and construction in accordance with the plans and specifications approved by the City. PDF will be paid 1% of the total expenditures as a construction management fee. In the event the costs of design and construction exceeds the amount specified in Subsections (a) and (b) of this Section 1, such costs shall be promptly paid by PDF and not by the City.

2. This Agreement shall terminate upon completion of the construction project and transfer of Property back to the City. Any unspent City Funds remaining as of that date shall revert to the City's Half Cent Tax Economic Development Fund.

3. PDF represents and warrants that no person, entity, or organization has been employed or retained or will receive or be paid, directly or indirectly, any commission, percentage, contingent fee or any other remuneration, payment or receipt of which is contingent upon approval of this Agreement or City's advancement of City Funds to PDF hereunder except as specified in this Agreement. For breach or violation of this warranty, City shall have the right to terminate this Agreement, or recover the full amount of such commission, percentage, contingent fee or other remuneration, and/or to seek such other remedies legally available to City, which remedies shall be cumulative.

4. (a) In no event shall City or PDF, their officers, agents, or employees be liable to each other for damages, including without limitation, compensatory, punitive, indirect, special or consequential damages, resulting from or arising out of or related to this Agreement or the performance or breach thereof by the Parties hereto or the failure or delay of the Parties hereto in the performance of any covenant or provision under this Agreement on their part to be performed. In consideration of the other Party entering into this Agreement, City and PDF hereby waive and discharge each other, their officers, agents and employees from all claims for any and all such damages.

(b) Notwithstanding the above, in the event of breach of this Agreement by the City or PDF, the non-breaching Party shall have the right to request specific performance of this Agreement by the breaching Party, but not damages.

5. In the event of any litigation arising under this Agreement, exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado and each Party submits to the personal and subject matter jurisdiction of such District Court. To the extent allowed by law, each Party waives its right to a jury trial.

6. This Agreement expresses the entire understanding of the Parties and supersedes and abrogates any and all prior dealings and commitments, whether oral or written, with respect to the subject matter of this Agreement. This Agreement may not be amended or modified except in writing signed by City and PDF. Any waiver of any provision of this Agreement must be in writing and signed by the Party whose rights are being waived. No waiver of any breach of any provision hereof shall be or be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement. The failure of either Party to enforce or seek enforcement of the terms of this Agreement following any breach shall not be construed as a waiver of such breach.

7. This Agreement shall be construed in accordance with and be governed by the laws of the State of Colorado without regard to conflict of law principles.

8. Any notices hereunder shall be sufficiently given if given in writing personally or mailed by first class, registered, or certified mail, postage prepaid, addressed:

(a) if to City, Mayor, City of Pueblo, 1 City Hall Place, Second Floor, Pueblo, CO 81003 with a copy to City Attorney, 1 City Hall Place, Third Floor, Pueblo, Colorado 81003, or

(b) if to PDF, President, 301 N. Main St., Suite 210, Pueblo, Colorado 81003.

or to such other person or address as either Party shall specify in written notice given to the other Party pursuant to the provisions of this paragraph 8.

9. Time is of the essence hereof. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, provided PDF may not assign this Agreement or any interest herein without the express written consent of the City, which consent may not be unreasonably withheld.

10. The persons signing this Agreement in the name of and on behalf of PDF represent and warrant that they and PDF have the requisite power and authority to enter into, execute, and deliver this Agreement, and that this Agreement is a valid legally binding obligation of PDF enforceable against PDF in accordance with its terms.

11. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the other provisions of this Agreement which shall remain in full force and effect.

12. Neither Party shall be, or hold itself out as, agent of the other or as joint venturers or partners under this Agreement.

13. Each Party acknowledges that this Agreement was fully negotiated by the Parties and, therefore, no provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.

14. The provisions of this Agreement are for the exclusive benefit of the Parties hereto and their successors and permitted assigns, and no third party shall be a beneficiary, or have any rights by virtue of this Agreement.

15. This Agreement may be executed in any number of counterparts by physical or electronic signatures, and each such counterpart shall be deemed for all purposes to be an original, and all such counterparts shall together constitute but one and the same original.

Executed effective the day and year first above written.

[S E A L]

City of Pueblo
a Colorado Municipal Corporation

Attest: _____
City Clerk

By: _____
Mayor

[S E A L]

Pueblo Development Foundation
a Colorado nonprofit corporation

Attest: _____
Name: Dan Molello
Title: Secretary

By: _____
Name: Robert L. Root
Title: President