

AGREEMENT FOR CONVEYANCE OF REAL PROPERTY AND IMPROVEMENTS

This Agreement for Conveyance of Real Property and Improvements (“Conveyance Agreement”) is made and entered into this 25th day of April, 2022 by and between the City of Pueblo, a Colorado Municipal Corporation (hereinafter “City”), and the Pueblo Development Foundation, a Colorado Non-Profit Corporation (hereinafter “Foundation”). City and Foundation are collectively referred to as the “Parties”.

RECITALS

On May 26, 2020, the Pueblo City Council approved and authorized the Mayor of the City to sign an agreement between City and Foundation appropriating monies from the Sales and Use Tax Capital Improvements Projects Fund for the acquisition of land in the Minnequa Industrial Park and for the construction of a shell building and related infrastructure improvements, (“Funding Agreement”).

Pursuant to the Funding Agreement, the City allocated up to \$5,000,000.00 for the acquisition of the land and the construction of the building and infrastructure improvements. The Funding Agreement required that after construction was completed, Foundation would convey the property and improvements to the City for its economic development projects.

The construction of the shell building and the related infrastructure improvements on the property has been completed, however certain requirements related to stormwater drainage features as required by the City of Pueblo Stormwater Utility have not been completed as the same will most likely undergo material changes depending upon the requirements and planned use of the property by an economic development prospect currently engaged in negotiations with the City to ultimately acquire the property.

The Parties desire to enter into an agreement concerning the conveyance of the property to the City and the related assumption by the City of the Stormwater Discharge Permit issued by the Colorado Department of Public Health and Environment and the related requirements imposed by the City of Pueblo Stormwater Utility.

NOW, THEREFORE, for and in consideration of compliance with the Funding Agreement and of the mutual covenants and terms hereinafter set forth, the City and Foundation agree as follows:

1. CONVEYANCE TO CITY.

Foundation, as Grantor, hereby agrees to and shall execute a Special Warranty Deed to the City, as Grantee, conveying the real property and improvements located at 200 Greenhorn Dr., Pueblo, CO 81004 and more particularly described as:

Lot 1, Minnequa Industrial Park, Fifth filing, County of Pueblo, State of Colorado.

Said deed shall be in substantially the same form as that attached hereto and made a part hereof by reference, labeled **Exhibit A**. Upon delivery of the Deed to City, City agrees to cause the same to be recorded in the records of the Pueblo County Clerk and Recorder, and such recording shall further constitute acceptance of the Deed by the City.

2. STORMWATER REQUIREMENTS.

Foundation hereby informs and discloses to City as follows:

In order to obtain the building permit for the construction of the shell building, Foundation was 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, as the Responsible Owner, in the Colorado Environmental Online Services ("CEOS"), and, 2) to agree to perform and/or comply with all requirements imposed by the City of Pueblo Stormwater Utility.

Foundation obtained the State Permit (Permit No. COR411796) and entered the same as the Responsible Owner in CEOS. Foundation has resolved and completed some, but not all, of the outstanding stormwater requirements and issues as identified by the City of Pueblo Stormwater Utility. City acknowledges receipt of the information and disclosure by Foundation as set forth above and based upon the same and its own investigation into the matter, hereby agrees to accept the conveyance of the property subject to all such requirements and obligations as are related to stormwater planning, infrastructure, maintenance, and operation as have been, and as may hereinafter be, imposed by the governmental entity or the regulatory department having jurisdiction over stormwater matters at the property. 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 such Stormwater Regulations. City agrees to cause the Director of its Stormwater Utility, or his or her designee, to enter the City as the Responsible Party for the State Permit in the CEOS system and to take all such other actions as may be required to discharge and relieve Foundation from any further obligation of any nature related to stormwater matters at the property.

3. BINDING AGREEMENT.

When executed by the Parties, this Agreement shall constitute a binding agreement and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, provided Foundation may not assign this Agreement or any interest herein without the express written consent of the City, which consent shall not be unreasonably withheld.

4. GENERAL MATTERS.

(a) In no event shall City or Foundation, 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 covenantor provision under this Agreement on their part to be performed. In consideration of the other party entering into this Agreement, City and Foundation 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 Foundation, the non-breaching party shall have the right to request specific performance of this Agreement by the breaching party, but not damages.

(c) 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 jurisdiction of such District Court. To the extent allowed by law, each party waives its right to a jury trial.

(d) 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 Foundation. 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.

(e) 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.

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

(I) 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

(II) if to the Foundation, 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 subsection (f).

(g) The persons signing this Agreement in the name of and on behalf of Foundation represent and warrant that they and Foundation 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 Foundation enforceable against Foundation in accordance with its terms.

(h) 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.

(i) Neither party shall be, or hold itself out as, agent of the other or as joint venturers or partners under this Agreement.

(j) 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.

(k) 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.

(l) 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:
Title:

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