

CONSTRUCTION MANAGEMENT AGREEMENT

THIS CONSTRUCTION MANAGEMENT AGREEMENT (“Agreement”) is entered into effective September 26, 2022, between the City of Pueblo, a municipal corporation (“City”) and Pueblo Development Foundation, a Colorado nonprofit corporation (“PDF”). City and PDF are sometimes referred to herein as a “Party” and collectively, the “Parties.” WITNESSETH:

WHEREAS, City is the owner of a building containing approximately 22,500 rentable square feet located 32501 Walt Bassett Ave., Pueblo, CO 81001 (the “Property”); and

WHEREAS, since approximately July 24, 2017, the Property has been leased to the Lockheed Martin Corporation, a Maryland Corporation (“Lockheed”); and

WHEREAS, the City is simultaneously entering into an Amendment No. 2 (of even date herewith) to the lease between the City and Lockheed for the Property which extends the term of the lease by two years but also requires the City to install a new concrete floor in the front office area of the Property (“renovation of the Property”) at City’s sole cost and expense; and

WHEREAS, City desires to engage PDF to provide construction management services in connection with the renovation of the Property; and

WHEREAS, City will reimburse PDF funds for the renovation of the Property and PDF is willing to oversee and manage such construction, on the condition that the City pay PDF an agreed upon management fee.

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

Section 1. Renovation. PDF will oversee and manage the installation of a new concrete floor in the front office area of the Property for an amount not to exceed Seventy Thousand Dollars (\$70,000.00) including PDF’s management fee. Time is of the essence hereof. The Parties agree that renovation of the Property shall be completed on or before December 31, 2022.

Section 2. Requests for Payment. PDF shall file with City’s Director of Finance written requests for payment certified to be true and correct by an officer of PDF or its representative that the amounts included in each request for payment have not been included in any prior request for payment and are for the actual cost of renovating the Property, identifying the construction work for which payment is sought has been completed. All City Funds disbursed directly to PDF shall be held in trust by PDF for the sole and only purpose of paying for renovation of the Property.

Section 3. Management Fee. City shall pay PDF three percent (3%) of the total costs of renovating the Property to be retained by PDF as payment in full of PDF's construction management fee.

Section 4. Additional Documents or Action. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 5. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 6. Minor Changes. The Parties executing this Agreement are authorized to make non-substantive corrections to this Agreements, if any, as the Parties mutually consider necessary.

Section 7. Good Faith of Parties. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

Section 8. Venue and Waiver of Jury Trial. 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 full extent allowed by law, each Party waives its right to a jury trial.

Section 9. Notices. Any notice required or permitted to be given or delivered under this Agreement shall be in writing and shall be given by personal delivery, or by the United States Postal Service, by registered or certified mail, postage prepaid, or reputable national overnight courier service:

(a) If to City, addressed to:

Mayor
City of Pueblo
1 City Hall Place, 2nd Floor
Pueblo, Colorado 81003

with a copy to: City Attorney
1 City Hall Place, 3rd Floor
Pueblo, Colorado 81003

(b) If to PDF, addressed to:

President
301 N. Main Street, Suite 210
Pueblo, CO 81003

or to such other address or person as any Party may from time to time specify in a writing delivered to the other Party in the manner provided in this paragraph. Any notice shall be deemed delivered on the day on which personal delivery is effected or three (3) days after deposit in the mail in the case of registered or certified mail, and one (1) business day after deposit in the case of overnight courier.

Section 10. Authority to Sign. 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. When executed by the City and PDF, 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 permitted assigns.

Section 11. Severability. 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.

Section 12. Drafters. 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.

Section 13. Attorneys' Fees. In the case of any litigation among the parties under this Agreement, the prevailing party will be entitled to reimbursement for its reasonable costs, including reasonable attorneys' fees, incurred in any such dispute.

Section 14. Assignment. This Agreement shall be binding upon and inure to the benefit of City and PDF and their respective successors and assigns, provided PDF may not assign this Agreement or any of its rights hereunder without the prior written consent of City.

EXECUTED at Pueblo, Colorado as of the day and year first above written.

CITY OF PUEBLO,
a Colorado Municipal Corporation

By: _____
Nicholas A. Gradisar, Mayor

Attest: _____
City Clerk

Approved as to form:

City Attorney

PUEBLO DEVELOPMENT FOUNDATION
a Colorado Non-profit Corporation

By: _____
Robert L. Root, President

Attest: _____
Secretary