

GRANT AGREEMENT

THIS GRANT AGREEMENT (“Agreement”) is made and entered into this 26th day of September, 2022, (hereinafter “Effective Date”) by and between the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as the “City” and the Bessemer Historical Society, Inc. d/b/a Steelworks Center of the West, a Colorado nonprofit corporation, hereinafter referred to as the “Grantee” or “SCW.” City and Grantee/SCW are sometimes each referred to as a “Party” and collectively “Parties.”

RECITALS

The following recitals are incorporated in and made a part of this Agreement.

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, by Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from ARPA for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds (“CLFRF”) to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, Grantee has requested that the City use CLRF funds to mitigate the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic (hereinafter “Project”); and

WHEREAS, the City desires to disburse funds from Project No. CI2113 to the Grantee for the aforesaid purpose.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereto mutually agree as follows:

1. FACTUAL BASIS FOR THE GRANT AWARD

(a) As a result of the COVID-19 pandemic, Grantee Steelworks Center of the West closed on March 16, 2020 and remained closed through August 5, 2020 in accordance to local and state COVID-19 mandates. During this time, Grantee's Board made the difficult decision to terminate 33% of SCW's staff due to the lack of income.

(b) Grantee reopened for a short time beginning August 5, 2020 only to close again to the public on November 16, 2020 when one of SCW's own staff tested positive for the virus. Following this interval, the entire museum facility was deep cleaned by a professional janitorial company. In an abundance of caution, Grantee remained closed until April 6, 2021.

(c) In addition to the lack of museum admission fees, gift shop sales, archives fees, donations were also lacking throughout most of 2020. Grantee was forced to cancel several of its major fundraising endeavors. Grantee's only fundraiser in 2020, the "Faces of CF&I/Hall of Fame" event took place in February, 2020, just before the mandatory closures. Grantee raised \$34,716 during that event. Grantee was unable to host the "Faces of CF&I/Hall of Fame" evening event in 2021 due to COVID, a potential loss of revenue of \$34,000.

(d) Grantee was also unable to host its annual summer fundraiser, "Steel'ebation" in 2020 and 2021, a potential loss of revenue of \$6,000 each year. Grantee was also unable to host its "Saints and Sinners" fundraiser in 2020. In 2021, Grantee hosted the event, but on a much smaller scale, a potential loss of revenue of \$1,300.

(e) Grantee is a nonprofit organization disproportionately impacted by the COVID-19 public health emergency, operating in a qualified census tract under 31 CFR 35.6.(b) (3) (C).

(f) Grantee is a member of the tourism industry eligible for reimbursement of payroll costs and covered benefits for employees, the compensation of returning employees and financial support for operations and maintenance of existing equipment and facilities under 31 CFR 35.6.(b) (3) (D).

2. RESPONSIBILITIES OF GRANTEE

Prior to receiving ARPA funds under this Agreement, Grantee is required to provide the City with the following information and documentation:

1. Federal SAM Unique Entity ID;
2. City Sales Tax License;
3. State Sales Tax License;
4. Certificate of Good Standing from the Office of the Secretary of State.

3. PAYMENTS TO GRANTEE

(a) The aggregate of all payments made hereunder shall not exceed Ten Thousand Dollars (U.S. \$10,000). Payment will be made within thirty (30) days following approval of this Agreement by the City Council of the City of Pueblo and execution of this Agreement by the Grantee.

(b) Upon expiration of the term of this Agreement or upon any prior termination, Grantee shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

4. TERM OF PROJECT AND AGREEMENT

(a) The term of the Project shall be from Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

(b) The term of this Agreement shall be from the Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

5. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Grantee, upon ten (10) days written notice to Grantee including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Grantee. Cause for termination shall include any material failure by Grantee to comply with any term of this Agreement.

(b) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Grantee, which decision shall not be subject to appeal.

(c) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Grantee shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City.

6. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Grantee without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at City's election, be deemed void and of no effect whatsoever.

7. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement constitute the entire and complete agreement of the Parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Grantee and City.

8. GOVERNMENT IMMUNITY.

The City does not waive or intend to waive, by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act § 24-10-101 to 120, C.R.S., or otherwise available under applicable law.

9. NO THIRD-PARTY BENEFICIARIES.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under the Agreement shall be deemed an incidental beneficiary only.

10. LITIGATION, VENUE AND WAIVER OF TRIAL BY JURY.

In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. 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 fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

11. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

12. RULES OF CONSTRUCTION.

The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

13. WAIVER.

The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

14. NO MONETARY DAMAGES AGAINST CITY.

In consideration of City entering into the Agreement, Grantee waives and discharges City, its officers, agents and employees from any and all claims for any monetary damages whether such claims arise under tort, contract, statutory or any other law.

15. COUNTERPARTS.

This Agreement may be executed in two (2) or more counterparts 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.

16. SIGNATURES.

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

IN WITNESS, WHEREOF, the Grantee and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

CITY OF PUEBLO
A COLORADO MUNICIPAL CORPORATION

City Clerk

By _____
Nicholas A Gradisar, Mayor

[S E A L]

