

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 Fuel and Iron Commercial, LLC, a Colorado limited liability company, hereinafter referred to as the “Grantee” or “Fuel & Iron.” City and Grantee/Fuel & Iron 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 reimburse Grantee for the cost of acquiring restaurant fixtures and equipment for the Fuel & Iron Food Hall located at 400 S. Union Ave., Pueblo, CO 81003 (hereinafter “Project”); and

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

WHEREAS, Grantee has represented to the City that it is duly qualified, eligible and willing to undertake the Project in accordance with the terms and conditions of this Agreement.

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) The redevelopment of the Holmes Hardware Block will consist of the Fuel & Iron Food Hall on the first floor and 28 affordable housing units on the second and third floors of the heretofore abandoned and vacant building located at 400 S. Union Avenue in downtown Pueblo. The larger project site will have roughly an acre devoted to an urban farm, ample parking for both the food hall customers and apartment residents, and roughly a half-acre dedicated to additional housing in Phase II of the project.

(b) Fuel & Iron will serve as an incubator for the next generation of great Pueblo restaurants. The five restaurant spaces within the food hall will be occupied by independent local chefs and restauranteurs. During this time, the up-and-coming culinarians will receive business planning and financing guidance, in addition to help with site selection and lease negotiation for their own brick and mortar locations within Pueblo.

(c) After the restauranteurs are successful in opening up their own stand-alone brick and mortar locations, their space in the food hall will be given to another restaurateur, and the cycle will be repeated, affording these entrepreneurial chefs opportunities they would not have otherwise had and at the same time invigorating the Pueblo restaurant scene as a whole.

(d) The upper floors of the Holmes Hardware block, in conjunction with Phase II of the site redevelopment, will bring much needed housing into Downtown Pueblo, and will help activate Pueblo's downtown during a much greater portion of the week. The aim of the project is to be catalytic, encouraging more commercial and residential development downtown and further encouraging Pueblo's growth in a way that honors local residents and businesses to live, work, and play downtown.

(e) The Fuel & Iron Project will have a catalytic impact in contributing to the recovery of the hospitality and tourism industry from the impacts of COVID-19. In addition to its impact on small business creation for restauranteurs as described above, the project will create 57 FTE positions in the hospitality industry, helping to make up for some of the job losses due to the pandemic.

(f) Furthermore, the Fuel & Iron Food Hall will help rebuild Pueblo's tourism industry because it will be a can't miss amenity for tourists and out of town visitors. Its location strategically bookends Union Avenue with downtown's other main tourist attraction - the Pueblo Riverwalk. As locals and tourists alike move between the food hall and the Riverwalk, the increased traffic along Union Ave. will create greater opportunities for the intervening businesses. By adding another amenity downtown, locals will be encouraged to make more trips downtown, and tourists will have enough amenities to remain in Pueblo for longer durations, which

will further create economic opportunities for the rest of downtown Pueblo.

(g) Grantee is a small business disproportionately impacted by the COVID-19 public health emergency, operating in a qualified census tract under 31 CFR 35.6.(b) (2) (iii) (B).

(h) Grantee is engaged in the development, repair and operation of affordable housing and services or programs to increase long-term housing security under 31 CFR 35.6 (b) (3) (ii) (A) (5).

(i) Grantee is engaged in the rehabilitation of commercial properties and is eligible for a grant for start-up costs for a small business under 31 CFR 35.6 (b) (3) (ii) (B) (2).

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. State Sales Tax License;
3. Certificate of Good Standing from the Office of the Secretary of State.

Grantee shall apply for a City Sales Tax License within ten (10) days of receiving a Certificate of Occupancy for the Fuel & Iron Food Hall.

3. PAYMENTS TO GRANTEE

- (a) The aggregate of all payments made hereunder shall not exceed Two Hundred Ninety-Four Thousand One Hundred Twenty-One and 51/100 Dollars (U.S. \$294,121.51). The grant funds shall not be distributed in a lump sum. Grantee shall provide the City with invoices for the restaurant fixtures and equipment purchased by Grantee for use in the Fuel & Iron Food Hall.
- (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.

ATTEST:

CITY OF PUEBLO
A COLORADO MUNICIPAL CORPORATION

City Clerk

By _____
Nicholas A Gradisar, Mayor

[S E A L]

Grantee:

FUEL AND IRON COMMERCIAL, LLC
a Colorado limited liability company

ATTEST:

By _____
Signature

By _____
Signature

Name _____

Name _____

Title _____

Title _____