

RESOLUTION NO. 4395

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT ENTITLED "STATE OF MONTANA AGREEMENT" WITH THE STATE OF MONTANA HISTORIC PRESERVATION OFFICE FOR PARTIAL FUNDING OF THE HISTORIC PRESERVATION OFFICER POSITION.

WHEREAS, the City of Miles City desires to enter into an agreement with the Montana State Historic Preservation Office to assist in the funding of the Miles City Historic Preservation Officer position;

AND WHEREAS the Montana State Historic Preservation Office has prepared an Agreement setting for the obligations of the City and the State, and the City of Miles City desires to enter into such Agreement;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The "State of Montana Agreement MT 21-023," attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 23RD DAY OF MARCH, 2021.



John Hollowell, Mayor

ATTEST:



Mary Rowe, City Clerk

STATE OF MONTANA AGREEMENT

MT-21-023

This Grant Agreement (the "Agreement") is hereby made between the City of Miles City, 17 South Eighth Street, Miles City, MT 59301, DUNS# 134230325 (the "Subgrantee"), and the Montana State Historic Preservation Office (SHPO), Montana Historical Society (MHS), 225 North Roberts, PO Box 201202, Helena, Montana 59620-1202 (the "Grantor" or the "State"). Liaison for the Subgrantee is Ally Capps, the Historic Preservation Officer (HPO). Liaison for the Grantor is Kate Hampton, Community Preservation Coordinator.

The State expects to be awarded \$926,767 of grant monies from the U.S. Department of the Interior, the National Park Service under the Historic Preservation Fund for the federal fiscal year of 2021 (federal grant period to begin October 1, 2020, and end September 30, 2021). The funding for this agreement is provided by this award, CFDA number 15.904, Historic Preservation Fund Grants-In-Aid. The Federal Award Identification Number assigned by the National Park Service is yet to be determined.

The two parties, in consideration of mutual covenants and stipulations described below, agree as follows:

1. EFFECTIVE DATE, DURATION, AND RENEWAL

This Agreement shall take effect on April 1, 2021, and shall terminate on March 31, 2022, unless a new termination date is set or the Agreement is terminated as provided in this Agreement. Total payments by the Grantor for all purposes under this Agreement shall not exceed \$6,000.00. In the event that the Grantor does not receive full funding from the National Park Service (NPS), the total grant award may be reduced, as outlined in "The Montana Certified Local Governments Manual." Payment shall be made on a reimbursement basis by request of Subgrantee to the Grantor. In no event is this Agreement binding on the State unless State's authorized representative has signed it. Any legal counsel signature approving legal content of the Agreement and any procurement officer signature approving the form of the Agreement do not constitute an authorized signature.

2. SERVICES AND/OR SUPPLIES

The Subgrantee shall:

1. Maintain an active Historic Preservation Commission (HPC) that will advocate for preservation, assist the HPO to accomplish preservation goals, and fill vacancies on the HPC promptly.
2. Participate in and carry out the responsibilities for Certified Local Government (CLG) program status as outlined in "The Montana Certified Local Government Manual."
3. Ensure historic preservation concerns are considered at all levels of local government planning and are incorporated as goals of other local, state, and federal projects.
4. Administer local preservation ordinances.
5. Designate a minimum half-time designated Historic Preservation Officer (HPO) who demonstrably plays an active and consistent role in the conduct of the Subgrantee's historic preservation activities. On behalf of the Subgrantee it is the role of HPO to conduct these activities and/or work with the HPC to:
 - a. Regularly report on HPC activities at local government Commission meetings and be available for comment to these groups and other local government offices;
 - b. Provide technical assistance, direction, and/or literature on historic preservation tax credits, National Register, federal regulations, and Secretary of Interior Standards;
 - c. Evaluate historic properties for potential and feasible reuse and rehabilitation;
 - d. Coordinate, promote, and participate in events such as National Historic Preservation Month and/or other preservation related activities;
 - e. Cooperate and communicate with the Grantor and fellow HPOs/HPCs in Montana and elsewhere as appropriate; and
 - f. Submit Semi-Annual Progress Reports, meeting minutes, and financial reports per deadlines outlined in this agreement. In the Final Progress Report, the HPO will identify the benefits the local government has derived

as a result of the employment of a HPO, the needs of the local government for future professional preservation efforts, and any additional functions of the HPO carried out which further the understanding and implementation of historic preservation values and objectives in the local government.

6. Send at least one (1) person from the CLG to SHPO-approved training. The attendee shall attend the entire training and report back to their HPC.

All work completed under this funding Agreement must meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as interpreted by the Grantor. Final products or services that do not fulfill the requirements of this Agreement, and do not comply with the appropriate Secretary of the Interior's Standards, will not be reimbursed, and any advance payments made in connection with such products or services must be repaid to the Grantor.

3. CONSIDERATION/PAYMENT

3.1 Payment Schedule. In consideration of services rendered in this Agreement, the Grantor agrees to pay the Subgrantee as follows:

1. The Subgrantee agrees to submit Semi-Annual Progress Reports, meeting minutes, and Requests for Reimbursement. Reports will be accompanied by the following documentation:
 - a. The Subgrantee's name, address, and Agreement Number MT-21-023;
 - b. A report discussing the work completed during the reporting period. Include meeting agendas and minutes;
 - c. An itemized listing of cash or in-kind donations that comprise the non-federal match;
 - d. An itemized listing of project expenses that are charged to the federal grant. If indirect costs (IDC) are claimed for reimbursement (or match), the IDC rate must be in accordance with 2 CFR Part 200.414. A copy of the IDC approval letter from the Cognizant agency must be submitted to the Grantor and approved prior to any reimbursement;
 - e. Receipts, invoices, and/or financial reports sufficient to document each expenditure;
 - f. The net request for payment (reimbursement); and
 - g. Products produced during the reporting period.
2. All Requests for Reimbursement must be approved by the Grantor prior to payment. Payment for work completed under this Agreement may be withheld pending the delivery and acceptance of such items. All Subgrantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of three (3) years or until an acceptable audit (accessible by auditors) has been performed and all claims and audit findings involving the records have been resolved. The 3-year retention period starts from the date of the submission of the final report. A final Request for Reimbursement must be submitted within thirty (30) days of the termination of this Agreement to qualify for payment.
3. All Requests for Reimbursement will be reviewed for eligibility and allowability under Chapters 12, 13, and 14 of the NPS Historic Preservation Fund Manual and the Montana Certified Local Governments Manual. The Subgrantee may request a copy of the Montana Certified Local Governments Manual from the Grantor and the Historic Preservation Fund Manual is available for inspection at the SHPO.
4. The Subgrantee shall, at minimum, provide documentation detailing forty percent (40%) matching non-federal funds for the overall grant award. In order to receive the full grant award of \$6,000.00, the minimum dollar amount of match necessary to be provided by the Subgrantee is \$4,000.00 in matching in-kind services or cash. In the event that the grant award is reduced, the match requirement would be reduced proportionally. Requests for Reimbursement require the same 40% documentation relative to the amount requested. The accepted Grant Application, reviewed and approved by the Grantor, provides an estimation of sources and amounts of matching funds from the Subgrantee.

5. The Grantor may retain final payment of federal grant funds until such time as the approved project work has been successfully completed and all conditions of this Agreement have been met.

3.2 Payment Terms. Unless otherwise noted in the solicitation document, the State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. The Subgrantee shall provide banking information at the time of Agreement execution in order to facilitate the State's electronic funds transfer payments.

3.3 Reference to Agreement. The Agreement Number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Agreement. If the number is not provided, the State is not obligated to pay the invoice.

4. ACCESS AND RETENTION OF RECORDS

4.1 Access to Records. The Subgrantee shall provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine Agreement compliance. The State may terminate this Agreement under Section 20, Severability, without incurring liability, for the Subgrantee's refusal to allow access as required by this section (18-1-118, MCA).

4.2 Retention Period. The Subgrantee shall create and retain all records supporting the services rendered for a period of eight (8) years after either the completion date of this Agreement or termination of the Agreement.

5. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

The Subgrantee may not assign, transfer, or subcontract any portion of this Agreement without the State's prior written consent (18-4-141, MCA). The Subgrantee is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Subgrantee. No contractual relationships exist between any subcontractor and the State under this Agreement.

5.1 The Subgrantee agrees that the procurement of services, supplies, equipment, and construction will be obtained efficiently and economically and in compliance with the applicable federal laws, and of 2 CFR Part 200.317 through 200.326, and Chapter 17 of the Historic Preservation Fund Manual.

5.2 The process for the selection of subcontractors to perform the services under this Agreement, regardless of whether by competitive bidding or negotiated procurement shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms or individuals in order for them to qualify to do business, (2) noncompetitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.

5.3 Competitive bidding or negotiated procurement is required for all survey and planning subcontracts. Proposals shall be requested from an adequate number of sources (at least two or three sources) to permit reasonable competition. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable. The Request for Proposals shall identify the survey or planning area, population, number of properties to be inventoried, funds available and volunteer support (if applicable). The Subgrantee shall document in writing the evaluation criteria used and the results of the technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for subcontract award. Subcontractors shall be selected on the basis of qualification, subject to negotiation of fair and reasonable compensation. Unsuccessful offerors shall be notified promptly. A copy of documentation of the selection process will be submitted to the Grantor prior to the initiation of the project.

5.4 Non-competitive negotiation may be used with prior written approval from the Grantor when, after the solicitation in accordance with Section 5.3 above, competition is determined inadequate.

5.5 The Subgrantee will notify the Grantor upon the selection of a subcontractor. The Subgrantee will verify subcontractor is not on the debarred list. A copy of this contract will be submitted to the Grantor for review and written approval prior to its execution.

5.6 Prior to the beginning of project work or any grant payment, the Subgrantee must submit to the Grantor the below listed items to demonstrate that the federal procurement requirements have been met in full:

- a. Copies of the letters to qualified sources and public advertisements requesting proposals and/or invitations to bid;
- b. Copy of the Subgrantee documentation of the selection criteria and process;
- c. A copy of the successful proposal and a description of the Subgrantee reasons for selection;
- d. Listing of the unsuccessful offerors; and
- e. Copy of the proposed contract between the Subgrantee and the subcontractor.

Note: The Grantor must review and approve all contracts between the Subgrantee and subcontractors prior to their execution. The parties agree that there will be no assignment or transfer of this Agreement or any interest in the Agreement and that no service required under this Agreement may be performed under subcontract unless both parties agree in writing.

6. EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Sections 49-2-303 and 49-3-207, MCA, and the federal Civil Rights Act of 1964 (as amended), and Equal Employment Opportunity statute, in all hiring or employment made possible by or resulting from this Agreement, the Subgrantee: 1) will not discriminate against any employee or applicant for employment because of race, color, social condition, religion, sex, age, national origin, marital status, creed, political affiliation, or physical or mental handicap; and 2) will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This requirement applies to, but is not limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subgrantee will comply with all applicable statutes and Executive Orders on Equal Employment Opportunity, including enforcement provisions, as implemented by, but not limited to, Department of the Interior policies, published in 43 CFR 17.

7. FAIR LABOR STANDARDS

The Subgrantee agrees to comply with all federal and state wage and hour rules, statutes, and regulations, and warrants that all applicable federal and state fair labor standards and provisions will be complied with both by the Subgrantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the Grantor and the Subgrantee.

8. PROHIBITION AGAINST LOBBYING

The Subgrantee must conform to provisions of 18 USC 1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, November 2, 2002:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Members or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this Section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this Section shall constitute violations of Section 1352(a) of title 31. In addition to the above, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply." Thus, costs associated with activities to influence legislation pending before Congress, commonly referred to as "lobbying" is unallowable under this Agreement.

9. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, the Subgrantee shall indemnify and hold harmless the State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses, and expenses, including the cost of defense thereof, to the extent caused by or arising out of the Subgrantee's negligent acts, errors, or omissions in work or services performed under this Agreement, including but not limited to, the negligent acts, errors, or omissions of any subcontractor or anyone directly or indirectly employed by any subcontractor for whose acts the subcontractor may be liable.

10. COMPLIANCE WITH WORKERS' COMPENSATION ACT

The Subgrantee shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Subgrantee nor its employees are State employees. This insurance/exemption must be valid for the entire Agreement term. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

11. COMPLIANCE WITH LAWS

The Subgrantee shall, in performance of work under this Agreement, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to:

- 11.1** The Montana Human Rights Act, Executive Order 11246 (as amended), the Equal Pay Act of 1963, Title VI of the Civil Rights Act of 1964 (as amended) (78 Stat. 252; 42 U.S.C. §§2000d et seq.), and the Americans with Disabilities Act of 1990, and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- 11.2** In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, the Subgrantee agrees that the hiring of persons to perform this Agreement will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Agreement.
- 11.3** The Subgrantee will comply Title V, Section 504 of the Rehabilitation Act of 1973 (as amended) (87 Stat. 394; 29 U.S.C. §794) which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- 11.4** The Subgrantee will comply with the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.) prohibiting discrimination on the basis of age in programs and activities receiving federal Financial assistance.
- 11.5** The Subgrantee is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees, and taxes under the Patient Protection and Affordable Care Act (P.L. 111-148, 124 Stat. 119). Any subletting or subcontracting by the Subgrantee subjects subcontractors to the same provisions.
- 11.6** Minority Business Enterprise Development: Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Grant Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
- 11.7** The Subgrantee will comply with Paragraph (g) of Section 106 of the Trafficking Victims Protections Act of 2000 (as amended) and those award terms put forth in 2 CFR §175.15 <https://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.
- 11.8** The Subgrantee will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

- 11.9** Debarment and Suspension (Executive Orders 12549 and 12689)—the Subgrantee may not be, nor subcontract with, parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Additional Indemnification. Claims under this provision also include those arising out of or in any way connected with the Subgrantee's breach of this Agreement, including any claims asserting that any of the Subgrantee's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to excise taxes or penalties imposed on the State under Internal Revenue Code (“Code”) §§ 4980H, 6055, or 6056.

The Subgrantee agrees to comply with all federal and state wage and hour rules, statutes, and regulations, and warrants that all applicable federal and state fair labor standards and provisions will be complied with both by the Subgrantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the Grantor and the Subgrantee.

12. DISABILITY ACCOMMODATIONS

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

13. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED

The Subgrantee acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired (18-5-603, MCA). Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

14. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665 or visit their website at <http://sos.mt.gov>.

15. MODIFICATIONS AND PREVIOUS AGREEMENTS

- 15.1** This instrument contains the entire Agreement between the parties, and no previous statements, promises, or inducements made by either party or agent of either party which are not contained in this written agreement shall be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by the parties and attached to the original of this Agreement, except as provided under Section 20. No change, addition, or erasure of any printed portion of this Agreement shall be valid or binding upon either party.

- 15.2** Any changes that substantially alter the scope of work or the cost of the approved project must be submitted by the Subgrantee as a project amendment. These amendments must have prior written approval from NPS before the change is implemented. Change orders will be treated as amendments. The

Subgrantee must consult with the Grantor to review the proposed change to determine if it substantially alters the scope of work or the cost of the approved project. If the Grantor determines the change to be substantial, the Grantor will process the amendment through NPS. Failure of the Subgrantee to notify the Grantor of any such changes may be construed as just cause for revocation and/or recovery of the grant funds by the Grantor.

16. CONFLICT OF INTEREST

No officer or employee of the MHS or member of the MHS Board or State Historic Preservation Review Board and no member of the Subgrantee's governing body at localities in which the project is situated or being carried out who exercises any functions or responsibilities, or who enjoys a position of influence in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects their personal or pecuniary interest. The Subgrantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

17. INTELLECTUAL PROPERTY/OWNERSHIP

- 17.1 Mutual Use.** The Subgrantee shall make available to the federal government and the State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice, or created in whole or in part under this Agreement, if such availability is necessary for the State to receive the benefits of this Agreement. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this Agreement. This mutual right includes (i) all deliverables and other materials, products, modifications that the Subgrantee has developed or prepared for the State under this Agreement; (ii) any program code, or site- related program code that the Subgrantee has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Agreement; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".
- 17.2 Title and Ownership Rights.** The State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "Content"), but grants the Subgrantee the right to access and use Content for the purpose of complying with its obligations under this Agreement and any applicable statement of work.
- 17.3 Ownership of Work Product.** The Subgrantee shall execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.
- 17.4 Copy of Work Product.** The Subgrantee shall, at no cost to the State, deliver to the State, upon the State's request during the term of this Agreement or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or such expiration or termination.
- 17.5 Ownership of Subgrantee Pre-Existing Materials.** The Subgrantee retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods, or related rights and derivatives that the Subgrantee owns at the time this Agreement is executed or otherwise developed or acquired independent of this Agreement and employed by the Subgrantee in connection with the services provided to the State (the "Subgrantee Pre-existing Materials"). Subgrantee Pre-existing Materials are not Work Product. The Subgrantee shall provide full disclosure of any Subgrantee Pre-Existing Materials to the State before its use and to prove its ownership. If, however, the Subgrantee fails to disclose to the State such Subgrantee Pre-Existing Materials, the Subgrantee shall grant the State a non-exclusive, worldwide, paid-up license to use any Subgrantee Pre-Existing Materials embedded in the Work Product to the extent such Subgrantee Pre-Existing Materials are necessary for the State to receive the intended benefit under this Agreement. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 17.3, Ownership of Work Product, or as

may be expressly agreed in any statement of work, the Subgrantee shall retain title to and ownership of any hardware it provides under this Agreement.

18. PATENT AND COPYRIGHT PROTECTION

- 18.1 Third-Party Claim.** If a third party makes a claim against the State that the products furnished under this Agreement infringe upon or violate any patent or copyright, the State shall promptly notify the Subgrantee. The Subgrantee shall defend such claim in the State's name or its own name, as appropriate, but at the Subgrantee's expense. The Subgrantee shall indemnify the State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.
- 18.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then the Subgrantee may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine whether the Agreement has been breached.
- 18.3** Except as otherwise provided in the terms and conditions of the grant Agreement, the Subgrantee is free to copyright any books, publications, or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty-free, non-exclusive, and irrevocable license throughout the work to the Grantor and/or the United States government to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes.
- 18.4** Any materials produced as a result of this Agreement which are to be publicly distributed, shall include the following statement:
- "The (activity) that is the subject of this (type of publication) has been financed (in part/entirely) with Federal funds from the National Park Service, U.S. Department of Interior, and administered by the SHPO of Montana. The contents and opinions do not necessarily reflect the views or policies of the U.S. Department of the Interior or the Montana Historic Preservation Office, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or SHPO."
- 18.5** Publications must include the nondiscrimination statement:
- "This program receives federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, age, or disability in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to:
- The Office for Equal Opportunity
National Park Service
849 C Street, N.W.
Washington, D.C. 20240"
- 18.6** The Subgrantee shall not include in the materials produced as a result of this Agreement any copyrighted matter without the written approval of the copyright owner that provided SHPO and the United States government with written permission to use the material in the manner provided herein.

19. AUDITING

The Subgrantee agrees to allow access to the records of the activities covered by this Agreement as may be necessary for legislative post audit and analysis purposes in determining compliance with the terms of this Agreement. The Grantor shall maintain all administrative and fiscal records relating to this project for three (3) years after the final grant reimbursement is made by the Grantor to the Subgrantee. Notwithstanding the provisions of Section 20, this Agreement shall automatically terminate upon any refusal of the Subgrantee to allow

access to records necessary to carry out the legislative post audit and analysis functions set forth in Title 5, Chapter 12 and 13, MCA, and the financial and programmatic audit conducted by the Secretary of the Interior and the Comptroller General of the United States provided for in 2 CFR Part 200.333 through 200.338.

For local governments and school districts, the Subgrantee will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau. All other Subgrantees, such as Tribal Communities and Non-Profit Organizations, will provide the report to the Montana Historical Society, State Historic Preservation Office.

Non-federal entities that expend \$750,000 or more during a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and 2 CFR Part 200, Subpart F, which is available at <http://www.ecfr.gov/cgi-bin/text-idx?SID=fd6463a517ceea3fa13e665e525051f4&node=sp2.1.200.f&rgn=div6>

Non-federal entities that expend less than \$750,000 for a fiscal year in federal awards are exempt from federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the federal agency, pass-through entity, and General Accounting Office (GAO).

Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found at 2 CFR Part 200, Subpart F, as applicable. Additional information on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/>.

20. SEVERABILITY

It is understood and agreed by the parties hereto that a declaration by any court or any other binding legal source that any provision of the Agreement is illegal and void shall not affect the legality and enforceability of any other provision of the Agreement, unless the provisions are mutually and materially dependent.

20.1 Termination for Cause with Notice to Cure Requirement. The Subgrantee may terminate this Agreement for the State's failure to perform any of its duties under this Agreement after giving the State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

20.2 Reduction of Funding. The State must by law terminate this Agreement if funds are not appropriated or otherwise made available to support the State's continuation of performance of this Agreement in a subsequent fiscal period (18-4-313(4), MCA). If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Agreement (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this Agreement as required by law. The State shall provide the Subgrantee the date State's termination shall take effect. The State shall not be liable to the Subgrantee for any payment that would have been payable had the Agreement not been terminated under this provision. As stated above, the State shall be liable to the Subgrantee only for the payment, or prorated portion of that payment, owed to the Subgrantee up to the date State's termination takes effect. This is the Subgrantee's sole remedy. The State shall not be liable to the Subgrantee for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

21. EVENT OF BREACH – REMEDIES

21.1 Event of Breach by Subgrantee. Any one or more of the following Subgrantee acts or omissions constitute an event of material breach under this Agreement:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Agreement;
- Failure to perform any of the other terms and conditions of this Agreement, including but not limited to beginning work under this Agreement without prior State approval or breaching Section 27, Meetings, obligations; or

- Voluntary or involuntary bankruptcy or receivership.

21.2 **Event of Breach by State.** The State's failure to perform any material terms or conditions of this Agreement constitutes an event of breach.

21.3 **Actions in Event of Breach.** Upon the Subgrantee's material breach, the State may:

- Terminate this Agreement under Section 20.1, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Agreement, at law, or in equity; or
- Treat this Agreement as materially breached and, except as the remedy is limited in this Agreement, pursue any of its remedies under this Agreement, at law, or in equity.

Upon the State's material breach, Subgrantee may:

- Terminate this Agreement under Section 20.1, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Agreement, at law, or in equity; or
- Treat this Agreement as materially breached and, except as the remedy is limited in this Agreement, pursue any of its remedies under this Agreement, at law, or in equity.

22. GENERAL AND SPECIFIC CONDITIONS

The Subgrantee agrees to follow the General and Specific Conditions according to this Agreement and Chapter 5 of the Historic Preservation Fund Manual.

23. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five (5) working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Agreement, unless the parties mutually agree that the obligation is excused because of the condition.

24. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

25. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Agreement shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the Agreement terms, conditions, and specifications may be rejected and returned at the Subgrantee's expense.

26. LIAISONS AND SERVICE OF NOTICES

26.1 **Agreement Liaisons.** All project management and coordination on the State's behalf must be through a single point of contact designated as the State's liaison. The Subgrantee shall designate a liaison that will provide the single point of contact for management and coordination of the Subgrantee's work. All work performed under this Agreement must be coordinated between the State's liaison and Subgrantee's liaison.

Kate Hampton is the State's liaison
Address: MT SHPO, 1301 E. Lockey
City, State, Zip: Helena, MT 59620-1202
Telephone: (406) 444-7742
Email: khampton@mt.gov

Ally Capps is the Subgrantee's liaison
Address: 17 South Eighth Street
City, State, Zip: Miles City, MT 59301
Telephone: (406) 234-6339
Email: mcplanner@milescity-mt.org

- 26.2** Notifications. The State's liaison and Subgrantee's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three (3) business days of mailing.

27. MEETINGS

Subgrantee shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Agreement term or to discuss the progress made by the Subgrantee and State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The State shall provide the Subgrantee a minimum of three (3) full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at the Subgrantee's option and expense, a conference call meeting may be substituted. The Subgrantee's consistent failure to participate in problem resolution meetings, the Subgrantee missing or rescheduling two consecutive meetings, or the Subgrantee's failure to make a good faith effort to resolve problems may result in termination of the Agreement.

28. CHOICE OF LAW AND VENUE

Montana law governs this Agreement. The parties agree that any litigation concerning this bid, proposal, or this Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

29. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act (P.L. 111-148, 124 Stat. 119).

30. AUTHORITY

This Agreement is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

31. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

- 31.1** Agreement. This Agreement consists of twelve (12) numbered pages and any attachments as required. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.
- 31.2** Entire Agreement. These documents are the entire Agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

32. WAIVER

The State's waiver of any Subgrantee obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Subgrantee obligation or responsibility.

33. EXECUTION

The parties through their authorized agents have executed this Agreement on the dates set out below.

STATE OF MONTANA

Montana Historical Society

225 North Roberts

Helena, Montana 59620-1201

BY: Denise King/Administrator

Centralized Services Division, Montana Historical
Society

City of Miles City

17 South Eighth Street

Miles City, MT 59301

DUNS # 134230325

BY: John Hollowell, Mayor

(Name/Title)

(Signature)

DATE:

3-30-21

(Signature)

DATE:

3-23-21