

AGREEMENT NUMBER MT-15-011

STATE OF MONTANA AGREEMENT

This grant agreement (Agreement) is hereby made between the City of Billings, 2825 Third Avenue North, 4th Floor, Billings, MT, 59101-1156, DUNS# 068925759 (the "Sub-grantee") and the Montana State Historic Preservation Office, Montana Historical Society ("MHS"), 225 North Roberts, PO Box 201202, Helena, Montana 59620-1202 (the "Grantor"). Liaison for the sub-grantee is Lora Mattox Liaison for the Grantor is Kate Hampton.

The State has been awarded \$785,524 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 2015 (October 1, 2014 – September 30, 2015). 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 to be determined.

Section 17-1-106, Montana Code Annotated, requires any state agency which receives non-general funds to identify and recover its indirect costs (IDC). MHS's indirect cost rate is determined annually and is applied as a percentage of direct costs charged to a federal award. As defined by 2 CFR Part 200 (formerly OMB Circular A-87), MHS's current IDC rate is 11.15% for fiscal year 2015 (July 1, 2014 to June 30, 2016). IDC will not be charged in relation to this agreement.

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

SECTION I: SERVICES

The Sub-grantee 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 program status as outlined in "The Montana Certified Local Government Manual."
3. Insure 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. Have on staff a minimum half-time designated Historic Preservation Officer (HPO) who demonstrably plays an active and consistent role in the conduct of the sub-grantee's historic preservation activities. On behalf of the Sub-grantee 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. Monitor Preservation Covenants and Agreements and provide historic preservation information and assistance to property owners;
 - c. Provide technical assistance, direction, literature on historic preservation tax credits, National Register, Federal regulations and Secretary of Interior Standards;
 - d. Inspect and evaluate historic properties for potential and feasible reuse and rehabilitation;

- e. Coordinate, promote and participate in events such as National Historic Preservation Month and/or other preservation related activities;
 - f. Cooperate and communicate with the Grantor and fellow HPO/HPCs in Montana and elsewhere as appropriate; and
 - g. 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 Certified Local Government to a State Historic Preservation Office (SHPO) - approved training. The attendee shall attend the entire training and report back to their Preservation Commission.

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.

SECTION II: EFFECTIVE DATE, DURATION, AND REMUNERATION

This Agreement shall take effect on April 1, 2015 and shall terminate on March 31, 2016 unless a new termination date is set or the agreement is terminated pursuant to SECTION IV. Total payments by the "Grantor" for all purposes under this contract shall not exceed \$5,500. In the event that the grantor does not receive full funding from the National Park Service, the total grant award may be reduced, as outlined in the CLG Manual. Payment shall be made on a reimbursement basis by request of Sub-grantee to the grantor.

SECTION III: CONSIDERATION AND PROCESS FOR PAYMENT

In consideration of Services rendered in this Agreement, the Grantor agrees to pay the Sub-grantee as follows:

1. The Sub-grantee agrees to submit semi-annual Progress Reports, meeting minutes, and Requests for Reimbursement. Reports will be accompanied by the following documentation:
 - a. The Sub-grantee's name, address and agreement number MT-15-011;
 - 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 nonfederal 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. The net request for payment (reimbursement); and
- f. 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 Sub-grantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of 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 if they are to qualify for payment.

3. All Requests for Reimbursement will be reviewed for eligibility and allow-ability under Chapters 12, 13 and 14 of the National Park Service's Historic Preservation Fund Manual and the State CLG Manual. The Sub-grantor may request a copy of the CLG Manual from the grantor and the Historic Preservation Fund Manual is available for inspection at the SHPO.

4. The Sub-grantee 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 \$5,500, the minimum dollar amount of match necessary to be provided by the Subgrantee is \$3,666.67 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 Sub-grantee.

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.

SECTION IV: TERMINATION

1. The Sub-grantee understands and agrees the Grantor, as a state agency, is dependent upon federal and state appropriations for its funding and actions by Congress or the Montana Legislature may preclude funding this Agreement completely through the termination date stated in Section II. Should such a contingency occur, the parties agree the Grantor may set a new termination date or terminate the contract immediately, depending upon the funding remaining available for the Agreement, and the Sub-grantee will be compensated for services rendered and expenses incurred to 5:00 p.m. of the revised termination date.

2. In the event of termination, all property (except real estate) and finished or unfinished documents, data, studies, and reports purchased or prepared by the Sub-grantee under this Agreement shall, at the option of the Montana Historical Society (MHS), become the property of the MHS, and the Sub-grantee shall be entitled to compensation for any un-reimbursed expenses necessarily incurred in satisfactory performance of this Agreement. Notwithstanding the above, the Sub-grantee will not be relieved of liability to the Grantor for damage sustained by the Grantor by virtue of any breach of the Agreement by the Sub-grantee, and the Grantor may withhold any reimbursement to the Sub-grantee for the purpose of off-set until such time as the exact amount of damages due the Grantor from the Sub-grantee is agreed upon or otherwise determined.

3. Except for the provisions of SECTION IV, paragraph 1, and SECTION XII, either party may terminate this Agreement without cause thirty (30) days after delivery of written notice in hand to the other party.

4. The MHS may terminate this Agreement for failure of the Sub-grantee to perform any of the services, duties, or conditions in accordance with the time schedule contained in this Agreement. The Grantor will provide the Sub-grantee with written notification of the reasons for the Sub-grantee's performance failure and allow the Sub-grantee a period of not less than ten (10) days or more than thirty (30) days after receipt of said notification to rectify the identified failure to perform.

SECTION V: GENERAL AND SPECIFIC CONDITIONS

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

SECTION VI: ASSIGNMENT AND PROCUREMENT PROCEDURES

1. The Sub-grantee 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 Grants Manual.

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.

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 Sub-grantee 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.

4. Noncompetitive negotiation may be used with prior written approval from the Grantor when, after the solicitation in accordance with Section VI, 3 above, competition is determined inadequate.

5. The Sub-grantee will notify the grantor upon the selection of a subcontractor. Sub-grantee 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.

6. Prior to the beginning of project work or any grant payment, the Sub-grantee 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 Sub-grantee documentation of the selection criteria and process;
- c. A copy of the successful proposal and a description of the Sub-grantee reasons for selection;
- d. Listing of the unsuccessful offerors; and
- e. Copy of the proposed contract between the Sub-grantee and the subcontractor.

Note: The grantor must review and approve all contracts between the Sub-grantee 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.

SECTION VII: EQUAL EMPLOYMENT OPPORTUNITY

1. Pursuant to Sections 49-2-303 and 49-3-207 of the Montana Code Annotated 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 Sub-grantee: 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 Sub-grantor 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.

2. The Sub-grantee will comply with Section 504 of the Rehabilitation Act of 1973 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.

3. The Sub-grantee will comply with The Age Discrimination Act of 1975 prohibiting discrimination on the basis of age in programs and activities receiving Federal Financial assistance.

SECTION VIII: FAIR LABOR STANDARDS

The Sub-grantee 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 Sub-grantee 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 Sub-grantee.

SECTION IX: PROHIBITION AGAINST LOBBYING

The Sub-grantee must conform to provisions of 18 USC 1913:

"No part of the money appropriated by an 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 any other device intended or designed to influence in any matter a Member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the U.S. or its Departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper channels, requests for legislation or appropriation that they deem necessary for the efficient conduct of the public business." Thus, costs associated with activities to influence legislation pending before Congress, commonly referred-to as "lobbying" is unallowable under this Agreement.

SECTION X: INDEMNIFICATION

The Sub-grantee agrees that it will hold harmless and indemnify the MHS from any and all losses that may result to the Grantor because of negligence on the part of the Sub-grantee, its agents, representatives, or employees. The Subgrantee shall hold harmless the MHS from any and all claims arising out of the execution of this Agreement for injury to third persons, including their agents, employees, or volunteers, recipients, and to the public at large, for injury to property of persons, which arise out of any Sub-grantee's actions.

SECTION XI: WORKERS' COMPENSATION

The Sub-grantee and all independent subcontractors earning compensation under this funding agreement must elect to be bound personally and individually by the provisions of compensation plans 1, 2 or 3, but he/she may apply to Montana Workers' Compensation division for an exemption from the Worker's Compensation Act. The application must be made in accordance with the rules adopted by the division.

The division may deny the application only if it determines that the applicant is not an independent contractor. When the division approves an application it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

SECTION XII: MODIFICATIONS AND PREVIOUS AGREEMENTS

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 IV (1). No change, addition, or erasure of any printed portion of this Agreement shall be valid or binding upon either party.
2. Any changes that substantially alter the scope of work or the cost of the approved project must be submitted by the Sub-grantee 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 Sub-grantee 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.

SECTION XIII: CONFLICT OF INTEREST

No officer or employee of the MHS or member of the Society Board or State Historic Preservation Review Board and no member of the Sub-grantee'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 his or her personal or pecuniary interest. The Sub-grantee 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.

SECTION XIV: COPYRIGHT PROHIBITION

1. Except as otherwise provided in the terms and conditions of the grant agreement, the Sub-grantee 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, nonexclusive, and irrevocable license throughout the work to the Grantor and/or the US Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

2. 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, or does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or SHPO.

3. 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:

Office for Equal Opportunity
National Park Service
849 C Street, N.W.
Washington, D.C. 20240

4. The Sub-grantee 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.

SECTION XV: AUDITING

The Sub-grantee 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 Sub-grantor shall maintain all administrative and fiscal records relating to this project for three years after the final grant reimbursement is made by the Grantor to the Sub-grantee. Notwithstanding the provisions of SECTION IV, this Agreement shall automatically terminate upon any refusal of the Sub-grantee 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.

Subgrantees that expend \$500,000 or more in Federal funds, shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." 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.

SECTION XVI: SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this contract is by the courts held to be illegal or in conflict with any Montana law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

SECTION XVII: EXECUTION

This Contract consists of this Agreement and pages of attachments; the original copy is to be retained by the grantor. A copy of the original and attachments, if any, has the same force and effect for all purposes as the original.

Each party has full power and authority to enter into and perform this Agreement, and the person signing the Agreement on the behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

To express the parties' intent to be bound by the terms of this Agreement, they have executed this document on the dates set out below:

City of Billings

Date

Administrator, Centralized Services Division
Montana Historical Society

Date