

**MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION  
CONTRACT # 18-80-011**

**Montana Preservation Alliance**

This Contract is entered into by and between the Montana Heritage Preservation and Development Commission (the Commission), created pursuant to Sections 22-3-1001, *et seq.*, Montana Code Annotated (MCA), and Montana Preservation Alliance (the “Contractor”),

The Contractor and the Commission hereby agree to the following terms:

**Section 1. PURPOSE**

The purpose of this Contract is to: provide preservation and general contractor services in Virginia City, Nevada City, and Reeder’s Alley, Montana.

**Section 2. AUTHORITY**

This Contract is issued under authority of Sections 22-3-1001, *et seq.*, MCA.

**Section 3. EFFECTIVE DATE AND TIME OF PERFORMANCE**

This Contract shall take effect upon execution of the parties and terminate on upon completion of the activities and responsibilities on or before July 1<sup>st</sup> 2024, unless terminated earlier in accordance with the terms of this Contract.

**Section 4. DUTIES OF CONTRACTOR**

Contractor is engaged by the Commission to provide consultation on preservation and general contractor services over-seeing sub-contractors in Virginia City, Nevada City, and Reeder’s Alley, Montana.

**DUTIES OF COMMISSION**

When deemed necessary, the Commission will provide archaeological monitoring and services in compliance with local and state historic preservation guidelines along with consultation services with the State Historic Preservation Office.

**Section 5. COMPENSATION & CONSIDERATION**

- (a) In consideration of and for the successful completion of the services described herein, the Commission shall pay the Contractor for a total project cost not to exceed \$300,000 The amount to be paid for labor will be calculated according to the hourly billing rates for the various personnel, supplies and materials, as referenced in the Contractor’s quote. All

projects and hourly charges must be approved by Executive Director of the Montana Heritage Commission in writing prior to beginning construction on all projects.

- (b) The Contractor may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of other eligible expenses incurred during the billing period, and the total amount being billed.
- (c) The Contractor may be required to provide banking information at the time of Contract execution in order to facilitate electronic funds transfer payments.
- (d) The Commission may withhold payments to the Contractor if the Contractor has breached the terms of the Contract.

## **Section 6. PROJECT MONITORING**

The Commission, the Department of Commerce, or their authorized agents may monitor and inspect all phases and aspects of the Contractor's performance to determine compliance with the terms and conditions of this Contract, including the adequacy of the Contractor's records and accounts. The Commission will advise the Contractor of any specific areas of concern and provide the Contractor opportunity to propose corrective actions acceptable to the Commission.

## **Section 7. ACCESS TO AND RETENTION OF RECORDS**

The Contractor agrees to provide the Commission, the Montana Department of Commerce (the Department), the Montana Legislative Auditor, or their authorized agents access to any records necessary to make audits, examinations, excerpts, transcriptions, or to determine Contract compliance. The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three (3) years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or any third party, whichever is later. These records will be kept in the Contractor's offices in Helena, Montana.

**For the Contractor:**

**Chere Juisto**  
**Montana Preservation Alliance**  
**120 Reeder's Alley**  
**Helena, MT 59601**  
**406-457-2822**  
**chere@preservemontana.org**

**For the Commission:**

Elijah Allen, Executive Director  
Montana Heritage Commission  
P.O. Box 338  
Virginia City, MT 59755  
406-843-5247

**Section 8. COMPLIANCE WITH NONDISCRIMINATION LAWS**

The Contractor must, in performance of work under this Contract, fully comply with all applicable federal, state, or local nondiscrimination laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Section 109 of the Housing and Community Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Executive Order 11246 of September 24, 1965, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, ancestry, creed, political ideas, sex, age, pregnancy, marital or parental status, familial status, physical, mental, emotional, or learning disability, or national origin by the persons performing the Contract.

**Section 9. AVOIDANCE OF CONFLICT OF INTEREST**

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its services under this Contract. The Contractor further covenants that, in the performance of this Contract, it will employ no person who has any such interest. The Contractor will comply with sections 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA (as applicable) regarding the avoidance of conflict of interest.

**Section 10. TERMINATION OF CONTRACT**

The Commission may, by written notice to the Contractor, terminate this Contract in whole or in part at any time the Contractor fails to perform the Contract.

## **Section II. FAILURE TO HONOR CONTRACT**

If the Contractor fails to deliver in accordance with the Contract terms and conditions, the State Procurement Bureau may, in its discretion, suspend the Contractor for a period of time from entering into any contracts with the State of Montana.

## **Section 12. INDEPENDENT CONTRACTOR**

It is understood by the parties hereto that Contractor is an independent contractor and as such, neither it nor its employees, if any, are employees of the Commission or the State of Montana for purposes of tax, retirement system, or social security (FICA) withholding.

## **Section 13. HOLD HARMLESS AND INDEMNIFICATION**

Contractor agrees to protect, defend, and save the Commission, the Montana Department of Commerce, and the State, their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties due bodily or personal injuries, death, or damages of any kind arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, assigns, subcontractors, or representatives, except the sole negligence of the Commission, the Department of Commerce, or the State, under this Contract.

## **SECTION 14. INSURANCE**

*General Requirements:* The Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

*Primary Insurance:* The Contractor's insurance coverage shall be primary insurance as respect to the Commission, the Department of Commerce, the State, and their elected or appointed officers, officials, employees, and volunteers. The State's insurance is in excess to the Contractor's insurance and shall not contribute with it.

*Specific Requirements:* The Contractor shall purchase and maintain Commercial General Liability (occurrence coverage) with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

*Additional Insured Status:* The Commission, the Department, the State, and their officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

*Certificate of Insurance/Endorsements:* Insurance shall be placed with a carrier licensed to do business in the State of Montana with a Best's rating of at least A-. The certificate with

endorsements must be received by the Commission prior to beginning any activity provided for under the Contract. This insurance must be maintained for the duration of the Contract. The Contractor shall notify the Commission immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Commission reserves the right to require complete copies of insurance policies at all times.

#### **Section 15. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

The Contractor shall not assign, transfer, or subcontract any portion of this Contract without the express written consent of the Commission. Any subcontractor or assignee will be bound by the terms and conditions of the Contract.

#### **Section 16. WAIVER OF DEFAULT**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract.

#### **Section 17. CONTRACT AMENDMENT**

Except as otherwise set forth herein, this Contract may not be enlarged, modified, or altered except upon written agreement by all parties to the Contract.

#### **Section 18. JURISDICTION AND VENUE**

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract 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.

#### **Section 19. SEPARABILITY**

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

#### **Section 20. NOTICE**

All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons identified herein either by first class mail or personal service, or at such other address as may be designated by notice from a party to the other.

#### **Section 21. REFERENCE TO CONTRACT**

The Contract number must appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract.

## **Section 22. NO ARBITRATION**

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

## **Section 23. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with Sections 39-71-401, 39-71-405, and 39-41-417, 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 Contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and renewal documents must be sent to the Commission.

## **Section 24. FORCE MAJEURE**

Neither party shall be 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 non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

## **Section 25. DEBARMENT**

The Contractor certifies and agrees to ensure during the term of this Contract that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any governmental department or agency.

## **Section 26. OWNERSHIP AND PUBLICATION OF MATERIALS**

All reports, information, data, and other materials prepared by the Contractor, or any of its contractors or subcontractors, in furtherance of this Contract are the property of the Contractor and the Commission, which both have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, in whole or part, such property and any information relating thereto. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Commission and the Contractor.

**Section 27. REGISTRATION WITH 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 Mont. Code Ann. §§ 35-1-1026 and 35-8-1001. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

**Section 28. INTEGRATION**

The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties hereto have caused this Contract to be executed.

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Chere Juisto  
Montana Preservation Alliance

\_\_\_\_\_  
Date

\_\_\_\_\_  
Elijah Allen, Executive Director  
Commission

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Department of Commerce Legal Counsel

\_\_\_\_\_  
Date