

**Interlocal Agreement
Related to Rehabilitation of the Federal Building
Between
City of Missoula and County of Missoula**

This Interlocal Agreement related to rehabilitation of the Missoula Federal Building (this “Agreement”), is entered into by and between the City of Missoula, (the “City”), a municipal corporation and political subdivision of the State of Montana, and the County of Missoula (the “County”), a political subdivision of the State of Montana.

Recitals:

WHEREAS, on July 7, 2020, the federal General Services Administration (“GSA”) published a Notice of Surplus Determination announcing its intention to dispose of the Missoula Federal Building located at 200 East Broadway Street (“Federal Building”); and

WHEREAS, both the City of Missoula and Missoula County (collectively “the Parties”) need and desire additional space for the provision of government services; and

WHEREAS, on July 24, 2020, the parties completed an Interlocal Agreement to cooperate in the acquisition and management of services to assist in addressing facility needs for the City and County of Missoula; and

WHEREAS, investigation completed under that Interlocal Agreement evidenced that acquisition and rehabilitation of the Federal Building is a beneficial and cost-effective way to address City and County facility needs; and

WHEREAS, the Parties believe that acquisition and redevelopment of the Federal Building would preserve a unique historical resource, better serve the public, and otherwise benefit Missoulians; and

WHEREAS, the City and County have the opportunity to receive the Federal Building as a historic monument transfer under 40 U.S.C. § 550(h) at no cost; and

WHEREAS, on behalf of the Parties, as directed by City Council resolution on June 28, 2021, the City applied to the National Park Service (“NPS”) and GSA to receive the building as a historic monument transfer; and

WHEREAS, the City and County entered into, on July 2, 2021, a Memorandum of Understanding regarding acquisition of the Federal Building which outlined the intention of the Parties to research, create, draft, and approve documents necessary to create a jointly owned entity to assume ownership and management of the Federal Building, and to take other necessary steps to accomplish that goal; and

WHEREAS, in order to conserve public funds and timely commence rehabilitation and preservation of the Federal Building the Parties desire to perform the design and engineering work related to the rehabilitation of the Federal Building for use as City and County government operations in advance of the building being formally conveyed to the Parties; and

WHEREAS, it is necessary and desirable that the City and the County enter into this Interlocal Agreement to establish judicious decisionmaking procedures, articulate the parties' respective responsibilities, and govern the use of public funds subject to this Agreement.

NOW THEREFORE, based on the above recitals, and the mutual covenants and conditions detailed below, the parties agree to the following:

Article I. PURPOSE

The purpose of this Agreement is to articulate how the County and the City will manage all aspects of the design and rehabilitation of the Federal Building.

Article II. AUTHORITY

Interlocal Agreements are authorized within the provision of Title 7, Chapter 11, Part 1, MCA, known as The Interlocal Cooperation Act, the purpose of which is to permit local governments to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage.

Article III. EFFECTIVE DATE, DURATION, ASSUMPTION OF PRIOR CONTRACTS

1. This Agreement will become effective and binding upon ratification and execution by both parties.
2. This Agreement will remain in effect until one or both parties withdraw pursuant to the provisions of this Agreement.
3. Upon completion, determined by the Project Executives, the Agreement will terminate.
4. This Agreement succeeds and dissolves the Interlocal Agreement between the parties dated July 24, 2020, to cooperate in the acquisition and management of services to assist in addressing facility needs for the City and County of Missoula. Decisions made jointly under the provisions of that agreement, including procurement of services, are continued and assumed by the Parties under this Agreement unless otherwise abrogated.

Article IV. DEFINITIONS AND EXHIBITS

1. **Definitions.** In this Agreement the following terms have the meanings given to them in this Section.
 - 1.1. "Board" means the Missoula County Board of County Commissioners.
 - 1.2. "City Project Executive" means the Chief Administrative Officer of the City or his/her designee.

- 1.3. “Common Areas” means areas of the Federal Building open and available to use by Parties or generally by members of the public, such as entrance ways, staircases, shared storage, bathrooms, and mechanical rooms.
- 1.4. “Common Systems” means mechanical and building systems that serve the entire building, such as HVAC, electrical, plumbing, roofing.
- 1.5. “County Project Executive” means the Chief Administrative Officer of the County or his/her designee.
- 1.6. “Financial Services” means receiving, validating, processing and paying invoices for services performed under executed contracts with vendors.
- 1.7. “Governing Body” means the City Council in the case of the City and the Board in the case of the County.
- 1.8. “Project Related Costs” means costs of designing, engineering, constructing, equipping, and furnishing the Federal Building, and includes ancillary matters such as site preparation, assembling lots or parcels, soils tests, surveys, historical or archaeological surveys, abatement of safety hazards, and similar matters; Project Related Costs are a capital expenditure included in the overall capital cost of the undertaking.
- 1.9. “Vendor” means any contractor or outside entity contracted to provide goods or services relative to the project.

2. **Exhibits.** The following exhibits are attached hereto and incorporated by reference.

Exhibit A: Preservation and Use Plan

Exhibit B: Reserved

Exhibit C: Reserved

Article V. CITY OF MISSOULA RESPONSIBILITIES

1. **Financial Services for City Expenses.** The City will provide financial services for City Expenses, as defined below.
2. **Act in Good Faith; Timely Responses to Action Items.** The City, and all its employees, officers, and agents, shall act in good faith in all matters arising from this Agreement. The City shall respond in a reasonably timely manner to all items requiring its input or assent.
3. **Prompt Payments.** Unless there is a disagreement about the expense, as discussed below, where the County has made payments on Joint Expenses and requested payment from the City for the City’s share of the cost of services performed in furtherance of Joint Expenses, the City shall make payments within 30 days upon receipt of a request for payment from the County.

Article VI. COUNTY OF MISSOULA RESPONSIBILITIES

1. **Financial Services for County Expenses.** The County will provide financial services for County Expenses, as defined below.
2. **Financial Services for Joint Expenses.** The County will provide financial services for Joint Expenses, as defined below. For Joint Expenses, or for invoices encompassing City Expenses, the County will receive the bills, process and pay invoices for services performed, and request payment from the City for City Expenses and the City's share of the cost of services performed in furtherance of Joint Expenses.
3. **Act in Good Faith; Timely Responses to Action Items.** The County, and all its employees, officers, and agents, shall act in good faith in all matters arising from this Agreement. The County shall respond in a reasonably timely manner to all items requiring its input or assent.

Article VII. ALLOCATION OF EXPENSES

1. **Categorization of Expenses.** Each project expense for the Federal Building project completed under the provisions of this Agreement and paid to external parties shall be allocated by the Project Management Team to one of three categories: Joint Expense; City Expense; or County Expense.
 - 1.1. Where vendors may incur expenses which fall into more than one of these categories, contracts with those vendors must stipulate that the vendor will categorize all expenses in any invoice.
2. **Default Cost Split.** In general, and by default, the City and County shall each be responsible for 50% of any Joint expenses. A different pro rata split for specific expenses or categories of expenses may be approved by the Oversight Team either because one party benefits disproportionately from the expense or to facilitate the full collective utilization of funding available only for specific, limited portions of the project. Common areas and common systems shall be considered a Joint expense unless a particular system needs to be oversized for one party's specific needs (e.g., increased electrical and HVAC needs associated with hosting servers in the building, which shall be an expense allocated to the Party needing the oversizing). Once a final design has been selected, the Oversight Team may decide to change the default cost split to a pro-rata share based on the percentage of the total square footage allocated to each Party's use, not to include common areas which shall be evenly split between the Parties.
3. **City Expenses.** The City shall be responsible for City Expenses, which are those expenses incurred solely on behalf of the City of Missoula for vendors under contract with the City or under contract with the County on behalf of the City.

4. **County Expenses.** The County shall be responsible for County expenses, which are those expenses incurred solely on behalf of Missoula County for vendors under contract with the County.
5. **Disagreement Regarding the Appropriate Allocation of Expenses.** The Project Managers shall discuss and resolve any disagreement regarding the appropriate allocation of expenses. In the event of lack of resolution, or in the event that an ambiguous or disputed expense will or may exceed \$25,000, the Oversight Team shall allocate the expense.

Article VIII. THE FEDERAL BUILDING UNDERTAKING

1. **Development of Federal Building.** The County and the City agree that the County and the City shall at all times during the design, construction, equipping, and furnishing of Federal Building conceive of the project as one integrated and whole site such that determinations in terms of design, construction and equipping will be made from the perspective of creating a unified design and how the Federal Building can best be preserved and utilized as a whole for the citizens of Missoula County and the City of Missoula. However, the County and the City shall each also have substantial discretion to make design decisions for areas of the building designated for use by one Party that could, to some extent, be in tension with broader joint goals. Factors to be considered during design and implementation include:
 - 1.1. Compliance with all terms of conveyance, including but not limited to the Preservation and Use Plan approved by the National Park Service.
 - 1.2. Compliance with policies of the City and the County relative to procurement, conservation, planning, and other relevant matters.
 - 1.3. Quality of service delivered to the public.
 - 1.4. Quality of work environment for County and City employees.
 - 1.5. Short- and long-term operations and maintenance efficacy and costs.
 - 1.6. Current and future capital costs.
2. **County as Contracting Party.**
 - 2.1. Contracting Authority. The County will, following compliance with applicable laws, policies, and procedures related to procurement and contracting, and after receiving input from the Project Management Team, approval by the Oversight Team, and approval as appropriate by the Board, enter into contracts with third-party professionals pertaining to the design and construction of improvements related to the Federal Building Undertaking.
 - 2.2. Execution of Documents. The Board will, following appropriate review and approval, including, without limitation, input from the Project Management Team and the Oversight Team, sign contract change orders, amendments, and other documents relating to contracts for the design and construction of Federal Building.

- 2.3. Payment Authority. The County will, following appropriate review and approval, including, without limitation, input from the Project Management Team, the Oversight Team, and/or the Board, pay invoices and progress billings under design, construction, and other relevant contracts related to the Federal Building Undertaking.

3. Project Management Team.

- 3.1. Make Up of the Project Management Team. The Project Management Team will consist of six (6) persons in total, three (3) designated from time to time by the Chief Administrative Officer of the County and three (3) designated from time to time by the Chief Administrative Officer of the City. The Project Management Team will remain constituted and in effect until substantial completion of the improvements to the Federal Building Undertaking.
- 3.2. Operation of the Project Management Team. The Project Management Team will manage the day-to-day work relating to the design and construction of Federal Building. The Project Management Team will meet on a regular basis throughout the development of Federal Building and such meetings may include, as appropriate, professionals within and outside of the County and the City who are then involved with the Federal Building Undertaking. The County and the City understand and agree that the primary focus and concentration of work of the Project Management Team will change as Federal Building is developed and the Project Management Team will endeavor to plan for changing needs, expertise, and focus as the improvements proceed at Federal Building.
- 3.3. Project Management Team Responsibilities. The Project Management Team will be responsible for undertaking the work regarding the development of Federal Building relating to:
- 3.3.1. Procurement and contracting for the design team, construction contractor, and other contractors and other vendors;
 - 3.3.2. Review and approval of design documents, change orders, invoices, and progress billings;
 - 3.3.3. Review and approval of requests for draws to pay Project Related Costs or Eligible Transaction Costs;
 - 3.3.4. Budget monitoring;
 - 3.3.5. Evaluation or assessment of the design team, construction contractor, and other contractors or other vendors; and
 - 3.3.6. Compliance with contractual obligations; recognizing, however, that in certain instances the above activities will not be final without the review or approval of the Oversight Team and/or the Governing Body.
- 3.4. Public Engagement. The Project Management Team will ensure that project costs and construction progress information are provided to the public on at least a quarterly basis

on the City and County websites and by other means as determined by the project management team.

- 3.5. Action Upon Impasse at the Project Management Team. In the event the Project Management Team is unable to reach consensus on matters that require resolution for work at Federal Building to move forward (e.g. impasse with cost split or design elements), the Project Management Team will bring such matters promptly to the attention of the Oversight Team for resolution of such matters.
- 3.6. Action in the Event of Cost Overruns. In the event of cost overruns or threatened cost overruns for any reason, including actual or impending change orders, the Project Management Team will bring the details of such actual or threatened cost overruns to the attention of the Oversight Team for a determination by the Oversight Team of the appropriate resolution of such overruns and the required or appropriate procedures relating to such overruns, including, without limitation, and as appropriate, seeking resolution by the Governing Bodies.
- 3.7. Periodic Reports to Oversight Team. The Project Management Team will report periodically on the progress of the Federal Building Undertaking to the Oversight Team.
- 3.8. Adoption of Governing Rules. The Project Management Team may develop rules or protocols for implementation of its responsibilities under this Agreement, so long as such rules or protocols are consistent with this Agreement.

4. Oversight Team.

- 4.1. Make Up of Oversight Team. The Oversight Team will consist of six (6) persons, three (3) of whom are employees of the County and three (3) of whom are employees of the City. The employees of the County who are members of the Oversight Team will be the Chief Administrative Officer and two other County employees designated from time to time by the Chief Administrative Officer of the County. The employees of the City who are members of the Oversight Team will be the Chief Administrative Officer of the City and two other City employees designated from time to time by the Chief Administrative Officer of the City. The Oversight Team will remain constituted and in effect until substantial completion of the improvements to the Federal Building.
- 4.2. Responsibilities of the Oversight Team. The Oversight Team, or individual members of the Oversight Team, will seek to ensure that the applicable policies and procedures of the County and of the City are being followed, that public information regarding the Federal Building is made available to the public as required by law, and that appropriate matters are brought before the Governing Bodies. In addition, the Oversight Team will:
 - 4.2.1. Be available to consult with and advise the Project Management Team;
 - 4.2.2. Be charged with resolving any impasse that may arise or threaten to arise in the work of the Project Management Team; and

- 4.2.3. Be responsible for coordinating matters regarding the Federal Building Undertaking that need to be or are appropriate for being brought before the respective Governing Bodies.
- 4.2.4. The Oversight Team will have such additional responsibilities as become apparent and appropriate as work on the Federal Building Undertaking proceeds. The Oversight Team may develop rules or protocols for implementation of its responsibilities under this Agreement, so long as such rules or protocols are consistent with this Agreement.
- 4.3. Resolving Impasse at the Project Management Team. Whenever matters are referred to the Oversight Team pursuant to Section 3.5 above, the Oversight Team shall attempt to informally resolve the issue. If the Oversight Team is unable to resolve the matter, the Parties shall cause the matter to be heard by each Parties' Governing Body, which shall attempt to finally resolve the matter. In the event the Governing Bodies are unable to informally resolve the matter, the Parties shall submit to binding mediation, to be conducted by a mediator jointly selected by the Parties.

Article IX. OPERATION, MANAGEMENT, AND MAINTENANCE OF FEDERAL BUILDING

- 1. General.** Upon completion of the improvements forming a part of the Federal Building Undertaking, the City and the County will operate, manage, and maintain the Federal Building. The particulars regarding such operation, management, and maintenance will be set forth in a subsequent agreement or other document between the City and the County (the "Management Document").
- 2. Governing Principles.** The City and the County agree that:
 - 2.1. User fees, rental revenues, management fees, and other moneys received by the City or the County from the management or operation of Federal Building will be applied to operations, maintenance, and preservation of the Federal Building, and to reduce costs of maintaining Federal Building, as more particularly set forth in the Management Document.
 - 2.2. The City and County will provide for efficient management and operation of the Federal Building for benefit of the community including use of limited-term, third-party contracts for services necessary to provide for the maintenance, repair, use, and operation of the Federal Building.
 - 2.3. Neither the City nor the County will enter into long-term (greater than one year) contracts with a third party regarding the management or operation of facilities at Federal Building or any lease or sublease of space at such building or any other arrangement regarding revenue producing facilities at such building without the prior written approval of the other party (i.e., the City or the County, as the case may be), which approval will not be unreasonably withheld. Any fees, revenues, or other money

received by the City or the County as a result of such contract or arrangement will be applied to operations, maintenance, and preservation of the Federal Building, and to reduce costs of maintaining Federal Building, as more particularly set forth in the Management Document.

- 2.4. The City and the County will manage and utilize the Federal Building in accord with the Preservation and Use Plan approved by the National Park Service and other principles of sound management as more particularly set forth in the Management Document.

Article X. FINANCING

At the outset of this Agreement, each Party shall pay all costs associated with this Agreement out of that Party's general fund. The County shall be responsible for establishing and maintaining a budget for this undertaking.

Article XI. COORDINATION OF PROVISIONS OF THIS AGREEMENT WITH THIRD-PARTY CONTRACTS

For any of the undertakings done pursuant to this Agreement, the Parties will endeavor to include in their contracts with third parties provisions or references to provisions from this Agreement that bear upon performance by the City or the County and the third party under the third-party contract or that otherwise affect such third-party contract. For example, and for illustrative purposes only, in the contract between the County and the design team regarding the Federal Building Undertaking, the County will endeavor to include applicable information regarding the Project Management Team, the Oversight Team, the Governing Bodies, and such other details contained in this Agreement as will bear upon the contract between the design team and the County regarding Federal Building. The Party entering into a contract with a third party shall require that the non-contracting Party (i.e. the City in a County contract with a third party; and vice versa...) be named as an additional insured, and that the third-party contractor agree to indemnify the non-contracting Party.

Commented [EG1]: **Editor Note** It may be appropriate to request that third-party contracts include indemnification and insurance clauses agreed upon by the city and county. We want to ensure the county is a named additional insured as well as that it is included in indemnity provisions even where a contract may be negotiated by the city.

Article XII. WITHDRAWAL AND DISSOLUTION

1. Withdrawal; Delivery of Notice. This agreement will remain in effect until one or both parties withdraw by giving notice in writing from one Project Executive to the other.

2. Expenses Up to Effective Date of Withdrawal. Expenses incurred to effective date of withdrawal shall be paid by the withdrawing party. Expenses not yet incurred but committed to by the parties in the form of written contracts with vendors shall continue to be paid by the withdrawing party. Expenses not yet incurred or committed to in the form of written contracts shall not be the responsibility of the exiting party.

Article XIII. INDEMNIFICATION

County shall defend, indemnify and hold harmless the City, its employees and agents, from all claims, liabilities, demands, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of County, its employees or agents.

City shall defend, indemnify and hold harmless County, its employees and agents, from all claims, liabilities, demands, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of the City, its employees or agents.

Article XIV. LIABILITIES AND INSURANCE

Both Parties shall provide premises and general liability insurance for the Federal Building. The Parties shall maintain general liability insurance in such amounts as to ensure the ability to pay claims up to the tort claims limits listed in Section 2-9-108, MCA. Any liability claims related to the building shall be made equally to each Party's insurance provider, unless such claim arises from an event in an area of exclusive use by one party. Any payments made on any claims for shared or public spaces shall be split equally between the Parties; claims arising from events in an area of sole use by one party shall be that parties sole responsibility.

This Article XIV is intended to only apply to the initial design, engineering, and early construction phase of the rehabilitation of the Federal Building. The parties agree this provision will not apply to the long-term operation or maintenance of the building, as the Parties will need to find an alternative method to address insurance and liability issues at the Federal Building after this initial phase. The Parties will negotiate a liability and insurance provision applicable to operation and/or maintenance which will be incorporated into an operation and maintenance interlocal agreement or other governing document. This provision applies until a subsequent provision regarding insurance and liability is agreed to in a subsequent agreement, or until Termination of this Agreement pursuant to Article XII.

Article XV. AMENDMENT OF AGREEMENT

1. **Request of Either Party.** Either party may initiate a request to amend this Agreement by a member of the Oversight Team of one party providing a written copy of the proposed amendment to the members of the Oversight Team of the other party for review and consideration.
2. **Required Review Action.** The Governing Body in receipt of the proposed amendment will respond in writing within 30 days to the party initiating the request to amend the Agreement. Such response will clearly articulate acceptance or rejection of the proposed amendment in part or in whole, or request additional information or discussion. However, the recipient Governing Body need not act on a proposed amendment until the Governing Body of the requesting party has approved the amendment. Such action by the recipient Governing Body

may include a refusal to proceed with the proposed amendment or a decision to defer a determination.

3. **Effective Date.** Any amendment to this Agreement will become effective on the date the amendment is executed by both Parties.

Article XVI. MISCELLANEOUS PROVISIONS

1. **No Joint Entity Created.** This Agreement does not affect responsibility of each of the parties hereto to manage its own affairs. With the exception of a potential Special District, which must be established pursuant to procedures set out in state law before being created, no joint board or budget shall result from the undertakings set forth in this Agreement and no partnership or joint venture exists or shall be deemed to exist between the City and the County as a result of this Agreement, notwithstanding terms such as “Project Management Team” or “Oversight Team.”
2. **Headings.** The headings used herein are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any provision contained herein.
3. **Entire Agreement.** The City and the County intend that the terms of this Agreement shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement. The City and the County further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative, arbitral, or other legal proceeding involving this Agreement.
4. **Notice.** Any notice or response required by this Agreement is considered effective once it has been delivered to the U.S. Mail, or sent via electronic means. Notice shall be delivered to the designated City/County Project Executive.
5. **Severability.** If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
6. **Further Assurances.** The City and the County will cooperate in undertaking such activities and executing all further documents necessary or appropriate to effect the transactions discussed herein. The foregoing provision will be construed liberally to enable the City and the County to implement the terms of this Agreement without having to amend this Agreement.
7. **No Assignment.** This Agreement shall not be assigned by the City or the County.
8. **Counterparts.** This Agreement may be executed in counterparts, all of which, when taken together, will constitute one and the same agreement.
9. **Effective Date.** This Agreement is effective upon the date of the last signature below.

IN WITNESS WHEREOF, the Parties have caused this instrument to be duly executed by its proper officers on the dates shown below, to be effective as of the effective date first set forth above.

CITY OF MISSOULA:

COUNTY OF MISSOULA: