

FEIN: 81-0467791
AWARD DATE: 04/18/2022

AFFORDABLE HOUSING TRUST FUND AWARD AGREEMENT
AWARD AGREEMENT NUMBER _____

This Award Agreement is entered into by Habitat for Humanity of Missoula (“AWARDEE”), a Montana non-profit corporation located at 3655 MT Highway 200 E, Missoula, MT 59802, and the City of Missoula, Montana, principally located at 435 Ryman Street, Missoula, MT (CITY).

RECITALS

- A. The Affordable Housing Trust Fund (AHTF) was established by ordinance in 2020 and is administered by the City of Missoula with oversight from the mayor and the Affordable Housing Resident Oversight Committee. The objective of the AHTF is the development and preservation of affordable housing.
- B. The Affordable Housing Trust Fund receives revenue from the General Fund, revenue from City owned land sales and American Rescue Plan Act investment. Other allowable revenue sources are outlined in the Ordinance (3663) and Funding Resolution (8440). The AHTF has received allocations of funds to be administered by the City in furtherance of the program objectives.
- C. The City of Missoula utilizes a competitive application process to determine how to allocate and spend the AHTF funds awarded allocated annually through the Allocation Plan.
- D. AWARDEE applied for AHTF funds. This application has been fully reviewed and approved by the Missoula City Council in compliance with public open-meeting requirements.

Now therefore, based on the Recitals above, AWARDEE and the City agree to the following terms:

1. PURPOSE

The purpose of this Award Agreement is to provide funding for project activities approved by the City under the Affordable Housing Trust Fund Program. The terms, obligations and requirements that AWARDEE needs to perform in exchange for this award of funding are set forth in this Award Agreement, and upon execution of this Award Agreement, are binding on all parties.

2. APPLICATION INCORPORATED BY REFERENCE

AWARDEE's application for an AHTF award is incorporated into this Award Agreement by this reference and all representations made in the application are binding upon AWARDEE, including financial match commitments. If AWARDEE undertakes activities not represented in the application this Award Agreement may be subject to termination pursuant to the terms of Section 23 of this Award Agreement.

3. ACCEPTANCE OF AHTF PROGRAM REQUIREMENTS

AWARDEE will comply with all applicable parts of Affordable Housing Trust Fund Policies and Procedures manual; the applicable Affordable Housing Trust Fund Ordinance regulations in Chapter 3.24 Missoula Municipal Code, as now in effect or as they may be amended during the term of this Award Agreement; all requirements established by the City; applicable State and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.

AWARDEE agrees that all contracts entered into by it for the completion of the activities set forth in their application and summarized in Section 6 of this Award Agreement will contain special provisions requiring contractors to comply with all applicable state and federal requirements.

AWARDEE expressly agrees to repay to the City any funds advanced to AWARDEE under this Award Agreement which AWARDEE, its subcontractors or subrecipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Award Agreement expends in violation of the terms of this Award Agreement or the federal statutes and regulations governing the AHTF Program.

4. ADMINISTRATION

The City of Missoula (the City) shall administer this award. Any reference to the City indicates an administrative function to be performed by the City of Missoula staff members.

5. EFFECTIVE DATE AND TIME OF PERFORMANCE

Contingent on the completion of all items in Section 8 (below), this Award Agreement shall take effect upon execution by all the parties, or April 18, 2022 whichever occurs later, and end on June 30, 2023. AWARDEE may be able to receive reimbursement for costs expended in furtherance of the approved list of activities contained in AWARDEE's application for costs incurred between November 1 and the date of execution of this Award Agreement. Reimbursement for already expended costs is purely a discretionary decision to be made by the City staff members, and shall be evaluated on a case-by-case basis. If reimbursement is allowed, reimbursement for already expended costs is limited to only those costs allowed by established AHTF policies and procedures.

6. SCOPE OF ACTIVITIES

The allocation of AHTF funds awarded to AWARDDEE by the City must be utilized to achieve and/or perform the identified list of activities set forth in AWARDDEE's application for AHTF grant assistance. By accepting the AHTF award, AWARDDEE agrees to perform all activities identified in its AHTF application. The major components of the approved project include, but are not limited to:

- Purchase, placement, and associated costs of two modular structures onto Habitat-owned parcel

7. AMOUNT OF AWARD AND BUDGET

- (a) The total amount of AHTF funds awarded to AWARDDEE by the City will not exceed \$190,250. The City will have no obligation to pay for any project activities that exceed this award amount.
- (b) A copy of the project budget is included as Attachment B to this Award Agreement, and by this reference is made a part of this Award Agreement and binding upon AWARDDEE.

8. SPECIAL CONDITIONS

- (a) AWARDDEE will not obligate or utilize AHTF funds for any activities provided for by this Award Agreement until:
 - The approval of the funding recommendation by City Council;
 - The issuance of a Release of Funds Letter by the City; and
 - All sources outlined in the submitted and approved budget have been confirmed.
- (b) Reversion of assets. Upon expiration of this agreement, AWARDDEE shall transfer to CITY any AHTF funds on hand at the time of expiration and any accounts receivable attributable to the use of AHTF funds.
- (c) In all contracts with its subcontractors and subrecipients, AWARDDEE will require all contract provisions, clauses, and conditions as are required by the applicable year's version of the City of Missoula AHTF Policies and Procedures Manual.

9. PROCEDURE FOR DISBURSEMENT OF FUNDS

- (a) The City will pay to AWARDDEE funds available under this Award Agreement upon approval by the City of AWARDDEE's Request for Payment. The City will reimburse AWARDDEE for approved, eligible and necessary expenses according to the documentation submitted by AWARDDEE to support the expenditures. The City will

not reimburse Awardee for any expenses not included in the approved budget or not clearly and accurately supported by Awardee's records. Any awarded funds not expended by Awardee within 18 months of the date of execution of this Award Agreement will revert to the City and will be used to finance other AHTF projects.

- (b) For non-construction projects, a monetary retainage of 10% of the AHTF program award shall be withheld by the City until satisfactory completion of the scope of activities outlined in Section 6 of this agreement and all reporting and closeout requirements in Section 13 of this agreement have been satisfied.
- (c) The reimbursement of eligible costs incurred is contingent upon Awardee's compliance of Section 8. SPECIAL CONDITIONS. In the event Awardee is unable to comply with the terms and the conditions of this Award Agreement, any costs incurred will be Awardee's sole responsibility.
- (d) If the actual total cost of completing the project is less than has been projected by Awardee in the budget (Attachment B), the City may, at its discretion, reduce the amount to be provided to Awardee under this Award Agreement in proportion to the overall savings.
- (e) If the City determines that Awardee has failed to satisfactorily carry out its responsibilities under this Award Agreement, the City may revoke Awardee's authority to draw against the awarded funds described in this Award Agreement until the City and Awardee agree on a plan to remedy the deficiency.
- (f) The City reserves the right to withdraw a commitment for any AHTF funds which remain unobligated 18 months after the date of execution of this Award Agreement.

10. NOTICE

All notices, demands, and consents provided for in this Award Agreement must be given in writing and shall be sent by U.S. Mail, hand-delivered, or emailed to the following:

The City's contact for all administrative and technical matters concerning this Award Agreement is:

Aubrey Godbey, AHTF Program Coordinator (or Successor)
City of Missoula Office of Housing and Community Development
435 Ryman Street
Missoula, MT 59802
(406) 552 6219
godbeya@ci.missoula.mt.us

Awardee's contact for all administrative and technical matters concerning this Award Agreement is:

Heather Harp, Executive Director (or Successor)
PO Box 7181
Missoula, MT 59807
(406) 549 8210
director@habitatmsla.org

11. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor pursuant to this Award Agreement are to be the property of AWARDEE and the City which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating thereto. No material produced in whole or part under this Award Agreement may be copyrighted or patented in the United States or in any other country without the City's prior written approval.

12. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) AWARDEE will maintain adequate and reasonable records of its performance under this Award Agreement and will allow access to these records at any time during normal business hours by the City and its auditors. These records will be kept in AWARDEE's offices in Missoula, Montana for a period not less than four (4) years as measured from the date of contract expiration.
- (b) The City may monitor and inspect all phases and aspects of AWARDEE's performance to determine compliance with the Scope of Activities, and other technical and administrative requirements, including the adequacy of AWARDEE's records and accounts. The City will advise AWARDEE of any specific areas of concern and provide AWARDEE opportunity to propose corrective actions acceptable to the City.

13. PROJECT PROGRESS REPORTING AND CLOSEOUT

- (a) During the term of this Award Agreement, AWARDEE will submit a Project Progress Report to the City during each quarter for the periods ending September, December, March, and June. This report must describe the status of the project with respect to each implementation objective including, at a minimum, the percentage of the project which has been completed, costs incurred, funds remaining and anticipated completion date. The report must also provide beneficiary demographic information. The report must also describe any significant problems encountered and any necessary modification of the project scope or implementation schedule that are being requested (Attachment A, Project Schedule).
- (b) AWARDEE will submit the Project Progress Report to the City within 15 days of the close of each quarter. The City will not honor claims for payment until the required quarterly report has been submitted to and approved by the City. Project Progress Reports submitted during a quarter in conjunction with a Request for Payment will

satisfy the quarterly progress-reporting requirement.

- (c) In order for the City to closeout this sub-award and remit final payment, AWARDEE must complete all required reporting.

14. NON-DISCRIMINATION

All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

15. AFFIRMATIVE ACTION POLICY

Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, titled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula is committed to implement affirmative action to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, national origin, sex, age, marital status, creed, ex-offender status, physical condition, political beliefs, public assistance status, sexual preference, sexual orientation, gender identity or gender expression. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility of actively facilitating equal opportunity for present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all personnel actions are administered on the basis of job necessity.

Specific responsibility for development, implementation, monitoring and reporting will be assigned to the City Personnel staff under the supervision of the Mayor's Administrative Assistant.

It is the policy of the City of Missoula to take affirmative action to eliminate discrimination in personnel policies and procedures that have adverse impact on the "affected class" unless sex, ex-offenders' status, and/or physical or mental handicap relates to a bona fide occupational qualification. Equal opportunities shall be provided for all City employees during their terms of employment. All applicants for City employment shall be recruited from the

available labor market and employed on the basis of their qualifications and abilities. The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees, and applicants.

16. AVOIDANCE OF CONFLICT OF INTEREST

AWARDEE will comply with the provisions of the applicable conflict of interest regulations:

(1) *Conflicts prohibited.* The general rule is that no persons described in paragraph (a) of this section who exercise or have exercised any functions or responsibilities with respect to AHTF activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from an AHTF-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to an AHTF-assisted activity, or with respect to the proceeds of the AHTF-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

(a) *Persons covered.* The conflict-of-interest provisions of paragraph (1) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of AWARDEEs that are receiving funds under this part.

17. MODIFICATION OF AWARD AGREEMENT

This Award Agreement, together with all referenced and incorporated attachments, contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this written Award Agreement, are valid or binding. This Award Agreement may not be enlarged, modified, or altered except upon mutual written agreement of the parties except for amendments made by the City pursuant to Section 23 of this Award Agreement. AWARDEE accepts responsibility for the adherence to the terms of this Award Agreement by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Award Agreement.

18. CONSTRUCTION AND VENUE

This Award Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning the Award Agreement, venue shall be in the

District Court of the Fourth Judicial District in and for the County of Missoula, State of Montana.

19. INDEMNIFICATION

- (a) AWARDEE waives any and all claims and recourse against the City and its officers, employees and agents including the right of contribution, for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to AWARDEE's or any subrecipient's performance under this Service Agreement.
- (b) AWARDEE agrees to indemnify, hold harmless, protect, defend and save the City, its elected and appointed officials, agents and employees, while acting within the scope of their duties as such, against any and all claims, demands, damages, costs, liability, expenses, including reasonable attorneys' fees, or causes of action of any kind or character, including the cost of defense arising out of the performance or omissions of performance or in any way resulting from the acts or omissions of AWARDEE and/or its agents, employees, representatives, assigns, subrecipients, and/or subcontractors under this Agreement.

20. WORKERS' COMPENSATION AND LIABILITY INSURANCE COVERAGE

- (a) Workers' Compensation: AWARDEE must, at their own expense, obtain and keep in force any required workers' compensation insurance. The City of Missoula is not the workers' compensation insurer of AWARDEE's employees. AWARDEE must have current workers' compensation insurance in place for its employees. The City of Missoula shall have no liability with respect to any and all actions of AWARDEE's employees, officers or agents. AWARDEE shall provide the City with a certificate of insurance evidencing AWARDEE's workers' compensation insurance coverage.
- (b) Liability Insurance: AWARDEE must, at their own expense, obtain and keep in force general commercial liability insurance to provide insurance against liability for loss, damage, or injury to property or persons that might arise out of AWARDEE's activities. The City of Missoula shall have no liability with respect to any and all actions of AWARDEE's officers, employees or agents. AWARDEE shall provide the City with a certificate of insurance evidencing liability insurance.

21. AWARD AGREEMENT AMENDMENT

- (a) AWARDEE may request that this Award Agreement be amended. However, the City will allow an amendment only if AWARDEE clearly demonstrates that the modification is justified and will enhance the overall impact of the original project. The City will consider each request to determine whether the modification is substantial enough to necessitate reevaluating the project's original ranking. If warranted, the City will analyze the impact of the proposed modification on the scores assigned AWARDEE's application in the original award competition.

- (b) The City will not approve amendments to the scope of work or the budget that will affect high priority activities or improvements that would materially alter the circumstances under which the award was originally ranked.
- (c) If the City determines that the proposed amendment represents a substantial change in the project activities proposed in the original application for the AHTF award, the City will hold a local public hearing on the amendment with reasonable notice.
- (d) No amendment to the Award Agreement will occur unless the amendment is set forth in writing and signed by the City and AWARDDEE.

22. PROPERTY MANAGEMENT

Title to real property or equipment acquired under a grant or subgrant will vest upon acquisition in AWARDDEE or subgrantee.

23. TERMINATION OF AWARD AGREEMENT

This Award Agreement may be terminated as follows:

- (a) Termination and Modification Due to Loss of Funding. If, for any reason, the financial resources required by the City to fund AWARDDEE's project are withdrawn from the City, the City may unilaterally terminate or modify the terms of this Award Agreement to reflect the loss of funding. If a termination or modification is required, the City will, to the extent permitted by available AHTF funds, compensate AWARDDEE for eligible work elements AWARDDEE has completed and for actual, necessary, and eligible expenses incurred by AWARDDEE as of the revised termination date. The City will give AWARDDEE written notice of the effective date of the modification or termination of this Award Agreement and, if a reduction in funding is required, will provide AWARDDEE with a modified project budget.
- (b) Termination Due to Noncompliance with Award Agreement Terms. If the City determines that AWARDDEE has failed to comply with the general terms and conditions of this Award Agreement, the project schedule (Attachment A), or any special conditions, and if upon notification of the defect AWARDDEE does not remedy the deficiency within a reasonable period to be specified in the notice, the City may terminate this Award Agreement in whole or in part at any time before the date of completion. The City will promptly notify AWARDDEE in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.
- (c) Effect of Termination. In the event of termination due to AWARDDEE's failure to comply with the terms of this Award Agreement or the project's adverse environmental impact, any costs incurred will be the responsibility of AWARDDEE. However, at its discretion, the City may approve requests by AWARDDEE for reimbursement of expenses incurred. The City's decision to authorize payment of these costs or to recover expended AHTF funds will be based on a consideration of

the extent to which the expenditure of those funds represented a good faith effort of AWARDEE to comply with the terms of this Award Agreement and on whether any failure to comply with the terms of this Award Agreement was the result of circumstances beyond AWARDEE's control.

24. WAIVER

The waiver of any of the terms and conditions of this Award Agreement on any occasion or occasions is not to be deemed as waiver of those terms and conditions on any future occasion.

25. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Award Agreement is for any reason held to be invalid, illegal, or unenforceable, such decision shall not affect the validity of the remaining portions of this Award Agreement.

26. ATTORNEY'S FEES

In the event of a breach of the terms of this Award Agreement, each party shall bear their own attorney's fees and costs incurred in the enforcement of the terms of this Award Agreement.

27. SUCCESSORS AND ASSIGNS.

This Award Agreement inures to the benefit of and constitutes a binding obligation on AWARDEE and their respective successors and assigns. AWARDEE may not assign this Award Agreement or any of its duties hereunder without the prior written consent of the City.

28. PERIOD OF AFFORDABILITY FOR HOUSING PROJECTS

Housing activities supported by the AHTF are subject to period of affordability requirements. Housing activities include acquisition, rehabilitation, and/or construction of permanent housing for homeowners and/or renters. The City of Missoula will use the AHTF Period of Affordability policy when determining the length of the period of affordability based on the size of subsidy:

AHTF Investment	Activity	Period of Affordability
<\$30,000	<ul style="list-style-type: none">• Small repair loans• Acquisition• Rehabilitation	20 Years

	<ul style="list-style-type: none"> • Mobile/Manufactured Home Preservation 	
\$30,001-\$100,000	<ul style="list-style-type: none"> • Small repair loans • Acquisition • Rehabilitation • Mobile/Manufactured Home Preservation 	25 Years
\$100,001-\$400,000	<ul style="list-style-type: none"> • Small repair loans • Acquisition • Rehabilitation • Mobile/Manufactured Home Preservation 	30 Years
\$400,001-\$1,000,000	<ul style="list-style-type: none"> • Small repair loans • Acquisition • Rehabilitation • Mobile/Manufactured Home Preservation • All New Construction Projects 	35 Years
Any Level of Investment	<ul style="list-style-type: none"> • Community Land Trusts 	75 Years

The City of Missoula may require AWARDDEE to deed restrict the properties to ensure compliance with the period of affordability.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties have executed this Award Agreement.

CITY OF MISSOULA:

AWARDEE:

John Engen, Mayor

Heather Harp, Executive Director

Date: _____

Date: _____

ATTEST:

Martha L. Rehbein, CMC
City Clerk

STATE OF MONTANA)
)
County of Missoula)

On this ____ day of _____, 2020, before me _____, a Notary Public for the State of Montana, personally appeared, [NAME], Chair, Board of Directors, [ORG] of Missoula in Montana, and acknowledged to me that s/he executed the written instrument on behalf of said Business.

(NOTARY SEAL)

PRINTED NAME: _____
Notary Public for the State of Montana
Residing at _____
My Commission expires _____