

MEMORANDUM OF AGREEMENT

Project Name/Description:

Owner(s):

Owner's (Owners') Address/Phone/Email:

Owner Type: Private

Property Address/Vicinity:

SHF Project Number: #	Total Estimated Project Cost:
Grant Amount:	Match:

SUMMARY

A. On behalf of the Owner and with the Owner's approval and support, Colorado Preservation, Inc. (CPI) has applied for and been awarded a State Historical Fund grant (the "Grant") from History Colorado, an agency of the State of Colorado under the Department of Higher Education ("History Colorado"), for the purpose of carrying out the project described above (the "Project") on the Property.

B. To evidence the terms of the Grant, CPI will enter into a separate contract (the "Contract") with History Colorado substantially in the form attached hereto as Exhibit A.

C. Of the total estimated Project cost, the Contract requires CPI to provide matching funds in the amount shown above as "Match." Owner has raised the Match and has committed such funds to the Project.

D. CPI is responsible for administering the terms of the Grant (including the disbursement of Grant and Matching Funds to providers of services and materials for the Project), and will oversee the Project. In return for such services, CPI will receive a grants administration fee and the reimbursement of indirect costs.

NOW, THEREFORE, the parties agree as follows:

ARTICLE ONE: DEFINITIONS

Section 1.01 Definitions. For purposes of this Agreement, the following capitalized terms have the meanings given them below:

- (a) "Contract" means the grant contract between CPI and History Colorado, included in-full as Exhibit A.
- (b) "Colorado Preservation" means Colorado Preservation, Inc., a Colorado nonprofit corporation and is serving as the grant administrator.
- (c) "Owner" means the person(s) or entity(ies) identified as "Owner" above.
- (d) "Project" means the project to be carried out under the terms of the "Scope of Work" provided for in the Contract, as briefly described above under "Project Description."

- (e) "SHF" means the State Historical Fund, a program of History Colorado.
- (f) "History Colorado" means History Colorado, an agency of the State of Colorado under the Department of Higher Education.
- (g) "Grant Administration" means directing and managing project tracking and grant reporting.

Section 1.02 Additional Terms. Capitalized terms used in this Agreement without definition shall have the meaning given them in the Contract.

ARTICLE TWO: OBLIGATIONS OF COLORADO PRESERVATION

Section 2.01 Use of Grant funds. CPI shall use the Grant funds exclusively in support of the Project, in accordance with the terms and conditions of the Contract. The performance of work under the Project shall be governed by the plans and specifications approved by History Colorado and forming a part of the Contract.

Section 2.02 Incorporation of Contract by Reference. The terms and conditions of the Contract, as the same may be amended from time to time, are incorporated into this Agreement by reference, as fully and completely as if included in this Agreement. In the event of any conflict between the provisions of the Contract and the provisions of this Agreement, the provisions of the Contract shall be regarded as controlling.

Section 2.03 Performance of the Contract. Subject to Owner's full and complete performance of its obligations under this Agreement, and subject also to the entering into the contract by CPI, Owner, and History Colorado, CPI agrees that it will (i) perform the obligations of the "Contractor" (as such term is used in the Contract) under the terms of the Contract and in accordance with the pertinent sections of the *Secretary of the Interior's Standards* and (ii) perform its obligations under this agreement. CPI shall be excused from the performance of any of its obligations under this Agreement to the extent that Owner shall fail in the performance of any of its obligations under this Agreement, including, without limitation, those obligations relating to payment of Match and/or the Letter of Credit.

Section 2.04 Conflict Resolution. In the event that a conflict arises, CPI will coordinate a formal consultation with key parties including, but not limited to Owner and representatives of History Colorado and CPI to develop an action plan to bring the project to a satisfactory conclusion. Notwithstanding the foregoing, if at any time CPI reasonably determines that a conflict or dispute has arisen that cannot be resolved by formal consultation as provided in the immediately preceding sentence, CPI and Owner shall submit the conflict or dispute to mediation by a mediator chosen by CPI in the exercise of its sole discretion. Such mediation shall occur no later than thirty (30) days after such written notice by CPI to Owner of such mediation. Owner shall pay the costs and expenses of such mediation and, if requested by CPI in the exercise of its sole discretion, pay 50% of such costs and expenses in advance. For avoidance of doubt, Owner's failure to submit to mediation or pay the costs of such mediation as set forth in this Section 2.04 shall be deemed a material breach of this Agreement by Owner.

Section 2.05 Payments by Colorado Preservation. CPI will receive all Grant funds and Match and will disburse such funds to service and material providers upon receipt of appropriate invoices showing work properly completed in accordance with the terms of the Contract. Before disbursing any funds, CPI will require signed mechanic's lien waivers, in form and substance acceptable to CPI, waiving any and all rights to file any mechanics liens against the Property, for any work performed or material supplied by the party to be paid (and any subcontractors to such party) up to the date of such waiver, and acknowledging that any amounts due to such party up to such date have been paid in full.

Section 2.06 Administration Fee. For its services with respect to the Project and the Contract, CPI shall be entitled to receive as compensation the amount set forth above as the "Grant Administration Fee" in the Contract. Such amount shall be paid proportionately out of Grant funds and Match upon execution of this Agreement. Such fee

is deemed to be wholly earned and non-refundable upon execution of this Agreement. Owner also agrees to pay reimbursable, indirect expenses as defined in the Contract.

Section 2.07 Books and Records. CPI will keep proper books and records reflecting the expenditure of all Grant funds and Match in accordance with the requirements of the Contract. All receipt and expenditures associated with the Project shall be documented in a detailed and specific manner, and shall be identified with and grouped into categories in accordance with the Project, all as provided for in the Contract. Owner shall share copies of all payments made related to the work with CPI for financial reporting purposes. Such copies shall be organized by date of payment and will include invoice and proof of payment.

Section 2.08 Reimbursement of Match to Owner. In the event the total actual Project cost is less than the total Grant funds and Match available to pay for the Project, remaining Matching Funds remaining as a Deposit, if any (without interest) will be returned by CPI to Owner upon final grant disbursement by History Colorado to CPI within thirty (30) days.

ARTICLE THREE: OBLIGATIONS OF OWNER

Section 3.01 Payment & Proof of Matching Funds. Any such exception requires approval from the CPI in writing. Upon execution of this Agreement, Owner or Owner's Representative will pay to CPI the full amount identified above as "Match," which amount will be held by CPI exclusively for the performance of this Agreement and the Contract. CPI shall hold these matching funds in a restricted account established for this purpose and owner acknowledges that CPI may place the funds in an interest earning account and will retain any such earned interest.

Section 3.02 Owner Cooperation. Throughout the Project, Owner will cooperate with CPI in all respects, including without limitation, (a) providing CPI and its contractors and subcontractors full and free access to the Property at all reasonable hours as needed for purposes of carrying out the Project and (b) cooperating in all reasonable respects with CPI and its contractors and subcontractors in the successful and timely completion of the Project. Without limiting the forgoing, (i) providing CPI and its contractors access to the property during daylight hours seven days a week, 365 days a year, (ii) responding to CPI's requests no later than 24 hours after such requests are made, and (iii) Owner or its representatives meeting with CPI and its contractors, subcontractors and CPI's other representatives at all meetings for which CPI has provided at least 48 hours' notice of such meeting, shall all be deemed reasonable. Owner will not do anything or suffer anything to be done that would result, immediately or with the passage of time, in a default by CPI under the Contract.

Section 3.03 Illegal Aliens. Owner is responsible for compliance with the provisions of CRS 8-17.5-101 et seq. Owner shall not knowingly employ or contract with an illegal alien to perform work as identified within the Contract.

Section 3.04 Ineligible Owner Expenses. Owner expressly acknowledges that except as otherwise agreed in writing by History Colorado, CPI and Owner, expenses incurred by Owner prior to the date of the Contract are not eligible for reimbursement out of the Grant funds or Matching Funds.

Section 3.05 Changes. Should History Colorado, in its sole and absolute discretion, require changes in the Scope of Work, Owner agrees that Owner, with support by CPI, will be permitted to perform the Scope of Work as modified by such changes.

Section 3.06 Conflict of Interest. Owner expressly agrees to comply with the Conflict of Interest provision in Section 21 of the Contract.

Section 3.07 Special Meetings. CPI reserves the right to require special meetings which may be held on short notice and at which attendance by a representative of Owner will be mandatory.

Section 3.08 Emergency Contact. Owner will provide CPI with contact information for an authorized representative of Owner whom CPI will contact in the event of an emergency with respect to the Property.

Section 3.09 Indemnification. Owner will hold CPI and its officers, employees, agents, directors, and trustees harmless and indemnify them against any and all claims, damages, liability and court awards, including all costs, expenses, and attorney fees, arising out of any act or omission by Owner or anyone performing activities in connection with the Project, except for damages or liabilities caused by or arising out of the willful misconduct or gross negligence of Colorado Preservation.

Section 3.10 Insurance. At all times during the Project, Owner will maintain a builder's risk policy of insurance providing (1) coverage for any property damage to the Property in connection with the Project for the insurable value of the Property and (2) not less than \$300,000 of liability coverage for bodily injury or death or damage to the property of others that may result from the activities of Owner, CPI, and any contractor or subcontractors in connection with activities on the Property during the Project. Policy will comply with the Colorado State Labor Law. CPI will be named as an additional insured on such policy for the duration of the Project. Proof of such coverage, in the form of a letter from the insurance company, will be provided at the time of execution of this contract.

ARTICLE FOUR: COST OVERRUNS

Section 4.01 Notice by CPI. In the event it shall appear at any time during the performance of the Contract that the cost of the Project will exceed the amount of Grant funds and Matching Funds available (including contingency amounts), CPI will give prompt written notice thereof to Owner, including Colorado Preservation's estimate of the likely amount of such overrun.

Section 4.02 Election by Owner to Proceed; Payment of Additional Match. Within ten (10) days of its receipt of such notice, Owner shall respond to CPI either (a) agreeing to accept such estimated overrun or (b) requesting that CPI modify the scope of the Project with History Colorado or take such other steps as may be required to limit the expenditure of funds to the amount of the original Grant funds and Matching Funds. If Owner shall elect to proceed under Section 4.02(a) above, Owner shall pay additional Matching Funds to CPI in the amount of such estimated overrun at the time of notice.

Section 4.03 Election Not to Proceed. Should Owner elect not to proceed, all parties, including CPI, History Colorado, Owner and lead contractors shall determine the course of action determined to fulfill the scope of services under the Contract. CPI shall not expend any amounts in excess of the original grant funds and Matching Funds without the prior written consent of Owner.

ARTICLE FIVE: RELATIONSHIP OF THE PARTIES

Section 5.01 No Joint Venture or Partnership. Neither Owner nor CPI is an employee, agent, or partner of, or joint venturer with, the other. Execution and performance of this Agreement by Owner and CPI shall not create a joint venture, partnership, or agency arrangement between them. Neither Owner nor CPI shall have the authority, express or implied, to act on behalf of the other or legally bind the other in any manner (except that CPI shall be entitled to take all steps reasonably necessary to carry out the Project on the Property in accordance with the terms and conditions of the Contract).

ARTICLE SIX: TERMINATION

Section 6.01 Termination of Agreement by CPI for Cause. If Owner fails to fulfill any of its obligations under this Agreement, CPI, in addition to all remedies available to it at law or in equity or as provided in this Agreement, shall have the right to terminate this Agreement upon ten (10) days' prior written notice of such default to Owner; provided that if such default is reasonably susceptible to cure and is in fact cured by Owner within such ten (10) day period, then such notice of termination shall be ineffective.

Section 6.02 Termination of Agreement by Owner for Cause. If CPI fails to fulfill any of its obligations under this Agreement, Owner, in addition to all remedies available to it at law or in equity or as provided in this Agreement, shall have the right to terminate this Agreement upon ten (10) days' prior written notice of such default to CPI; provided, that if such default is reasonably susceptible to cure and is in fact cured by CPI within such ten (10) day period, then such notice of termination shall be ineffective.

Section 6.03 Termination for Convenience of History Colorado. In the event that History Colorado exercises its right of Termination for Convenience of State under the Contract, either CPI or Owner may terminate this Agreement by giving written notice of termination to the other party specifying the effective date of such termination, which notice shall be provided at least ten (10) days before the effective date of such termination. In the event of any such termination, all finished or unfinished documents and other materials paid for shall become the property of Owner. In the event of a termination pursuant to this Section 6.03, any Matching Funds not previously spent or committed (including any Matching Funds previously committed to payment of CPI's Fee, which are non-refundable once this Agreement is executed) shall be returned to Owner.

Section 6.04 Effect of Termination. Termination of this Agreement notwithstanding, the non-terminating party shall not be relieved of liability to the other for any damages sustained by the terminating party arising from the failure of the non-terminating party to fulfill its obligations under this Agreement.

ARTICLE VII: MISCELLANEOUS

Section 7.01 Public Acknowledgment of Funding Source. When issuing press releases, official statements or documents that describe the Project and in all publications funded under this Agreement and the Contract, Owner will include a credit line that reads: "This project [is/was] partially funded by a State Historical Fund grant award from the Colorado Historical Society with the assistance of Colorado Preservation, Inc." For the duration of the Project and up to two (2) months after completion of the Project, Owner will permit History Colorado and CPI to place on prominent display at the Property temporary signs (to be provided by History Colorado and CPI) reflecting their support and involvement in the Project.

Section 7.02 Notices. All notices required to be given by the parties hereunder shall be given at the addresses set forth below. Either party may from time to time give written notice of substitute addresses or persons to whom such notices shall be sent.

To Owner: at the address set forth in the heading of this Agreement

To Colorado Preservation: Colorado Preservation, Inc.
1420 Ogden Street, Suite 104
Denver, Colorado 80218
Attn: Cindy Nasky, Preservation Services Director

Section 7.03 Severability. In the event any term, covenant or condition of this Agreement or the application thereof to any person or circumstances will to any extent be deemed invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other

than those as to which it is held invalid or unenforceable, will not be affected thereby, and every other term, covenant or condition of this Agreement will be valid and enforceable to the fullest extent permitted by law.

Section 7.04 Successors and Assigns. Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party.

Section 7.05 Funds Availability. All obligations of CPI under this Agreement which are dependent upon funding by the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available to CPI. This Agreement may be terminated by CPI by written notice to Owner in the event such funds are not made available to CPI as intended. CPI reserves the right to hold payment of invoices until History Colorado funds have been received into CPI accounts.

Section 7.06 Applicable Law. This Agreement shall be governed by Colorado law.

Section 7.07 Merger. This Agreement, including all exhibits hereto, together with the Contract, contain the entire agreement of the parties hereto and supersede all other prior to contemporaneous agreements of the parties. No representations, inducements, promises or agreements, oral or otherwise, between CPI and Owner not embodied herein will be of any force or effect. Any amendment, change or addition to this Agreement will be effective only if reduced to writing and signed by each party.

Section 7.08 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument. This Agreement shall become effective when the parties hereto have signed a copy hereof (whether or not the same or different copies) and shall have delivered the same to Colorado Preservation.

Section 7.09 No Third-Party Beneficiaries. This Agreement will not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

Section 7.10 Additional Provisions. Any additional provisions agreed between the parties to address this particular situation are set forth on Exhibit B, which is fully incorporated into this Agreement by this reference.

Section 7.11 Attorneys' Fees. The prevailing party in any litigation brought by a party to enforce the terms of this Agreement shall be entitled to receive from the other party reimbursement of all costs and expenses of such prevailing party, including all reasonable attorneys' fees. In the event that a party shall prevail on some, but not all, matters subject to such litigation, the prevailing party shall be the party identified by the court.

[Signature page follows]



IN WITNESS WHEREOF, Owner and CPI have executed this Agreement effective as of the latest date written below.

COLORADO PRESERVATION, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

OWNER:

By: _____

Date: _____

Print Name: _____

Title: _____

EXHIBIT A

FORM OF GRANT CONTRACT

[insert form of Grant Contract after this page]

EXHIBIT B

ADDITIONAL PROVISIONS

[insert any unique provisions here or type “None”]