

ITEM # 33
DATE: 05-09-23
DEPT: ADMIN.

COUNCIL ACTION FORM

SUBJECT: CAPITAL GRANT AGREEMENT WITH AMES HISTORICAL SOCIETY

BACKGROUND:

In February 2022, the City Council directed staff to include \$150,000 of one-time funding in the FY 2021/22 adjusted City budget from the Hotel-Motel Fund balance for the Ames Historical Society (d/b/a Ames History Museum). These funds were then carried over into FY 2022/23. The purpose of the funding is to support the Ames History Museum expansion project. This project will restore the Ames Pantorium building, provide community gathering space, expand the available exhibit space, and provide additional space for storage and archival of historical artifacts.

An agreement is necessary for the City to provide the funding to the Ames History Museum. City staff has prepared an agreement that contains the following four deliverables in exchange for the \$150,000 in funding:

1. Rehabilitate and restore the Pantorium Building located at 410 Douglas Avenue, Ames.
2. Remodel the existing Ames History Museum building located at 416 Douglas Avenue, Ames.
3. Construct new space to connect the Pantorium Building and existing Ames History Museum building.
4. Upon completion (anticipated in spring 2024) of the renovation, rehabilitation, and construction projects described above, install and host a permanent exhibit in the renovated facility featuring the history of transportation in Ames.

A representative of the Ames History Museum has signed the agreement, and it is now presented for City Council approval. The agreement contains the option for up to 10% of the total contract amount to be paid to the organization as an initial “start-up payment.” Except for that optional start-up payment, the funds provided under the agreement will be paid on a reimbursement basis with documented receipts, or contracts for work provided by the Ames History Museum. The final payment and closeout of the agreement may only occur with City Council approval.

The agreement contains repayment provisions if the organization completes the project and receives the funds, but does not maintain occupancy of the building or fails to adhere to the requirements in the contract. The repayment penalties decrease each year for five

years; after the fifth year, the obligation to repay expires and the organization is free to do what it wishes with the property.

The City Council may recall a memo delivered on January 20, 2022 from the City Attorney regarding City funds being used for the capital project being undertaken by the Ames History Museum. That memo indicated that certain issues existed with funding for the Ames History Museum capital project being construed as a “donation.” This contract has therefore been drafted with specific components intended to demonstrate compliance with state law. The contract reflects the guidance from the State Auditor dated November 2, 2021, regarding public funds being used to support outside entities. Attachment 1 outlines the language in the contract that addresses the State Auditor guidance.

ALTERNATIVES:

1. Approve an agreement with Ames Historical Society in the amount of \$150,000 for a capital improvement project to the Ames History Museum.
2. Do not approve an agreement with Ames Historical Society.
3. Refer this item back to the review committee for further information.

CITY MANAGER’S RECOMMENDED ACTION:

The attached agreement reflects the proposed project that Ames History Museum intends to undertake for its renovation and expansion project. The requirements included in the agreement meet the legal requirements for the provision of public funds for such a project. Once complete, the project will provide a significant improvement to the cultural and historical resources available in Ames, and will enhance the Downtown Ames area.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as described above.

Attachment 1: State Auditor Guidance Compared to Contract Language

State Auditor Guidance	Discussion/Relevant Contract Provision
<p>Public funds may be provided to a non-profit when the payment is for economic development purposes, if the governing body considers any or all of the following:</p>	
<p>i. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.</p>	<p>“The City of Ames has determined, by its City Council acting in open and regular session, that a professionally curated historical collection, when cataloged and made accessible to the community, improves the welfare, comfort, and convenience of Ames’ citizens, promotes economic development and tourism, and enhances the community identity.</p> <p>It has been further determined that the existence of quality facilities and equipment is necessary for such historical resources to be effectively delivered to the community; and that such facilities and equipment do not yet exist in the community to the extent necessary to achieve these objectives.”</p>
<p>ii. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains, and benefits are warranted in comparison to the amount of the funds dispensed.</p>	<p>“The City of Ames has determined that the activities outlined in this Agreement represent the highest value to the citizens of Ames in exchange for the funds provided.”</p>
<p>iii. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state...</p>	<p><i>This is not an issue with the proposed contract.</i></p>
<p>Public funds may be provided to a non-profit, if the following requirements are met:</p>	
<p>a. Agreements should be reduced to a written contract.</p>	<p><i>A written contract has been prepared.</i></p>
<p>b. The terms and conditions of each party to the contract should be plain, detailed, and unambiguous.</p>	<p><i>The contract describes the terms and conditions in a detailed and organized fashion.</i></p>
<p>c. There should be clear language as to how much the government is paying, the schedule of payments, and what the government (or the public) is receiving from the non-profit in return. Overall, consideration should be balanced for each party and the government should seek the highest value possible for taxpayers.</p>	<p><i>The contracts include specific payment amounts and provisions for which payment may be received. Each contract includes a scope of services describing what each recipient must complete in exchange for funding.</i></p> <p>“The City of Ames has determined that the activities outlined in this Agreement represent the highest value to the citizens of Ames in exchange for the funds provided.”</p>

<p>d. When a government contracts with a non-profit and the non-profit is providing a service to the public, the public benefit will be the “consideration” the government receives under the contract. This consideration, how the public (as a whole) is benefitting, should be made clear in the contract.</p>	<p>“Therefore, the purpose of this Agreement is to procure for the City of Ames and its citizens certain historical programming and resources as hereinafter described and set out; to ensure these resources facilitate increased historical programming accessible to the Ames community; to establish the conditions governing payment by the City of Ames for such resources...”</p>
<p>e. The total cost of the contract and required supporting invoices and/or documentation should be clearly defined. The government should ensure it is not overpaying for the product or services received.</p>	<p><i>The contract includes a specific funding amount and requires supporting documentation and invoices.</i></p>
<p>f. All contracts should include a requirement for the non-profit to account to the government for the public funds and how they are spent to meet the state public purpose requirement. The form and frequency of that accounting should be clear in the contract.</p>	<p>“All payments made to the Provider by the City of Ames shall be made in accordance with procedures established by the City and on such forms as the City may prescribe. The City will reimburse the Provider only for allowable costs the Provider incurs in performing the work under this Agreement in the manner described in Section II. The City will not reimburse the Provider for any cost that is contrary to this Agreement, is categorically disallowed from purchase under the City’s Purchasing Policies and Procedures (e.g., alcoholic beverages, items for personal use, etc.), or violates local, state, or federal law.”</p> <p>“At such time and in such form as the City may require, there shall be furnished to the City such statements, records, reports, data, and information including any such reports or information as the Provider is required to complete to receive State or Federal funds. These records shall be made available to qualified City personnel for the purpose of conducting management or financial audits or program evaluations.”</p>
<p>g. The contract should be signed by a representative of the government and a representative of the non-profit.</p>	<p><i>The contract includes a signature section.</i></p>

CONTRACT FOR FUNDING

THIS AGREEMENT, made and entered into _____, 2023, through June 30, 2024, by and between the **CITY OF AMES, IOWA**, a municipal corporation organized and existing pursuant to the laws of the State of Iowa (hereinafter sometimes called "City" or "City of Ames") and **Ames Historical Society** (hereinafter called "Provider"); for funding of said Provider up to and including **\$150,000**.

WITNESSETHS THAT:

WHEREAS, the City of Ames has, by its City Council acting in open and regular session, determined that the Provider shall receive funds in accordance with the written agreement as hereinafter set out;

NOW, THEREFORE, the parties hereto have agreed and do agree as follows:

I: PUBLIC PURPOSE

The City of Ames has determined, by its City Council acting in open and regular session, that a professionally curated historical collection, when cataloged and made accessible to the community, improves the welfare, comfort, and convenience of Ames' citizens, promotes economic development and tourism, and enhances the community identity.

It has been further determined that the existence of quality facilities and equipment is necessary for such historical resources to be effectively delivered to the community; and that such facilities and equipment do not yet exist in the community to the extent necessary to achieve these objectives.

The City of Ames has determined that the activities outlined in this Agreement represent the highest value to the citizens of Ames in exchange for the funds provided.

Therefore, the purpose of this Agreement is to procure for the City of Ames and its citizens certain historical programming and resources as hereinafter described and set out; to ensure these resources facilitate increased historical programming accessible to the Ames community; to establish the conditions governing payment by the City of Ames for such resources; and, to establish other duties, responsibilities, terms, and conditions mutually undertaken and agreed to by the parties hereto in consideration of the activities to be performed and monies paid.

The activities financed through this Agreement are initiatives to be completed solely at the direction of the Provider; the Provider shall have complete control regarding the development of specifications, selection of architects, engineers, and contractors, and the methods of fulfilling the

scope of services as herein described. Nothing in this Agreement shall be construed as a joint enterprise with the City of Ames or shall confer an ownership interest to the City of Ames for the project constructed or premises improved.

II: SCOPE OF SERVICES

The provider shall use the funds received under this Agreement as follows:

1. Rehabilitate and restore the Pantorium Building located at 410 Douglas Avenue, Ames.
2. Remodel the existing Ames History Museum building located at 416 Douglas Avenue, Ames.
3. Construct new space to connect the Pantorium Building and existing Ames History Museum building.
4. Upon completion (anticipated in spring 2024) of the renovation, rehabilitation, and construction projects described above, install and host a permanent exhibit in the renovated facility featuring the history of transportation in Ames.

III: METHOD OF PAYMENT

All payments made to the Provider by the City of Ames shall be made in accordance with procedures established by the City and on such forms as the City may prescribe. The City will reimburse the Provider only for allowable costs the Provider incurs in performing the work under this Agreement in the manner described in Section II. The City will not reimburse the Provider for any cost that is contrary to this Agreement, is categorically disallowed from purchase under the City's Purchasing Policies and Procedures (e.g., alcoholic beverages, items for personal use, etc.), or violates local, state, or federal law.

The Provider may invoice the City for payment under this Agreement as follows:

Option for Startup Payment (10%): Within 30 days of the execution of this Agreement by the Parties, the Provider may request issuance of payment for an amount not to exceed 10% of the total contract amount. This payment request is not required to be accompanied by documentation indicating expenses actually incurred. **If such a startup payment is requested and issued, the amount of the retainage to be withheld until the completion of the project shall be increased by the amount of the startup payment.** If no request for a startup payment is made within 30 days of the execution of this Agreement, the Provider is considered to have forfeited the option to such payment, and all payments under this Agreement will be made in accordance with the "Standard Payments" and "Retainage" paragraphs as outlined below.

Standard Payments: Except any optional Startup Payment and the Payment of Retainage, standard payments under this Agreement shall be issued only:

1. **On the basis of reimbursement for actual expenses incurred** in accomplishing the project as outlined in Section III of this Agreement, supported by properly executed invoices, receipts, vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges, **OR**
2. **Upon presenting a contract between the Provider and a third party obligating the Provider to pay for goods/services related to the project.**

Retainage (10% minimum): Until the completion of the Scope of Services as described in this Agreement, **the City shall hold as retainage an amount equal to 10% of the total contract amount, plus the amount of any startup payment issued.** Payment of the retainage amount to the Provider shall only occur after the following has been completed:

1. Provider submits a request for final payment containing an invoice, documentation of expenses incurred, and a statement furnished by Provider's contractor(s) indicating the project has been completed and is free from all liens (if determined applicable by City).
2. City staff inspects the project to verify completeness (City staff may waive this requirement at their own discretion)
3. City Council approves completion of the project and release of remaining funds. The date of City Council approval shall be considered the date of completion of the project.

IV: REPAYMENT REQUIREMENT

Provider shall occupy the premises improved with these funds for a period of at least five years from the date the improvements are completed.

The Provider is required to repay any grant funds received in the event of any of the following during that five-year period:

1. Any portion of the improved property is sold, transferred, leased, or sub-leased to another party, unless the other party continues the operation funded by the grant (this requirement does not apply to a Provider that uses grant funds solely for the purchase of moveable capital equipment, provided the moveable capital equipment remains in use by Provider in the City of Ames).
2. Occupancy of the property by the Provider ceases for any reason, except for instances in which the property is destroyed or otherwise rendered uninhabitable due to fire, flood, wind, or other disaster.
3. Any default under or breach of the promises, terms, and conditions stated in the program requirements or this Agreement.

Any funds required to be repaid will be repaid in accordance with the following schedule:

100% of funds received shall be repaid if a demand to repay is issued prior to or during the 1st year after completion of the project

80% of funds received shall be repaid if a demand to repay is issued during the 2nd year after completion of the project

60% of funds received shall be repaid if a demand to repay is issued during the 3rd year after completion of the project

40% of funds received shall be repaid if a demand to repay is issued during the 4th year after completion of the project

20% of funds received shall be repaid if a demand to repay is issued during the 5th year after completion of the project

V: SPECIAL CONDITIONS

The City shall have access to all records relating to the expenditure of funds provided under this Agreement.

All records shall be maintained in accordance with procedures and requirements established by the City Finance Director, and the City Finance Director may, prior to any disbursement under this Agreement, conduct a pre-audit of recordkeeping and financial accounting procedures of the Provider. All records and documents required by this Agreement shall be maintained for a period of five (5) years following final disbursement by the City.

At such time and in such form as the City may require, there shall be furnished to the City such statements, records, reports, data, and information including any such reports or information as the Provider is required to complete to receive State or Federal funds. These records shall be made available to qualified City personnel for the purpose of conducting management or financial audits or program evaluations.

The contribution of funds provided by the City of Ames should be acknowledged by the Provider where practical for the project (e.g., signage, ribbon-cutting events, sponsor walls, etc.).

The Provider is responsible for compliance with any state or federal tax obligations associated with the receipt of funding under this Agreement.

The Provider shall ensure that any improvements completed using funds provided by this Agreement are in compliance with all applicable state and local development and building codes. It

is understood and agreed that the receipt of funding through this Agreement does not imply or confer approval to Provider for any permit or license required to complete the project.

VI: DISCRIMINATION PROHIBITED

In accordance with Chapter 14 of the Municipal Code, no person shall, on the grounds of race, color, creed, religion, national origin, disability, sexual orientation, gender identity, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Agreement.

VII: ASSIGNMENT OR TRANSFER

Neither party to this Agreement may assign any of its rights or obligations hereunder to any other person or entity, nor may either party transfer or sell the same, without the prior written consent of the other party hereto.

VIII: DURATION

This Agreement shall be in full force and effect from and after February 14, 2023, through June 30, 2024, or, until terminated by resolution of the City Council of the City of Ames, Iowa. The City Council may terminate this Agreement prior to June 30, 2024, by giving written notice to the Provider at least sixty (60) days before the effective date of such termination. From and after the effective date of termination, no further disbursement under this Agreement shall be made by the City. Any money disbursed to the Provider and unencumbered or unspent as of the effective date of termination, shall be repaid to the City.

The repayment provisions contained in Section V of this Agreement shall survive the termination of this Agreement.

(This space intentionally left blank)

IN WITNESS WHEREOF the parties hereto have, by their authorized representatives, set their hand and seal as of the date first above written.

CITY OF AMES, IOWA

ATTEST:

BY _____
John Haila, Mayor

Renee Hall, City Clerk

PROVIDER
AMES HISTORICAL SOCIETY

BY _____

Printed Name

Title