SECTION 4. EXCEPTION REQUEST

PRIORITY # 9 – Wyoming Humanities Council / SPCR Partnership

A. EXPLANATION OF REQUEST: The Department requests an one-time appropriation of $300,000 in General Funds to be passed through to the Wyoming Humanities Council (WHC) to continue to provide annual grant funds and program funds to Wyoming communities. The WHC will use these funds to strengthen local economies through investments and partnerships in cultural organizations throughout the state. These investments will enable citizen civic participation, foster cultural diversity, promote cultural heritage preservation and tourism, improve literacy, and promote lifelong learning. Through these funds, the WHC will extend its mission of community building by supplementing projects of statewide significance, working with SPCR and other state agencies to consider Wyoming values and cultural differences, and moving forward with innovative community ideas. With its roster of statewide humanities specialists, established constituencies with community libraries, museums, colleges, and local governments, and ability to organize large statewide projects, the WHC is in a position to efficiently synergize public and private resources to build civic participation at a crucial juncture in Wyoming’s history in which citizen participation in shaping Wyoming’s future is more critical than ever.

For over 45 years, the WHC has been the sole non-profit public humanities organization in Wyoming and a long-term and respected partner of state agencies and the state’s extensive network of cultural institutions. Its mission of strengthening our economy through cultural programs and tourism and strengthening our communities by creating an informed, engaged democratic citizenry directly impacts the quality of life in our state. The council offers neutral space for sharing diverse perspectives in a safe environment carefully curated by experts and scholars. The WHC, like other successful non-profit organizations, leverages federal, state, and local partnerships. Out of the 56 state humanities councils in the Federal-State Partnership Program of the National Endowment for the Humanities (NEH), only 10 state humanities councils do not match their federal funds with state funds. The proposed funding, while short of a 1 to 1 match, reflects state participation and validation of the WHC’s impact in building and enhancing Wyoming’s civic capacities.

B. REQUEST BY OBJECT CODE, FUNDING AMOUNT & FUND SOURCE:

<table>
<thead>
<tr>
<th>Object Code</th>
<th>Amount</th>
<th>Funding Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>0620 - Grants</td>
<td>$300,000</td>
<td>100% 1001 General Fund (one-time)</td>
</tr>
</tbody>
</table>

Total $300,000

C. PERFORMANCE JUSTIFICATION: This request addresses the #2 and number #3 primary functions of the Department of State Parks and Cultural Resources in the performance measures; #2 - Serve & Educate our Customers/Constituents - providing high quality customer service, facilities, opportunities, experiences, educational resources, outreach and public safety for our customers/constituents and #3 - Perform Evaluation, Preservation, Conservation and
Restoration - evaluate, protect, conserve and restore important cultural and historical resources in the State of Wyoming and educate the public regarding resource significance.

GOVERNOR'S RECOMMENDATION

I recommend approval of $300,000 general fund as one-time request.
CONTRACT BETWEEN
THE WYOMING DEPARTMENT OF STATE PARKS AND CULTURAL RESOURCES
AND
THE WYOMING HUMANITIES COUNCIL, INC.

1. **Parties.** The parties to this Contract are the Wyoming Department of State Parks & Cultural Resources (hereinafter referred to as “Agency”), whose address is 2301 Central Avenue, Cheyenne, WY 82002, and the Wyoming Humanities Council, Inc. (hereinafter referred to as “Contractor”), whose address is 1315 E. Lewis, Laramie, WY 82072.

2. **Purpose of Contract.** The purpose of this Contract is to establish the terms and conditions under which the Agency passes through funding to the Contractor to administer programs of the Wyoming Humanities Council pursuant to the State of Wyoming 2018 Budget Session Laws Enrolled Act No. 62, Section 024.

3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from July 1, 2018 through June 30, 2020. All services shall be completed during this term.

4. **Payment.**

   A. The Agency agrees to transfer funds to the Contractor for the services described herein. The total amount transferred under this Contract shall not exceed three hundred thousand dollars ($300,000.00). The Department shall transfer one hundred fifty thousand dollars ($150,000.00) to the Contractor for program expenses (10) days after this Agreement has been executed by the parties. Upon receipt and acceptance of the first annual report and a Wyoming Humanities Council invoice described in section 5.B, below, but no later than July 15, 2019, the Department shall transfer the remaining one hundred fifty thousand dollars ($150,000.00) to the Contractor for program expenses.

   B. No payment shall be made for work performed before the Effective Date of this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of Agency.

   C. Except as otherwise provided in this Contract, the Contractor shall pay all costs and expenses, including travel, incurred by Contractor or on its behalf in connection with Contractor’s performance and compliance with all of Contractor’s obligations under this Contract.

5. **Responsibilities of Contractor.** The Contractor agrees to:

   A. Use the fund distributed pursuant to this Contract to further the work of the Wyoming Humanities Council, Inc., providing humanities programs and grants to
Wyoming to promote the history of the State, build civic participation, foster cultural diversity, promote historic preservation and cultural heritage preservation and tourism, and increase and promote adult literacy and lifelong learning.

B. Also use the funds to extend its mission of community building by implementing and/or supplementing humanities projects of statewide significance, working with the Agency and other State agencies to consider Wyoming values and cultural differences, and moving forward with innovative community ideas.

C. Provide a first annual and a second annual report to the Agency. The reports shall describe in detail how the funds that were transferred to the Contractor under this Contract were used. The first annual report is due to the Agency no later than May 31, 2019 and the second annual report is due to the Agency no later than May 31, 2020. Failure to provide the reports by the required due dates in this Section may result in forfeiture of all funds transferred to the Contractor and the Contractor will be required to return all funds within sixty (60) days of written request by the Agency.

D. Credit the Agency on all publications related to the use of these funds as follows: “Supported in part by the Wyoming Department of State Parks and Cultural Resources through funding provided by the Wyoming State Legislature.”

6. Responsibilities of Agency. The Agency agrees to:

A. Pay the Contractor for the services described herein, as set forth in section 4 above. The Agency shall have no other responsibilities, obligations or duties with regard to this Agreement.


A. Amendments. Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.

B. Applicable Law, Rules of Construction, and Venue. The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

C. Assignment Prohibited and Contract Shall Not be Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Agency.
D. Audit and Access to Records. The Agency and its representatives shall have access to any books, documents, papers, electronic data, and records of the Contractor which are pertinent to this Contract.

E. Availability of Funds. Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

F. Award of Related Contracts. The Agency may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.

G. Certificate of Good Standing. The Contractor shall provide to the Agency a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Contractor is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Contractor shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State’s office are up-to-date before signing this Contract.

H. Compliance with Laws. The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.

I. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Agency for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Agency within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Agency.

J. Entirety of Contract. This Contract, consisting of seven (7) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.


Contract between the Wyoming Department of State Parks and Cultural Resources and the Wyoming Humanities Council, Inc.
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L. **Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein.

M. **Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

N. **Indemnification.** The Contractor shall release, indemnify, and hold harmless the State, the Agency, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys’ fees, and expenses arising out of Contractor’s failure to perform any of Contractor’s duties and obligations hereunder or in connection with the negligent performance of Contractor’s duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys’ fees, and expenses arising out of Contractor’s negligence or other tortious conduct.

O. **Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency or to incur any obligation of any kind on behalf of the State of Wyoming or the Agency. The Contractor agrees that no health or hospitalization benefits, workers’ compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor’s agents or employees as a result of this Contract.

P. **Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.
Q. **Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.

R. **Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Agency for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.

S. **Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

T. **Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.

U. **Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

V. **Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Agency expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

W. **Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers’ compensation, unemployment insurance, and sales taxes.

X. **Termination of Contract.** This Contract may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Contract may be terminated by the Agency immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.
Y. **Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

Z. **Time is of the Essence.** Time is of the essence in all provisions of this Contract.

AA. **Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.

BB. **Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

CC. **Counterparts.** This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the Contractor of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Agency.

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8. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

**AGENCY:**
The Wyoming Department of State Parks and Cultural Resources

[Signature]
Sara Needles, Administrator, Division of Cultural Resources [Signature]

Date: 6/28/18

**CONTRACTOR:**
The Wyoming Humanities Council, Inc.

[Signature]
Shannon Smith, Executive Director

Date: 6/18/18

**ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM**

[Signature]
Tyler M. Renner, Assistant Attorney General

Date: 6/14/18