

EXHIBIT 4-C.1

SAMPLE FORMAT PROFESSIONAL SERVICES CONTRACT *(Not to be used for architects/engineers)*

This Contract is entered into this _____ day of _____, 20____, by and between (*name of Grantee*), herein referred to as the "Grantee" and (*name of Contractor*), herein referred to as the "Contractor," whose address is _____, Witnesseth:

WHEREAS, the Montana Department of Commerce, herein referred to as "the Department," has awarded (*name of Grantee*) grant funds under the HOME Investment Partnerships Program (HOME) Grant for purposes of (*description of project*); and

WHEREAS, (*name of Grantee*) desires to engage the Contractor to render certain services related to the administration of the above described HOME project; and

WHEREAS, (*name of Grantee*) has complied with state and federal procurement requirements regarding the selection of contractors; and

WHEREAS, (*name of Grantee*) desires to enter into an agreement with the Contractor as hereinafter provided to assure the effective management of the project;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

- 1. EMPLOYMENT OF CONTRACTOR.** (*Name of Grantee*) agrees to engage the Contractor, and the Contractor agrees to provide the following services in order to provide for the administration and management of the HOME project for (*name of Grantee*) as approved by the Department.
- 2. SCOPE OF SERVICES.** The Contractor will perform the following services: (*Here, or in an exhibit to the contract, explicitly and completely list the services and products the grant recipient expects of the contractor, including the timetable for completion of key tasks. Consult with your HOME Program Officer as to the specific services that may be appropriate for each grant category.*)

It is understood and agreed by the parties that the services of the Contractor do not include any of the following: the disbursement or accounting of funds distributed by the (*name of Grantee*) financial officer, legal advice, fiscal audits or assistance with activities not related to the HOME project.

- 3. LIAISON.** The Grantee's designated liaison with the Contractor is _____ . The Contractor's designated liaison with the Grantee is _____ .

- 4. EFFECTIVE DATE AND TIME OF PERFORMANCE.** This Contract takes effect on _____. The services to be performed by the Contractor will be completed no later than _____.
- 5. COMPENSATION.** For the satisfactory completion of the services to be provided under this Contract, the Grantee will pay the Contractor a sum not to exceed \$_____, which the Grantee agrees to pay as set forth on the attached Attachment "A", which by this reference is made a part hereof. Compensation for services will be provided in installments, based on actual work performed. Payment will be based upon the completion of key components of the adopted project implementation schedule (and/or on the basis of a set hourly rate). Contractor requests for payment may be submitted monthly, and must be accompanied by a written narrative report which adequately describes and documents the work performed during that period relative to the adopted implementation schedule for the project. (The exhibit should describe the maximum amount payable under the contract, the procedures for approving payment, the terms of payment, and the performance measures to be used to determine contractor compliance.)
- 6. CONDITIONAL AGREEMENT.** It is expressly understood by the parties hereto that this Contract is dependent and conditional upon the receipt by the Grantee of HOME Grant funds from the Department, and that in the event that said funds are not provided, the Grantee incurs no responsibilities or liabilities under this Contract.
- 7. INDEPENDENT CONTRACTOR.** It is understood by the parties hereto that the Contractor is an independent contractor and as such, neither it nor its employees, if any, are employees of the Grantee for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Contractor has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principles and employees for the services to be performed hereunder.
- 8. CONTRACTOR REGISTRATION.** Under the provisions of Section 39-9-201 of the Montana Code Annotated, each construction contractor shall register with the Department of Labor and be issued a Certificate of Registration upon compliance with registration requirements. Independent contractors without employees and architects, civil or professional engineers licensed in Montana and acting solely in a professional capacity are exempt from registering (Section 39-9-211). An independent contractor may voluntarily elect to register.
- 9. ELIGIBILITY.** The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension" [24 CFR 24.505].
- 10. CONFLICT OF INTEREST.** The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the HOME project that would conflict in any manner or degree with the performance of its services hereunder. The

Contractor further covenants that, in the performance of this Contract, it will employ no person who has any such interest.

11. DOCUMENTS INCORPORATED BY REFERENCE. The Grantee's application to the Department for HOME funding, dated _____, 20__, and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Contractor.

12. CONTRACT PRICING. Neither the cost plus a percentage of cost method nor the percentage of construction cost method will serve as the basis for compensating the Contractor for its services provided under this Contract.

13. PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE. This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is the _____ Judicial District in and for the County of _____, State of Montana.

14. BREACH OF CONTRACT. (*applicable to contracts in excess of \$100,000*) In the event of breach of Contract by the Contractor, the Grantee may at its option, engage the services of another contractor to complete the work and deduct the cost of the completion from the amount due to the Contractor. In the event either the Grantee or Contractor do not fulfill performance under this agreement, then the affected party may pursue all legal remedies available for breach of contract.

15. TERMINATION OF CONTRACT. This Contract may be terminated as follows:

(a) Termination due to loss of funding. This Contract will terminate, in whole or in part, at the discretion of the Grantee in the event that the Department reduces or terminates payments under the HOME Program so as to prevent the Grantee from paying the Contractor with HOME funds. In this event, the Grantee will give the Contractor advance written notice which sets forth the effective date of the termination and explains that the termination is due to a loss or reduction of the HOME Program grant.

(b) Termination for cause.

(i) If the Grantee determines that the Contractor has failed to comply with the terms and conditions of the Contract, it may terminate this Contract in whole or in part at any time before the date of completion. If the Contractor fails to comply with any of the terms and conditions of this Contract, the Grantee may give notice, in writing, to the Contractor of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period to be specified in the notice, the Grantee may, with no further notice, declare this Contract to be terminated. The Contractor will thereafter be entitled to receive payment for those services reasonably performed to the date of termination, less the amount of reasonable damages suffered by the Grantee by reason of the Contractor's failure to comply with this Contract.

- (ii) Notwithstanding the above, the Contractor is not relieved of liability to the Grantee for damages sustained by the Grantee by virtue of any breach of this Contract by the Contractor, and the Grantee may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the Grantee from the Contractor is determined.

16. CIVIL RIGHTS ACT OF 1964 [42 U.S.C. 2000d]. The Contractor will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VI, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

17. NONDISCRIMINATION AND EQUAL OPPORTUNITY. The Contractor will abide by the Federal requirements set forth in 24 CFR 5.105(a), Nondiscrimination and Equal Opportunity, as these apply to the HOME program and activities:

- a) requirements of the Fair Housing Act [42 U.S.C. 3601-20] and Executive Orders 11063 and 12259 (regarding Equal Opportunity in Housing);
- b) prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101-07];
- c) prohibitions against discrimination against an otherwise qualified individual with a physical or mental disability, as provided in Section 504 of the Rehabilitation Act of 1973 [42 U.S.C. 794]; and
- d) Executive Order 11246 as amended regarding Equal Employment Opportunities.

18. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 [12 U.S.C. 1701u]. The Contractor will ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with this HOME-assisted project will be extended to lower income project area residents. Further, Contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the awarding of contracts and purchasing of services and supplies.

19. MINORITY AND WOMEN'S BUSINESS ENTERPRISES [Executive Orders 11625, 12432, 12138, and 11246]. The Contractor will take affirmative steps to assure that minority and women-owned businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor must document all affirmative steps taken to solicit the participation of minority and women-owned businesses, and will forward this documentation (along with the names of the minority subcontractors and suppliers) to the Grantee.

20. NONDISCRIMINATION. The Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, gender, age, marital status, physical or mental disability, or national origin.

21. LOBBYING PROVISIONS. The Contractor certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

22. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are to be the property of the Grantee and the Department, which have nonexclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating thereto. Any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or in part under this Contract may be subject to copyright or patent in the United States or in any other country without the prior written permission of the Grantee and the Montana Department of Commerce (MDOC).

23. REPORTS AND INFORMATION. The Contractor will maintain accounts and records, including personnel, property and financial records, which are adequate to identify and account for all costs pertaining to this Contract; and such other records as may be deemed necessary by the Grantee to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Grantee or its authorized representative, and will be retained by the Contractor for three years after the expiration of this Contract, unless permission to destroy them is granted by the Grantee.

The contractor, at such times and in such forms as the owner may require, shall furnish the owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

24. ACCESS TO RECORDS. It is expressly understood that the Contractor records relating to this Contract will be available during normal business hours for inspection by the Grantee, Montana Department of Commerce, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and, when required by law, the Montana Legislative Auditor.

25. INDEMNIFICATION. The Contractor waives any and all claims and recourse against the Grantee, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to the

Contractor's performance of this contract, except for liability arising out of concurrent or sole negligence of the Grantee or its officers, agents or employees. Further, the Contractor will indemnify, hold harmless, and defend the Grantee against any and all claims, demands, damages, costs, expenses or liability arising out of the Contractor's performance of this Contract except for liability arising out of the concurrent or sole negligence of the Grantee or its officers, agents or employees. In the event that the Grantee is named as a co-defendant in any action relating to activities to be performed by the Contractor or a subcontractor under this Contract, the Contractor will notify the Grantee of this fact and will represent the Grantee in the legal action unless the HOME Grantee undertakes to represent itself as a co-defendant, in which case the Grantee will bear its own litigation costs, expenses, and attorney's fees.

26. LEGAL FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

27. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract 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 the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement. The Contractor may not subcontract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the Grantee. Any subcontract or assignee will be bound by the terms and conditions of this contract.

28. PRECONSTRUCTION CONFERENCE. After the construction contract(s) for the project contemplated by this Contract have been awarded, but before the start of construction, a conference will be held for the purpose of familiarizing the successful bidder with the federal and State requirements which apply to projects funded in whole or in part by a HOME Grant. Additionally, discussions will take place on such matters as project supervision, coordination with city or county officials, on-site inspections, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety and other items pertinent to the project. The Architect and/or Engineer Contractor may be responsible for conducting this conference.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the _____ day of _____, 20____.

CONTRACTOR

GRANTEE

By:

By:

Contractor's Name

Official Representative of the Grantee

TITLE: _____

EXHIBIT 4-C.1

SAMPLE ATTACHMENT "A" COMPENSATION

Whenever possible, the Grantee should ensure that the basis for compensating a contractor or consultant is tied to measurable objectives such as the completion of key tasks in the scope of services or implementation schedule. The least desirable approach is compensation strictly on the basis of time periods, since this provides the Grantee less control over contractor performance.

The example below for a housing rehabilitation project demonstrates payment on the basis of the completion of major project management steps, and upon the basis of the number of homes under contract and/or completed.

COMPENSATION

Contractor requests for payment may be submitted monthly and must be accompanied by a written narrative report which adequately describes and documents the work performed during that period relative to the adopted implementation schedule for the project. Total payment for the services rendered under this Contract will not exceed \$_____.

Compensation for project administration services will be provided in installments, based on actual work performed. Payment will be based upon: completion of key components of the adopted project implementation schedule; the number of homes under contract for rehabilitation; and the number of homes completed.

Fixed Fee Compensation to the Contractor:

- | | |
|---|----------|
| a. Commence Start Up Activities | \$ _____ |
| b. Completion of Environmental Review | \$ _____ |
| c. Preparation of Draft Housing Rehabilitation Guidelines | \$ _____ |
| d. Approval of Project Closeout by MDOC | \$ _____ |

Payment to the Contractor shall be on the basis of \$_____ per unit for rehabilitation contracts, with a two-thirds payment authorized at the time a rehabilitation contract is finalized. For housing rehabilitation contracts, the one-third balance will be provided to the Contractor when the mortgage, escrow agreement, or lien is filed for the rehabilitated property.