

EXHIBIT 1-B.1

HOME CONTRACT TEMPLATE – COMPETITIVE GRANTS

Insert or select language as appropriate, and remove highlighting. Delete language NOT selected

CFDA # 14.239

MONTANA DEPARTMENT OF COMMERCE HOME INVESTMENT PARTNERSHIPS PROGRAM CONTRACT # [REDACTED]

This Contract is entered into by [NAME OF GRANTEE], Tax ID # [insert tax ID], DUNS # [insert DUNS #], [CITY], Montana (the “Grantee”), and the Montana Department of Commerce, Helena, Montana (the “Department”).

The Grantee and the Department hereby agree to the following terms:

Section 1. PURPOSE

The purpose of this Contract is to provide funding for [insert project activities] approved by the Department under the Montana Home Investment Partnerships Program (HOME), and to achieve the purposes of Title II of the *Cranston-Gonzalez National Affordable Housing Act (Title II, Public Law 101-625*, approved November 1990, **104 Stat. 4079, 42 U.S.C. 12701-12839**), as amended.

Section 2. AUTHORITY

This contract is issued under authority of Title 90, Chapter 1, Part 1, Montana Code Annotated (MCA), and the Administrative Rules of Montana, Title 8, Chapter 111.

Section 3. DOCUMENTS INCORPORATED BY REFERENCE

- (a) The HOME Investment Partnerships Program, **24 CFR Part 92**; and Title II of the *Housing and Community Development Act of 1992, Public Law 102-550 (H.R. 5334)*, October 28, 1992;
- (b) The Department’s HOME Investment Partnership Program *Application Guidelines* and *HOME Administration Manual* (applicable year’s versions, as amended); and
- (c) The Grantee’s application for HOME grant assistance and the representations contained therein, which are binding upon the Grantee.

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[INSERT NAME OF GRANTEE]

Section 4. ACCEPTANCE OF PROGRAM REQUIREMENTS

- (a) The Grantee will comply with the *Certifications for Application* as signed and submitted with the Grantee's HOME application. The Grantee will comply with all applicable parts and requirements of the *National Affordable Housing Act of 1990* (as amended), now in effect or as amended during the term of this Contract; all requirements established by the Department; applicable state and Federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.
- (b) The Grantee agrees that all contracts entered into by the Grantee for the completion of the activities described in Section 6 of this Contract will contain special provisions requiring contractors to comply with all applicable requirements.
- (c) The Grantee expressly agrees to repay to the Department any funds advanced to the Grantee under this Contract which the Grantee, its subcontractors or subrecipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract or the Federal statutes and regulations governing the HOME Program.
- (d) The Grantee agrees that one hundred percent (100%) of HOME funds will be used to benefit low- and very low-income persons.
- (e) The Grantee will not obligate or expend any funds, regardless of source, for any activities provided for by this Contract until the Grantee:
- completes an Environmental Review Record(s) and a Notice of Release of Funds is issued.
- (f) The Grantee will not be reimbursed by the Department for any HOME-eligible costs for any activities provided for by this Contract until the Grantee:
- submits to the Department evidence of the firm commitment of the other resources necessary for the completion of the project, as defined in Section 7, BUDGET and Attachment B of this Contract;
 - **[If project management services are being provided by an entity other than the Grantee, insert the following, otherwise, delete this section in the contract:]** finalizes and submits to the Department a signed copy of the management contract between **[GRANTEE]** and **[ENTITY PROVIDING SERVICES]**, for the project management services of this project;

- submits, and the Department approves, a Program Management Plan and administrative guidelines and terms for financial assistance;
 - submits **[SELECT ONE OF THESE OPTIONS and delete the other:]** a detailed **Program Income/Recaptured Funds Plan, --OR-- a CHDO Proceeds Plan**, attached as Attachment C and incorporated herein, for review and written approval by the Department prior to the release of any funds.
 - establishes a separate HOME account or accounting classification within the approved accounting and management system to be used exclusively for the receipt and disbursement of HOME and related funds, including **[SELECT ONE OF THESE OPTIONS and delete the other:]** **program income/recaptured funds, --OR-- CHDO proceeds** receipts and disbursements. An original of the *Signature Certification Form* and the *Designation of Depository Form* will be sent to the Department.
- (g) The Grantee will provide and document matching contributions in the minimum amount of **[MATCH AMOUNT]** prior to project completion. Matching contributions must be an eligible form of matching contribution as defined in **24 CFR § 92.220, Form of Matching Contribution.**
- (h) The Grantee will comply with Federal requirements set forth in **24 CFR Part 5, Subpart A, Generally Applicable Definitions and Federal Requirements; Waivers**, which includes nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.
- (i) The Grantee will adopt affirmative marketing and minority outreach procedures and requirements in accordance with **24 CFR § 92.351, Affirmative Marketing; Minority Outreach Program**, for HOME-assisted housing if the housing assisted with HOME funds contains five or more assisted units.
- (j) The Grantee will comply with displacement, relocation and acquisition requirements set forth in **24 CFR § 92.353, Displacement, Relocation, and Acquisition**; labor standards set forth in **24 CFR § 92.354, Labor**, and conflict of interest detailed in **24 CFR § 92.356, Conflict of Interest.**
- (k) Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (**42 U.S.C. 4821-4846**), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (**42 U.S.C. 4851-4856**), and implementing regulations at **24 CFR Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures, Subpart A, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property; Subpart B, General Lead-Based Paint Requirements and Definitions for All Programs;**

Subpart J, Rehabilitation; Subpart K, Acquisition, Leasing, Support Services, or Operation; Subpart M, Tenant-Based Rental Assistance; and Subpart R, Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities, of this title.

[SELECT ONE OF THESE OPTIONS]

[Rental:]

- (l) The Grantee will require that all housing assisted with HOME funds meet affordability requirements set forth in **24 CFR § 92.252, Qualification as Affordable Housing: Rental Housing**, and will require the repayment of any HOME funds disbursed for a project if the assisted housing unit does not meet the affordability requirements for the specified time period. The Grantee shall establish initial rents and procedures for rent increases on rental projects.

[--OR-- Homebuyer Assistance:]

- (l) The Grantee will require that all housing assisted with HOME funds meet affordability requirements set forth in **24 CFR § 92.254 Qualification as Affordable Housing: Homeownership**, and will require the repayment of any HOME funds disbursed for a project if the assisted housing unit does not meet the affordability requirements for the specified time period. Homeownership projects in accordance with **24 CFR § 92.254(a), Acquisition with or without rehabilitation**, must set forth resale or recapture requirements imposed on the housing units.

[--OR-- Homeowner Rehabilitation:]

- (l) As required by the HOME Program, the Grantee will require that all housing rehabilitated with HOME funds meet affordability requirements set forth in **24 CFR § 92.254 Qualification as Affordable Housing: Homeownership**, and will require the repayment of any HOME funds disbursed for a homeowner rehabilitation project if the assisted housing unit does not meet the affordability requirements for the specified time period. Homeowner rehabilitation projects must set forth recapture requirements imposed on the housing units specified in **24 CFR § 92.254(a), Acquisition with or without rehabilitation**

[NOTE: There is no affordability requirement for TBRA, so if doing TBRA, section (k) would be removed and the following sections re-numbered.]

- (m) The Grantee will comply with the project requirements found in **24 CFR Part 92, Subpart F, Project Requirements**, as applicable, in accordance with the type of project assisted.
- (n) The Grantee will carry out each activity in compliance with all Federal laws and regulations described in **24 CFR Part 92, Subpart H, Other Federal Requirements**, except that the Grantee does not assume the responsibility for

release of funds under **24 CFR § 92.352**, *Environmental Review*, or the intergovernmental review process described in **24 CFR § 92.357**, *Executive Order 12372, Intergovernmental Review of Federal Programs*.

- (o) When applicable, the Grantee will follow the provisions governing the use of HOME funds by religious organizations, as contained in **24 CFR § 92.257**, *Religious Organizations*.
- (p) In all contracts with its subcontractors and subrecipients, the Grantee will require all contract provisions, clauses and conditions detailed in Chapter 4 of the applicable year's version of the HOME Administration Manual.
- (q) The Grantee will require the following language in all contracts with its subcontractors and subrecipients: *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, the contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in awarding contracts and procuring services and supplies.*

[SELECT ONE OF THE FOLLOWING]

- (r) **Governmental Entities.** The requirements of OMB Circular No. A-87, *Cost Principles for State, Local and Indian Tribal Governments*, and the following requirements of **24 CFR Part 85**, *Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments*, apply to State Recipients, and any governmental subrecipient receiving HOME funds.

--OR--

Nonprofit Entities. The requirements of OMB Circular No. A-122, *Cost Principles for Non-Profit Organizations*, and certain provisions of **24 CFR Part 84**, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, apply to a Department certified Community Housing Development Organization (CHDO) receiving HOME funds.

- (s) Title to real property or equipment acquired under a grant or subgrant will vest upon acquisition in the Grantee or Subgrantee, respectively. The Grantee or Subgrantee will use, manage, and dispose of this property or equipment in accordance with all applicable State and Federal requirements.
- (t) If any housing assisted with HOME funds fails to meet the affordability requirements for the period(s) set forth in Section 5 EFFECTIVE DATE AND TIME OF PERFORMANCE the Qualified Entity will repay to the Department all HOME funds expended on this housing.

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- (u) If at project completion, the Grantee will be the owner of real property, the enforcement of the affordable housing requirements of the HOME Program will be assured by the imposition of a lien on the property, deed restrictions, or covenants running with the land. In the case of rental housing projects, affordability requirements will be enforced through the imposition of deed restrictions. Breach of the HOME requirements through the period of affordability will result in one or more of the actions identified in **24 CFR § 85.43, Enforcement.**

If the Grantee provides HOME funds for a project that will be owned by another entity, the Grantee and the entity will execute a written agreement that implements the requirements described in the preceding paragraph.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect upon date of signature of the Director of the Department and will be in effect for the "period of affordability," which, from the date of project completion, is **[NUMBER]** years. The Grantee's Implementation Schedule is included as part of this Contract as Attachment A. For State recipients the duration of this Contract will be for 36 months beginning the date the Director of the Department of Commerce signs this Contract. **[NOTE: If the Implementation Schedule changes, the contract will need to be formally amended to incorporate the revised Implementation Schedule.]**

[Select portion of table for affordability requirements according to project terms; delete inapplicable requirements]

ACTIVITY	Minimum period of affordability, in years
RENTAL HOUSING ACTIVITY (24 CFR § 92.252(e))	
Rehabilitation or acquisition of existing rental housing per unit amount of HOME funds:	
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000 or rehabilitation involving refinancing	15 years
New Construction or acquisition of newly constructed housing	20 years
HOMEOWNERSHIP ACTIVITY (24 CFR § 92.254 (4))	
Homeownership Activity assistance HOME amount per-unit	
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

ACTIVITY	Minimum period of affordability, in years
HOMEOWNER REHABILITATION ACTIVITY	
Homeowner rehabilitation activity assistance HOME amount per-unit Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

Section 6. SCOPE OF WORK

The Grantee will carry out the activities as set forth in the Grantee's application for HOME grant assistance received [DATE], which by this reference is incorporated into this Contract. **[Insert activity, including, but not limited to type of project/activity, total number of units, number of HOME units (by each unit size, if applicable), fixed or floating (if applicable), identification of fixed units (if applicable), etc.]**

In addition, the Grantee will be responsible for administering this Contract.

The Grantee will be responsible for monitoring the performance of all entities receiving HOME funds to assure compliance with the requirements of the HOME program, and to take appropriate action when performance problems arise.

Section 7. BUDGET

- (a) The total amount to be awarded to the Grantee under this Contract will not exceed \$[TOTAL GRANT AMOUNT].
- (b) A copy of the PROGRAM BUDGET is included as Attachment B to this Contract and by this reference is incorporated into this Contract and is binding upon the Grantee. The Grantee shall follow guidance provided in Section (d) below to modify the attached budget.
- (c) All projects set up in the Integrated Disbursement and Information System (IDIS) will require a separate budget. The Department will not disburse funds to the Grantee for a particular project until the Grantee has submitted and the Department has approved the budget for that project.
- (d) Budget modifications to the HOME portion of the budget (see Attachment B) must be approved in advance by the Department. The Department may approve HOME budget adjustments of **\$5,000 or less**, through the Request for Payment form. When the Grantee submits the request, the Grantee shall provide justification for these adjustments through its Project Progress Report. Department approval of these adjustments occurs when the Department

approves the payment request. For budget adjustments **greater than \$5,000**, the Grantee will submit its written request and justification to the Department for approval in advance of the proposed modification. If these proposed modifications change the scope of the project, the Grantee's request may require a re-evaluation of the project. Budget modifications for an amount greater than \$5,000 are subject to contract amendment by the Department.

Section 8. METHOD OF COMPENSATION

- (a) The Grantee will request that the Department disburse funds when the funds are needed for payment of eligible costs. The amount of each request will be limited to the amount needed. In accordance with **24 CFR § 92.502(c)**, *Disbursement of HOME funds*, the Grantee will use the HOME funds on HOME-eligible project costs within fifteen (15) days of receipt. Any funds not disbursed within 15 days must be returned to the Department.

[SELECT ONE OR BOTH, AS APPROPRIATE:] The Grantee will disburse **program income/recaptured funds AND/OR CHDO proceeds** received before requesting HOME funds from the Department. In drawing against the amount reserved for the Grantee by the Department, the Grantee will follow instructions supplied by the Department.

- (b) If the actual total cost of completing the project is less than that projected by the Grantee in the preliminary budget (Attachment B), the Department may, at its discretion, reduce the amount of HOME funds to be provided under this Contract in proportion to the overall savings. If actual construction bids are less than the estimates included in the preliminary budget, the construction budget in the Contract will be established at the bid price. The Department will reallocated the difference between actual project costs and the original grant award to unfunded or partially funded projects, or use it to expand the scope of the Grantee's program.
- (c) If the Department determines the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department will notify the Grantee in writing of the deficiency. If after receiving this notification, the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may suspend the Grantee's authority to draw against the reserve described in this Contract. The suspension will continue until the Department and the Grantee agree on a plan to remedy the deficiency.
- (d) All project funds must be committed and spent within thirty-six (36) months of the date the Director of the Department signed this Contract. Any funds not expended by this date may be withdrawn from the Grantee and used for other HOME eligible activities.

- (e) The Department is allowed 30 days to process requests for payments. The Grantee shall provide banking information at the time of Contract execution in order to facilitate electronic funds transfer payments. The Department may withhold payments to the Grantee if the Grantee has breached the terms of the Contract.

Section 9. REPORTING REQUIREMENTS

Each *Request for Payment* form must be accompanied by a signed *Project Progress Report*. The *Project Progress Report* must provide a written narrative on activities that have occurred relating to Match, Soft Costs Activity, Project Activity and Program Income as detailed in Chapter 3 of the HOME Administration Manual. Grantee shall also submit sufficient documentation to justify expenditures as applicable to each type of project.

A *Project Progress Report* must also be submitted by the Grantee every 30 days that includes information relevant to the implementation of project activities, including a description of the cumulative progress and accomplishments achieved and any problems or delays that could affect the program implementation schedule or budget since program start-up and since the last progress report submitted.

The Grantee agrees to submit the project Completion Report to the Department within 100 days of the final project drawdown in order for the Department to comply with the requirements of with 24 CFR § 92.502(d)(1): within 120 days after the final draw the Department must enter the completion data into HUD's IDIS system.

Section 10. LIAISONS

The contact persons for this Contract are:

For the Department:

[NAME OF PROJECT SPECIALIST] (or successor)

[TITLE], [PROGRAM], MDOC

301 S. Park Ave.

P.O. Box 200545

Helena, MT 59620-0545

406-841-**[REDACTED]**

For the Grantee:

[NAME]

[TITLE]

[MAILING ADDRESS]

[BUSINESS LOCATION]

[PHONE NUMBER]

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Section 11. PROJECT MEETINGS

- (a) Progress Meetings. During the term of the Contract, the Department may plan and schedule progress meetings with the Grantee to discuss the progress made by the Grantee and the Department in the performance of their respective obligations. These progress meetings may include the parties' liaisons and any other additional personnel involved in the performance of the contract as required. At each such meeting, the Grantee shall provide the Department with a written status report that identifies any problem or circumstance encountered by the Grantee, or of which the Grantee gained knowledge during the period since the last such status report, which may prevent the Grantee from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the Department to perform its obligation under the Contract. Grantee shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.
- (b) Technical or Contractual Problems. The Grantee is required to consult with the Department's liaison to resolve technical or contractual problems that may occur during the term of the Contract, at no additional cost to the Department. Consultations will occur as problems arise and will be coordinated by the Department. Failure to participate in problem resolution or failure to make a good faith effort to resolve problems may result in termination of the Contract.

Section 12. ACCESS TO AND RETENTION OF RECORDS

The Grantee will maintain reasonable records of its performance under this Contract and will allow access to these records at any time during normal business hours by the Department, the U.S. Department of Housing and Urban Development, the Comptroller General and, when required by law, the Montana Legislative Auditor.

The project and program records that must be on file in the Grantee's offices are described in the applicable year's edition of the Department's HOME Administration Manual. These records will be kept at the Grantee's offices in [CITY], Montana.

In accordance with **24 CFR § 92.508**, *Recordkeeping*, all records pertaining to each fiscal year of HOME funds must be retained for the most recent five-year period, except as provided below:

[SELECT ONE]

(a) For rental housing projects:

- records must be retained for five years after the project completion date; and

- records of individual tenant income verifications, project rentals, and project inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.

--OR--

(a) For homeownership housing projects:

- records must be retained for five years after the **project completion date**; and
- Documents imposing recapture/resale restrictions must be retained for five years after the affordability period terminates

--OR--

(a) For tenant-based rental assistance projects, records must be retained for five years after the period of rental assistance terminates

(b) Written agreements must be retained for five years after the agreement terminates.

(c) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled under **24 CFR § 92.353, Displacement, Relocation, and Acquisition**.

(d) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

Access to the records described above and all other documentation relating to the program is governed by all applicable state and Federal laws pertaining to the disclosure of information to the public and to the individual's right of privacy.

Section 13. PROJECT MONITORING

(a) The Department or any of its authorized agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the SCOPE OF WORK, the proper use of Program funds, and other technical and administrative requirements of this Contract, including the adequacy of the Grantee's records and accounts. The Department will advise the Grantee of any specific areas of concern and provide the Grantee opportunity to propose corrective actions acceptable to the Department.

- (b) Failure by the Grantee to proceed with reasonable promptness to take necessary corrective actions shall be a default. If the Grantee's corrective actions remain unacceptable, the Department may terminate this Contract in whole or in part, or reduce the contract price or award to reflect the reduced value of services received.

Section 14. COMPLIANCE WITH LAWS

- (a) The Grantee must, in performance of work under this Contract, fully comply with all applicable federal, state, and tribal laws, rules, policies, and regulations, concerning, but not limited to, human rights, civil rights, employment law, and labor law. Any subletting or subcontracting by the Grantee subjects subcontractors to the same provision.
- (b) The Grantee shall promptly refer to the Department any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

Section 15. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with all applicable laws regarding the avoidance of conflict of interest, including but not limited to **24 CFR Part 84**, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, and **24 CFR Part 85**, *Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments*, **24 CFR § 92.356**, *Conflict of Interest*, and HUD guidance found in the HOME management plan guidelines. In addition, the Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

Section 16. LOBBYING RESTRICTIONS

- (a) The Grantee shall comply with the provisions of 31 U.S.C. § 1352 and implementing regulations published at **15 CFR Part 28**, *New Restrictions on Lobbying*. These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying.

- (b) The Grantee shall submit a completed Form SF-LLL, *Disclosure of Lobbying Activities*, regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Department for submission to the appropriate federal government agency.

Section 17. ACCOUNTING, COST PRINCIPLES, AND AUDITING

- (a) The Grantee, in accordance with **Section 18-4-311, MCA; 5 U.S.C.App. 3 §§ 1 et seq.; OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations**; and other authorities, must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (GAAP).
- (b) The Department, Montana Legislative Auditor, Inspector General of the U.S. Department of Commerce, or any other legally authorized governmental entity or their authorized agents may, at any time during or after the term of this Contract, conduct, in accordance with **Sections 5-13-304 and 18-1-118, MCA; 5 U.S.C.App. 3 §§ 1 et seq.; OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations**; and other authorities, audits for the purposes of ensuring the appropriate administration and expenditure of the monies provided through this Contract and to ensure the appropriate administration and delivery of services provided through this Contract.
- (c) The Grantee, for purposes of audit and other administrative activities, in accordance with **18-1-118, MCA; 5 U.S.C.App. 3 §§ 1 et seq.; OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations**; and other authorities, must provide the Department, Montana Legislative Auditor, Inspector General of the U.S. Department of Commerce, or any other legally authorized governmental entity or their authorized agents access at any time to all of their respective records, materials and information, including any and all audit reports with supporting materials and work documents, pertinent to the services provided under this Contract until the expiration of three (3) years from the completion date of this Contract. The Department and any other legally authorized governmental entity or their authorized agents may record any information and make copies of any materials necessary for the conduct of an audit or other necessary administrative activity.

Section 18. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by the Grantee, or any of its contractors or subcontractors, in furtherance of this Contract are the property of the Grantee and the Department, which both have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, in whole or part, such property and any information relating thereto. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Department and the Grantee.

Section 19. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

- (a) The Grantee may not assign, transfer, delegate, or subcontract, in whole or part, this Contract or any right or duty arising under this Contract, unless the Department in writing approves the assignment, transfer, delegation, or subcontract.
- (b) Any assignment, transfer, delegation, or subcontract entered into by the Grantee must be in writing, must be subject to the terms and conditions of this Contract, and must contain any further conditions as may be required by the Department.
- (c) The Department's approval of any assignment, transfer, delegation, or subcontract neither makes the Department a party to that contract nor creates any right, claim, or interest in favor of any party to that contract against the Department.
- (d) The Grantee must immediately notify the Department of any litigation concerning any assignment, transfer, delegation, or subcontract.

Section 20. HOLD HARMLESS AND INDEMNIFICATION

The Grantee agrees to protect, defend, and save the Department, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, to the extent arising in favor of the Grantee's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of Grantee's negligence in connection with services performed or omissions of services or in any way resulting from the negligent acts or omissions of the Grantee and/or its agents, employees, representatives, assigns, contractors, subcontractors, except the negligence of the Department under this agreement.

Section 21. INSURANCE

[select one or the other; CITIES/TOWNS get this section; COUNTIES & NON-PROFITS get the other one.]

[FOR CITIES/TOWNS – USE THIS SECTION]

- (a) General Requirements. Grantee shall maintain and shall assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, liability insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the duties and obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. The Department, its officers, officials, employees, and volunteers are to be covered as additional insured's for all claims arising out of the use of grant proceeds provided by the State of Montana.
- (b) General Liability Insurance. At its sole cost and expense, the Grantee shall purchase occurrence coverage with minimum combined single limits of \$1 million per occurrence and \$2 million aggregate per year, or as established by statutory Tort limits of \$750,000 per claim and \$1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under Section 2-9-211, MCA.
- (c) Professional Liability Insurance. Grantee shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.
- (d) Property Insurance. At its sole cost and expense, the Grantee shall maintain property and hazard insurance, including course of construction coverage, and earthquake insurance in areas where there is a shaking level above 10g (see map at <http://rmtd.mt.gov/aboutus/publicationslfiles/NEHRP.pdf>) for loss or damage for any building and all related improvements and contents therein on the premises on a replacement cost basis throughout the term of the contract.
- (e) General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana or by a domiciliary state and with a Best's rating of at least A-, or by a public entity self-insured program either

individually or on a pool basis as provided by Title 2, MCA. All certificates and endorsements are to be received by the Department prior to beginning any activity provided for under the Contract. Grantee shall notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of Grantee's insurance policy at any time, including endorsements.

[--OR-- FOR COUNTIES & CHDO / NONPROFITS – USE THIS SECTION]

- (a) General Requirements. Grantee shall maintain and shall assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, primary liability insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the duties and obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. The State, its officers, officials, employees, and volunteers are to be covered as additional insured's for all claims arising out of the use of grant proceeds provided by the State of Montana.
- (b) Primary Insurance. Grantee's insurance coverage shall be primary insurance with respect to the State of Montana, its elected or appointed officers, officials, employees, or volunteers and shall not contribute with it.
- (c) General Liability Insurance. At its sole cost and expense, the Grantee shall purchase occurrence coverage with minimum combined single limits of \$1 million per occurrence and \$2 million aggregate per year, or as established by statutory Tort limits of \$750,000 per claim and \$1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under Section 2-9-211, MCA.
- (d) Professional Liability Insurance. Grantee shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

- (e) **Property Insurance.** At its sole cost and expense, the Grantee shall maintain property and hazard insurance, including course of construction coverage, and earthquake insurance in areas where there is a shaking level above 10g (see map at <http://rmtd.mt.gov/aboutus/publications/files/NEHRP.pdf>) for loss or damage for any building and all related improvements and contents therein on the premises on a replacement cost basis throughout the term of the contract.
- (f) **General Provisions.** All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana or by a domiciliary state and with a Best's rating of at least A-, or by a public entity self-insured program either individually or on a pool basis as provided by Title 2, MCA. All certificates and endorsements are to be received by the Department prior to beginning any activity provided for under the Contract. Grantee shall notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of Grantee's insurance policy at any time, including endorsements.

Section 22. INDEPENDENT CONTRACTOR

Grantee and his or her employees or agents performing under this Contract are not employees or agents of the Department. Grantee will not claim to be an officer or employee of the Department by reason of this Contract, nor will it make any claim of right, privilege or benefit which would accrue to a civil service employee of the State of Montana.

Section 23. DEBARMENT

The Grantee certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, or subcontractors are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any governmental department or agency. If the Grantee cannot certify this statement, it has attached a written explanation for review by the Department.

Section 24. CONTRACT AMENDMENT

Except as otherwise set forth herein, this Contract may not be enlarged, modified, or altered except upon written agreement by all parties to the Contract.

- (a) The Department will consider requests by the Grantee for grant amendments. A request for an amendment must clearly demonstrate that the amendment is justified and will enhance the overall impact of the original project. The Department will consider each request to determine whether the amendment is substantial enough to require reevaluating the projects original ranking. If

warranted, the Department will analyze the proposed amendment and its impact on the scores originally assigned to the application in the original grant competition.

- (b) The Department will not approve amendments that would materially alter the circumstances under which the grant was originally ranked and selected.
- (c) If the Department determines that the proposed amendment represents a substantial change in the project activities as proposed in the original application for HOME funds, the Department will require the Grantee to hold a local public hearing on the amendment with reasonable notice.

Section 25. 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 sole discretion of the Department, in the event that the Department suffers a loss of funding or termination of the Federal grant which permits it to fund the Grantee in whole or in part, thereby rendering the Department unable to make payment to the Grantee. In this event, the Department will give the Grantee written notice setting forth the effective date of full or partial termination or, if a change in funding is required, setting forth the change in funding and changes in the approved budget.
- (b) Termination Due to Noncompliance with Contract Terms. If the Department determines that the Grantee has failed to comply with the general terms and conditions of this Contract, the project schedule, or any special conditions, and, if upon notification of the defect, the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the expiration of the period of affordability specified in Section 5. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for termination, and the effective date of the termination.
- (c) Termination Due to Adverse Environmental Impact. This Contract will terminate at the conclusion of the environmental review process if the Grantee or the Department determines that the project would have a significant adverse impact on the quality of the human environment, and that this impact cannot be avoided or sufficiently mitigated by reasonable means.
- (d) Effect of Termination. In the event of termination due to Grantee's failure to comply with the terms of this Contract or the project's adverse environmental impact, any costs incurred will be the responsibility of the Grantee.

Section 26. DEFAULT

Failure on the part of either party to perform the provisions of the Contract constitutes default. Default may result in the pursuit of remedies for breach of contract as set forth herein or as otherwise legally available, including but not limited to damages and specific performance.

Section 27. NO WAIVER OF BREACH

No failure by the Department to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the Department to enforce each and all of the provisions hereof upon any further or other breach on the part of the Grantee.

Section 28. COMPLIANCE WITH WORKERS' COMPENSATION ACT

The Grantee accepts responsibility for requiring all contractors and subcontractors being reimbursed with Program grant funds to supply the Department with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. **(MCA §§ 39-71-120, 39-71-40 I, and 39-71-405.)** Neither the Grantee nor its employees are employees of the Department. The proof of insurance/exemption must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status, and must be received by the Department within 10 working days of the execution of this Contract and must be kept current for the entire term of the Contract.

CONTRACTS WILL BE TERMINATED PURSUANT TO THE PROVISIONS OF SECTION 25 IF THE GRANTEE FAILS TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.

Coverage may be provided through a private carrier or through the State Compensation Insurance Fund (406) 444-6500. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division (406) 444-1446. Corporate officers must provide documentation of their exempt status.

Section 29. FORCE MAJEURE

Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes,

directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

Section 30. SEPARABILITY

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

Section 31. NOTICE

All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons identified herein either by first class mail or personal service.

Section 32. NO ARBITRATION

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

Section 33. REFERENCE TO CONTRACT

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.

Section 34. JURISDICTION AND VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (**Section 18-1-401, MCA**).

Section 35. FUNDING ACKNOWLEDGEMENT

All materials developed wholly or in part by the funding provided under the Contract shall state that "The funding for the (insert name of project) was funded (in part, if applicable) by a grant from the Montana Department of Commerce." Any variations from this language must be approved by the Department prior to use. The Department of Commerce logo is also available for use upon request.

Section 36. INTEGRATION

This contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either

party, not contained herein or in a properly executed amendment hereto are valid or binding. Amendments to this contract must be signed by both parties.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties hereto have caused this Contract to be executed on the dates set out below.

By: _____
[NAME] Date
[TITLE]

By: _____
Meg O'Leary Date
Director, Montana Department of Commerce