

CHAPTER 9 -- CONSTRUCTION MANAGEMENT: PUBLIC FACILITIES AND HOUSING

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CHAPTER 9

CONSTRUCTION MANAGEMENT: PUBLIC FACILITIES AND HOUSING

I. OVERVIEW

The procedures and practices described in this chapter are designed to:

- Provide for fair and competitive awards of all contracts and subcontracts for
 - construction of public facilities projects,
 - construction of new housing, and
 - housing projects involving the rehabilitation of existing multi-family housing apartment buildings.
- Assure the selection of qualified, experienced contractors at a reasonable cost;
- Ensure that contractors and subcontractors comply with the applicable federal and state requirements such as labor standards, civil rights, and procurement;
- Assure that the construction phase of CDBG funded public facility projects is managed effectively;
- Help CDBG grant recipients provide information about construction contract opportunities;
- Ensure equal treatment of all potential contractors; and
- Help grant recipients meet their responsibility for informing potential contractors of their responsibilities when they accept a contract funded in whole or in part by CDBG dollars.

The fair and competitive procedures for selection of contractors described in this chapter are designed to:

- Ensure the selection of qualified, experienced contractors (for public facilities construction projects and new housing construction projects) at reasonable cost; and
- Assist CDBG grant recipients to achieve compliance with applicable federal and state requirements such as procurement, civil rights, and labor standards which are the responsibility of CDBG grant recipients.

CDBG grant recipients' responsibilities concerning construction management -- in public facilities projects, in new housing construction projects and in projects rehabilitating of existing housing apartment complexes -- can be met by appropriately following the action steps listed below:

1. **Selecting engineering and/or architectural services** -- in accordance with federal/state procurement standards appropriate for competitive negotiation (Step 1).

2. **Preparing design plans and specifications and bid document items** -- including the required federal and state construction contract provisions -- and **receiving all necessary reviews and approvals from CDBG** (Steps 2 and 3).
3. **Providing for the appropriate advertisement of bid solicitation and bid security procedures** (Steps 4 and 5).
4. **Conducting the bid opening in a proper manner and giving appropriate attention to bid review procedures** (Steps 6, 7 and 8).
5. **Awarding construction contracts to the lowest responsible bidder** within the required time (Step 9).
6. **Holding a pre-construction conference** -- to inform the prime contractor and all subcontractors performing contract construction work of their labor standards and civil rights obligations (Step 10).
7. **Providing the required notices when initiating construction activities** (Step 11).\
8. **Monitoring contractor activities throughout the construction period** -- to ensure that performance is in accord with the technical specifications and that compliance is maintained with all federal, state, and local standards and the terms of the contract (Step 12); and.
9. **Conducting the final inspection and filing the required notices and reports with the appropriate agencies** (Step 13).

The CDBG Program also recommends that CDBG public facilities construction projects consult the following documents for helpful ideas relevant to the CDBG public facilities project management.

Building It Right: A Public Facilities Construction Administration Manual (Second Edition, March, 2004, on-line at <http://comdev.mt.gov/content/Publications/docs/BuildItRightManual.pdf>) published by MDOC's Community Development Division, Community Development Bureau in cooperation with the Montana Water, Wastewater and Solid Waste Action Coordinating Team (*W₂ASACT*); and

The Treasure State Endowment Program (TSEP) Project Administration Manual (Chapter 8, Public Facilities Construction Management, on-line at <http://comdev.mt.gov/TSEP/tsep2009adminmanual.mcp>).

II. REQUIREMENTS FOR SELECTION AND AWARDING OF CONSTRUCTION CONTRACTS

The state and federal requirements that follow describe the principles for selection and awarding of construction contracts (public facilities projects and new housing construction projects and apartment complex rehabilitation projects). In addition to complying with the

following requirements for selecting and awarding contracts, grant recipients must comply with applicable requirements discussed in all of the preceding and subsequent chapters of this manual that have implications for selecting contractors, awarding contracts and monitoring contractor performance.

A. FEDERAL REQUIREMENTS FOR SELECTION AND AWARDING OF CONSTRUCTION CONTRACTS: HUD (U.S. Department of Housing and Urban Development) Administrative Requirements for Grant Recipients, 24CFR, Part 85.36, <http://www.nls.gov/offices/cpo/grantees/cfr8536.cfm>

1. BONDING AND INSURANCE REQUIREMENTS – established by HUD for grant recipients

HUD federal requirements include a **bid guarantee** from each bidder equivalent to five (5) percent of the bid price.

■ ■ ■ However, since this is less restrictive than Montana law, this HUD requirement is superseded by Montana law, which requires a bid guarantee of ten (10) percent.

➤ **For contracts exceeding \$100,000** HUD also requires:

- (a) a **performance bond** on the part of the contractor for 100 percent of the contract price; and
- (b) a **payment bond** on the part of the contractor for 100 percent of the contract price.

➤ **For contracts for less than \$100,000** you may follow the less-restrictive requirements of Montana state law for contractor performance bonds or payment bonds (MCA 18-2-201 through 203).

- (a) Under Montana law, there are certain **alternatives to surety bonds which may be used**; for example -- certified check, bank draft, or certificate of deposit.
- (b) **For contract work under \$50,000**: Local governments have the authority to waive all such bonds for contract work under **\$50,000**. Your local government attorney and the Department of Commerce (MDOC) should be contacted for guidance if these procedures are contemplated for your construction contracts.

2. PROCUREMENT STANDARDS – established by HUD for grant recipients

HUD regulations (24 CFR Part 85.36) also outline the required procedures for the selection and award of contracts funded in whole or in part by CDBG funds. (See Chapter 3, *Procurement Standards*.) These procedures are designed to:

- a) avoid unnecessary or duplicate purchases,
- b) obtain favorable prices for goods and services without sacrificing quality,
- c) ensure maximum open and free competition, and
- d) promote national HUD/CDBG goals related to equal employment opportunity and affirmative action.

B. STATE -- REQUIREMENTS FOR SELECTION AND AWARDING OF CONTRACTS


1. Bid Security

Sections 18-1-201, et seq., MCA, requires that all bids be accompanied by bid security in the amount of **ten percent** to protect the public authority in the event a successful bidder fails or refuses to enter into a contract.

2. Contractor License Fee (1% Tax on Contractor's Gross Receipts)

Section 15-50-205, MCA, requires contractors on public construction projects pay a contractor **"license fee" of one percent of the contractor's gross receipts from this contracting work** to the Department of Revenue. To guarantee payment of this fee, section 15-50-206, MCA, directs governmental entities to withhold one percent of the payments they owe contractors for public works projects and remit these withheld funds to the Department to be credited against the contractors' license fee obligation. The CDBG grant recipient must retain one percent of the total amount of each partial payment due to the contractor and transmit these funds to the Montana Department of Revenue for the Contractor's Gross Receipts Tax.

Contracts valued at less than \$5,000 are exempt from this provision. Copies of the "Contract Award Report" and the "Gross Receipts Withholding Report" are contained in **Exhibit 9-E**.

 **NOTE: There is a possible exemption from the 1% Tax on Contractor's Gross Receipts that might apply to your project:** The Montana Department of Revenue has determined that in the instance where (1) the project construction is funded by a public entity and (2) the building will be maintained and owned by a nonprofit entity, **the project is considered exempt from payment of the 1% Contractors Gross Receipts Tax.**

3. MUNICIPAL Contracts and Franchises

Section 7-5-4302, MCA, <http://data.opi.state.mt.us/bills/mca/7/5/7-5-4302.htm>, requires:

- (a) **competitive bidding** by cities and towns of **construction contracts in excess of \$50,000;**
- (b) **advertising or posting** of such contracts before bids are opened; and
- (c) award of contracts to **the lowest responsible bidder.**

4. COUNTY Contracts

Section 7-5-2301, MCA, <http://data.opi.state.mt.us/bills/mca/7/5/7-5-2301.htm>, requires:

- a) **competitive bidding** by counties **for construction contracts in excess of \$50,000;**
- b) **advertising or posting** of such contracts before bids are opened; and
- c) award of contracts to **the lowest responsible bidder.**


5. Performance, Labor and Material Bonds


Section 18-2-201, MCA, **requires contractors to provide a bond that ensures that the contractor will:**

- a) faithfully perform all of the provisions of such contract;
- b) pay all laborers, mechanics, subcontractors, and material men; and
- c) pay all persons who shall supply . . . provisions, material, or supplies for the carrying on of such work.

This provision may be waived if the contract is **under \$50,000.** (See Section A.1, above.)

6. Construction Contractor Registration is Required for All Bidders

 Title 39, Chapter 9, MCA provides that **no Contractor may submit a bid unless properly registered with the Montana Department of Labor and Industry.**

 **No bids shall be considered that do not carry the bidder's Montana Contractor's Registration number on the bid and on the envelope containing the bid.**

- This contractor registration requirement (for bidding and for entering into contracts) ensures that contractors are complying with all employment laws, such as workers' compensation.

- If the contractor is registered, the community (the CDBG grant recipient) can ensure that the contractor has workers' compensation coverage, and therefore, it has protected itself from upward migration of liability.
- If the construction contractor is registered and in good standing on the date the contract begins, the liability for workers' compensation accidents will not be the responsibility of the general contractor or the community (the CDBG grantee).
- While the law exempts construction "independent contractors" without employees from registering, many general contractors will hire only registered contractors to protect themselves from upward migration of liability.
- If a contractor hires an unregistered independent contractor -- even if that person has a workers' compensation exemption -- the contractor still risks the consequences of liability for workers' compensation should an individual be hurt on the job.
- If the contractor from another state is only bidding on a job in Montana, it may ask for a **"Bid Only" registration. Out-of-state contractors bidding jobs in Montana may get a "Bid Only" registration from the Montana Department of Labor.** Construction companies with "Bid only" certificates must upgrade their registration to "Employer" status before they can have employees working in Montana.
- When the contractor actually comes to work in Montana, **the contractor must obtain a workers' compensation policy specific to Montana**, since Montana's workers' compensation law does not allow coverage from other states' workers' compensation plans in the construction industry.

▪ **Information pertaining to contractor registration procedures may be obtained from:**

**The Montana Department of Labor and Industry Employment
 Relations Division / Contractor Registration**
<http://mtcontractor.com>
 P.O. Box 8011 Helena, Montana 59604
 (406) 444-7734

For additional information about contractor registration, see:

- Exhibit 9-H; and**
- the Montana Department of Labor website listed above.**

THE MONTANA CONTRACTOR PREFERENCE STATUTE
and its relationship to CDBG
and other federally-funded
public construction programs

■ The Montana Contractor Preference statute, Section 18-1-102, MCA, is **NOT applicable to Montana public construction contracts funded in whole or part with CDBG funds** -- as determined by the Attorney General in an opinion (Volume 42, number 35) issued during November of 1987.

■ This opinion also extends to other federally-funded **public facilities construction programs**, such as those financed by the Economic Development Administration, the Environmental Protection Agency, or USDA Rural Development, which are common sources of matching funds for many types of CDBG-funded public facilities projects.

Grants to Montana Counties for Projects within Montana's Indian Reservations

While county governments can apply for and receive grants on behalf of projects on a reservation or to benefit tribal members, there are two important cautions that must be observed:

- 1) The local county government needs to ensure that they have legal authority to carry out activities on a reservation.**
- 2) Indian Preference hiring rules apply only to the Indian CDBG Program. It would violate civil rights laws for State CDBG funds to assist an activity where one must be Native American to participate.**

- Under federal law, eligible applicants for Montana Department of Commerce's **State CDBG Program** funding are limited to general-purpose local governments -- i.e., counties, incorporated cities and towns, and consolidated city-county governments.
- Among Montana municipalities, only Billings, Great Falls, and Missoula are ineligible to apply to the State CDBG Program because they receive CDBG funds from a separate HUD allocation for communities with populations over 50,000 (the **CDBG Entitlement Communities Program**). You can get information about the Entitlements CDBG Program at: <http://www.hud.gov/offices/cpd/communitydevelopment/programs/entitlement>
- Tribal governments are not eligible under federal law to receive CDBG grants from a state CDBG Program. While Tribal governments cannot apply directly for State CDBG Program

funds, counties can apply for projects to assist unincorporated communities or tribal utility authorities within a reservation boundary. On October 25, 2005, at Montana's request, HUD clarified that it is permissible, under federal law, for a county CDBG recipient to assist projects principally benefiting county residents who are members of an Indian Tribe. When members of an Indian Tribe are also residents of a county, that county can use CDBG funds to assist public facilities or services predominantly used by Indians, including those who live on Indian reservations or on allotted Indian land.

- Therefore, the Montana State CDBG Program now allows State CDBG funds to be awarded to counties that apply on behalf of tribal utility authorities to assist tribal communities, providing all other federal and state CDBG requirements are met. All such applications will be considered during the regular grant competition for public facilities applicants.
- Since 1982, Montana's CDBG Program has been providing infrastructure, affordable housing, and economic development assistance to Montana incorporated cities, towns, and counties. This assistance has included funding for incorporated communities located within Montana's tribal reservations, such as Browning, Lodge Grass, and Poplar. The CDBG program has also assisted county water and sewer districts located on reservations, such as the Ashland Water and Sewer District where Rosebud County agreed to sponsor the project.
 - Montana's Indian tribes also receive CDBG funds from a separate HUD CDBG Program, the **Indian CDBG (ICDBG) Program**, and are not eligible to apply directly to the State program. The ICDBG Program provides eligible grantees with direct grants for use in developing viable Indian and Alaska Native Communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low and moderate income persons.
 - **For more information regarding the Indian CDBG program**, please contact the Office of Native American Programs at the HUD – Denver, Colorado regional office -- (303) 672-5465.

<http://www.hud.gov/offices/pih/ih/grants/icdbg.cfm>

III. RESPONSIBILITIES OF CDBG GRANT RECIPIENTS

- The following steps are provided as a guide to implementation of public facilities (and new housing construction) projects. They should be followed along with applicable requirements in preceding chapters.
- CDBG public facilities construction project area also encouraged to consult the March, 2004 second edition of **Building It Right: A Public Facilities Construction Administration Manual**.



STEP 1 - SELECT ENGINEERING AND/OR ARCHITECTURAL SERVICES

- The CDBG grant recipient should follow the instructions in Chapter 3, *Procurement Standards*, for **selecting an engineer or architect** to prepare the final project plans, including drawings and material specifications.
 - Those instructions include compliance with Section 18-8-201 to 212, MCA (Architectural, Engineering, and Land Surveying Services) which **exempts architects, engineers, and surveyors from price bidding in response to Requests for Proposals** (described in Chapter 3).
 - Use instead a **Request for Qualifications (RFQ)** process for procuring the services of architects, engineers, and surveyors estimated to cost more than \$20,000.
 - Compensation for these professional services is to be negotiated **after** the firm is selected.
 - This law establishes a qualifications-based selection procedure for architectural, engineering and surveying services costing more than \$20,000 which are funded by state and local public agencies (state agencies, local governments, school districts, special districts or authorities of local governments).
 - Upon tentatively selecting an architect or engineer, the grant recipient must contact their assigned state CDBG liaison to determine whether the individual or firm is eligible to receive federal and/or state funds.
 - CDBG will conduct a review to assure that the individual or firm is not ineligible to participate (listed as “debarred” at the federal Excluded Parties Lists System, <https://www.epls.gov/>) in federally-assisted projects as a result of past failures to comply with federal program requirements -- and whether or not the individual or firm is on the State of Montana list of debarred/suspended vendors, <http://gsd.mt.gov/ProcurementServices/debarredsuspendedvendors.mcp>
 - Please see Chapter 6, *Labor Standards* (Section III, Step 5,) for instructions on verifying a contractor’s eligibility (or possible debarment) status.
-



STEP 2 - PREPARE A BID PACKAGE


Before inviting bids on any contract, ensure that the bid package contains all the relevant information that bidders will need for their bid (see CDBG’s Checklist for Review of Construction Bid Documents, Exhibit 9-J.)


The following initial steps should be taken:

- The architect or engineer should provide to the CDBG grantee a draft set of plans and specifications for the construction project including an accurate and clear description of the technical requirements of the project.
- When construction of a public building is involved, a certification that the design takes into account requirements of *the Architectural Barriers Act* related to *accessibility by handicapped persons* must also be provided. The certification (**Exhibit 9-A**) must be co-signed by a local official and placed in the Public Facilities or Housing contract file.
- Additionally, the plans and drawings must be stamped by an architect or engineer registered or licensed by MDOC.
- Have plans and specifications reviewed and approved by the Department of Environmental Quality, if applicable.
- Acquire any property, easements, or rights-of-way that might be required for construction of the public facility. (See Chapter 7, *Acquisition and Relocation*).
- Obtain information from local public utilities regarding underground installations. Utilities locations should be identified on a map of the project site, which will be included in the bid package. The contractor should be required to verify these locations prior to actual construction and then be held liable for any subsequent damages to underground facilities.
- Be sure to consult with other funding agencies that may be involved in the project regarding their bid format requirements, if any.
- Determine the cost and pricing format. "Cost plus" contracts are **not** allowed (see Chapter 3, *Procurement*). **Contracts may be either lump sum or unit priced. One method is to use deductive alternates (as described below).**

CONSIDER USE OF THE "DEDUCTIVE ALTERNATES" APPROACH

If a CDBG grant recipient has reason to believe that bids may come in higher than available funds, deductive alternates may be used. For a variety of reasons, a *bidder who is not the low bidder on some item or items* may be able to achieve substantial economies not attainable by the low bidder on one or more components of a project.

 Due to the increasing frequency of bids being submitted which exceed cost estimates, the MDOC strongly encourages CDBG grant recipients to use deductive alternates for bidding various project components.

 Under the deductive alternates approach, the bid proposal would contain several schedules of work items or components to be provided. This would allow contractors to either bid on one component or all components of work items, providing generally more competition and price efficiency.

PREPARE THE BID PACKAGE, including at least the following checklist items:

See CDBG’s Exhibit 9-J (**Checklist for CDBG Review of Construction Bid Documents**) for a more detailed list of requirements.

√	ITEM TO BE INCLUDED IN THE BID PACKAGE
	Advertisement for bids
	Information on the method of bidding, process by which the bids will be evaluated, and the method of contract award
	Bid schedule
	Bid bond requirements and bid bond form
	Information on performance and payment bond requirements and performance and payment bond forms
	Notice of award form
	Notice to proceed form
	Change order form
	Current copy of federal prevailing wages (Davis-Bacon wage rates and zone hourly rates), as applicable
	General conditions
	CDBG’s required supplemental conditions as identified in <i>Exhibit 9-B</i> (or in WASACT’s Section 00900 document, <i>Funding Agency Special Provisions for Montana Public Facilities Projects</i>) – on-line at http://dnrc.mt.gov/cardd/ResDevBureau/wasact/docs/Uniform_Spec_Supplement.pdf
	<i>Exhibit 6-A</i> (Federal Labor Standards Provisions, which is the <i>HUD 4010 Form</i>)
	Any required conditions of other funding agencies; and
	In addition to the relevant information needed to prepare a complete bid package, all construction contracts must contain provisions for compliance with federal labor standards and equal opportunity requirements.

The Montana Contractors’ Association, <http://www.mtagc.org>, publishes **model bid specifications** entitled **Montana Public Works Standard Specifications** (Fifth Edition, March 2003, including the 2006 Addendum). It includes most of the items listed above. These standard specifications and addendum were prepared in cooperation with the Montana Utility Contractors Association, the Montana Department of Environmental Quality and the Montana Department of Transportation.

The **Montana Public Works Standard Specifications** document is now available on computer diskette, in addition to the traditional books format. The document can be ordered from the Montana Contractors Association (1717 11th Avenue), P.O. Box 5419, Helena, Montana, 59604-5419; (406) 442-4162 and at <http://www.mtagc.org/docs/mpw-order-form.pdf>

NOTE:
Under federal law, **the MONTANA CONTRACTOR BID PREFERENCE** included in these **model bid specifications** **CANNOT** be applied to public construction contracts funded with **CDBG** funds.

STEP 3 - OBTAIN BID DOCUMENT REVIEW AND APPROVAL FROM CDBG

To ensure that all of the required provisions are included, **no later than 30 days prior to the initial bid advertisement** project engineers or architects must:

- **complete Exhibit 9-C (Letter of Transmittal of Construction Contract Checklist and Proposed Bid Document)**, and
- **transmit Exhibit 9-C and a copy of the draft bid document** to the project's assigned CDBG Program Specialist for **CDBG review and approval** (with CDBG using **Exhibit 9-J**).

The bid package must also receive the review and approval of all other applicable state or federal agencies with review and approval authority for the type of project planned.

- **Once the complete bid package has been assembled, it should be reviewed by the CDBG grant recipient's attorney for completeness and consistency with state and federal laws and regulations.**
 - Montana law (Section 18-2-404, MCA) requires that all public works contracts be approved in writing by the public entity's legal adviser prior to execution.

STEP 4 – ADVERTISE A BID SOLICITATION

An advertisement of the bid should be drafted based on the information included in the "Advertisement for Bid" portion of the bid document. The bid advertisement must be in accordance with the requirements stated in the table below.


OVERVIEW OF MONTANA PUBLIC NOTICE REQUIREMENTS


Jurisdiction	Statute	Amount of Contract	Advertising Requirements	Notes
Municipalities	7-5-4302, MCA and 7-1-4127, MCA	Contracts over \$50,000	Must advertise twice with at least 6 days separating the advertisements.	The second publication must be not less than five days or more than 12 days before the bid opening.
Counties and Districts	7-5-2301 and 7-1-2121, MCA	Contracts over \$50,000	Must advertise twice with at least 6 days separating the advertisements.	

- Requirements for publication of notices for **municipalities** are set forth in sections 7-1-4127, MCA, Publication of notice.

- Requirements for publication of notices for **counties** are set forth in Section 7-1-2121, MCA, Publication and content of notice.
- Because section 18-8-203, MCA does not establish a specific time frame or method of publication, this section of the MCA should be read in conjunction with sections 7-1-4127, MCA, Publication of notice (for municipalities); for municipalities); and 7-1-2121, MCA, Publication and content of notice for counties.
- **In addition to the minimum legal advertising, MDOC strongly recommends** that CDBG recipients **also advertise at least once in a newspaper with regional distribution in their area of the state.**
- The bid solicitation can also be submitted to plan exchanges and bid clearinghouses such as those administered by the Montana Contractors Association. **The more exposure the bid solicitation receives, the more qualified contractors will be aware of it, hopefully resulting in lower and better bid proposals.**
- **Any amendments to the bid package must be mailed as an addendum to each bidder**, and every bidder must be given an appropriate period of time to review and respond.
- **You may wish to have a pre-bid conference and project walk-through.** The place and location of the pre-bid conference should be included in your advertisement for bids.
- **Your bid solicitation process must comply with Disadvantaged Business Enterprise Requirements.**

DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

 Disadvantaged Business Enterprise (DBE) requirements of federal Executive Order 11246 are **applicable to CDBG-funded construction contracts and procedures for compliance discussed in Chapter 5, Civil Rights, and should be followed and documented in your bid solicitation process.**

 The current **Montana Department of Transportation (MDT) Disadvantaged Business Enterprise (DBE) Directory** may be used to locate qualified DBE firms in your area.

The DBE/WBE Directory can be accessed via the *MDT's Internet website*:

<http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>

-- or by contacting **MDT's DBE Program Bureau** at

(800) 883-5811 or 406.444.6337

TTY: 800.335.7592 | Fax: 406.444.7685



CURRENT DAVIS-BACON WAGE RATE DETERMINATIONS MUST BE INCLUDED IN THE SOLICITATION FOR BIDS:

- **A copy of the current federal wage rate determinations provided by the project's CDBG Program Specialist must be included in any solicitation for bids.**
 - CDBG staff will provide the current Davis-Bacon Wage Rate Determinations to you upon request. (See **Exhibit 6-B** and **Chapter 6, Labor Standards**).
 - **Current federal Davis-Bacon wage rate determinations for each county in Montana** can be found at <http://www.access.gpo.gov/davisbacon/mt.html>, the U.S. Department of Labor's Davis-Bacon website.
 - **CDBG grant recipients need to verify (via contact with CDBG) that the wage rate determination is the most current available.** Weekly advance notice of upcoming changes are posted every Friday at <http://www.gpo.gov/davisbacon/advanced.html>
 - Therefore, **not less than fifteen work days prior to the bid opening** your project's CDBG Program Specialist must be **contacted by telephone or in writing to find out if the wage rate decisions included in the bids solicitation are still current.**



Modifications to the wage rate determinations that are posted by HUD at the Davis-Bacon website **ten days before bid opening** need to be utilized.



Modifications to the wage rate determination that are posted at the Davis-Bacon webpage **less than ten days before bid opening** do not have to be used.

- In those instances where the U.S. Department of Labor has issued a modification of an earlier wage determination ten days before the scheduled bid opening, MDOC will require you to provide the new rate decision to all potential bidders by addendum, since this is a reasonable amount of time allowed for this procedure.



DOCUMENTING ON-GOING DAVIS-BACON COMPLIANCE

To regularly document that the proper federal Davis-Bacon wages (and hourly zone rates, if applicable) are being paid all during the course of a project, you are required to include the following as part of the documentation you submit to CDBG with all your requests for drawdown of "Activity budget" funds:

- a) copies of the required labor compliance interviews of contractors' employees, and
- b) certification (on Exhibit 6-P) that you have completed and maintained documentation of the completion of your weekly reviews of weekly payroll documents.
 - See Chapter 6 (pages 6-13 and 6-14), Exhibit 6-K, and Exhibit 6-P.

STEP 5 - LOG EACH BID RECEIVED

Upon receipt, each bid should be logged as to time and date of receipt. The bids should remain sealed and safely stored until the bid opening.

STEP 6 - CONDUCT THE BID OPENING

Public construction contracts must be awarded fairly and in a manner that ensures public funds are used as efficiently as possible. These objectives may be accomplished only if all bidders are required to respond to the same project specifications.

The bid opening should be conducted in a businesslike manner with each bid being opened and reviewed **prior** to reading aloud the dollar amounts. The CDBG grant recipient's attorney should participate in the bid opening.

IRREGULARITIES: If any irregularities are found, the amounts should not be read or considered and the bid should be returned to the bidder. Should a bidder identify an error in the bids, in any form, the CDBG grant recipient's attorney should review the State of Montana statutes governing bid irregularities before proceeding further. ***When all matters of bid irregularities are resolved, the low bidder will be determined.***

Examples of **IRREGULARITIES CALLING FOR REJECTION OF A BID** include:

- a contractor submitting a bid is not registered;
- bid proposals not submitted on specified forms, or altered in form by a bidder;
- bid proposals not submitted on time;
- unsigned bid proposals;
- bid proposals not accompanied by the specified guarantee (bid bond, etc.);
- bid proposals by unqualified or improperly licensed entities, contrary to specifications or law;
- qualifying a bid or bid items in a bid proposal contrary to the specified requirements of bid items or bidding documents;
- bid proposals which omit items required by the specifications;
- altering a bid as to specified time of commencement or completion of work; and
- bid proposals that fail to acknowledge an addendum to the original call for bids.

Examples of **MINOR BID IRREGULARITIES THAT MAY BE WAIVED** include:

- ❑ omission of date signed or title of person signing;
- ❑ failure to initial erasures (assuming other information is legible);
- ❑ failure to acknowledge an addendum which does not affect quantity, quality, time or price;
- ❑ submission of a bid in an unsealed envelope;
- ❑ omission of a subcontractor's or supplier's name at bid submission time;
- ❑ unit price bid proposals which include correctable, reconcilable arithmetic errors if the unit price does not change; and
- ❑ lump sum bid proposals that include correctable, reconcilable arithmetic errors if the amount on which the award will be based does not change.

IF ALL BIDS RECEIVED EXCEED THE AMOUNT OF FUNDS AVAILABLE for the construction project, the CDBG grant recipient has two options:

- ▶ (1) Use additional local financing resources -- such as general revenues or bond proceeds; or
- ▶ (2) Modify the bid package and repeat the entire bid process as outlined above. In re-doing bid solicitation, consider use of the deductive alternative method, described above.

▶▶▶▶ Under no circumstances can CDBG grant recipients negotiate with the low bidder to bring the offer in line with the project budget.

IF ALL BIDS RECEIVED ARE LESS THAN THE APPROVED BUDGET for the construction project: In the event that all bids received are less than the approved budget (as found in the signed CDBG contract) for the construction project, **MDOC will share proportionately in any savings with all funding sources – and the savings (i.e., funds that would be unused because of the lower bids) are to be returned to CDBG and other funding sources.**

POSSIBLE EXCEPTION: If, after the bidding process is completed, a balance of budget funds remain that could **possibly** be used in the project for additional or lower-priority public facilities construction, **the CDBG grant recipient's representative should immediately send the project's CDBG Program Specialist a written request, including a full rationale for the change in the scope of work and cost details. MDOC review and approval to amend the grant contract for the proposed additional activities is necessary for such changes of scope. If this request is**

denied by MDOC, the amount of the low bid plus ten percent (10%) contingency will be allowed as the revised or final construction budget.

FINALIZING THE CDBG PROJECT BUDGET:

- **Within 15 days after bids are received on all project activities, a final project budget** needs to be established with MDOC.
- When approved by CDBG, the final project budget becomes part of the MDOC contract with the grant recipient.

STEP 7 - REVIEW THE LOW BID

Following the bid opening the low bid should be reviewed to ensure that:

- the bid submission was **technically and legally responsive to the solicitation for bids**; and
- **the contractors and all subcontractors are qualified and have the capacity to carry out the project as scheduled.**

If, in the opinion of the project engineer and the CDBG grant recipient's attorney, the low bid proves to be unsatisfactory for any reason, and the CDBG grant recipient chooses to use the next lowest bidder -- a statement of justification must be sent to the low bidder with a copy retained in the construction contract file.

STEP 8 - OBTAIN A CDBG DEBARMENT (ELIGIBILITY) REVIEW OF THE LOW BIDDER

Prior to awarding any construction contract, the CDBG grant recipient must provide notice to the CDBG liaison of the name of the prospective contractor firm and its principal owner(s). See sample letter, Exhibit 6-D.

- The CDBG liaison conduct a federal and state debarment check.
 - CDBG will check the U.S. General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" (see the website at <https://www.epls.gov/>) and also the State of Montana's list of debarred vendors (on-line at <http://gsd.mt.gov/ProcurementServices/debarredsuspendvendors.mcp> to determine if the names of the prospective contractor firm and its principal owner(s) and of the identified subcontractors are listed.
- DUNS numbers for all selected contractors must be provided to CDBG as well so that CDBG can conduct the required federal debarment check. This new requirement, effective January 1, 2009, was listed in Appendix Q of the 2009 CDBG Housing and Public Facilities Grant Application Guidelines, on line at <http://comdev.mt.gov/CDBG/requiredappforms.mcp>


- The requirement that the local government's DUNS (Data Universal Numbering System) Number must be provided by all applicants is a compliance requirement of the Federal Funding Accountability and Transparency Act of 2006 which went into effect January 1, 2009. **You can get a DUNS number from the Dun & Bradstreet (D&B) Government Customer Response Center, <http://fedgov.dnb.com/webform/displayHomePage.do>**
- Getting a DUNS number can be done on the Web at the address above, and it can also be obtained over the phone (call 1-866-705-5711).
 - See http://fedgov.dnb.com/webform/pages/reqDuns_phone.jsp
- CDBG staff will provide the CDBG grant recipient with a notice of the contractor's eligibility or ineligibility.
 - **CDBG funds will be withdrawn from any contract entered into with a listed or otherwise ineligible contractor.**
 - Contractor eligibility reviews are discussed in greater detail in Chapter 6, *Labor Standards*.
 - After a successful debarment review by CDBG staff, no further MDOC approval of the contractor is required.

 STEP 9 - AWARD THE CONTRACT(S) FOR CONSTRUCTION

- The CDBG grant recipient should make the contract award within 30 days of the bid opening unless special circumstances exist.
- A sample "Notice of Award" is included in the **Montana Public Works Standard Specifications** document cited above.
- Generally, a bid is valid beyond sixty days only with the agreement of the low bidder (but other possible options for the length of bid validity are possible and can be included in the bid solicitation document).
- As discussed in Chapter 6, *Labor Standards*, **there are also time limitations on Davis-Bacon prevailing wage determinations.** If a delay of longer than 60 days is anticipated (in getting the contract signed), CDBG grant recipients should contact their project's CDBG Program Specialist for guidance.

THE COMPLETE CONTRACT PACKAGE should consist of an executed contract document that includes the following attachments:

- all items included in the bid package;
- contractor's bid proposal;
- bond and insurance forms; and
- signed contractor certifications.

 A complete copy of the signed contract and contract package should be sent to your CDBG liaison.



STEP 10 - HOLD A PRE-CONSTRUCTION CONFERENCE

- The pre-construction conference should be held soon after the contract award. The CDBG grant recipient and prime contractor should include all subcontractors in the discussions to ensure that the subcontractors are aware that they must also comply with federal labor standards and civil rights provisions.
 - The CDBG liaison for your project should be invited.
 - The conference represents a key opportunity prior to beginning project construction for the CDBG grant recipient to give instructions to the contractor. These instructions should include a review of:
 - the project and timetable;
 - method for payment; and
 - contractor responsibilities related to civil rights, labor standards, and other federal, state, and local requirements.
 - **At this pre-construction conference, the contractor should be provided a summary of the basic CDBG requirements as listed in Exhibit 6-E of Chapter 6. Labor Standards, provides additional information on pre-construction conferences).**
 - Minutes of the pre-construction conference, including a list of those persons attending, should be placed in the construction contract file and copy should be sent to your CDBG project liaison. See the CDBG Pre-construction Conference Planning Guide, **Exhibit 6-E**.



STEP 11 - ISSUE NOTICE TO PROCEED

- Upon execution of the contract and holding the pre-construction conference, the CDBG grant recipient may then provide the prime contractor(s) with a **Notice to Proceed**.
 - This notice establishes the construction starting date and the estimated date of completion.
 - A sample "Notice to Proceed" is included in the Montana Public Works Standards Specification document cited previously.
 - **A copy of the Notice to Proceed must also be sent to your project's CDBG liaison when it is issued to the contractor.**
 - **Additionally, the CDBG grant recipient must send CDBG a Notice of Contract Award and Pre-construction Conference, including the date on which construction will start. (Please see Exhibit 9-D.)**

- **In the event a contractor is unable to complete a construction project, the CDBG grant recipient may assess the contractor for the costs the CDBG grant recipient must incur in order to complete the project.**
 - This assessment generally takes into account the work actually performed by the original contractor and the total amount of any contracts needed to satisfactorily complete the construction. These provisions must be consistent with the corresponding elements of the contract.

STEP 12 - THE LOCAL GRANTEE MONITORS CONTRACTORS' ACTIVITIES

Monitoring of the Contractor(s) by the CDBG Grant Recipient:

- ❑ Throughout the construction period, **the CDBG grant recipient is responsible for monitoring the contractor(s) for performance regarding the project's technical specifications and for compliance with all federal, state, and local standards and the terms and conditions of the contract(s).**
- ❑ **The grant recipient's local grant administrator/project manager must conduct regular compliance monitoring for civil rights, labor and other requirements on an ongoing basis.** See Chapter 5, *Civil Rights*, and Chapter 6, *Labor Standards*, for guidance.
- ❑ **There are specific reporting requirements of contractors to demonstrate compliance with civil rights regulations.** These include the Contract Reporting Form, **Exhibit 5-J**, which must be completed by the CDBG grant recipient from information supplied by the contractor.
- ❑ In addition -- in coordination with the project manager/grant administrator -- the CDBG grant recipient's architect or engineer should **conduct performance monitoring of the construction contractor(s) that would include the following elements:**
 - ❑ **General supervision**, including identifying the need for any construction adjustments and preparation of contract amendments.
 - ❑ **Change orders that (1) affect the approved scope of work as described in the CDBG contract with the CDBG grant recipient and/or (2) exceed \$5,000 require prior CDBG review and approval before such change orders are signed.** This also involves reviews of major changes to the estimated construction schedule.
 - ❑ **Quality control** -- to ensure compliance with technical specifications and conformance with codes and standards.
 - ❑ **Quality control** -- to ensure that the contractor is providing materials and products consistent with the quantities identified in the design and specifications; and

- ❑ **Certification of pay estimates** -- to be used by the grant recipient's financial officer to verify estimated costs for partial payments to the contractors.
- ❑ **Labor standards monitoring and documentation. As part of the documentation you submit to CDBG with all your requests for drawdown of Activity budget funds, during the construction period**, include:
 1. copies of the required labor compliance interviews of contractors' employees;
 2. certification (on Exhibit 6-P) of your completion of weekly reviews of weekly payroll; and
 3. documentation of weekly payroll reviews that you have conducted (maintaining copies in the local project records as well). See Exhibit 6-P and Chapter 4, page 4-5.
- ❑ **Maintain in your local project files documentation that you have assured that all during the project that the proper federal Davis-Bacon wages (and hourly zone rates, if applicable) are being paid.** See Chapter 6 (pages 6-13 and 6-14) and Exhibits 6-K and 6-P.
- ❑ **The architect or engineer should also obtain evidence that the contractor has made partial payments to any subcontractor or suppliers.**
- ❑ **Where the project was awarded based on a fixed-price bid**, the contractor should prepare a cost breakdown showing the amount of funding associated with each element of the construction contract.
 - ❑ This information can be then be used by the architect or engineer for performance monitoring and for determining the accuracy of requests for payments.
 - ❑ A copy of this information, which is usually incorporated into the contractor's payment request form, should be included in each of the CDBG grant recipient's draw requests to facilitate MDOC's financial review requirements.

RETAINAGE: Questions Concerning Contractor Retainage in the CDBG Program

Questions sometimes arise concerning retainage for contractors. Local project financial officers wanted to know: **(a)** *whether* retainage should or could be drawn from CDBG funds *throughout the life of the project*; and **(b)** if Yes to “a”, should the retainage be kept in a separate bank account; and **(c)** if Yes to “a” and “b,” could that account draw interest?

The Denver HUD Office has clarified this issue for Montana CDBG: **The answer to question “a” is No**, and thus **the answers to “b” and “c” are also No**. HUD has indicated that:

1. **Retainage cannot be drawn from CDBG funds until the local government is ready to disburse the retainage after the project has been satisfactorily completed.**
2. **To hold a retainage in any kind of local bank account would violate the HUD and CDBG “\$5,000 / 3-day” rule.**
3. **To hold retainage in an interest-bearing account would also violate the prohibition against earning interest on HUD funds.**

- In summary, local governments should **not** request a drawdown of **CDBG** funds **for retainage until:**
- **the contractor has completed the project,** and
- **the local government is ready to release the retainage to the contractor.**

For other federal or state programs, their own individual, specific retainage rules would apply, but this clarifies the use of CDBG funds in relation to retainage.

- Partial payments by local project authorities to contractors may generally be made **up to 95 percent** of the total amount of compensation in the contract.
 - **Payment of the remaining five percent (or retainage amount) is to be held pending the final inspection and acceptance of work.**
 - The actual amounts retained may vary, depending on the amount of the contract, progress of construction, and other specific instructions in the contract.

NOTE: There is a possible exemption from the 1% Tax on Contractor’s Gross Receipts that might apply to your project: The Montana Department of Revenue has determined that in the instance where (1) the project construction is funded by a public entity and (2) the building will be maintained and owned by a public nonprofit entity, **the project is considered exempt from payment of the 1% Contractors Gross Receipts Tax.**

STEP 13 - CONDUCT FINAL INSPECTION

- Upon completion of the construction activities, **the architect or engineer must provide the grant recipient and/or sub-recipient with a set of “as-built” plans** with the request for final payment.
- Before making the final payment less the retainage, the grant recipient must conduct a final inspection of the construction work.
- **Additionally, there should be a determination of whether all federal and state requirements (e.g., civil rights and labor standards) have been satisfied, and that all contract files are complete.**
- A written acceptance of work can then be issued and final payment made less the retainage. After 45 days and upon submission of a lien release from all contractors and suppliers, the retainage may be released.
 - If after 45 days there remain claims or liens against the contract, appropriate action must be taken which includes making payments from the retainage and/or the performance and payment bonds as prescribed by the laws of the State of Montana.

- Within 90 days after completion of construction activities (and prior to release of any retainage) the Montana Department of Environmental Quality requires "as-built" plans to be submitted by your engineer for all water and sewer projects. Your engineer also must certify that these activities were completed in accordance with the initially approved plans and specifications.
- **Decision concerning final acceptance:** A CDBG recipient that enters into a contract after October 1, 1999, for the construction of a building (as described in 18-2-101, MCA) must -- unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance -- **decide whether or not to make final acceptance**, 18-2-306, MCA.
- **Final acceptance** means that the building has been certified by the project engineer that it has been constructed in accordance with the terms and conditions of the contract documents.
 - **Within 30 days after final acceptance by the CDBG recipient, the CDBG recipient must make the final payment of the contract price specified in the contract to the other party to the contract.** (Chapter 439, Session Laws 1999)

 **STEP 14 – MAINTAIN RECORDS: Labor Standards and Construction**

For each prime contract, the grant recipient should maintain a Construction Contract file and a Labor Standards file with the following documentation inserted as required by this chapter and Chapters 5 (Civil Rights) and Chapter 6 (Labor Standards).

Note: Information to be retained in the **Labor Standards file** is **noted with an asterisk (*)** and all other documents should be retained in the **Construction Contract** file, as follows.

- design and cost estimates
- evidence of easements and acquisition
- bid documents, including required civil rights, labor, and other provisions
- evidence of bid advertising
- minutes of bid opening including tabulation of bids
- evidence of low bid review
- letter of request for contractor eligibility (*)
- MDOC notice of contractor eligibility (*)
- copy of Notice of Contract Award
- executed contracted documents with attachments
- Notice of Contract Award and Pre-construction Conference (**Exhibit 9-E**) (*)
- minutes of pre-construction conference (*)
- copy of Notice to Proceed
- monitoring and inspection reports
- contract reporting form (**Exhibit 5-J**) (*)
- contractors' weekly payrolls and signed Statements of Compliance (*)

- ❑ evidence of weekly review of payrolls by the grantee's designated reviewer (as listed in the approved Project Management Plan; See Chapter 6, page 6-17 and 6-18) (*)
- ❑ records of construction worker interviews (*)
- ❑ evidence of any violations and resolutions of violations (*)
- ❑ evidence of the final inspection
- ❑ notice of acceptance of work
- ❑ lien releases from all contractors and suppliers; and
- ❑ evidence of disposition of outstanding claims.

IV. SPECIAL CONCERNS AND REQUIREMENTS REGARDING PUBLIC FACILITIES PROJECTS

The following items are special concerns and requirements regarding CDBG public facilities projects, in addition to the standards applicable to all CDBG projects:

1. ***If a project has a Water, Sewer, or Solid Waste District as a sub-grant recipient***

During the past decade, the Montana Legislature has broadened the legal authority for water and sewer districts to use a variety of financing mechanisms to construct and operate systems to serve unincorporated communities. Water and sewer districts also have the authority to adopt user charges to assure adequate long-term maintenance and to require metered water use to encourage water conservation and more equitable rates.

If a project has a Water, Sewer, or Solid Waste District as a sub-grant recipient, CDBG guidelines require:

- a. **Formation of a County Water, Sewer, or Solid Waste District, so that legal authority can be established for the long-term operation and maintenance needs of an unincorporated community's water and/or sewer system.** Water or sewer users associations, because they are private, nongovernmental entities must first be established as county water or sewer districts (pursuant to Title 7, Chapter 13, Parts 22 and 23, MCA) **before** making an application for CDBG funds through a county government.
 - b. Proposed improvements to stand-alone independent rural water or sewer systems that are to be entirely operated and maintained through **an RSID** must first be legally created as a county water and sewer district **before** an application to CDBG may be submitted.
 - c. **Adoption of an Interlocal Agreement** (“sub-recipient agreement”) between a County and a Water and Sewer District, where the County is the CDBG grant recipient. (See the Sample Interlocal Agreement, **Exhibit 9-G**).
- **Thus, CDBG Public Facilities Application Guidelines require the formation of the County Water, Sewer, or Solid Waste District prior to applying for grant funds in order to avoid any delays** in project start up and project construction, except under the

special circumstances described here:

- **In limited circumstances, counties can apply for funding without the proposed project area being established as a county water and sewer district.** To be eligible, the proposed area where the project would take place would be required to be connected to an existing or proposed system owned and operated by an incorporated municipality or a county water and sewer district. In addition, the municipality or county water and sewer district must provide a written commitment that it will assume responsibility for the long-term operation and maintenance of the proposed improvements upon completion of the project.
- **Incorporated municipalities can apply for funding for an area outside a city or town without the proposed project area being established as a county water and sewer district, provided the applicant municipality states its intent to annex the proposed area to be connected to the municipality's system by a specified future date.** The municipality must provide a written commitment stating its intent to assume responsibility for the long-term operation and maintenance of the proposed improvements.
 - An example of this situation would be where a proposed project area is adjacent to a municipality or a county water and sewer district, and the proposed project area is not prepared or could not be annexed or included within the boundaries of the municipality or a county water and sewer district during the term of the CDBG project.
 - In this example, a rural special improvement district (RSID) would be created to assist with the financing of the project, so that those properties benefited by the improvements are paying for the improvements. Since a RSID is not eligible to apply for funding, the city would apply on its behalf.

2. ***If a project has a non-profit organization or a for-profit organization as a sub-grant recipient, CDBG requires:***

- **The adoption of an Interlocal Agreement between the city/county and the non-profit organization (or the for-profit organization) --** where the City/County is the CDBG grant recipient and a local non-profit or for-profit organization is the entity for which the county or city submitted the successful CDBG grant application. (See Sample Sub-Recipient Agreements, **Exhibit 9-I** and **Exhibit 9-F**).

3. ***If a project involves the use of CDBG funds to pay for system assessment costs or hook-up costs for LMI rental households:***

- If a project utilizes CDBG funds to defray system upgrade assessments (or hookup costs) for landlords who agree to rent to LMI families at or below the Fair Market Rents established by HUD, **a mechanism must be put in place to recapture CDBG funds, if a landlord fails to meet the obligations set out under a Landlord Deferred Repayment Assistance Agreement.** (See **Exhibit 9-N**). This Agreement will need to be secured with a lien on the property to insure compliance with the agreement. (See **Exhibit 9-O**).

- **For more information and details about paying assessments and hookups for LMI households in CDBG public facilities projects), see:**
 - the CDBG Public Facilities Application Guidelines (Chapter V, Section C,); and
 - CDBG’s handbook, Documenting Benefit to Low and Moderate Income Persons for Economic Development, Housing, and Public Facilities Projects: Exhibit H (Targeting LMI Benefits for CDBG Public Facility Projects), and Exhibit L (Sample CDBG Public Facilities Targeting Plan for A Project with Direct Benefit to LMI)

4. ***If a project involves Construction of or Modifications to Structures.***

Structures modified or constructed with CDBG funds are subject to the State of Montana **building code** and **flood plain insurance** requirements.

- a. **Building Code Requirements.** Structures modified or constructed with CDBG funds must meet or exceed requirements contained in current editions of the following:
 - ❑ National Electrical Code, as amended;
 - ❑ Uniform Plumbing Code, as amended;
 - ❑ International Mechanical Code; and
 - ❑ International Building Code

Permits must be obtained from the MDOC Building Codes Bureau for all electrical and/or plumbing work undertaken with CDBG funds unless the grant recipient has been certified by the Bureau to enforce the codes cited above. In such cases, permits will be obtained locally.

In addition, in those cases where the Building Codes Bureau has not certified the grant recipient, permits must be obtained from the Bureau for general building and mechanical work involving any commercial or public buildings.

- b. **Floodplain Requirements.** Because drinking water and wastewater treatment facilities are frequently located in proximity to surface waters or low-lying areas, special attention should be paid to requirements related to floodplains and wetlands. The CDBG grant recipient must determine whether a proposed project is located in or will affect a floodplain or wetlands area. If assistance is needed in determining whether the project is located in or would affect a floodplain, please contact:

Floodplain Management Section, Water Operations Bureau
 Montana Department of Natural Resources and Conservation
 48 N. Last Chance Gulch
 Helena, Montana 59620
 Phone Number: (406) 444-6654

- c. **Federal Flood Insurance.** The purchase of federal floodplain insurance is required if a structure assisted in part with CDBG funds is constructed within a designated floodplain. For the assistance of CDBG recipients, a publication titled Further Advice on Executive Order 11988, Floodplain Management, is available from MDOC.
- d. **Permits are needed if a project involves construction of structures or improvements below the low water mark of navigable water bodies.** The placement and construction of structures or improvements, such as bridges, below the low water mark of navigable water bodies requires a permit from the Montana Department of Natural Resources and Conservation. This requirement applies to any lake or streambed that has a history of commercial use or navigation.

The structures covered by the requirement include bridges, roads, pipelines, power lines, telephone lines, diversion structures and riprap. For information regarding compliance with the state permit requirements, contact:

Trust Land Division
 Montana Department of Natural Resources and Conservation
 P.O. Box 201601
 1625 Eleventh Avenue
 Helena, Montana 59620-1601
 Phone Number: (406) 444-2074

- e. **If Wetlands and Streambanks are affected:** U.S. Environmental Protection Agency approval or a U.S. Army Corps of Engineers "404" permit may be required if wetlands will be affected. A "310" permit from the County Conservation District may also be necessary if construction work will affect a streambank.

5. **Other Special Conditions and Circumstances:**

Additional special conditions might also need to be incorporated into the grant contract depending on the specific type of public facilities or housing project. Special conditions that might need to be added to a CDBG contract with a grant recipient include:

- ❑ **Adoption of an LMI Targeting Plan** – a plan document which provides the details and specifics concerning how and under what conditions assistance to low and moderate income (LMI) households within a designated project where assessments or hookup charges would be paid directly for qualifying LMI households.
- ❑ **Adoption of a subrecipient agreement** between the CDBG grant recipient and a private nonprofit corporation (e.g., senior citizens organization) or a for-profit organization -- where the sub-grant recipient will own and/or operate the completed facility area.
- ❑ **Publication of the Section 3 Public Notice: Economic Opportunities for Low-Income and Moderate Persons (Exhibit 5-B, or its equivalent).** In order to inform the community of employment and business opportunities and to demonstrate compliance with Section 3 requirements, Exhibit 5-B should be published when an advertisement of the bid is

published. To document the Section 3 requirements **Exhibit 9-L**, Section 3 Summary Report, must be completed by the CDBG grant recipient and submitted to the CDBG program. Further discussion of the Section 3 requirement is discussed in Chapter 5, Civil Rights.

- **Capital Improvements Plan:** The CDBG program in FY 2007 dropped the requirement (in effect from FY1998-FY2006) that grantees without a (CIP) must prepare a CIP during the course of their project.
 - In the FY1998 -FY2006 period the CDBG program required that grant applicants that were awarded CDBG public facility that did not have a capital improvements plant had to develop during a CIP that covered at least a 5-year period.
 - A stated above that requirement has been dropped. **However, CDBG public facilities grants applicants are still encouraged to complete a comprehensive CIP to encourage more effective long-term planning for the construction, maintenance, and financing of local public facility projects.**
 - In some circumstances creation of an updated Comprehensive Capital Improvements Plan might be set forth as a requirement in the CDBG contract with the grantee.
 - **Local governments, if they wish, can still use CDBG funds to pay for the preparation of the comprehensive CIP as part of the CDBG-funded project and can include funds for the CIP in the proposed project budget.** Funds reserved for the preparation of a comprehensive CIP (up to \$25,000) would not be included in the scoring of benefit to low and moderate income persons.
 - An applicant to CDBG's public facilities grant competition will continue to typically receive more points during the ranking process if a comprehensive CIP has been adopted -- especially if the criteria used by CDBG in ranking Public Facilities applications as set forth in Chapter V of the *CDBG Grant Application Guidelines*, <http://comdev.mt.gov/CDBG/requiredappforms.mcp>

CHAPTER 9

EXHIBITS

- 9-A **Architect's Certification: Compliance with Minimum Standards for Accessibility by the Physically Handicapped**
- 9-B **CDBG Supplemental General Conditions (Exhibit 9-B) and Federal Labor Standards Provisions (See Exhibit 6-A, the HUD 4010 Form)**
- 9-C **Transmittal of Construction Contract Checklist and Proposed Bid Document, Checklist of Required Clauses for CDBG Construction Contracts, and Executive Order 11246 Clause**
- 9-D **Notice of Contract Award and Pre-construction Conference**
- 9-E **Contract Award Report and 1% Gross Receipts Withholding Report (Miscellaneous Tax Division, Montana Department of Revenue)**
- 9-F **Sample Sub-Recipient Agreement for an Affordable Housing Project with Multiple Funding Sources**
- 9-G **Sample Interlocal Agreement for a County and Rural Water and Sewer District**
- 9-H **Construction Contractor Registration Law**
- 9-I **Sample Sub-Recipient Agreement**
- 9-J **Checklist for CDBG Review of Construction Bid Documents**
- 9-K **Contractor Reporting Form**
- 9-L **Section 3 Summary Report (Economic Opportunities for LMI Persons)**
- 9-M **Public Facility Construction (and New Housing Construction) Management Checklist**
- 9-N **Sample Agreement (Concerning LMI Assessment Payments) For Owners of Low and Moderate- Income Occupied Residential Property**
- 9-O **Notice of Security Interest in Real Property to Secure Repayment of A Wastewater Upgrade Assessment Assistance**

DEBARMENT INFORMATION

HUD recently provided updated information regarding debarment processes. Beginning June 2014, all grantees, subrecipients, contractors, or those entities that will receive CDBG or HOME funding must register with the federal system to comply with federal regulations. The General Services Administration, a federal agency, is required to compile and maintain a list of parties debarred, suspended, or disqualified by federal agencies. This list is the System for Awards Management (SAM) and is maintained at SAM.gov. Grantees, or any entity receiving payment of CDBG or HOME funds, must register prior to receiving award or reimbursement of CDBG or HOME funding. An active registration in SAM is required both to apply for an award or for reimbursement of funds to make a sub-recipient or contractor payment.

SAM registration requirements are as follows:

- 1.) If already registered in SAM, each potential contractor or grantee should ensure that their email address is current in SAM.gov so as to receive annual automated reminders to renew that registration.

SAM and/or DUNS registration requirements are as follows:

- 1.) If NOT already registered, all entities must acquire a D-U-N-S® Number. The process by telephone takes between 5 and 10 minutes. Just call Dun and Bradstreet at 1-866-805-5711. If an entity identifies as a contractor on a State government project, the acquisition of a DUNS number will be free. The following information will need to be provided:

- Legal Name
- Tradestyle, Doing Business As (DBA), or other name by which your organization is commonly recognized
- Physical Address, City, State and Zip Code
- Mailing Address (if separate)
- Telephone Number
- Contact Name
- SIC Code (Line of Business)
- Number of Employees at your location
- Headquarters name and address (if there is a reporting relationship to a parent corporate entity)
- Is this a home-based business

- 2.) Register with SAM. To do so, go to SAM.gov. In order to complete the registration, a user account must be created. After the user account with a username and password are established, registration can occur. The entity's Tax Identification Number must be entered into SAM. The HELP tab on the main page can provide additional guidance to understanding the entity's registration status.

EXHIBIT 9-A

**ARCHITECT'S CERTIFICATION:
COMPLIANCE WITH MINIMUM STANDARDS FOR
ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED**

Contract No. _____

Project Name _____

Address _____

Pursuant to Section 8.32 of 24 CFR Part 8, the undersigned certifies that the design of the above-mentioned project is in conformance with the Uniform Federal Accessibility Standards (UFAS). This section provides that effective as of July 11, 1988, the design, construction, or alteration of buildings in conformance with section 3-8 of UFAS (Appendix A to 41 CFR Subpart 101-19.6 for general type buildings and Appendix A to 24 CFR Subpart 40 for residential structures) shall be deemed to comply with the requirements of Sections 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided. The alteration of housing facilities shall also be in conformance with additional scoping requirements contained in this part.

Architect for the Project: _____

Legal Name and Address: _____

Registration Number: _____

Signature: _____

Print Name

Official Signature for the CDBG Grantee:

Print or Type Name

Date: _____

To be returned to:

Montana Department of Commerce
Community Development Division
CDBG Program
P.O. Box 200523
Helena, MT 59620-0523

EXHIBIT 9-B
CDBG SUPPLEMENTAL GENERAL CONDITIONS
AND FEDERAL LABOR STANDARDS PROVISIONS

Also see (*Funding Agency Special Provisions for Montana Public Facilities Projects, SECTION 00900*), which has Supplemental General Conditions for CDBG (and also for other funding agencies in the Montana Water, Wastewater and Solid Waste Action Coordinating Team). See http://www.dnrc.mt.gov/cardd/ResDevBureau/wasact/docs/Uniform_Spec_Supplement.pdf.

The following Montana CDBG Supplemental General Conditions are hereby made a part of this contract and shall supplement and/or supersede any articles of these specifications in conflict therewith. Any subsequent and/or addenda issued after these specifications have been prepared shall supplement and/or supersede any articles of these specifications.

1. Montana Contractor Registration Requirements
2. 1% Gross Receipts Withholding Requirement (Contractor's License Fee)
3. Pre-construction Conference
4. Reports and Information
5. Access to Records
6. Contract Pricing
7. Federal Labor Standards Provisions (HUD-4010 Form). See CDBG Exhibit 6-A.
8. Schedule of Minimum Hourly Wage Rates (Davis-Bacon Wage Determination)
9. Equal Opportunity Provisions
 - a. Equal Employment Opportunity (Executive Order 11246)
 - b. Title VII of the Civil Rights Act of 1964
 - c. Section 109 of the Housing and Community Development Act of 1974
 - d. Section 3 of the Housing and Urban Development Act of 1968
 - e. Minority/Women Business Enterprise
 - f. Nondiscrimination Provision in all Public Contracts
10. Uniform Federal Accessibility Standards (UFAS)
11. Compliance with Federal Clean Air and Water Acts
12. Contractor Eligibility
13. Workers' Compensation Insurance

1. **MONTANA CONTRACTOR REGISTRATION REQUIREMENT**

Title 39, Chapter 9, Part 2, MCA provides that no Contractor may submit a bid unless properly registered with the Montana Department of Labor and Industry (DOLI). No bids will be considered that do not carry the bidder's Montana Contractor's Registration Number on the envelope containing the bid and on the bid.

MCA 39-9-201 through 39-9-211 sets out contractor registration requirements with the State of Montana. Contractors and any of the contractor's subcontractors doing work on a project are required to register with the DOLI. Forms for registration are available from the Department of Labor and Industry, P. O. Box 8011, 1805 Prospect, Helena, Montana 59604-8011. Information on registration can be obtained by calling 1-406-444-7734.

All laborers and mechanics employed by the contractor or subcontractors in performance of the construction work shall be paid wages at rates as may be required by the federal Davis Bacon prevailing wage and reporting requirements. The contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex or national origin.

2. **GROSS RECEIPTS WITHHOLDING REQUIREMENTS (CONTRACTOR'S LICENSE FEE)**

Pursuant to Section 15-50-206(2)(3), MCA, the Owner is required to withhold one percent of all payments due the Contractor and is required to transmit such moneys to the Montana Department of Revenue as part of the public contractor's license fee. In like fashion, the Contractor is required to withhold one percent from payments to subcontractors.

3. **PRE-CONSTRUCTION CONFERENCE**

After the contract(s) have been awarded, but before the start of construction, a conference will be held for the purpose of discussion requirements 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 contractor shall arrange to have all supervisory personnel connected with the project on hand to meet with representatives of the engineer and owner to discuss any problems anticipated.

4. **REPORTS AND INFORMATION**

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.

5. **ACCESS TO RECORDS**

The owner, the Inspector General of the United States, the U.S. Department of Housing and Urban Development, the U.S. Department of Labor, the General Accounting Office, and the Montana Department of Commerce shall be permitted by the contractor to have full access to, and right to examine any pertinent books, documents, papers and records of the contractor involving transactions related to this contract, during the period of the project and for three (3) years from

the date of final payment or until all findings have been resolved to the satisfaction of the State of Montana.

6. **CONTRACT PRICING**

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used.

7. **FEDERAL LABOR STANDARDS PROVISIONS, HUD-4010**

The HUD-4010 form (Federal Labor Standards Provisions) which is Exhibit 6-A of the CDBG Grant Administration Manual) must be included with attached to these CDBG Supplemental Conditions. The HUD- 4010 form summarizes the federal provisions which are required to be contained in the contract including minimum wage, withholding for wages, payroll and basic records, apprentices and trainees, sub-contracts, debarment, labor standards disputes, overtime, liability for unpaid wages, liquidated damages, health and safety, and other issues.

8. **SCHEDULE OF MINIMUM HOURLY WAGE RATES**

The current federal Davis-Bacon Wage Determination provided by the Montana Department of Commerce's CDBG Program as applicable to the project must be included attached to these CDBG Supplemental Conditions. (See Chapters 6 and 9 of the CDBG Grant Administration Manual.)

9. **EQUAL OPPORTUNITY PROVISIONS**

- (a) Equal Employment Opportunity (Executive Order 11246). During the performance of this contract, the Contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
 - (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - (6) In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
 - (7) The contractor will include the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that each provision will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
- (b) Title VII of the Civil Rights Act of 1964. Provides that no person shall, 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.
 - (c) Section 109 of the Housing and Community Development Act of 1974. "No person in the United States shall on the ground of race, color, national origin 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 available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity."
 - (d) Section 3 of the Housing and Urban Development Act of 1968. The contractor will ensure that to the greatest extent feasible opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to 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 the award of contracts and purchase of services and supplies.

- (e) Minority Business Enterprise. Under the provisions of Executive Order 11246 contractors on federally-funded projects are required to take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the contractor must document all affirmative steps taken to solicit minority businesses and forward this documentation along with the names of the minority subcontractors and suppliers to the owner upon request.
- (f) Nondiscrimination Provision in all Public Contracts Pursuant to Section 49-3-207, MCA. The Contractor certifies that all hiring will be on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

10. **UNIFORM FEDERAL ACCESSIBILITY STANDARDS (UFAS)**

All design specifications for the construction of any building shall provide access to the physically handicapped in accordance with the Uniform Federal Accessibility Standards and HUD regulations 24 CFR Part 8, "Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of HUD".

11. **CERTIFICATION OF COMPLIANCE WITH FEDERAL CLEAN AIR AND WATER ACTS**

(Applicable to federally assisted construction contracts and related sub-contracts exceeding \$100,000.)

During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR 15, as amended.

12. **CONTRACTOR 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).

13. **WORKERS' COMPENSATION INSURANCE**

The Contractor certifies that workers' compensation insurance will be maintained as required by the Montana Workers' Compensation Act (39-71-101, MCA). The Contractor further certifies that the Contractor will comply at all times with occupational disease and health and safety laws and regulations to the full extent applicable.

EXHIBIT 9-C

**LETTER OF TRANSMITTAL OF
CONSTRUCTION CONTRACT CHECKLIST
AND PROPOSED BID DOCUMENT**

(Date)

Montana Department of Commerce
Community Development Division
Community Development Block Grant (CDBG) Program
301 S. Park
P.O. Box 200523
Helena, MT 59620-0523

This is to certify that the bid document, prepared by _____, dated _____ for the _____ Project, under Contract MT-CDBG-0_PF-__ [or MT-CDBG-0HR-0_] contains provisions for compliance with all applicable CDBG requirements as outlined on the attached checklist.

Your review of the attached checklist and proposed bid document would be appreciated. If you have any questions or comments, please contact me at (telephone number).

Sincerely,

(_____ signature _____)
Project Manager (or Project Engineer or Project Architect)

**CHECKLIST OF REQUIRED CLAUSES
FOR CDBG CONSTRUCTION CONTRACTS**

Indicate on the line to the left of each item the page number where this clause can be found in your bid document. Except where indicated, these clauses are included in the Supplemental General Conditions of Exhibit 9-B.

IN ALL CASES:

- _____ MDOC Access to Contractor's Records
- _____ Title VII of the Civil Rights Act of 1964
- _____ Contractor Eligibility
- _____ Nondiscrimination Provision in all Public Contracts

IF OVER \$2,000:

- _____ Federal Labor Standards Provisions (*HUD-4010 form – CDBG Manual Exhibit 6-A*)
(Includes: *Davis-Bacon Act, Copeland Act, and Contract Work Hours and Safety Standards Act*)
- _____ Davis-Bacon Wage Rate Determination # _____, ¹
Modification # (if any): _____

IF OVER \$5,000:

- _____ Bid Bond
- _____ Payment Bond
- _____ Performance Bond

IF UNDER \$10,000:

- _____ Executive Order 11246² (*3 paragraph EEO Statement*)

¹ Attach and identify the current federal Davis-Bacon wage rates.

² See page 9-C.4 of this Exhibit.

IF OVER \$10,000:

- _____ Executive Order 11246 (*Paragraph 8, EEO Statement*)
- _____ Section 109 of the Housing and Community Development Act of 1974
- _____ Section 3 of the Housing and Urban Development Act of 1968

IF OVER \$100,000:

- _____ Certification of Compliance with Federal Clean Air and Water Acts
(*Includes: Clean Air Act, Clean Water Act, and EPA regulations 24 CFR, Part 15*)

IF A PUBLIC BUILDING:

- _____ Uniform Federal Accessibility Standards

Executive Order 11246 Clause³

During the performance of this contract, the contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City/County setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor shall incorporate the foregoing requirements in all subcontracts.

³ For construction contracts of less than \$10,000.

EXHIBIT 9-D

NOTICE OF CONTRACT AWARD
AND PRE-CONSTRUCTION CONFERENCE

(Date)

Montana Department of Commerce
Community Development Division
CDBG Program
301 S. Park
P.O. Box 200523
Helena, MT 59620-0523

This is to inform you that after having received CDBG's approval, (name of company and I.D. number) at (address), (phone number) has been awarded a contract (contract # and brief description of work) by the (name of grantee: City, Town or County of ...) under CDBG contract MT-CDBG-0_PF-0_ [or MT-CDBG-0HR-0_].

The number of the applicable federal Davis-Bacon wage rate decision is _____.
The contract is for (amount). The estimated start of construction is (date). Contract completion is estimated to be approximately (date).

A pre-construction conference will be held concerning this project at (time) on (date) at (address).

A copy of the signed contract will be sent to CDBG as soon as it becomes available.

Sincerely,

(Signature)
(Typed name)

Project Manager (or Project Engineer or Project Architect)

_____, MT Zip code

EXHIBIT 9-E

Contract Award Registration Report (Form CGR-1)

and

Gross Receipts Withholding Return Report (Form CGR-2)

- **“1% Contractor’s Gross Receipts Contract Award Registration” -- Form CGR-1, Rev 01-10**

Available (as a fillable PDF file) at the Montana Department of Revenue website:
http://revenue.mt.gov/content/formsandresources/current_year_downloadable_forms/Other_Forms_Not_Yearly/Miscellaneous_Forms/CGR1.pdf

- **“Gross Receipts Withholding Return” -- Form CGR-2, Revised 01-10**

Available (as a fillable PDF file) at the Montana Department of Revenue website:
http://revenue.mt.gov/content/formsandresources/current_year_downloadable_forms/Other_Forms_Not_Yearly/Miscellaneous_Forms/CGR2.pdf

CGR-1 and CGR-2 are published by
Business Tax Section
Income and Miscellaneous Tax Division
Montana Department of Revenue

Updated 7-12-2010

EXHIBIT 9-F

**(SAMPLE) SUB-RECIPIENT AGREEMENT
FOR AN AFFORDABLE HOUSING PROJECT
WITH MULTIPLE FUNDING SOURCES**

**CITY OF _____
_____, INC.
_____ PROJECT**

THIS AGREEMENT ("Contract") dated this ____ day of _____ is a Sub-Recipient Agreement by and between the City of _____, hereinafter referred to as "the City", and _____, Inc. hereinafter referred to as "Sub-recipient, Inc."

WHEREAS, the United State Government, through the Housing and Community Development Act of 1974 ("the Act"), Public Law No. 93-383, as amended, has established a Neighborhood Stabilization Program ("NSP") Grant program and has allowed each state to elect to administer this program and such federal funds for its non-entitlement areas; and

WHEREAS, the Montana Department of Commerce ("MDOC") is responsible for administering NSP in Montana; and

WHEREAS, the City was instrumental in identifying the need for the affordable _____ housing project, cooperated in the preparation of the application for NSP funds, and is identified in said application as the organization that will administer the NSP portion of the proposed project ("Project"); and

WHEREAS, the MDOC has approved the City's NSP Project applications through an award of funds; and

WHEREAS, Sub-recipient, Inc. will act as the controlling general partner in a limited partnership, a separate entity created for purposes of capitalization of federal Low Income Housing Tax Credits, and will own, operate and manage the Project known as the "_____
Project"; and

WHEREAS, it is in the best interests of the City to administer the project through a contractual relationship; and

WHEREAS, the City desires to contract with Sub-recipient, Inc., and Sub-recipient, Inc. desires to contract with the City for the implementation of this _____ project to promote housing opportunities for _____ citizens generally having incomes at or below _____% of area median income; and

WHEREAS, Sub-recipient, Inc., as the controlling general partner of the limited partnership, agrees to operate, manage, and maintain the Project in a manner that will make its units available to all residents of the greater _____ area without regard to race, color, religion, creed, political ideas, gender, marital status, physical or mental disability, or national origin; and

WHEREAS, Sub-recipient, Inc. will network to make activities and services for the Project's clients available; and

WHEREAS, the parties to this Agreement understand that neither party has in any way abrogated any of its individual powers, and that this Agreement does not create any new organization or legal entity; and

WHEREAS, the City has concurrently entered into a NSP Grant Contract #MT-NSP-____-____-____-____ ("Grant"), a copy of which is attached hereto and incorporated herein as Attachment A, with the MDOC whereby the City will receive and administer NSP monies to provide _____; and

WHEREAS, Sub-recipient, Inc. desires to obtain such financing for the Project and is willing to assist the City with obligations to the State under the Grants, as well as providing repayment of the Grants in a situation of default, under the terms and conditions as provided herein.

NOW, THEREFORE, for valuable consideration, the City and Sub-recipient, Inc. do mutually agree as follows:

1.0 ENGAGEMENT OF SUB-RECIPIENT, INC.

Sub-recipient, Inc. shall undertake the _____ and perform the services as set forth in the Grant Contracts between the City and MDOC, provided as Attachment A, and as listed in the NSP Management Plan dated _____ provided as Attachment B, and also summarized under Scope of Services Part 2.0, which by this reference is made a part of this Agreement.

2.0 SCOPE OF SERVICES.

Initially, Sub-recipient, Inc. will enter into construction and professional service contracts for the Project in accordance with the Project Implementation Schedule as provided in Attachment A of the Grant Contracts between the City and MDOC. These construction and professional service contracts will need to be reassigned to the limited partnership during the course of construction to allow the utilization of capital funds provided by the limited partners for the construction of the project. All building plans and specifications will be between the service providers and Sub-recipient, Inc. Sub-recipient, Inc. will be involved in key construction management decisions through consultation with its Executive Director, the Sub-recipient, Inc. designated liaison and project manager, the project architect, the general contractor, and the fiscal director. Once the construction of the housing project has been completed, the limited partnership, of which Sub-recipient, Inc. (a non-profit arm of _____) shall be the general and controlling partner, shall be responsible for ownership and management of the affordable senior rental housing project.

Except for those responsibilities to be specifically performed by the City, Sub-recipient, Inc. is responsible for the administration of and compliance with the NSP grants and will perform all the services listed in the NSP Management Plan and NSP Grant provided as Attachments A and B of this Agreement. The City agrees that Sub-recipient, Inc. may assign this responsibility to the controlling general partner if different than Sub-recipient, Inc. and the Limited Partnership, but Sub-recipient, Inc. will remain responsible to the City for compliance with the requirements of an NSP grant secured by the City for Sub-recipient, Inc. for this project, and any subsequent assignment of responsibility does not release of Sub-recipient, Inc. from its responsibility under this agreement.

3.0 TIME OF PERFORMANCE.

This Agreement will become effective upon its execution. The Project will commence as soon as practicable after the execution of this Agreement and will be undertaken and performed in accordance with the schedule set forth in the Grant Contracts between the City and MDOC. Sub-recipient, Inc. agrees that time is of the essence in the performance of its obligations under this Agreement and that it will complete the Project no later than the termination date plus authorized extensions as set forth in the Grant Contracts between the City and MDOC.

4.0 PAYMENT.

The City will provide up to \$_____ through its NSP grant for _____ costs or all eligible project costs as identified in the NSP Grant Budget. It is expressly understood and agreed that in no event may the total payments to be paid to Sub-recipient, Inc. hereunder exceed \$_____ for all services required. Notwithstanding anything to the contrary herein, the City's obligation to make periodic or final payment is conditioned upon the receipt by the City of Project Grant funds sufficient to make such payment.

5.0 SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Agreement will survive the termination date and will be enforceable by the City as provided herein.

The Period of Affordability for this project is 20 years; during which time Sub-recipient, Inc. agrees to monitor and report on the project as required by the FY 200__ edition of the CDBG/NSP Program Administration Manual, a copy of which has been provided to Sub-recipient, Inc. and by this reference is a part of this Agreement.

6.0 CONDITIONAL AGREEMENT.

It is expressly understood by the parties hereto that this Agreement is dependent and conditioned upon the receipt by the City of Neighborhood Stabilization Program Grant funds from MDOC and that in event that said funds are not provided, the City incurs no responsibilities or liabilities under this Agreement.

7.0 TERMINATION OF AGREEMENT. This Agreement may be terminated as follows:

- (a) Termination due to loss of funding. This Agreement will terminate, in whole or in part, at the discretion of the City in the event that the MDOC reduces or terminates payments under the NSP Program so as to prevent the City from paying for the project with NSP funds. In this event, the City will give Sub-recipient, Inc. 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 NSP grant.
- (b) Termination for cause.
 - (i) If at any time before the date of completion, one of the parties determines that the other party has failed to comply with any of the terms and conditions of this Agreement,

the aggrieved party may give notice, in writing, to the defaulting party of any deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If the defaulting party fails to cure and correct all defaults claimed within a reasonable period to be specified in the notice, the aggrieved may, with no further notice, declare this Agreement to be terminated in whole or in part. It is understood that representatives of both parties shall enter into negotiations in an attempt to reach a solution that is mutually acceptable within 10 days of notification of termination, if such negotiations be requested in writing. If the defaulting party is Sub-recipient, Inc., it will reimburse the City any NSP funds dispersed under this Agreement.

- (ii) Notwithstanding the above, Sub-recipient, Inc. will not be relieved of liability to the City for any damages sustained by the City or the State by virtue of any breach of the Contract by the Sub-recipient, Inc., and the City may withhold any payment to Sub-recipient, Inc. for the purpose of setoff until such time as the exact amount of damages due the City or the State from Sub-recipient, Inc. is determined.

8.0 DOCUMENTS INCORPORATED BY REFERENCE.

The following documents, including any attachments and modifications are incorporated by reference herein:

- (a) The City application to the Department of Commerce for NSP funding, dated _____, 200__ and _____, 200__ respectively
- (b) Attachment A -- NSP Grant Contract #MT-NSP-____-____-____.
- (c) Attachment B – NSP Management Plan, dated _____.
- (d) All applicable federal and state statutes and regulations are incorporated into this Agreement by this reference and are binding upon Sub-recipient, Inc.

9.0 RESPONSIBILITIES DELEGATED TO SUB-RECIPIENT, INC.

- (a) Sub-recipient, Inc. agrees to carry out the responsibilities assigned to it as stated in the project Management Plan.
- (b) Following the completion of the facility, Sub-recipient, Inc. will submit annual reports to the City, on a date to be determined by the City or agreement. These annual reports will include:
 - 1) Sub-recipient, Inc. shall timely submit to the City performance reports according to the prescribed State form. The performance reports will be due on the same dates as required under the Grant Contracts between MDOC and the City. Failure to submit these reports by the specified time may be considered a breach of contract and action may be taken based on clause 7b of this contract. Reports will be submitted to: _____, City of _____ Community Development Office, _____, _____, MT 59____.
 - 2) During the Contract period, the retention period and for as long thereafter as the records are maintained, at any time during normal business hours, the City, the State, or their authorized representatives, shall have the right of access to any books, documents,

papers or other records of Sub-recipient, Inc. or Subcontractor with respect to all matters covered by this Contract in order to make audit, examination, excerpts, transcripts, and photocopies. Sub-recipient, Inc. shall collect such information and retain records on the Project in order to allow the City to fully comply with its obligation under the Grant to include the Project in an annual audit report as required under the Grant. A copy of Sub-recipient, Inc.'s annual audit, as well as a copy of its annual IRS 990 tax form shall be provided to the City.

- 3) Sub-recipient, Inc. shall provide proof of adequate insurance on the facility. During the construction period, this insurance shall include worker's compensation insurance, hazard insurance, liability insurance and performance/payment bonds. Following construction, during the operation of _____, the insurance shall include hazard and liability coverage.

10.0 PERSONNEL

Sub-recipient, Inc. represents that it has, or will secure, at its own expense, all personnel required to perform the services under this Agreement. All of the services required will be performed by Sub-recipient, Inc., or under its supervision, and all personnel engaged in the work must be fully qualified and must be eligible under the law to perform such services. Where the State or local public jurisdictions require licensure for the provision of services, Sub-recipient, Inc. and any subcontractors must be properly licensed therefore.

11.0 PROCUREMENT

All procurement transactions for supplies, equipment, and services will be conducted in a manner to provide, to the maximum extent practicable, open and free competition. Sub-recipient, Inc. will comply with all bidding and purchasing regulations of all applicable State and Federal laws and requirements.

12.0 CONFLICT OF INTEREST

- (a) In the Case of Procurement. In the procurement of supplies, equipment, construction and services by Sub-recipient, Inc. and its subcontractors, no employee, officer or agent of Sub-recipient, Inc. or its subcontractors shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the party or firm selected for award. Officers, employees or agents of Sub-recipient, Inc. and its subcontractors shall neither solicit nor accept gratuities, favors or anything of monetary value from parties or potential parties to contracts. Unsolicited items provided as gifts are not prohibited if the intrinsic value of such items is nominal.
- (b) In All Cases Other Than Procurement. In all cases other than procurement (including the provision of housing assistance to individuals, the provision of assistance to businesses, and the acquisition and disposition of real property), no persons described in subparagraph i) below who exercise or have exercised any functions or responsibilities with respect to NSP activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with

respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

- (c) Persons Covered. The conflict of interest provisions of this paragraph apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of Sub-recipient, Inc. or of any designated public agencies or subcontractors receiving NSP funds.

13.0 COMPLIANCE WITH APPLICABLE LAWS

At all times during the performance of this Agreement, Sub-Recipient, Inc. shall strictly adhere to all applicable Federal and State laws, orders, and all applicable standards, regulations, interpretations, or guidelines issued pursuant thereto.

14.0 MONITORING AND EVALUATION

The City will monitor and evaluate this Agreement with Sub-recipient, Inc. under the Grants. The Agreement will be monitored for compliance with the rules, regulations, requirements, and guidelines, which the City has promulgated or may promulgate and will be monitored periodically during the operation of the Project and upon its completion. This Agreement will also be subject to monitoring and evaluation by MDOC, and the U.S. Department of Housing and Urban Development.

15.0 SEVERABILITY

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof may not be construed as waiver of any other term.

16.0 BINDING ON SUCCESSORS

Except as herein otherwise provided, this agreement will inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns. Sub-recipient, Inc. may not assign or otherwise pass on its responsibilities pursuant to this Agreement unless the City has in writing approved such assignment or assignment of responsibility.

17.0 EFFECTIVE DATE OF THE AGREEMENT

This Agreement takes effect when the following conditions are satisfied:

- (a) The Montana Department of Commerce and the City have executed the NSP Grant Contract;
- (b) The Montana Department of Commerce has approved the City's "Request for Release of Funds and Certification" from NSP;
- (c) The attorney for the City and the attorney for Sub-recipient, Inc. have approved this Agreement as to form and content; and

- (d) The City Manager and Sub-recipient, Inc.'s Executive Director have each reviewed this Agreement and agreed fully to its terms and conditions.

18.0 DISPOSITION OF REAL PROPERTY, SITE IMPROVEMENTS AND EQUIPMENT.

- (a) Sub-recipient, Inc., as the controlling general partner of the limited partnership, will retain title, control and manage the NSP assisted property after the completion of the project. The limited partnership will maintain the real property assisted under this Agreement for the sole purpose of providing safe, decent, and sanitary housing for low and very low-income senior households for a period of 30 years from the date of substantial completion of the apartment building.
- (b) Reversion of assets. Upon the expiration of this Agreement, Sub-recipient, Inc., as the controlling general partner of the limited partnership, will transfer to the City any NSP funds on hand at the time of expiration and any accounts receivable attributable to the use of NSP funds. With respect to any real property or equipment under the limited partnership's control that was acquired or improved in whole or in part with NSP funds in excess of \$25,000 the limited partnership will either:
- i. use the property to meet one of the national objectives contained in 24 CFR Part 570.901 for 30 years from the date of substantial completion of the apartment building; or
 - ii. dispose of the property in a manner that results in the City's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-NSP funds for acquisition of, or improvements to, the property. Reimbursement is not required after the period of time specified in paragraph (a) of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR Part 570-504 (Program Income), 24 CFR Part 85.25 (Program Income), Part 85.31 (Real Property), and Part 85.32 (Equipment).

19.0 Program Income

All Program Income derived from the repayment of the low interest loans to the Project will be tracked by Sub-recipient, Inc. as required by NSP regulations and reported to the funding sources on an annual basis and used in accordance with applicable NSP guidelines.

20.0 CIVIL RIGHTS ACT OF 1964.

Sub-recipient, Inc. will abide by the provisions of 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.

21.0 SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.

Sub-recipient, Inc. will comply with the following provision in that no person in the United States may on the grounds of race, color, national origin, 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 the funds made available under this title. Any prohibition against discrimination on the basis of age

under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

22.0 SECTION 3 OF HOUSING AND URBAN DEVELOPMENT ACT OF 1968.

Sub-recipient, Inc. will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG and HOME assisted project will be extended to lower income project area residents. Further, Sub-recipient, Inc. will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.

23.0 MINORITY BUSINESS ENTERPRISE.

Consistent with the provisions of Executive Order 11246, Sub-recipient, Inc. will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services.

24.0 NONDISCRIMINATION.

Sub-recipient, Inc. will comply with all applicable State and Federal laws, rules, and regulations involving non-discrimination on the basis of race, color, religion, national origin, age, handicap or sex. Sub-recipient, Inc. agrees to consider minorities or minority businesses as employees, specialists, agents, consultants or subcontractors under this Contract. Sub-recipient, Inc. agrees to comply with the letter and spirit of all applicable State and Federal law respecting discrimination and unfair employment practices.

25.0 REPORTS AND INFORMATION.

Sub-recipient, Inc. will maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City 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 City, its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Agreement unless permission to destroy them is granted by the City.

26.0 ACCESS TO RECORDS.

It is expressly understood that Sub-recipient, Inc.'s records relating to this Agreement will be available during normal business hours for inspection by the City, MDOC, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and when required by law, the Montana Legislative Auditor.

27.0 PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE.

The parties understand and agree that performance of this Agreement is in the County of _____ and that in the event of litigation concerning it, venue is the _____ Judicial District in and for the County of _____, State of Montana.

28.0 INDEMNIFICATION.

Sub-recipient, Inc. waives any and all claims and recourse against the City 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 incidental to Sub-recipient, Inc.'s performance of this contract except for liability arising out of concurrent or sole negligence of the City or its officers, agents or employees. Further, Sub-recipient, Inc. will indemnify, hold harmless, and defend the City against any and all claims demands, damages, costs, expenses or liability arising out of Sub-recipient, Inc.'s performance under this Agreement, except for liability arising out of the concurrent or sole negligence of the City or its officers, agents or employees.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement this _____ day of _____, 200__.

CITY OF _____

APPROVED AS TO CONTENT & FORM:

By _____

Type Name _____,
City Manager

Date

By _____

Type Name _____,
City Attorney

Date

(TYPE NAME OF SUB-RECIPIENT), INC.

By _____

Type Name _____,
Executive Director

Date

EXHIBIT 9-G

(SAMPLE) INTERLOCAL AGREEMENT (SUB-RECIPIENT AGREEMENT)
For A Project with A Water/Sewer District As Sub-recipient

- Interlocal agreements related to CDBG projects need to be reviewed and approved by MDOC/CDBG prior to signing.
- The clauses required by HUD regulations (24 CFR 570.503) are noted with an asterisk (*). Copies of the HUD requirements are available upon request from the Department of Commerce, CDBG Program.
- See Exhibit 9-I for an example of an interlocal agreement (sub-recipient agreement) between a local government and a local non-profit organization that is a subrecipient of CDBG grant funds.

_____ COUNTY AND
_____ WATER & SEWER DISTRICT
INTERLOCAL AGREEMENT

THIS AGREEMENT is entered into by _____ (County), herein referred to as "the County," and the _____ (NAME OF WATER & SEWER DISTRICT), herein referred to as "the District."

WITNESSETH THAT:

WHEREAS, the County is the recipient of a Community Development Block Grant (CDBG) to pay assessments for low and moderate income families located within the boundaries of the _____ Water and Sewer Improvements Project (the "Project"), which assessments are for purposes of paying for _____ (DESCRIBE ACTIVITIES TO BE COMPLETED DURING THE PROJECT), facilities to be owned and operated by the District; and

WHEREAS, this Agreement between the County and the District will enable them to enhance cooperation in implementing the County's CDBG award to accomplish the Project; and

I

Interlocal Agreement Implementing
_____ County

CDBG Contract # MT-CDBG-0_PF-_____
_____ Water and Sewer District

Community Development Block Grant (CDBG) Program
Montana Department of Commerce

CDBG / NSP Administration Manual
October 2013

WHEREAS, the County, in its capacity as a CDBG grantee, has determined that the District can better supervise the design and construction of the facilities, as well as the collection and payment of assessments; and

WHEREAS, the Montana Department of Commerce (“MDOC”), pursuant to its CDBG contract with the County (“the CDBG Contract”), has required the County to enter into an agreement with the District specifying the terms and conditions of the County's delegation of certain CDBG responsibilities to the District; and

WHEREAS, both parties to this Agreement understand that neither local government involved herein has in any way, expressly or implied, abrogated any of its individual powers, and that this Agreement does not create any new organization or legal entity.

NOW, THEREFORE, THE COUNTY AND THE DISTRICT MUTUALLY AGREE AS FOLLOWS:

I. Responsibilities Delegated to the District

- A. The District will, subject to prior approval by the Board of County Commissioners, retain the services of a consulting engineering firm to design and supervise the construction of the Project.
- B. The District will be responsible for all facets of the design and construction phases of the facilities, including but not limited to the following:
 - 1. Design engineering; including the development of design criteria, preparation of approvable plans and specifications and assistance with Project bidding and award;
 - 2. Construction engineering; including full-time resident construction inspection, Project close-out, preparation of an Operation & Maintenance manual, as-built drawings, and post-construction activities;

3. Except as provided by Section V (Administration), compliance with all applicable state and federal requirements contained in the Certifications for Application submitted to the MDOC with the County's application for CDBG assistance, dated May 26, 2006;
 4. Except as provided by Section V (Administration), compliance with all other state and federal requirements as described in the most recent version of the Montana CDBG Program Grant Administration Manual;
 5. Preparation of construction bid documents; and
 6. Supervision of the bid process, the awarding of construction contracts, and construction of the facilities. The selection of the Project contractor will be subject to the ratification of the County Board of Commissioners and bid solicitation documents will reflect this requirement.
- C. The District and its consulting engineer will receive, review, approve and pay all requests for payment for the items contained in paragraph 1(B), above, and will prepare a summary of expenditures (Uniform Status of Funds Spreadsheet and Uniform Invoice Tracking Spreadsheet) to keep the County abreast of Project status.
- D. The District agrees to provide the MDOC, the United States Department of Housing and Urban Development, the Comptroller General of the United States, the Montana Legislative Auditor, or their authorized agents, access to any records necessary to determine Agreement compliance. The District agrees to create and retain records supporting the services rendered or supplies delivered for a period of four (4) years after either the completion date of this Agreement or the conclusion of any claim, litigation, or exception relating to this Agreement taken by the County, the District, the State of Montana, or a third party, whichever is later. These records will be kept in the Grantee's offices in _____, Montana.

- E. The District will provide documentation that all non-County CDBG funds for the Project have been appropriated and allocated for use prior to the time of construction bid award.
- F. The District will withhold one percent (1%) of the amount of any claim submitted by the contractor (gross receipts) and will forward this amount to the Montana Department of Revenue pursuant to section 15-50-206(2), MCA.

II. Payment of Design, Construction & Administrative Costs Incurred by the District

- A. Each payment for engineering and construction costs will be drawn from the District's _____(LIST FUNDING AGENCIES) grants, _____(LIST FUNDING AGENCIES) loan and local funds in amounts that are proportionate to the percentage that such funds represent of the total cost of the Project as specified in Attachment B (Project Budget) to this Agreement, herein specifically incorporated by this reference, and any modifications thereto approved by the MDOC and the County in accordance with the provisions of the CDBG Contract,. The County is not responsible for payments directly to the engineer or construction contractors.
- B. Administrative costs shall be paid as specified in Attachment B (Project Budget) and any modifications thereto approved by MDOC and the County in accordance with the provisions of the CDBG Contract.

III. Payment of LMI Assessments by the County

Upon receipt of valid documentation that an existing user of the District's water and wastewater facility qualifies as "Low to Moderate Income", the County shall request from the MDOC the required amount of CDBG funds to pay the total determined assessment for that user. The funds will be transferred to the District for repayment of a portion of the District's Loan.

IV. Duration of the Agreement

- A. This Agreement takes effect when the following conditions are satisfied:

1. The MDOC and County Board of Commissioners have executed the CDBG Contract;
 2. The MDOC has approved the County's "Request for Release of Funds and Certification";
 3. The _____ County attorney and the attorney for the District have approved this Agreement as to form and content; and
 4. The County Board of Commissioners and the District's governing body have each reviewed this Agreement and agreed fully to its terms and conditions.
- B. This Agreement will terminate when the MDOC approves final closeout of the CDBG Contract, unless terminated earlier in accordance with the terms of this Agreement.

V. Administration

- A. For purposes of implementing the joint undertaking established by this Agreement, the County's Board of Commissioners and the District's Board of Directors hereby agree that a representative of the _____ County Commission may attend the District's regularly scheduled board meetings (typically held on the first and third Monday of each month) and any other necessary meetings in order to assess Project status and funding status.
- B. The District will comply with all requirements applicable to subrecipient entities as set forth in the CDBG Contract, attached hereto and specifically incorporated herein by this reference.
- C. The District will carry out each activity under this Agreement in compliance with all federal laws and regulations described in 24 CFR Part 570.
- D. The District does not assume the County's environmental responsibilities described at 24 CFR Part 58, and

- E. The District does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.
- F. The County will monitor housing units and lots with LMI households served by the Project as of the time of execution of this Agreement to ensure that the landlord continues to rent the properties to LMI tenants and maintains HUD Fair Market Rents affordable to the tenants for a 5-year period, commencing with the signing of the LMI Owner/Renter/Landlord Agreement (the Agreement) and accompanying Notice of Security Interest in Real Property to Secure Repayment of a Wastewater and Water System Assessment Assistance Form (the Notice). Furthermore, the County will ensure that lot rents for assisted LMI households are maintained for a 5-year period commencing with the signing of the Agreement and accompanying Notice, unless the County approves rent increases to reflect legitimate cost increases to the owner, such as increased property tax or utility costs.
- G. The District shall comply with all terms and provisions of the Management Plan for the Project.

VI. Disposition of Real Property or Equipment Acquired

- A. The primary purpose of this Agreement is to define the procedures by which the County will disburse CDBG funds to pay the assessments incurred by LMI households within the Project area to pay for construction of the Project. The District's facilities will be constructed or improved as described in the CDBG Contract and the District or its assign will continue to own and operate those facilities subject to the limitations contained in subparagraph B of this Section.
- B. Upon the expiration of this Agreement, the District will transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. With respect to any real property or equipment under the District's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 the District will either:

1. use the property to meet one of the national objectives contained in 24 CFR section 570.901 for five years after expiration of the agreement (or for such longer period of time as is determined to be appropriate by the County) or;
2. dispose of the property in a manner that results in the County's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property. Reimbursement is not required after the period of time specified in subparagraph A of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR 570.504 (Program Income) and 24 CFR Parts 85.25 (Program Income), 85.31 (Real Property), and 85.32 (Equipment).

VII. Indemnification

The District waives any and all claims and recourse against the County, including the right of contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to the District's performance of this Agreement except claims arising from the concurrent or sole negligence of the County or its officers, agents, or employees. The District will indemnify, hold harmless, and defend the County against any and all claims, demands, damages, costs, expenses, or liability arising out of the District's performance of this Agreement except for liability arising out of the concurrent or sole negligence of the County or its officers, agents, or employees.

VIII. Suspension and Termination

In accordance with 24 CFR 85.43, the County may suspend or terminate this Agreement if the District materially fails to comply with any term of the County's CDBG grant agreement with the MDOC. In addition, either party may terminate this Agreement in accordance with 24 CFR 85.44.

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties have executed this Agreement.

_____ **WATER AND SEWER DISTRICT**

BY: _____
[NAME, TITLE]

DATE: _____

ATTEST

BY: _____
[NAME/TITLE]

DATE: _____

**BOARD OF COUNTY COMMISSIONERS, _____ COUNTY,
MONTANA**

BY: _____
[NAME, TITLE]

DATE: _____

ATTEST

BY: _____
[NAME/TITLE]

DATE: _____

EXHIBIT 9-H

CONSTRUCTION CONTRACTOR REGISTRATION LAW

http://data.opi.mt.gov/bills/mca_toc/39_9_1.htm
39-9-101 et. seq., Montana Codes Annotated

Links to the following Montana Contractor Registration Agencies can be found at:

<http://mtcontractor.com/>

~ Construction Contractor Registration Unit

~ Independent Contractor Central Unit

Registration Documents are available for download at:

<http://mtcontractor.com>

~ Approved Contractor Registration List

~ Construction Contractor Registration Requirements

~ Construction Contractors Registration Application

~ Corporate Officer Coverage Requirements

~ Independent Contractor Application Instructions and Affidavit Form

*CONSTRUCTION CONTRACTOR
REGISTRATION*

The purpose of Construction Contractor Registration: to assure that all construction contractors are competing fairly and are in compliance with the workers' compensation laws.

The law also provides for protection from upward migration of workers' compensation liability. If the construction contractor is registered and in good standing on the date the contract begins, the liability for workers' compensation accidents will not be the responsibility of the general contractor or the homeowner. There is also a provision for an industry and consumer education program.

All construction contractors must register, with some limited exemptions. The most notable exemption is for construction contractors without employees. These individuals may register if they want. The Construction Contractor Registration cost is \$53. The Independent Contractor Exemption Certificate costs \$125.00. Both are good for two years.

The department provides a list of all registered construction contractors. This list is available in hard copy, on the State Bulletin Board or on the Internet.

If a contractor does not register, there is a provision for a penalty of up to \$500. If a construction contractor falsifies a registration or uses a falsified registration, there is a penalty of not more than \$5,000.

**Construction Contractor Registration Unit
Montana Department of Labor & Industry
<http://mtcontractor.com>
1805 Prospect Avenue/ PO Box 8011
Helena, MT 59604-8011
(406) 444-7734**

CONSTRUCTION CONTRACTOR REGISTRATION REQUIREMENTS

<http://mtcontractor.com>

Who has to register? All construction contractors and subcontractors in the building and construction industry that have employees.

How do I become a registered contractor? Complete a contractor registration application. Provide proof of workers' compensation coverage. Complete an independent contractor exemption affidavit (if not a corporation or a manager-managed limited liability company) or provide proof of workers' compensation on yourself. Submit a \$53 registration fee.

What if I am an independent contractor with no employees? The law exempts construction "independent contractors" without employees from registering, although they can choose to register.

Why would I want to register? Many general contractors will hire only registered contractors to protect themselves from upward migration of liability. If a contractor hires an unregistered independent contractor, (even if that person has a workers' compensation exemption), the contractor still risks the consequences of liability for workers' compensation should an individual be hurt on the job.

Can I be penalized if I don't register? Yes, the registration law provides for a \$500 maximum penalty for construction contractors who aren't registered. It also allows for a \$5,000 fine for falsely transferring a registration certificate.

Is a test required to become a registered contractor? No test is required.

I only perform a few odd jobs during the summer. Do I have to be registered? If the total of both labor and materials does not exceed \$2,500 for the entire job, you do not have to register.

I'm an out-of-state contractor bidding work in Montana. Are there any special requirements I might want to know about? Montana's workers' compensation law does not allow coverage from other states' workers' compensation plans in the construction industry. If you are only bidding jobs in Montana, you may ask for a "Bid Only" registration. When you come to work in Montana, you must have a workers' compensation policy specific to Montana. Construction companies with "Bid Only" certificates must upgrade their registration to "Employer" status before they can have employees working in Montana.

Do I need to advise the Department of Labor & Industry Employment Relations Division if the name or address of my business changes? Yes. If you are changing only the name or the address under which your business is registered, you do not have to reregister. However, you do need to notify the Employment Relations Division in

writing.

Can my spouse or child take over my business and registration? Your spouse can. If your child takes over the business, it is considered a new business and the child must register under his or her name.

What are the costs? The Construction Contractor Registration cost is \$53. The Independent Contractor Exemption Certificate costs \$125.00. Both are good for two years. There is no "2 for 1" deal.

What is the difference between Contractor Registration and the Independent Contractor exemption? *Construction Contractor Registration* is a new law mandated by the 1995 legislature, requiring contractors in the construction industry to register with the state. This registration ensures contractors are complying with all employment laws, such as workers' compensation. *The independent contractor exemption*, which exempts the holder from carrying workers' compensation coverage, has been around since 1983. The exemption deals with what independent business people called "independent contractors." Individuals seeking independent contractor status may get the exemption affidavit from the Department of Labor and Industry.

If you have questions, please call or write:

Construction Contractor Registration Unit
<http://mtcontractor.com/>
Workers' Compensation Regulation Bureau
Employment Relations Division
PO Box 8011
Helena, MT 59604-8011
(406) 444-7734

For your convenience, Job Service Offices have application forms.

EXHIBIT 9-I

(SAMPLE) SUB-RECIPIENT AGREEMENT (INTERLOCAL AGREEMENT)
For A Project with A Local Non-Profit Organization As Sub-Recipient

- Interlocal agreements related to CDBG projects need to be reviewed and approved by MDOC/CDBG.
- Certain clauses are required by HUD regulations (24 CFR 570.503). Copies of the HUD requirements are available upon request from the Department of Commerce, CDBG Program.
- See Exhibit 9-G for an example of an interlocal agreement (sub-recipient agreement) between a local government and a water/sewer district that is a subrecipient of CDBG grant funds.

~ ~ ~ ~ ~

SUB RECIPIENT INTERLOCAL AGREEMENT

CITY / COUNTY OF _____
AND _____

THIS AGREEMENT is entered into on the ____ day of _____, 2008, by and between the City/County of _____, hereinafter referred to as “the City/County” and _____, a private, non-profit corporation incorporated under the laws of Montana, hereinafter referred to as “the Center.”

WITNESSETH THAT

WHEREAS, the Center owns real property in the City/County (the “Property”) on which it proposes to _____ (the “Project”);
and

WHEREAS, the City/County desires to contract with the Center to construct the Project to enable the Center to _____; and

WHEREAS, the Center agrees to operate, manage, and maintain the Project in a manner so as to be available to all residents of the greater City/County area without regard to race, color, religion, creed, political ideas, gender, age, marital status, physical or mental disability, or national origin and with granting agencies required guidelines; and

WHEREAS, the City/County has applied for and been awarded Grant #MT-CDBG-_____ under Montana’s Community Development Block Grant (CDBG) program to construct the Project; and

WHEREAS, the parties to this Agreement understand that neither party has in any way abrogated any of its individual powers, and that this Agreement does not create any new organization or legal entity.

NOW, THEREFORE, THE CITY/COUNTY AND THE CENTER MUTUALLY AGREE AS FOLLOWS:

I. Responsibilities Delegated to the Center

- A. The Center agrees to carry out the responsibilities assigned to it as stated in the project Management Plan, as approved by the Montana Department of Commerce (MDOC) on _____, attached hereto and specifically incorporated herein by this reference.

- B. Following the completion of the Project, the Center will submit annual reports to the City/County, on a date to be specified by the City/County, unless later excused by new regulation or agreement. These annual reports shall include:
 - (1) a copy of the Center’s annual IRS 990 tax form; and
 - (2) a copy of the Center’s annual Treasurer’s report; and
 - (3) proof of adequate insurance on the facility.

II. Duration of the Agreement

- A. This Agreement takes effect when the following conditions are satisfied:
 - 1. The MDOC and the City/County have executed the CDBG Grant Contract;
 - 2. The MDOC has approved the City/County’s “Request for Release of Funds and Certification”;
 - 3. The attorney for the City/County and the attorney for the Center have approved this Agreement as to form and content; and
 - 4. The City/County’s Council/Commission and the Center’s Board of Directors have each reviewed this Agreement, agreed fully to its terms and conditions, and executed the same.

- B. This Agreement shall terminate five (5) years after MDOC final close out of CDBG Grant #MT-CDBG-_____.

III. Administration

- A. For purposes of implementing the joint undertaking established by this Agreement, the City/County’s Council/Commission and the Center’s Board of Directors agree to form as a committee comprising their total membership. The committee will meet as necessary to provide for the efficient and smooth implementation of this Agreement and the activities specified herein.

- B. The Center will comply with all requirements applicable to subrecipient entities as set forth in the City/County’s CDBG contract with the MDOC, attached hereto.

- C. The Center will carry out each activity under this Agreement in compliance with all federal laws and regulations described in 24 CFR Part 570.
- D. The Center does not assume the City/County's environmental responsibilities described at 24 CFR Part 58.
- E. The Center does not assume the City/County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

IV. Disposition of Real Property or Acquired Equipment

- A. The Center will retain title, control, and manage the Project after final closeout of the CDBG Grant #MT-CDBG-_____ in accordance with the terms set forth herein.
- B. With respect to any real property or any equipment under the Center's control that was acquired or improved in whole or in part with funds from CDBG Grant #MT-CDBG-_____ in excess of \$25,000, the Center will either:
 - 1. use the property to meet one of the national objectives contained in 24 CFR 570.208 for five (5) years after MDOC final closeout of CDBG Grant #MT-CDBG-_____, or for such longer period of time as is determined to be appropriate by the City/County or;
 - 2. dispose of the property or equipment in a manner that reimburses the City/County in the amount of the current fair market value of the property or equipment, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property or equipment. Reimbursement is not required after the period of time specified in subparagraph (B)(1) of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR 570.504 (Program Income), 24 CFR sections 84.24

(Program Income), 84.32 (Real Property), 84.34 (Equipment), 85.25 (Program Income), 85.31 (Real Property), and 85.32 (Equipment).

- C. Upon the expiration of this Agreement, the Center will transfer to the City/County any CDBG funds on hand at the time of expiration of this Agreement and any accounts receivable attributable to the use of CDBG funds.
- D. The parties agree that concurrent with execution of this Agreement, as security for the performance of the obligations set forth herein, an abstract of the lien against the Property created by this Agreement will be duly recorded with the _____ County Clerk and Recorder's office.

V. Indemnification

The Center waives any and all claims and recourse against the City/County, including the right of contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to the Center's performance of this Agreement except claims arising from the concurrent or sole negligence of the City/County or its officers, agents, or employees. The Center will indemnify, hold harmless, and defend the City/County against any and all claims, demands, damages, costs, expenses, or liability arising out of the Center's performance of this Agreement except for liability arising out of the concurrent or sole negligence of the City/County or its officer, agents, or employees.

VI. Suspension or Termination

In accordance with 24 CFR 84.61, the City/County may suspend or terminate this Agreement if the Center materially fails to comply with the terms and conditions of this Agreement, or if CDBG Grant #MT-CDBG-_____ is terminated by the MDOC in accordance with the terms of the City/County's CDBG contract with MDOC, attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2008.

CITY/COUNTY OF _____

BY: _____
[NAME, TITLE]

DATE: _____

ATTEST:

[NAME], [TITLE]

APPROVED AS TO FORM:

[NAME], City/County Attorney

STATE OF MONTANA)

:

County of _____)

On this _____ day of _____, 2008, before me _____, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of the City/County of _____ and _____, known to me to be the _____ of the City/County of _____, a Montana municipal corporation duly organized and incorporated and existing under the laws of the State of Montana, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said municipal corporation and acknowledged to me that such municipal corporation executed the same.

(NOTARY SEAL)

PRINTED NAME: _____
Notary Public for the State of Montana
Residing at _____
My Commission expires _____

[NAME OF ORGANIZATION]

BY: _____
[NAME, TITLE]

DATE: _____

STATE OF MONTANA)

:

County of _____)

On this _____ day of _____, 2008, before me _____, a Notary Public for the State of Montana, personally appeared, _____ of the _____ in Montana, and acknowledged to me that he/she executed the written instrument on behalf of said Business.

(NOTARY SEAL)

PRINTED NAME: _____
Notary Public for the State of Montana
Residing at _____
My Commission expires _____

EXHIBIT 9-J

Checklist for CDBG Review of Construction Bid Documents

For Public Facilities Projects, New Housing Construction Projects and
Projects for the Rehabilitation of Multi-Family Apartment Buildings

YES	NO	
		Is <u>Exhibit 9-C (Letter of Transmittal of Construction Contract Checklist and Proposed Bid Document -- and its attachments)</u> included with the bid documents submitted to CDBG for review?
		1. Do the bid documents show that the local government will comply with State minimums re bid <u>advertising times</u> ? (Proof of advertising needs to be submitted to CDBG. See Chapter 9, CDBG Manual, page 9-12.)
		2. Does the bid specs document include either <u>Exhibit 9-B (CDBG Supplemental General Conditions)</u> or <u>SECTION 00900 (Funding Agency Special Provisions for Montana Public Facilities Projects)</u> , found at the WASACT website at http://dnrc.mt.gov/cardd/ResDevBureau/wasact/docs/Uniform_Spec_Supplement.pdf)?
		~ Does the bid document include all applicable CDBG-required clauses? "2a" through "2m"
		<p>2a. <u>Montana Construction Contractor Registration Requirement</u>?</p> <p>~ i. No Contractor may submit a bid unless already properly registered in Montana at the time of bid submission with the Montana Department of Labor and Industry. (See Exhibit 9-B)</p> <p>~ ii. Chapter 9 of the Montana CDBG Manual: "<u>The Montana Contractor Preference statute, Section 18-1-102, MCA, is NOT APPLICABLE to Montana public construction contracts funded in whole or part with CDBG funds</u> as determined by the Attorney General in an opinion (Volume 42, number 35) issued during November of 1987.)</p>
		2b. Is the <u>1% Gross Receipts Withholding Requirement</u> (aka "Contractor's License Fee") included?
		2c. Is the <u>Pre-construction Conference requirement</u> included?
		2d. Are the <u>Reports and Information requirements</u> included?
		2e. Are <u>Access to Records requirements</u> included?
		2f. Are <u>Contract Pricing requirements</u> described? (Cost plus a percentage of cost / percentage of construction cost method of contracting shall <u>not</u> be used.)
		2g. Is the <u>Federal Labor Standards Provisions document (HUD-4010 Form)</u> included? (CDBG <i>Exhibit 6-A</i> is the HUD-4010 form.)
		2h. Is the <u>appropriate federal Davis-Bacon Wage Determination</u> (Schedule of Minimum Hourly Wage Rates) <u>included</u>? See CDBG Manual, pages 9-15 and following for CDBG Davis-Bacon Policy: CDBG grant recipients need to verify (via contact with CDBG) that the wage rate determination is the most current available. Modifications to the federal wage rate determinations posted at the Davis-Bacon website ten days before the bid opening need to be utilized. Therefore, not less than fifteen work days prior to the bid opening your project's CDBG Program Specialist must be contacted by telephone or in writing to find out if the wage rates included in the bids solicitation are still current.
		2i. Are the <u>Equal Opportunity Provisions</u> included? (See Ch. 5, CDBG Manual) [] ~ Equal Employment Opportunity (<u>Executive Order 11246</u>)

YES	NO	
		<input type="checkbox"/> ~ Title VII of the Civil Rights Act of 1964 <input type="checkbox"/> ~ <u>Section 109</u> of the Housing and Community Development Act of 1974 <input type="checkbox"/> ~ <u>Section 3</u> , Housing and Community Development Act (See Exhibits 9-I, 13-H, 5-B and 5-C). Section 3: <i>Economic Opportunities for Low and Moderate Income Persons</i> <input type="checkbox"/> ~ <u>Minority/Women Business Enterprise</u> <input type="checkbox"/> ~ <u>Nondiscrimination Provision</u> in all contracts
		2j. Are <u>Uniform Federal Accessibility Standards</u> (UFAS) included?
		2k. Are <u>Compliance with Federal Clean Air and Water Acts requirements</u> listed?
		2l. Are <u>Workers' Compensation compliance requirements</u> listed?
		2m. Is the <u>CDBG Project Sign requirement</u> listed?
		3. Is the <u>Contractor Insurance requirement</u> included?
		4. In the event bids might come in too high -- are <u>deductive alternatives</u> or <u>drop schedules</u> identified?
		5. The local government must provide a copy of the <u>Engineer's Estimate</u> and <u>Bid Tabs</u> to CDBG. (NOTE: This is to be done after the bid opening.)
		6. Is the <u>Information for Bidders</u> clearly presented?
		7. The local government must provide <u>documentation of the Advertisement for Bids</u> to CDBG. (Submit to CDBG after the advertisements are published.)
		8. Is the <u>Method of Bidding</u> clearly described?
		9. Is/are the <u>Bid Schedule / Bid Form(s)</u> included?
		10. Is the <u>Bid Bond requirement</u> (10%) included?
		11. Is the <u>Performance Bond requirement</u> (100%) included?
		12. Is the <u>Payment Bond requirement</u> (100%) included?
		13. Is the <u>Notice of Award</u> process described? (See CDBG <i>Exhibit 9-D.</i>) Requirements before Notice of Award is issued: (a) <u>Before a Notice of Award is issued</u> , CDBG must receive a request (using CDBG <i>Exhibit 6-D</i> ; see Chapter 9, page 9-18 and following) for a debarment/eligibility check concerning the tentatively-selected contractor/ firm and its principal owners. See #24 below. (b) Request CDBG approval (and that of other funding agencies) to issue the Notice of Award. (c) When the contract is signed, send a copy of the signed contract to CDBG.
		14. Are <u>Notice to Proceed requirements</u> described? (Also see <i>Exhibit 9-D.</i>)
		15. Is the <u>Change Orders</u> process described?
		16. Are <u>General Conditions</u> included?
		17. <i>If applicable:</i> Montana DEQ review and approval of plans.

YES	NO	
		18. Does the <u>project bid schedule and scope of work</u> (including project area) match those described in the original application to CDBG and in the CDBG contract with the local government?
		20. Do all activities listed in the bid specs appear to be <u>CDBG eligible</u> ?
		21. Do <u>plans and specs</u> appear complete and understandable?
		22. Was the <u>CDBG Release of Funds</u> (see Chapter 2, Environmental) made <u>prior to award of a contract</u> , as required by the CDBG-grantee policies and the CDBG contract? ... <u>If applicable</u> : Was floodplain compliance completed?
		23. Was an updated <u>Project Management Plan</u> and <u>Project Implementation Schedule</u> submitted to CDBG and approved prior to construction contract award?
		24. The grantee must check with MDOC/CDBG for state and federal <u>debarment checks of the prime contractors and subcontractors</u> prior to awarding a contract. DUNS numbers for all contractors must be provided to CDBG as part of the debarment check request. (See Chapter 6 re the DUNS number requirement.) ~ ___ Federal debarment checks: <i>Excluded Parties Lists System</i> , http://epls.arnet.gov/ ~ ___ State debarment checks: http://gsd.mt.gov/procurement/debarredsuspendedvendors.asp
		25. <i>Reasonable construction period allowed?</i> To avoid unnecessary claims for liquidated damages, <u>is the contractor granted a reasonable amount of time in which to complete project</u> ?
		26. <i>To encourage free and open competition:</i> If "brand names" or other proprietary components are specified, <u>is language added allowing for reasonable equivalent equipment or components</u> ?
		27. Are there <u>any unreasonable requirements</u> on firms in order for them to qualify to do business?
		28. Is there <u>unnecessary experience and excessive bonding</u> required?
		29. Are any <u>noncompetitive pricing practices between firms or between affiliated companies</u> noted by CDBG in its review of the bid specs?
		30. Are any <u>organizational conflicts of interest</u> noted?
		31. Are any <u>arbitrary action in the procurement process</u> noted?
		32. Are there any other issues that need to be addressed before CDBG approval of the bid documents? ▪ ... ▪ ...

EXHIBIT 9-K

(Exhibit 9-K is the same as Exhibit 5-J and Exhibit 13)

Montana Department of Commerce / CDBG Program CONTRACT REPORTING FORM – CONTRACT AND SUBCONTRACT ACTIVITY For contract and subcontract activities of \$10,000 or more											
Grantee Name											Date Submitted:
Contact Person			Phone								
(A) Contractor's Montana Registration Number	(B) Amount of Contract	(C) Type of Trade (See codes below)	(D) Business Ethnicity, Racial Category and Gender (See codes below)	(E) Contractor ID Number	(F) Sub- contractor ID Number	(G) Contractor/Subcontractor -- Name and Address					
						<u>Name</u>	<u>Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	
		<u>Trade Codes</u> 1 Construction 2 Education / Training 3 Other	<u>ETHNICITY CODES:</u> HL (Hispanic or Latino), NHL (Not Hispanic or Latino). <u>RACIAL CODES:</u> 1. <u>White</u> , 2. <u>Black or African American</u> , 3. <u>Asian</u> , 4. <u>American Indian or Alaskan Native</u> , 5. <u>Native Hawaiian or Other Pacific Islander</u> , 6. <u>American Indian or Alaskan Native and White</u> , 7. <u>Asian and White</u> , 8. <u>Black or African American and White</u> , 9. <u>American Indian or Alaskan Native and Black or African American</u> , 10. <u>Other Multi-racial</u> <u>GENDER CODES:</u> WBE (<u>Woman-owned</u>).								

**CONTRACT REPORTING FORM
-- INSTRUCTIONS --**

This report is to be used by grantees to report contract and subcontract activities of \$10,000 or more under the Community Development Block Grant (*Entitlement and Small Cities*). Grantees should also include contracts entered into by recipients of CDBG rehabilitation assistance. Contracts and subcontracts of less than \$10,000 may be reported at the option of the grantee, if the grantee believes that in the aggregate such contracts represent a significant portion of its contracting activity.

Business ethnicity, racial and gender codes (all of which are listed at the bottom of the form on page 1 of the form) are to be used to designate the ethnic, racial and gender character of the business entity receiving a contract or subcontract. To be classified in a particular racial, ethnic or gender category, a business entity must be 51% or more owned and controlled by the racial/ethnic/gender group members of the category. When a business is not 51% or more owned and controlled by a single racial/ethnic/gender group, enter the code for the group that seems most appropriate.

The contractors (*firms or organizations that contract directly with the local government receiving CDBG funds*) and subcontractors (*firms or organizations that contract with contractors*) names and addresses need only be included once on any quarterly report. The contractor's ID Number is to be shown on all prime contracts and on all of that contractor's subcontracts. For subcontracts, the subcontractor's ID number is also to be shown. When entering a subcontract show only the amount of the subcontract and the "type of trade" and business racial/ethnic/gender codes of the subcontractor. The form is to be completed as follows:

1. **Grantee Name.** Enter the name of the unit of government submitting report of contract/subcontract activity.
2. **Contact Person.** Enter name and phone number of person responsible for maintaining and submitting contract data at respective unit of government.
3. **Date Report Submitted.** Enter date the report is submitted to DOC.
4. **Contractor's Montana Registration Number [Column A].** Enter the contractor's license number.
5. **Amount of Contract [Column B].** Enter the dollar amount of the contract or subcontract. Round the figures to the nearest thousand dollars. If subcontractor ID Number is provided, the dollar figure would be for the subcontract only - not the prime contract.

6. **Type of Trade [Column C].** Enter the numeric code (*1 thru 3*) which best indicates the contractor's/subcontractor's service. If Subcontractor ID Number is provided, the type of trade code would be for the subcontractor only - not the prime contractor. The other category includes supply, professional services and all other activities except construction and education/training activities.
7. **Business Racial/Ethnicity/Gender Code [Column D].** Enter all the appropriate racial, ethnicity and gender codes (listed at the bottom of the form on page 1) that indicate the racial, ethnic and gender background of the contractor/subcontractor. If the Subcontractor ID Number is provided, the code would apply to the Subcontractor - not the Prime Contractor.
8. **Prime Contractor ID Number [Column E].** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of CDBG funds. Note that the Employer's Number must be provided for each contract or subcontract awarded.
9. **Subcontractor ID Number [Column F].** Enter the Employer (IRS) Number of the Subcontractor as the unique identifier for each subcontract awarded from CDBG funds. (When the Subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.)
10. **Contractor/Subcontractor Name and Address [Column G].** Enter the name and address information for each firm receiving contract / subcontract activity. This information needs to be provided only one time on each report for each firm.

EXHIBIT 9-L
(Exhibit 9-L is identical to Exhibit 13-H)

Section 3 Summary Report
Economic Opportunities for
Low- and Very Low-Income Persons

U.S. Department of Housing
And Urban Development
Office of Fair Housing
And Equal Opportunity

OMB Approval No. 2529-0043
(exp. 11/30/2010)

1. Recipient Name & Address: (Street, City, State, Zip)	2. Federal Identification: (contract/award no.)	3. Dollar Amount of Award
	4. Contact Person:	5. Phone: (include area code)
	6. Reporting Period	7. Date Report Submitted

8. Program Code: * (Use a separate sheet for each program code)	9. Program Name:
--	------------------

Part I: Employment and Training (include New Hires in columns E & F)**

A Job Category	B Number of New Hires	C Number of New Hires that are Sec. 3 Residents	D % of Aggregate Number of Staff Hours of New Hires that are Sec. 3 Residents	E** % of Total Staff Hours for Sec. 3 Employees and Trainees	F** Number of Sec. 3 Employees And Trainees
Professionals					
Technicians					
Office/Clerical					
Construction by Trade (List Trade)					
Trade					
Trade					
Trade					
Trade					
Other (List)					
TOTAL					

*Program Codes			
1 = Flexible Subsidy	3 = Public/Indian Housing	4 = Homeless Assistance	8 = CDBG-State Administered
2 = Section 202/811	A = Development	5 = HOME	9 = Other CD Programs
	B = Operation	6 = HOME-State Administered	10 = Other Housing Programs
	C = Modernization	7 = CDBG-Entitlement	

Part II: Contracts Awarded

1. Construction Contracts:

A. Total Dollar Amount of all contracts awarded on the project	\$
B. Total dollar amount of contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving contracts	

2. Non-Construction Contracts:

A. Total dollar amount of all non-construction contracts awarded on the project/activity	\$
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving non-construction Contracts	

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply)

- _____ Attempted to recruit low-income residents through methods such as: ~ Local advertising media, ~ signs prominently displayed at the project site, ~ contacts with community organizations and public or private agencies operating within the metropolitan area (or non metropolitan county) in which the Section 3 covered program or project is located, or ~ similar methods.
- _____ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- _____ Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet definition of Section 3 business concerns.
- _____ Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- _____ Other: Describe below.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u., mandates that the Department ensure that Employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3. To assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as a self-monitoring tool. The data is entered into a data base and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A- are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Form HUD-60002

EXHIBIT 9-M -- Construction Management Checklist

Date(s)	
	1. Set up a CDBG Public Facilities Construction (or Housing Construction) Management File. See Chapter 1, pages 1-17 and 1-20. Consult with your CDBG project liaison to clarify requirements. Review <i>Section I</i> (Construction Management) of the CDBG Project Monitoring Guide (Exhibit 12-A).
	2. Select engineering and/or architectural services in accordance with federal/state procurement standards appropriate for competitive negotiation. (<i>Chapter 3, Procurement Standards and Chapter 9, page 9-10 and following</i>)
	3. Prepare draft design plans and specifications and bid and contract document items -- including the required federal and state construction contract provisions. (<i>Chapter 9, page 9-10 and following; and Exhibit 9-J</i>).
	4. (a) Use Exhibit 9-C to request all necessary reviews and approvals (of the plans and bid documents) from CDBG and from all other relevant funding agencies. (b) Secure CDBG approval of bid solicitation package: _____
	5. Do the appropriate advertisement of bid solicitations. (Chapter 9, page 9-13 ff)
	6. Assure appropriate bid security procedures. (<i>Chapter 9, page 9-16 and following</i>)
	7. Conduct bid openings in a proper manner and give appropriate attention to bid review procedures. (<i>Chapter 9, page 9-16 and following</i>)
	8. Award construction contracts to the lowest responsible bidder within the required time -- after getting state and federal debarment/eligibility reviews from CDBG. (<i>Chapter 9, page 9-18 and following</i>)
	9. (a) Hold a pre-construction conference -- inform the prime contractor and all subcontractors performing contract construction work of their labor standards and civil rights obligations. Invite your CDBG liaison (Chapter 9, page 9-20 and following). (b) A complete copy of the signed contract and contract package should be sent to your CDBG liaison.
	10. Provide the required notices when initiating construction activities. (<i>Chapter 9, page 9-208 and following</i>).
	11. Monitor all contractors' activities throughout the construction period -- to ensure that performance is in accord with the technical specifications and that compliance is maintained with all federal, state, and local standards and the terms of the contract(s). (<i>Chapter 9, page 9-21 and following</i>)
	12. Conduct the final inspection and file the required notices and reports with the appropriate agencies. (<i>Chapter 9, page 9-23 and following</i>)
	13. Throughout the project, assure compliance with labor standards (weekly payroll reviews, labor interviews, etc, as explained in <i>Chapter 6</i>), and secure CDBG and other agencies' prior approval for change orders that affect the CDBG project budget, scope of work or construction schedule.
	14. Record and document Construction Management actions (<i>Chapter 9, page 9-24 and following</i>) in your Construction Management File (<i>See Chapter 1, page 1-19</i>).

EXHIBIT 9-N

MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

(SAMPLE) AGREEMENT (CONCERNING LMI ASSESSMENT PAYMENTS) FOR OWNERS OF LOW AND MODERATE-INCOME OCCUPIED RESIDENTIAL PROPERTY

THIS AGREEMENT made and entered into this _____ day of _____, 200__, by and between _____ County, Montana (hereinafter referred to as the County) and _____, the owner (Owner) of rental property located within _____/County Water and Sewer District (the District) whose address is: _____, _____.

WHEREAS, as a part of the District's sanitary sewer improvement project, the County is making available Community Development Block Grant (CDBG) funds to **pay the assessments of those District residents who qualify as low and moderate-income (LMI)** persons under U.S. Department of Housing and Urban Development (HUD) and CDBG guidelines; and

WHEREAS, for properties within the District owned by non-LMI persons, but occupied by renters who qualify as LMI, **CDBG funds can be utilized to offset the special sewer assessment costs for the subject property, in accordance with the following agreement;**

NOW THEREFORE, the parties agree as follows:

I. USE OF FUNDS

Funds provided by the County under this Agreement will be used to **pay the District's 200__ special sewer assessment for rental residences occupied by LMI tenants.**

II. OWNER'S DUTIES AND RESPONSIBILITIES

In consideration of receiving assistance under this the Owner agrees as follows:

- I. The Owner agrees that if the Owner rents the real property described in this Agreement within five years of signing this Agreement, the Owner, as landlord, will:
 - A. for five years from the date of this Agreement, maintain rents for the unit at or below the Fair Market Rents established by HUD and subject to review for compliance by the County.
 - B. allow the County to annually review the rents charged for the unit to ensure compliance with the rent cap. The Owner agrees to provide the County with any information necessary to perform this review.

2. If the Owner fails to comply with the conditions in Section II of this Agreement, the County may assess and collect from the Owner within 60 days of the date of any special sewer assessment notice to Owner, the amount of funds granted to the Owner by the County under this Agreement pursuant to a prorata five-year sliding scale of 20 percent per year. If the Owner does not repay the funds owed to the County within 60 days of the date of notice, the amount owed becomes a lien against the property, and the County may resort to the property and seek any remedies provided by the laws of Montana, including foreclosure, always holding the Owner responsible for any deficiency after the sale of the property securing the grant.

3. If the Owner conveys the real property described in this Agreement within five years of the date of this Agreement, the repayment provisions of paragraph 2, above, apply.

III. COUNTY DUTIES AND RESPONSIBILITIES

1. The County agrees to pay the initial special sewer assessment for the Owner's property for which there is a qualified LMI renter, using CDBG grant funds.
2. The County will assess and collect any sanitary sewer grant fund monies that the Owner owes to the County because of the Owner violation of or failure to comply with the Owner's obligation under to this Agreement.
3. If the Owner fails to meet the conditions described in Section II of this Agreement, the County will place a lien on the property described herein, and the County may levy a tax against the property for the amount owed the County.

IV. REAL PROPERTY TO BE BENEFITED

The real property to be benefited through the use of sanitary sewer assistance grant funds and which real property has a lien assessed against it by the County pursuant to the provisions of this Agreement is legally described as follows:

Lot _____
Block _____

The street address for this property is:

_____, _____, Montana 59xxx

V. SECURITY

The Owner will provide as security for the performance of this Agreement, a security interest to the County of those certain properties described in Section IV of this Agreement.

VI. LEVEL OF ASSISTANCE

The amount to be granted under this Agreement will be determined by deducting \$XXX,xxx (the amount of grants awarded for the project by the Montana Departments of Commerce and Natural Resources and Conservation) from the final, total cost of the project and dividing the

balance by the number of equivalent dwelling units (EDU's) being served by the District sewage collection/treatment system as of the date of the closing of a loan to the project from the State of Montana Revolving Loan Fund.

VII. FAIR MARKET RENTS

If the Owner rents the benefited real property within five years of the date of this Agreement so that the rent requirements set forth herein are activated, the Owner agrees to rent the property in accordance with Fair Market Rents as determined by HUD. Fair Market Rents are subject to change; therefore, the Owner is responsible for confirming the Fair Market Rent for the property prior to renting the property. Current Fair Market Rent guidelines will be used for annual reviews.

VIII. NO DISCRIMINATION IN RENTAL OF PROPERTY

If the Owner rents or sells the property, the Owner will not unlawfully discriminate in the sale, lease or rent of the property and will not refuse to sell, lease, or rent the property on the basis of sex, marital status, race, creed, religion, color, age, familial status as that term is defined by 42 United States Code Section 3602 (K), physical or mental disability or national origin.

IX. BINDING ON SUCCESSORS IN INTEREST

This Agreement is binding on all successors in interest or assigns of the parties to this Agreement.

X. LIAISON AND AUTHORIZED REPRESENTATIVE OF COUNTY

The County's liaison with the Owner for purposes of administering this Agreement is the President of the _____ / County Water and Sewer District who is authorized represent and to act on the County's behalf with respect to all matters arising under this Agreement.

XI. NOTICES

The parties agree to deliver any written notice required under the Agreement to each other at the following addresses and to personally contact each other at the following telephone numbers:

_____/COUNTY WATER
AND SEWER DISTRICT

President, Water/Sewer District
Phone: (406)- XXX-xxxx
P.O. Box XXX
_____, MT 59XXX-xxxx

Owner

XI. ENTIRE AGREEMENT

The provisions of this Agreement constitute the entire Agreement and understanding between the parties and is intended to be a final, complete expression of the terms of this Agreement. The parties agree that provisions, terms, conditions, obligations, or promises other than those set forth in this Agreement are not legally binding. This Agreement supersedes all previous communications, representation, or agreements between the parties whether oral or written.

XIII. MODIFICATIONS TO AGREEMENT MUST BE IN WRITING

Any modification to this Agreement must be in writing and signed by both parties.

XIV. DURATION OF AGREEMENT

This Agreement will be in effect for a period of five years from the date signed, until the Owner has had a reasonable time to comply with the provisions of this Agreement, and, if necessary, the County has had a reasonable time to collect any monies owed to the County as a result of the Owner's failure to comply with the provisions of this Agreement but no longer than eight years from the date of execution of this Agreement.

AGREED TO AND ENTERED INTO BY THE UNDERSIGNED PARTIES THIS _____ DAY OF _____, 200_____.

_____ COUNTY, MONTANA

By: _____
_____, PRESIDENT
_____/COUNTY WATER AND SEWER DISTRICT

OWNER(S)

Owner's Signature

Owner's Signature (if second owner)

Print Owner's Name

Print Owner's Name

STATE OF MONTANA)

County of _____)ss.

This instrument was acknowledged before me on _____,
by _____.

(NOTARIAL SEAL)

MONTANA

Printed Name: _____
NOTARY PUBLIC FOR STATE OF

Residing at _____
My Commission expires _____

Exhibit 9-O

**Notice of Security Interest in Real Property to Secure
Repayment of Water/Wastewater System Assessment Assistance**

NOTICE IS HEREBY GIVEN that on the _____ day of _____, 20____, the undersigned property owner(s) (the Owner[s]) pledged the real property legally described below as security for the repayment of amounts that the Owner(s) may become obligated to repay to _____ County, Montana, pursuant to the Community Development Block Grant Program Agreement for Owners of Low to Moderate-Income Occupied Residential Rental Property (the Agreement) executed by the Owner(s) and _____ County. This security interest terminates on the _____ day of _____, 20____ (five years after the execution of the Agreement).

[INSERT LEGAL DESCRIPTION]

A copy of the Agreement may be obtained from the _____ County Clerk and Recorder, _____, Montana.

IN WITNESS WHEREOF, the Owner(s) (has) (have) affixed (his, her, their) signature(s) this _____ day of _____, 20____.

Owner

Owner

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____

known to me to be the person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year noted above in this certificate.

(SEAL)

Notary: _____
Residing at: _____, Montana
My Commission Expires: _____

EXHIBIT 9-P

**(SAMPLE) SUB-RECIPIENT AGREEMENT
FOR AN AFFORDABLE HOUSING PROJECT
WITH MULTIPLE FUNDING SOURCES**

**CITY OF _____,
_____, INC.
_____ PROJECT**

THIS AGREEMENT ("Contract") dated this ____ day of _____ is a Sub-Recipient Agreement by and between the City of _____, hereinafter referred to as "the City", and _____, Inc. hereinafter referred to as "Sub-recipient, Inc."

WHEREAS, the United State Government, through the Housing and Community Development Act of 1974 ("the Act"), Public Law No. 93-383, as amended, has established a Neighborhood Stabilization Program ("NSP") Grant program and has allowed each state to elect to administer this program and such federal funds for its non-entitlement areas; and

WHEREAS, the Montana Department of Commerce ("MDOC") is responsible for administering NSP in Montana; and

WHEREAS, the City was instrumental in identifying the need for the affordable _____ housing project, cooperated in the preparation of the application for NSP funds, and is identified in said application as the organization that will administer the NSP portion of the proposed project ("Project"); and

WHEREAS, the MDOC has approved the City's NSP Project applications through an award of funds; and

WHEREAS, Sub-recipient, Inc. will act as the controlling general partner in a limited partnership, a separate entity created for purposes of capitalization of federal Low Income Housing Tax Credits, and will own, operate and manage the Project known as the "_____
Project"; and

WHEREAS, it is in the best interests of the City to administer the project through a contractual relationship; and

WHEREAS, the City desires to contract with Sub-recipient, Inc., and Sub-recipient, Inc. desires to contract with the City for the implementation of this _____ project to promote housing opportunities for _____ citizens generally having incomes at or below _____% of area median income; and

WHEREAS, Sub-recipient, Inc., as the controlling general partner of the limited partnership, agrees to operate, manage, and maintain the Project in a manner that will make its units available to all residents of the greater _____ area without regard to race, color, religion, creed, political ideas, gender, marital status, physical or mental disability, or national origin; and

WHEREAS, Sub-recipient, Inc. will network to make activities and services for the Project's clients available; and

WHEREAS, the parties to this Agreement understand that neither party has in any way abrogated any of its individual powers, and that this Agreement does not create any new organization or legal entity; and

WHEREAS, the City has concurrently entered into a NSP Grant Contract #MT-NSP-____-____-____-____ ("Grant"), a copy of which is attached hereto and incorporated herein as Attachment A, with the MDOC whereby the City will receive and administer NSP monies to provide _____; and

WHEREAS, Sub-recipient, Inc. desires to obtain such financing for the Project and is willing to assist the City with obligations to the State under the Grants, as well as providing repayment of the Grants in a situation of default, under the terms and conditions as provided herein.

NOW, THEREFORE, for valuable consideration, the City and Sub-recipient, Inc. do mutually agree as follows:

1.0 ENGAGEMENT OF SUB-RECIPIENT, INC.

Sub-recipient, Inc. shall undertake the _____ and perform the services as set forth in the Grant Contracts between the City and MDOC, provided as Attachment A, and as listed in the NSP Management Plan dated _____ provided as Attachment B, and also summarized under Scope of Services Part 2.0, which by this reference is made a part of this Agreement.

2.0 SCOPE OF SERVICES.

Initially, Sub-recipient, Inc. will enter into construction and professional service contracts for the Project in accordance with the Project Implementation Schedule as provided in Attachment A of the Grant Contracts between the City and MDOC. These construction and professional service contracts will need to be reassigned to the limited partnership during the course of construction to allow the utilization of capital funds provided by the limited partners for the construction of the project. All building plans and specifications will be between the service providers and Sub-recipient, Inc. Sub-recipient, Inc. will be involved in key construction management decisions through consultation with its Executive Director, the Sub-recipient, Inc. designated liaison and project manager, the project architect, the general contractor, and the fiscal director. Once the construction of the housing project has been completed, the limited partnership, of which Sub-recipient, Inc. (a non-profit arm of _____) shall be the general and controlling partner, shall be responsible for ownership and management of the affordable senior rental housing project.

Except for those responsibilities to be specifically performed by the City, Sub-recipient, Inc. is responsible for the administration of and compliance with the NSP grants and will perform all the services listed in the NSP Management Plan and NSP Grant provided as Attachments A and B of this Agreement. The City agrees that Sub-recipient, Inc. may assign this responsibility to the controlling general partner if different than Sub-recipient, Inc. and the Limited Partnership, but Sub-recipient, Inc. will remain responsible to the City for compliance with the requirements of an NSP grant secured by the City for Sub-recipient, Inc. for this project, and any subsequent assignment of responsibility does not release of Sub-recipient, Inc. from its responsibility under this agreement.

3.0 TIME OF PERFORMANCE.

This Agreement will become effective upon its execution. The Project will commence as soon as practicable after the execution of this Agreement and will be undertaken and performed in accordance with the schedule set forth in the Grant Contracts between the City and MDOC. Sub-recipient, Inc. agrees that time is of the essence in the performance of its obligations under this Agreement and that it will complete the Project no later than the termination date plus authorized extensions as set forth in the Grant Contracts between the City and MDOC.

4.0 PAYMENT.

The City will provide up to \$_____ through its NSP grant for _____ costs or all eligible project costs as identified in the NSP Grant Budget. It is expressly understood and agreed that in no event may the total payments to be paid to Sub-recipient, Inc. hereunder exceed \$_____ for all services required. Notwithstanding anything to the contrary herein, the City's obligation to make periodic or final payment is conditioned upon the receipt by the City of Project Grant funds sufficient to make such payment.

5.0 SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Agreement will survive the termination date and will be enforceable by the City as provided herein.

The Period of Affordability for this project is 20 years; during which time Sub-recipient, Inc. agrees to monitor and report on the project as required by the FY 200__ edition of the CDBG/NSP Program Administration Manual, a copy of which has been provided to Sub-recipient, Inc. and by this reference is a part of this Agreement.

6.0 CONDITIONAL AGREEMENT.

It is expressly understood by the parties hereto that this Agreement is dependent and conditioned upon the receipt by the City of Neighborhood Stabilization Program Grant funds from MDOC and that in event that said funds are not provided, the City incurs no responsibilities or liabilities under this Agreement.

7.0 TERMINATION OF AGREEMENT. This Agreement may be terminated as follows:

- (a) Termination due to loss of funding. This Agreement will terminate, in whole or in part, at the discretion of the City in the event that the MDOC reduces or terminates payments under the NSP Program so as to prevent the City from paying for the project with NSP funds. In this event, the City will give Sub-recipient, Inc. 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 NSP grant.
- (b) Termination for cause.
 - (i) If at any time before the date of completion, one of the parties determines that the other party has failed to comply with any of the terms and conditions of this Agreement,

the aggrieved party may give notice, in writing, to the defaulting party of any deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If the defaulting party fails to cure and correct all defaults claimed within a reasonable period to be specified in the notice, the aggrieved may, with no further notice, declare this Agreement to be terminated in whole or in part. It is understood that representatives of both parties shall enter into negotiations in an attempt to reach a solution that is mutually acceptable within 10 days of notification of termination, if such negotiations be requested in writing. If the defaulting party is Sub-recipient, Inc., it will reimburse the City any NSP funds dispersed under this Agreement.

- (ii) Notwithstanding the above, Sub-recipient, Inc. will not be relieved of liability to the City for any damages sustained by the City or the State by virtue of any breach of the Contract by the Sub-recipient, Inc., and the City may withhold any payment to Sub-recipient, Inc. for the purpose of setoff until such time as the exact amount of damages due the City or the State from Sub-recipient, Inc. is determined.

8.0 DOCUMENTS INCORPORATED BY REFERENCE.

The following documents, including any attachments and modifications are incorporated by reference herein:

- (a) The City application to the Department of Commerce for NSP funding, dated _____, 200__ and _____, 200__ respectively
- (b) Attachment A -- NSP Grant Contract #MT-NSP-____-____-_____.
- (c) Attachment B – NSP Management Plan, dated _____.
- (d) All applicable federal and state statutes and regulations are incorporated into this Agreement by this reference and are binding upon Sub-recipient, Inc.

9.0 RESPONSIBILITIES DELEGATED TO SUB-RECIPIENT, INC.

- (a) Sub-recipient, Inc. agrees to carry out the responsibilities assigned to it as stated in the project Management Plan.
- (b) Following the completion of the facility, Sub-recipient, Inc. will submit annual reports to the City, on a date to be determined by the City or agreement. These annual reports will include:
 - 1) Sub-recipient, Inc. shall timely submit to the City performance reports according to the prescribed State form. The performance reports will be due on the same dates as required under the Grant Contracts between MDOC and the City. Failure to submit these reports by the specified time may be considered a breach of contract and action may be taken based on clause 7b of this contract. Reports will be submitted to: _____, City of _____ Community Development Office, _____, _____, MT 59____.
 - 2) During the Contract period, the retention period and for as long thereafter as the records are maintained, at any time during normal business hours, the City, the State, or their authorized representatives, shall have the right of access to any books, documents,

papers or other records of Sub-recipient, Inc. or Subcontractor with respect to all matters covered by this Contract in order to make audit, examination, excerpts, transcripts, and photocopies. Sub-recipient, Inc. shall collect such information and retain records on the Project in order to allow the City to fully comply with its obligation under the Grant to include the Project in an annual audit report as required under the Grant. A copy of Sub-recipient, Inc.'s annual audit, as well as a copy of its annual IRS 990 tax form shall be provided to the City.

- 3) Sub-recipient, Inc. shall provide proof of adequate insurance on the facility. During the construction period, this insurance shall include worker's compensation insurance, hazard insurance, liability insurance and performance/payment bonds. Following construction, during the operation of _____, the insurance shall include hazard and liability coverage.

10.0 PERSONNEL

Sub-recipient, Inc. represents that it has, or will secure, at its own expense, all personnel required to perform the services under this Agreement. All of the services required will be performed by Sub-recipient, Inc., or under its supervision, and all personnel engaged in the work must be fully qualified and must be eligible under the law to perform such services. Where the State or local public jurisdictions require licensure for the provision of services, Sub-recipient, Inc. and any subcontractors must be properly licensed therefore.

11.0 PROCUREMENT

All procurement transactions for supplies, equipment, and services will be conducted in a manner to provide, to the maximum extent practicable, open and free competition. Sub-recipient, Inc. will comply with all bidding and purchasing regulations of all applicable State and Federal laws and requirements.

12.0 CONFLICT OF INTEREST

- (a) In the Case of Procurement. In the procurement of supplies, equipment, construction and services by Sub-recipient, Inc. and its subcontractors, no employee, officer or agent of Sub-recipient, Inc. or its subcontractors shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the party or firm selected for award. Officers, employees or agents of Sub-recipient, Inc. and its subcontractors shall neither solicit nor accept gratuities, favors or anything of monetary value from parties or potential parties to contracts. Unsolicited items provided as gifts are not prohibited if the intrinsic value of such items is nominal.
- (b) In All Cases Other Than Procurement. In all cases other than procurement (including the provision of housing assistance to individuals, the provision of assistance to businesses, and the acquisition and disposition of real property), no persons described in subparagraph i) below who exercise or have exercised any functions or responsibilities with respect to NSP activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with

respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

- (c) Persons Covered. The conflict of interest provisions of this paragraph apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of Sub-recipient, Inc. or of any designated public agencies or subcontractors receiving NSP funds.

13.0 COMPLIANCE WITH APPLICABLE LAWS

At all times during the performance of this Agreement, Sub-Recipient, Inc. shall strictly adhere to all applicable Federal and State laws, orders, and all applicable standards, regulations, interpretations, or guidelines issued pursuant thereto.

14.0 MONITORING AND EVALUATION

The City will monitor and evaluate this Agreement with Sub-recipient, Inc. under the Grants. The Agreement will be monitored for compliance with the rules, regulations, requirements, and guidelines, which the City has promulgated or may promulgate and will be monitored periodically during the operation of the Project and upon its completion. This Agreement will also be subject to monitoring and evaluation by MDOC, and the U.S. Department of Housing and Urban Development.

15.0 SEVERABILITY

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof may not be construed as waiver of any other term.

16.0 BINDING ON SUCCESSORS

Except as herein otherwise provided, this agreement will inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns. Sub-recipient, Inc. may not assign or otherwise pass on its responsibilities pursuant to this Agreement unless the City has in writing approved such assignment or assignment of responsibility.

17.0 EFFECTIVE DATE OF THE AGREEMENT

This Agreement takes effect when the following conditions are satisfied:

- (a) The Montana Department of Commerce and the City have executed the NSP Grant Contract;
- (b) The Montana Department of Commerce has approved the City's "Request for Release of Funds and Certification" from NSP;
- (c) The attorney for the City and the attorney for Sub-recipient, Inc. have approved this Agreement as to form and content; and

- (d) The City Manager and Sub-recipient, Inc.'s Executive Director have each reviewed this Agreement and agreed fully to its terms and conditions.

18.0 DISPOSITION OF REAL PROPERTY, SITE IMPROVEMENTS AND EQUIPMENT.

- (a) Sub-recipient, Inc., as the controlling general partner of the limited partnership, will retain title, control and manage the NSP assisted property after the completion of the project. The limited partnership will maintain the real property assisted under this Agreement for the sole purpose of providing safe, decent, and sanitary housing for low and very low-income senior households for a period of 30 years from the date of substantial completion of the apartment building.
- (b) Reversion of assets. Upon the expiration of this Agreement, Sub-recipient, Inc., as the controlling general partner of the limited partnership, will transfer to the City any NSP funds on hand at the time of expiration and any accounts receivable attributable to the use of NSP funds. With respect to any real property or equipment under the limited partnership's control that was acquired or improved in whole or in part with NSP funds in excess of \$25,000 the limited partnership will either:
- i. use the property to meet one of the national objectives contained in 24 CFR Part 570.901 for 30 years from the date of substantial completion of the apartment building; or
 - ii. dispose of the property in a manner that results in the City's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-NSP funds for acquisition of, or improvements to, the property. Reimbursement is not required after the period of time specified in paragraph (a) of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR Part 570-504 (Program Income), 24 CFR Part 85.25 (Program Income), Part 85.31 (Real Property), and Part 85.32 (Equipment).

19.0 Program Income

All Program Income derived from the repayment of the low interest loans to the Project will be tracked by Sub-recipient, Inc. as required by NSP regulations and reported to the funding sources on an annual basis and used in accordance with applicable NSP guidelines.

20.0 CIVIL RIGHTS ACT OF 1964.

Sub-recipient, Inc. will abide by the provisions of 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.

21.0 SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.

Sub-recipient, Inc. will comply with the following provision in that no person in the United States may on the grounds of race, color, national origin, 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 the funds made available under this title. Any prohibition against discrimination on the basis of age

under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

22.0 SECTION 3 OF HOUSING AND URBAN DEVELOPMENT ACT OF 1968.

Sub-recipient, Inc. will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG and HOME assisted project will be extended to lower income project area residents. Further, Sub-recipient, Inc. will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.

23.0 MINORITY BUSINESS ENTERPRISE.

Consistent with the provisions of Executive Order 11246, Sub-recipient, Inc. will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services.

24.0 NONDISCRIMINATION.

Sub-recipient, Inc. will comply with all applicable State and Federal laws, rules, and regulations involving non-discrimination on the basis of race, color, religion, national origin, age, handicap or sex. Sub-recipient, Inc. agrees to consider minorities or minority businesses as employees, specialists, agents, consultants or subcontractors under this Contract. Sub-recipient, Inc. agrees to comply with the letter and spirit of all applicable State and Federal law respecting discrimination and unfair employment practices.

25.0 REPORTS AND INFORMATION.

Sub-recipient, Inc. will maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City 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 City, its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Agreement unless permission to destroy them is granted by the City.

26.0 ACCESS TO RECORDS.

It is expressly understood that Sub-recipient, Inc.'s records relating to this Agreement will be available during normal business hours for inspection by the City, MDOC, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and when required by law, the Montana Legislative Auditor.

27.0 PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE.

The parties understand and agree that performance of this Agreement is in the County of _____ and that in the event of litigation concerning it, venue is the _____ Judicial District in and for the County of _____, State of Montana.

28.0 INDEMNIFICATION.

Sub-recipient, Inc. waives any and all claims and recourse against the City 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 incidental to Sub-recipient, Inc.'s performance of this contract except for liability arising out of concurrent or sole negligence of the City or its officers, agents or employees. Further, Sub-recipient, Inc. will indemnify, hold harmless, and defend the City against any and all claims demands, damages, costs, expenses or liability arising out of Sub-recipient, Inc.'s performance under this Agreement, except for liability arising out of the concurrent or sole negligence of the City or its officers, agents or employees.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement this _____ day of _____, 200__.

CITY OF _____

APPROVED AS TO CONTENT & FORM:

By _____

Type Name _____,
City Manager

Date

By _____

Type Name _____,
City Attorney

Date

(TYPE NAME OF SUB-RECIPIENT), INC.

By _____

Type Name _____,
Executive Director

Date