

EXHIBIT H1
SAMPLE SUB-RECIPIENT AGREEMENT
(For revolving loan fund projects)

THIS AGREEMENT is entered into this ____ day of _____, 20____, by (name of City, Town or County), herein referred to as the (“City”, “Town” or “County”) and (name of Local Development Organization), a nonprofit economic development corporation herein referred to as the “Sub-recipient.”

WITNESSETH THAT:

WHEREAS, (name of City, Town or County) is the recipient of a Community Development Block Grant – Economic Development (CDBG-ED) Program by the Montana Department of Commerce, herein referred to as “the Department,” and

WHEREAS, the purpose of the grant is to (establish a revolving loan fund – and/or – describe other activities) for the residents of (name of City, Town, County or region), and

WHEREAS, the (City/Town/County), desires to subgrant the CDBG-ED funds to the Sub-recipient and engage the Sub-recipient to administer the (revolving loan fund –and/or-- describe other activities) on the (City/Town/County)'s behalf, and

WHEREAS, the Department has required the (City/Town/County) to enter into a Sub-recipient agreement with the Sub-recipient specifying the terms and conditions of the (City/Town/County)'s delegation of certain CDBG-ED responsibilities to the Sub-recipient, and

WHEREAS, (name of Local Development Organization) is qualified as a (local development corporation or a nonprofit organization serving the development needs of the communities of nonentitlement areas) as defined by §105(a)(15) of Title I of the Housing and Community Development Act (the “Act”), and

WHEREAS, loan repayments made back to a qualified nonprofit entity defined by §105(a)(15) of the Act are considered miscellaneous revenue and would not be subject to federal program income requirements, except as mutually agreed to by the Sub-recipient, the (City/Town/County), and the Department, and

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

NOW, THEREFORE, in consideration of the mutual covenants and conditions set out in this Agreement, the parties agree as follows:

A. SPECIAL PROVISIONS. The (City/Town/County) agrees, under the terms and conditions of this Agreement, to sub-grant CDBG-ED grant funds as a loan for gap financing and technical assistance to the Sub-recipient.

B. INDEPENDENT SUB-RECIPIENT. It is understood by the parties hereto that the Sub-recipient is an independent Sub-recipient and that neither its principals nor its employees, if any, are employees of the (City/Town/County) for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Sub-recipient has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principals and employees for the services to be performed hereunder.

C. COMPENSATION. The Sub-recipient will retain all program income including principal and interest as the result of this grant award. These funds will be used to enhance a Revolving Loan Fund for the benefit of all eligible businesses located within the (City, Town, County or region). A portion of the interest income (XX%), not to exceed (\$XX,XXX) per year, may be used to cover the administrative costs of managing the fund. The Sub-recipient will be responsible for administration, management, and recording of fund income.

Neither the cost of architectural, engineering, or grant administrative services plus a percentage of that cost method nor the percentage of construction cost method will serve as the basis for compensating the sub-recipient for its services provided under this Contract.

For the satisfactory completion of the services to be provided under this Contract, the (City/Town/County) will pay the Sub-recipient a sum not to exceed \$ _____ as in the manner set forth in the attached Exhibit _____, which by this reference is made a part of this contract. Each specific service the Sub-recipient will provide under this contract, and the maximum amount that the (City/Town/County) will pay the Sub-recipient for each of these services, is set forth in the attached Exhibit _____.

The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Exhibit _____. The Sub-recipient may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

D. SCOPE OF SERVICES. The Sub-recipient will perform the following services: **(Here, or in an exhibit to the contract, explicitly and completely list the services and products the grant recipient expects of the Sub-recipient, including the timetable for completion of key tasks. Consult with your CDBG-ED liaison as to the specific services, which may be appropriate for each grant category.)**

It is understood and agreed by the parties that the services of the Sub-recipient do not include any of the following: the disbursement or accounting of funds distributed by the (City/Town/County)'s financial officer, legal advice, fiscal audits or assistance with activities not related to the CDBG-ED project.

1. The Sub-recipient will be responsible for all facets of the CDBG-ED gap financing and technical assistance program as described in the Management Plan for the CDBG-ED project. The Sub-recipient will also be responsible for all aspects of the local RLF program, including the following:

- a) Developing Policies and Procedures as they relate to the loan program and/or administering the local CDBG-ED grant program and the local RLF program.
- b) Conducting the local loan application process, including but not limited to:
 - (1) Application documentation;
 - (2) Environmental Review;
 - (3) Credit Analysis;
 - (4) Loan package development; and
 - (5) Collaboration with other funding sources as may be necessary to provide complete financing

2. During the term of this Agreement, the Sub-recipient will maintain reasonable records of its performance under this Agreement in a manner consistent with generally accepted accounting principles. The Sub-recipient will allow the (City/Town/County)'s authorized representatives access to these records at anytime during normal business hours. At the request of the (City/Town/County), the Sub-recipient will submit to the (City/Town/County), in the format prescribed by the (City/Town/County), status reports on its performance under this agreement.

3. The Sub-recipient will comply with the Revolving Loan Fund Plan as approved by the (City/Town/County) and the Montana Department of Commerce and attached to this Agreement as (Exhibit "X"). If the Sub-recipient ceases to exist or an Event of Default occurs, all program income relating to this grant, including funds on hand and accounts or notes receivable, will revert to the (City/Town/County).

E. DURATION OF THE AGREEMENT. This Agreement will become effective upon authorization by the (City/Town/County) (Council Members or Commissioners) and the (name of Local Development Organization) Board of Directors and approval by the Department.

This Agreement will terminate if either party fails to meet the conditions of this Agreement

or if an Event of Default occurs.

F. ADMINISTRATION.

1. For the purposes of implementing this Agreement, the (City/Town/County) will appoint a local government project liaison that will work with the Sub-recipient. The parties will meet as necessary to provide for the efficient and smooth implementation of this Agreement and the activities contained herein. This Agreement will run concurrently with the Management Plan, which governs the management of the initial CDBG-ED grant, and will follow the Management Plan for issues related to the initial grant. This Sub-recipient Agreement governs the management of the resultant RLF until terminated as provided in Section S.

2. The Sub-recipient will comply with the “Certifications for Application” signed by the (City/Town/County) and submitted with the application for economic development assistance to the Department of Commerce.

3. The Sub-recipient will comply with Procurement Standards as outlined in Chapter 3 and Chapter 8 of the CDBG Grant Administration Manual before entering into any agreements to remodel, to purchase equipment or material, or to retain the services of a consultant or contractor.

4. The CDBG-ED project fund will be audited on a yearly basis in conjunction with Sub-recipient’s agency-wide audit and the audit will be conducted according to OMB Circular A-133.

G. CONFLICT OF INTEREST. The Sub-recipient covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the CDBG-ED project which would conflict in any manner or degree with the performance of its services hereunder. The Sub-recipient further covenants that, in performing this Contract, it will employ no person who has any such interest.

H. DISPOSITION OF REAL PROPERTY OR EQUIPMENT ACQUIRED. Upon the expiration of the Agreement, the Sub-recipient will transfer to the (City/Town/County) any CDBG-ED funds on hand at the time of expiration and any accounts receivable attributable from the use of CDBG-ED funds. With respect to any real property or equipment under the Sub-recipient control that was acquired or improved in whole or in part with CDBG-ED funds in excess of \$25,000, the Sub-recipient will either:

1. Use the property to meet the national objectives contained in 24 CFR section 570.901 for five (5) years after expiration of the Agreement; or

2. Dispose of the property in a manner consistent with OMB Circular A-102 Attachment “n” and as approved by the Department. Reimbursement is not required after the period of time specified in the first paragraph of this section. The proceeds

from such disposition will be subject to the applicable provisions of 24 CFR 570.504 (program income).

I. DOCUMENTS INCORPORATED BY REFERENCE. The *(City/Town/County)*'s application to the Department for CDBG-ED funding, dated _____, 20____, and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Sub-recipient.

J. CIVIL RIGHTS ACT OF 1964. The Sub-recipient will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VI, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

K. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Sub-recipient will comply with the following provision:

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.

L. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968. The Sub-recipient will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG-ED assisted project will be extended to lower income project area residents. Further, the Sub-recipient 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.

M. MINORITY BUSINESS ENTERPRISE. Consistent with the provisions of Executive Order 11246, the Sub-recipient will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Sub-recipient will document all affirmative steps taken to solicit minority businesses and will forward this documentation along with the names of the minority subcontractors and suppliers to the local government CDBG-ED recipient upon request.

N. NONDISCRIMINATION. The Sub-recipient will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

O. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data,

and other materials prepared by the Sub-recipient pursuant to this Contract are the property of the (City/Town/County) and the Department which have the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by the Architect/Engineer for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Architect/Engineer. No material produced in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the (City/Town/County) and the Department.

P. REPORTS AND INFORMATION. The Sub-recipient will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the (City/Town/County) 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/Town/County) or its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Contract unless permission to destroy them is granted by the (City/Town/County).

Q. ACCESS TO RECORDS. It is expressly understood that the Sub-recipient's records relating to this Contract will be available during normal business hours for inspection by the (City/Town/County), the Department, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and, when required by law, the Montana Legislative Auditor and Legislative Fiscal Analyst.

R. INDEMNIFICATION. The Sub-recipient waives any and all claims and recourse against the (City/Town/County), including the right of contribution of loss or damage to person or property arising from, growing out of, or in any way connected with or incidental to the Sub-recipient's performance of this Agreement, except claims arising from the concurrent or sole negligence of the (City/Town/County) or its officers, agents or employees. The Sub-recipient will indemnify, hold harmless, and defend the (City/Town/County) against any and all claims, demands, damages, costs, expenses, or liability arising out of the Sub-recipient's performance of this Agreement except for liability arising out of the concurrent or sole negligence of the (City/Town/County) or its officers, agents, or employees.

S. TERMINATION OF AGREEMENT. If any of the following events occur, the (City/Town/County) may, in its sole discretion, declare such event a default under this Agreement:

1. Any representation or warranty made by the Sub-recipient in this Agreement or in any request or certificate or other information furnished to the (City/Town/County) under this Agreement proves to have been incorrect in any material respect; or

2. The Sub-recipient fails in any material respect to carry out its obligations under its

proposal to the (City/Town/County) for the assistance provided under this Agreement.

If the Sub-recipient fails to perform any of its duties under this Agreement or if any event of default occurs, the (City/Town/County) may declare the Sub-recipient to be in default and thereafter give the Sub-recipient written notice setting forth the action or inaction which constitutes the default and giving the Sub-recipient 45 days in which to correct the default. If the Sub-recipient fails to correct the default within 45 days of receipt of this notice, the (City/Town/County) may notify the Sub-recipient in writing that any amount that is payable under this Agreement is due and payable in full within 45 days and this Agreement is terminated.

It is agreed by the parties that the provisions of this Agreement provide for reasonable and sufficient notice to be given to the Sub-recipient in case of the Sub-recipient's failure to comply with any of its covenants and that this notice is sufficient for the Sub-recipient to rectify its actions or inactions of default.

The waiver by the (City/Town/County) of any default by the Sub-recipient does not constitute a waiver of a continuing breach or a waiver of a subsequent breach. Any agreement contrary to this Agreement is not binding upon either party unless it is in writing and signed by both parties.

T. CONSTRUCTION AND VENUE.

This Agreement will be construed under and governed by the laws of the State of Montana. The (City/Town/County) and the Sub-recipient agree that performance of this Agreement is in the County of _____, State of Montana and that in the event of litigation concerning it, venue is in the District Court of the ____th Judicial District in and for the County of _____, Montana.

U. ELIGIBILITY. The Sub-recipient certifies that the Sub-recipient'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)

This Sub-recipient Agreement has been approved by (name of City, Town or County) (Board of Commissioners or Council Members) and (name of Local Development Organization) Board of Directors.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed.

(Name of City, Town or County): (Name of Chief Elected Official)

Date

Attest:

**(Name of Local Development
Organization):**

(Name of Director)

Date

Attest:

(ATTACH ANY EXHIBITS HERE)

For Example:

Exhibit "A" – Revolving Loan Fund Plan

Exhibit "B" – CDBG-ED Grant Contract between the Department of Commerce & the **(City/Town/County)**

Exhibit "C" – Management Plan for the Project (between the **(City/Town/County)** and the Sub-recipient, as approved by the Department of Commerce)

Exhibit "D" – Schedule of Fees (see example on page L1.9)