

Return to Grants & Community Programs
435 Ryman, Missoula, MT 59802

CFDA # 14.239

**MONTANA DEPARTMENT OF COMMERCE
HOME INVESTMENT PARTNERSHIPS PROGRAM AGREEMENT
CONTRACT # MT-HOME-15-CM-HBA-PIRF-1**

This Contract is entered into by the City of Missoula, DUNS #01-431-3894, Missoula, Montana (the "Grantee"), and the Montana Department of Commerce, Helena, Montana (the "Department").

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

Section 1. PURPOSE

The purpose of this Contract is to allow the use of program income and recaptured funds generated from pre-2014 awards made to the City of Missoula by the Department's Home Investment Partnerships (HOME) program to continue a homebuyer assistance program under the rules of the Montana HOME program, and to achieve the purposes of Title II of the *Cranston-Gonzalez National Affordable Housing Act (Title II, Public Law 101-625*, approved November 1990, **104 Stat. 4079, 42 U.S.C. 12701-12839**), as amended.

Section 2. AUTHORITY

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

Section 3. DOCUMENTS INCORPORATED BY REFERENCE

(a) The HOME Investment Partnerships Program, **24 CFR Part 92**; and Title II of the *Housing and Community Development Act of 1992, Public Law 102-550 (H.R. 5334)*, October 28, 1992;

- (b) The Department's HOME Investment Partnership Program *Single Family Noncompetitive Program Qualification Package and Guidelines* and *HOME Administration Manual* (the most current version); and
- (c) The Grantee's *Single Family Noncompetitive Program Qualification Package* and the representations contained therein, which are binding upon the Grantee.
- (d) The Grantee's *Single Family Noncompetitive Program Management Plan*, as approved by the Department, and the representations contained therein, which are binding upon the Grantee.
- (e) The Grantee's *Program Income and Recaptured Funds Plan*, as approved by the Department, and the representations contained therein, which are binding upon the Grantee.

Section 4. ACCEPTANCE OF PROGRAM REQUIREMENTS

- (a) The Grantee will comply with the *Certifications for Application* as signed and submitted with the Grantee's HOME Qualification Package. The Grantee will comply with all applicable parts and requirements of the *National Affordable Housing Act of 1990* (as amended), now in effect or as amended during the term of this Contract; all requirements established by the Department; applicable state and Federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.
- (b) The Grantee agrees that all contracts entered into by the Grantee for the completion of the activities described in Section 6 of this Contract will contain special provisions requiring contractors to comply with all applicable requirements.
- (c) The Grantee expressly agrees to repay to the Department any HOME funds under this Contract which the Grantee, its subcontractors or subrecipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract or the Federal statutes and regulations governing the HOME Program.
- (d) The Grantee agrees that one hundred percent (100%) of HOME funds will be used to benefit low- and very low-income persons.
- (e) The Grantee will not obligate or expend HOME funds for any activities provided for by this Contract until the Grantee:
 - completes an Environmental Review Record and a Notice of Release of Funds is issued;.

- (f) The Grantee will not be reimbursed by the Department for any HOME-eligible costs for any activities provided for by this Contract until the Grantee:
- submits, and the Department approves, a Program Management Plan and supporting documents;
 - submits, and the Department approves, a detailed Program Income and Recaptured Funds Plan,
 - establishes a separate HOME account or accounting classification within the approved accounting and management system to be used exclusively for the receipt and disbursement of HOME funds. An original of the *Signature Certification Form* and the *Designation of Depository Form* will be sent to the Department.
- (g) The Grantee will provide and document matching contributions of no less than five percent (5%) of the amount of HOME funds drawn in a drawdown request as described in the Program Management Plan. Matching contributions must be an eligible form of matching contribution as defined in **24 CFR §92.220**, *Form of Matching Contribution*, and must be approved in writing by the Department.
- (h) The Grantee will comply with Federal requirements set forth in **24 CFR Part 5, Subpart A**, *Generally Applicable Definitions and Federal Requirements; Waivers*, which includes nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.
- (i) The Grantee will adopt affirmative marketing and minority outreach procedures and requirements in accordance with **24 CFR §92.351**, *Affirmative Marketing; Minority Outreach Program*, for HOME-assisted housing if the housing assisted with HOME funds contains five or more assisted units.
- (j) The Grantee will comply with displacement, relocation and acquisition requirements set forth in **24 CFR §92.353**, *Displacement, Relocation, and Acquisition*; labor standards set forth in **24 CFR §92.354**, *Labor*, and conflict of interest detailed in **24 CFR §92.356**, *Conflict of Interest*.
- (k) Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (**42 U.S.C. 4821-4846**), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (**42 U.S.C. 4851-4856**), and implementing regulations at **24 CFR Part 35**, *Lead-Based Paint Poisoning Prevention in Certain Residential Structures*, **Subpart A**, *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*; **Subpart B**, *General Lead-Based Paint Requirements and Definitions for All Programs*; **Subpart J**, *Rehabilitation*; **Subpart K**, *Acquisition, Leasing, Support Services, or Operation*; **Subpart M**, *Tenant-Based Rental Assistance*; and **Subpart R**,

Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities, of this title.

- (l) The Grantee will require that all housing assisted with HOME funds meet affordability requirements set forth in **24 CFR §92.254** *Qualification as Affordable Housing: Homeownership*, and will require the repayment of any HOME funds disbursed for an activity if the assisted housing unit does not meet the affordability requirements for the specified time period. Homeownership activities in accordance with **24 CFR §92.254** must set forth resale or recapture requirements imposed on the housing units.
- (m) The Grantee will comply with the requirements found in **24 CFR Part 92, Subpart F, Project Requirements**, as applicable, in accordance with the type of activity assisted.
- (n) The Grantee will carry out each activity in compliance with all Federal laws and regulations described in **24 CFR Part 92, Subpart H, Other Federal Requirements**, except that the Grantee does not assume the responsibility for release of funds under **24 CFR §92.352, Environmental Review**, or the intergovernmental review process described in **24 CFR §92.357, Executive Order 12372, Intergovernmental Review of Federal Programs**.
- (o) When applicable, the Grantee will follow the provisions governing the use of HOME funds by religious organizations, as contained in **24 CFR §92.257, Faith-Based Activities**.
- (p) In all contracts with its subcontractors and subrecipients, the Grantee will require that all contract provisions, clauses and conditions detailed in Chapter 4 of the most current version of the HOME Administration Manual be included in those contracts.
- (q) The Grantee will require the following language in all contracts with its subcontractors and subrecipients: *The contractor will ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with this HOME-assisted project will be extended to lower income project area residents. Further, the contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in awarding contracts and procuring services and supplies.*
- (r) *Nonprofit Entities.* The requirements of OMB Circular No. A-122, *Cost Principles for Non-Profit Organizations*, and certain provisions of **2 CFR Part 200**, and **24 CFR Part 84, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations**, apply to a Department certified Community Housing Development Organization (CHDO) receiving HOME funds.

- (s) Title to real property or equipment acquired under a grant or subgrant will vest upon acquisition in the Grantee or Subgrantee, respectively. The Grantee or Subgrantee will use, manage, and dispose of this property or equipment in accordance with all applicable State and Federal requirements.
- (t) If any housing assisted with HOME funds fails to meet the affordability requirements for the period(s) set forth in Section 5 EFFECTIVE DATE AND TIME OF PERFORMANCE the Qualified Entity will repay to the Department all HOME funds expended on this project as required by HOME regulations in **24 CFR §92.254(5)(ii)(A)**.
- (u) Before completion of each activity, the Grantee will ensure the enforcement of the affordable housing requirements of the HOME Program by the imposition of a recorded lien on the property, trust indenture, deed restriction, or covenant running with the land. Breach of the HOME requirements through the period of affordability will result in one or more of the actions identified in **24 CFR §85.43, Enforcement**.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect upon date of signature of the Director of the Department. The duration of this Contract will be for 24 months beginning the date the Director of the Department of Commerce signs this Contract.

It is understood and agreed to by the parties to this Contract that the period of affordability extends the tenure of this contract beyond the 24-month duration. The terms of this contract survive throughout the “period of affordability”, which, from the date of completion for each activity (each household), is **five, ten, or fifteen** years, as specified in the following table.

ACTIVITY	HUD Minimum Period of Affordability, in Years
HOMEOWNERSHIP ACTIVITY (24 CFR §92.254 (4))	
Homeownership Activity assistance HOME amount per-unit	
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

Section 6. SCOPE OF WORK

The Grantee will carry out the activities with program income and/or recaptured funds as set forth in the Management Plan and in the Grantee's Single Family Noncompetitive Program Qualification Package for HOME funds received **October 2014** which by this reference is incorporated into this Contract.

Type of activity: Down payment and closing cost assistance with no rehabilitation

Service area: City of Missoula

Minimum amount of HOME funds: \$1,000

Maximum amount of HOME funds: \$35,000 per unit.

Compliance with front end and back-end ratios, as specified in the approved Management Plan.

Compliance with minimum contribution by homebuyers, as specified in the approved Management Plan.

The Grantee will be responsible for administering this Contract.

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

Section 7. BUDGET

- (a) The total amount to be awarded to the Grantee under this Contract for homebuyer assistance will not exceed \$600,000 in HOME funds. Any amount of the HOME funds that is not committed to eligible homebuyer activities by the expiration of the contract may revert to the Department.
- (b) For homebuyer assistance activities, the purchase price of each assisted unit must not exceed the current *Maximum Purchase Price Limit (for Homebuyer Assistance)* as established by HUD and posted on the HOME program's web page. **Soft costs are defined in the Management Plan and are actual documented costs required to provide the HOME assistance to each homebuyer. Soft costs will not be reimbursed for households that ultimately do not receive HOME assistance.**
- (c) All activities set up in the Integrated Disbursement and Information System (IDIS) will require a separate budget as identified the Setup Report, **Exhibit 3-K**, Chapter 3 of the HOME Grant Administration Manual, submitted to the Department. The Department will not disburse funds to the Grantee for a

particular activity until the Grantee has submitted and the Department has approved the budget for that activity.

- (d) The initial budget for each homebuyer activity will be established when the Grantee submits to the Department the appropriate version of the Set-Up Report and applicable back-up documentation, **Exhibit 3-A.1**, Chapter 3 of the HOME Grant Administration Manual. The budgeted amount is subject to written approval by the Department and the availability of HOME Single Family Noncompetitive Program funds. If modification to the activity budget is necessary, the Grantee will submit a revised Set-Up Report along with justification for the modification and applicable back-up documentation. Budget modifications are subject to written approval by the Department and the availability of HOME Single Family Noncompetitive Program funds.

Section 8. METHOD OF COMPENSATION

- (a) The Grantee will request that the Department disburse funds when the HOME funds are needed for payment of eligible costs. The amount of each request will be limited to the amount needed. In accordance with **24 CFR §92.502(c)**, *Disbursement of HOME funds*, the Grantee will use the HOME funds on HOME-eligible activity costs within fifteen (15) days of receipt.

At the request of the Department, Requests for Reimbursement for contracted or subcontracted services must attach appropriate documentation demonstrating compliance with contract requirements. The grantee can only be reimbursed for project-related, actual costs that have been incurred, and must provide adequate and sufficient documentation supporting each claim for expenses to be reimbursed which includes, but is not limited to, itemized invoices with description of the work performed, number of hours worked, and hourly rate.

The Grantee will provide the original copy of the Request for Payment form (Exhibit 3-D) to the Department.

- (b) The Grantee will follow Section 7, BUDGET, instructions supplied by the Department, and the approved Management Plan and/or Program Income and Recaptured Funds Plan.
- (c) If the Department determines the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department will notify the Grantee in writing of the deficiency. If after receiving this notification, the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may suspend the Grantee's authority to draw against the HOME funds described in this Contract. The suspension will continue until the Department and the Grantee agree on a plan to remedy the deficiency.

- (d) All HOME funds for each homebuyer activity must be drawn and spent and the Completion Report, **Exhibit 3-K, page 2 and 3**, Chapter 3 of the HOME Grant Administration Manual submitted to the Department within **120 days** of the date the HOME funds are committed to the specific activity. Further, the Completion Report must be submitted within 100 days of the final draw or within **120 days** of activity commitment, whichever comes first. Unless otherwise agreed to in writing by the Department, any HOME funds not expended within **120 days** may be withdrawn from the Grantee and used for other HOME eligible activities.
- (e) The Department is allowed 30 days to process requests for payments. The Grantee shall provide banking information at the time of Contract execution in order to facilitate electronic funds transfer payments. The Department may withhold payments to the Grantee if the Grantee has breached the terms of the Contract.

Section 9. REPORTING REQUIREMENTS

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

If no draw request and *Progress Report* have been submitted by the Grantee for an uncompleted, open activity during any calendar quarter, the Grantee will submit a *Progress Report* within 15 days after the end of that calendar quarter that includes information relevant to the implementation of the activity, including a description of the cumulative progress and accomplishments achieved and any problems or delays that could affect the program implementation schedule or budget since activity start-up and since the last progress report submitted.

Section 10. LIAISONS

The contact persons for this Contract are:

For the Department:

Elisa Prescott (or successor)
Program Specialist, MDOC
301 S. Park Ave.
P.O. Box 200545
Helena, MT 59620-0545
(406) 841-2770

For the Grantee:

Erin Kautz, Grants Administrator (or successor)

City of Missoula
435 Ryman
Missoula, MT 59801
(406) 258-4904

Section 11. PROJECT MEETINGS

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

Section 12. ACCESS TO AND RETENTION OF RECORDS

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

The activity and program records that must be on file in the Grantee's offices are described in the approved **Management Plan**. These records will be kept at the Grantee's offices in **Missoula**, Montana.

(a) In accordance with **24 CFR §92.508, Recordkeeping**, all records pertaining to each fiscal year of HOME funds must be retained for the most recent five-year period, except records must be retained for five years after the **activity completion** date and documents imposing recapture/resale restrictions must be retained for five years after the affordability period terminates for each household assisted, as specified in **Section 5, EFFECTIVE DATE AND TIME OF PERFORMANCE**

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

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

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

Section 13. PROJECT MONITORING

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

(b) Failure by the Grantee to proceed with reasonable promptness to take necessary corrective actions shall be a default. If the Grantee's corrective actions remain unacceptable, the Department may terminate this Contract in whole or in part.

Section 14. COMPLIANCE WITH APPLICABLE LAWS

The Contractor must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973 and the Patient Protection and Affordable Care Act ("Affordable Care Act"). Any subletting or subcontracting by the Contractor subjects subcontractors to the same provisions. In accordance with Mont. Code Ann. § 49-3-207, the Contractor agrees that

the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

The Affordable Care Act requires a Contractor, if Contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees, who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980 H (ACA) if provided by the State.

Section 15. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with all applicable laws regarding the avoidance of conflict of interest, including but not limited to **2 CFR Part 200**; **24 CFR Part 84**, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, and **24 CFR Part 85**, *Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments*, **24 CFR §92.356**, *Conflict of Interest*, and HUD guidance found in the HOME management plan guidelines. In addition, the Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the activities funded under this Contract.

Section 16. LOBBYING RESTRICTIONS

- (a) The Grantee shall comply with the provisions of 31 U.S.C. §1352 and implementing regulations published at **15 CFR Part 28**, *New Restrictions on Lobbying*. These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying.
- (b) The Grantee shall submit a completed Form SF-LLL, *Disclosure of Lobbying Activities*, regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Department for submission to the appropriate federal government agency.

Section 17. ACCOUNTING, COST PRINCIPLES, AND AUDITING

- (a) The Grantee, in accordance with **Section 18-4-311, MCA; 5 U.S.C.App. 3 §§ 1 et seq.; 2 CFR Part 200; OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations**; and other authorities, must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (GAAP).
- (b) The Department, Montana Legislative Auditor, Inspector General of the U.S. Department of Commerce, or any other legally authorized governmental entity or their authorized agents may, at any time during normal business hours during or after the term of this Contract, conduct, in accordance with **Sections 5-13-304 and 18-1-118, MCA; 5 U.S.C. App. 3 §§ 1 et seq.; 2 CFR Part 200; OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations**; and other authorities, audits for the purposes of ensuring the appropriate administration and expenditure of the monies provided through this Contract and to ensure the appropriate administration and delivery of services provided through this Contract.
- (c) The Grantee, for purposes of audit and other administrative activities, in accordance with **18-1-118, MCA; 5 U.S.C. App. 3 §§ 1 et seq.; 2 CFR Part 200; OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations**; and other authorities, must provide the Department, Montana Legislative Auditor, Inspector General of the U.S. Department of Commerce, or any other legally authorized governmental entity or their authorized agents access at any time to all of their respective records, materials and information, including any and all audit reports with supporting materials and work documents, pertinent to the services provided under this Contract until the expiration of three (3) years from the completion date of this Contract. The Department and any other legally authorized governmental entity or their authorized agents may record any information and make copies of any materials necessary for the conduct of an audit or other necessary administrative activity.

Section 18. OWNERSHIP AND PUBLICATION OF MATERIALS

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

Section 19. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

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

Section 20. HOLD HARMLESS AND INDEMNIFICATION

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

Section 21. INSURANCE

- (a) General Requirements. Grantee shall maintain and shall assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, liability insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the duties and obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. The Department, its officers, officials, employees, and volunteers are to be covered as additional insured's for all claims arising out of the use of grant proceeds provided by the State of Montana.
- (b) General Liability Insurance. At its sole cost and expense, the Grantee shall purchase occurrence coverage with minimum combined single limits of \$1 million per occurrence and \$2 million aggregate per year, or as established by statutory

Tort limits of \$750,000 per claim and \$1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under Section 2-9-211, MCA.

- (c) Professional Liability Insurance. Grantee shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.
- (d) Property Insurance. At its sole cost and expense, the Grantee shall maintain property and hazard insurance, including course of construction coverage, and earthquake insurance in areas where there is a shaking level above 10g (see map at <http://rmtd.mt.gov/Portals/62/aboutus/publications/files/NEHRP.pdf>) for loss or damage for any building and all related improvements and contents therein on the premises on a replacement cost basis throughout the term of the contract.
- (e) General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana or by a domiciliary state and with a Best's rating of at least A-, or by a public entity self-insured program either individually or on a pool basis as provided by Title 2, MCA. All certificates and endorsements are to be received by the Department prior to beginning any activity provided for under the Contract. Grantee shall notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of Grantee's insurance policy at any time, including endorsements.

Section 22. INDEPENDENT CONTRACTOR

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

Section 23. DEBARMENT

The Grantee certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, or subcontractors are debarred, suspended, proposed

for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any governmental department or agency. If the Grantee cannot certify this statement, it has attached a written explanation for review by the Department.

Section 24. CONTRACT AMENDMENT

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

- (a) The Department will consider requests by the Grantee for grant amendments. A request for an amendment must clearly demonstrate that the amendment is justified and will enhance the overall impact of the original project. The Department will consider each request to determine whether the amendment is substantial enough to require reevaluating the projects original ranking. If warranted, the Department will analyze the proposed amendment and its impact on the scores originally assigned to the application in the original grant competition.
- (b) The Department will not approve amendments that would materially alter the circumstances under which the grant was originally ranked and selected.
- (c) If the Department determines that the proposed amendment represents a substantial change in the project activities as proposed in the original qualification package for HOME funds, the Department will require the Grantee to hold a local public hearing on the amendment with reasonable notice.

Section 25. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) Termination Due to Loss of Funding. This Contract will terminate in whole or in part, at the sole discretion of the Department, in the event that the Department suffers a loss of funding or termination of the Federal grant which permits it to fund the Grantee in whole or in part, thereby rendering the Department unable to make payment to the Grantee. In this event, the Department will give the Grantee written notice setting forth the effective date of full or partial termination or, if a change in funding is required, setting forth the change in funding and changes in the approved budget.
- (b) Termination Due to Noncompliance with Contract Terms. If the Department determines that the Grantee has failed to comply with the general terms and conditions of this Contract, the project schedule, or any special conditions, and, if upon notification of the defect, the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the expiration of the period of affordability specified in Section 5. The Department will promptly notify

the Grantee in writing of the decision to terminate, the reasons for termination, and the effective date of the termination.

- (c) Termination Due to Adverse Environmental Impact. This Contract will terminate at the conclusion of the environmental review process if the Grantee or the Department determines that the project would have a significant adverse impact on the quality of the human environment, and that this impact cannot be avoided or sufficiently mitigated by reasonable means.
- (d) Effect of Termination. In the event of termination due to Grantee's failure to comply with the terms of this Contract or the project's adverse environmental impact, any costs incurred will be the responsibility of the Grantee.

Section 26. DEFAULT

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

Section 27. NO WAIVER OF BREACH

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

Section 28. COMPLIANCE WITH WORKERS' COMPENSATION ACT

The Grantee accepts responsibility for requiring all contractors and subcontractors being reimbursed with HOME funds to supply the Department with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. (**MCA §§ 39-71-120, 39-71-401, and 39-71-405.**) Neither the Grantee nor its employees are employees of the Department. The proof of insurance/exemption must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status, and must be received by the Department within 10 working days of the execution of this Contract and must be kept current for the entire term of the Contract.

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

Coverage may be provided through a private carrier or through the Montana State Fund (406)495-5000. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division (406) 444-6453. Corporate officers must provide documentation of their exempt status.

Section 29. FORCE MAJEURE

Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

Section 30. SEPARABILITY

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

Section 31. NOTICE

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

Section 32. NO ARBITRATION

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

Section 33. REFERENCE TO CONTRACT

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

Section 34. JURISDICTION AND VENUE

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

Section 35. FUNDING ACKNOWLEDGEMENT

All activities developed wholly or in part by the funding provided under the Contract shall state that "The funding for homebuyer assistance was funded (in part, if applicable) by a

U.S. Department of Housing & Urban Development HOME Investment Partnerships grant from the Montana Department of Commerce.” Any variations from this language must be approved by the Department prior to use.

Section 36. INTEGRATION

This contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding. Amendments to this contract must be signed by both parties.

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

City of Missoula:

John Engen, Mayor

Date

ATTEST:

Martha L. Rehbein, CMC, Clerk

APPROVED AS TO FORM:

Jim Nugent, City Attorney

MONTANA DEPARTMENT OF COMMERCE:

Meg O'Leary, Director
Montana Department of Commerce

Date