

## Exhibit 15-1-A NSP

### SAMPLE NEIGHBORHOOD STABILIZATION PROGRAM CONTRACT

*This is an example of the contract boilerplate / format only.  
Each contract will require its own specific information.*

**CONTRACT #MT-NSP-\_\_\_(3 digit County code) - \_\_ (two digit local government code) -  
\_\_\_(three digit project code)**

This Contract is entered into by \_\_\_\_\_, Montana, (the Grantee), IRS # \_\_\_\_\_, and the Montana Department of Commerce, Helena, Montana, (the Department).

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

#### **Section 1. PURPOSE**

The purpose of this Contract is to provide funding for project activities approved by the Department under the Neighborhood Stabilization Program (NSP) for FFY 2008.

#### **Section 2. AUTHORITY**

This Contract is issued under authority of Section 90-1-103, Montana Code Annotated, and the Administrative Rules of Montana, Title 8, Chapter 94, Subchapter 37.

#### **Section 3. DOCUMENTS INCORPORATED BY REFERENCE**

- A. Department of Housing and Urban Development Federal Register Notice, Vol. 73, No. 194, dated October 6, 2008.
- B. Department of Housing and Urban Development Federal Register Update Notice, Vol. 74, No. 117, dated June 19, 2009.
- C. *State of Montana NSP Substantial Amendment, Plan Year 2008 Annual Action Plan*, submitted to HUD November 28, 2008 and approved by HUD January 30, 2009 ("the NSP Program").
- D. Grantee's application for participation in NSP, including any written modifications resulting from the review of that application by the Department, as set forth in the NSP approval letter dated \_\_\_\_\_, 2009 (collectively, the "Grantee's Program"), and the representations contained therein, which are binding upon the Grantee.



#### **Section 4. ACCEPTANCE OF PROGRAM REQUIREMENTS**

- A. The Grantee will comply with all applicable parts of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §§ 5301, et seq.; the applicable Department of Housing and Urban Development (HUD) regulations, including but not limited to 24 CFR Part 570 and Form HUD-4010, and the Housing and Economic Recovery Act, 2008, as now in effect or as they may be amended during the term of this contract; all administrative directives and procedures that may be established by the Department, including the most recent version of the CDBG/NSP Grant Administration Manual, as amended; and any other applicable local, state, and federal laws, regulations, administrative directives, procedures, ordinances, or resolutions.
- B. The Grantee agrees that all contracts entered into by it for the completion of the activities described in Section 6 SCOPE OF ACTIVITIES of this Contract will require such contractors, subcontractors, and subrecipient entities to also comply with all applicable local, state, and federal laws, regulations, administrative directives, procedures, ordinances, resolutions; and all administrative directives and procedures that may be established by the Department, including the CDBG/NSP Grant Administration Manual, as amended.
- C. The Grantee expressly agrees to repay to the Department any funds advanced under this Contract that the Grantee, or its contractors, subcontractors, or subrecipient entities, or any public or private agent or agency to which they delegate authority to carry out portions of this Contract, expends in violation of the terms of this Contract, the statutes and regulations governing the NSP Program, or any applicable local, state, or federal requirements.
- D. Grantee acknowledges and agrees that the State of Montana is in no way exercising its power of eminent domain through its approval or funding of Grantee's Program.

#### **Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE**

- A. This Contract shall take effect upon execution by the parties and will terminate upon approval of final Project closeout by the Department, unless terminated earlier in accordance with the terms of this Contract. The specific activities to be performed by the Grantee will be completed according to the Project Request, Implementation Schedule, and Budget to be submitted by Grantee and approved by the Department.
- B. This Contract will be in effect for the period of affordability for activity, **which may be up to twenty (20) years** from the date of completion, **depending on the amount of assistance provided, as referenced in State of Montana NSP Substantial Amendment Plan Year 2008 Annual Action Plan, Section C – Definitions and Descriptions (p. 24).**



## Section 6. SCOPE OF ACTIVITIES

As stated in the Housing Economic Recovery Act of 2008, NSP Program funds must be obligated by September 19, 2010 and expended by March 19, 2013. The Grantee will engage in activities approved for the Grantee's Program until the total amount of NSP funds are committed and expended (the "Program").

The major components of the Program include the following work for the \_\_\_\_\_ (County / City):

☐ \_\_\_\_\_;

☐ \_\_\_\_\_;

☐ \_\_\_\_\_; and

☐ administration of this Contract in compliance with the Project Management Plan approved by the Department and as may be amended from time to time by mutual agreement of the Parties.

## Section 7. BUDGET

- A. The Department will not disburse funds to the Grantee for a particular project in Grantee's Program until the Grantee has submitted and the Department has approved the budget for that project.
- B. All projects require a separate budget for entry into the Disaster Recovery Grant Reporting system (DRGR).
- C. Budget adjustments must be approved in advance by the Department. For budget adjustments of \$5,000 or less, Department approval of the Request for Funds form will constitute approval of the budget adjustment. The Grantee must describe the rationale for a budget adjustment in the Project Progress Report and note the adjustments in the Request for Funds and Status of Funds Report submitted with draws against the grant funding reserve. Budget adjustments in excess of \$5,000 require formal Department approval and the Contract amended. No modification will be approved for obligation of funds beyond September 19, 2010, or expenditure of funds beyond March 19, 2013.
- D. Program Income
  - (i) The Grantee may retain program income received before Project closeout, but such income must be treated as additional NSP funds and subject to all applicable requirements governing the use of NSP funds.
  - (ii) If the Grantee chooses to retain program income received before Project closeout, a program income plan in compliance with the most recent version of the Department's Program Income Manual for Revolving Loan Funds must be developed and submitted for



review and written approval by the Department.

- (iii) Grantee will record receipt and expenditure of retained program income as part of the financial transactions of the Project.
  - (iv) At the end of each calendar year during the term of this Contract, the Grantee must remit all program income balances (including investments thereof) held by the Grantee, its contractors, subcontractors, and subrecipient entities that exceed one-twelfth of the Department's total award to the Grantee, to be placed in the Grantee's funding reserve.
  - (v) The Grantee must expend substantially all program income it receives before requesting additional NSP funds. The Department will deduct the amount of program income on hand, shown on the drawdown form, from the amount requested by the Grantee.
  - (vi) If the Grantee desires to retain program income received after Project closeout, the Grantee must execute a grant closeout agreement with the Department at the time of closeout that describes the Grantee's responsibility for compliance with requirements governing program income received subsequent to grant closeout.
- E. Any authorized funds not expended by March 19, 2013 under this grant or otherwise accounted for in accordance with the provisions of this Section will revert to the Department and will be used to finance other NSP projects.

## **Section 8. AMOUNT OF GRANT AND METHOD OF PAYMENT**

- A. The Grantee will request that the Department disburse funds when the funds are needed for payment of eligible reimbursable costs. The amount of each request will be limited to the amount needed. The Grantee will use NSP funds based upon the requirements of obligation of funds by September 18, 2010, and expenditure of NSP funds by March 19, 2013.
- B. If the Department determines the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department will notify the Grantee in writing of the deficiency. If after receiving this notification, the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may suspend the Grantee's authority to draw against the reserve described in this Contract. The suspension will continue until the Department and the Grantee agree on a plan to remedy the deficiency.
- C. The Department agrees to reimburse the Grantee as set forth in this Section for successfully completing the activities set forth in Section 6 SCOPE OF ACTIVITIES, as the Grantee incurs approved, eligible, reasonable, and necessary Project expenses supported by adequate documentation submitted by the Grantee and upon approval by the Department of the Grantee's Request for Funds. In requesting reimbursement, the Grantee will follow the instructions supplied by the Department.
- D. The Department will not reimburse the Grantee for any costs incurred prior to the date of execution of this Contract, unless previously authorized in writing by the Department, but in no



event for costs incurred prior to the date of the Notice of Grant Approval Letter (Date), for any expenses not included in the budget or an approved adjustment thereto, or for any expenses not clearly and adequately supported by the Grantee's records.

- E. The reimbursement of approved, eligible, reasonable, and necessary Project expenses incurred is contingent upon the Grantee's completion of Section 17 SPECIAL PROJECT START-UP CONDITIONS.
- F. The Department will not release any NSP funds to the Grantee until the Grantee has obtained firm commitments for all other financial resources to be involved in the Project. The Grantee may not expend or obligate any NSP funds, other than for administrative purposes, until the Department determines that this condition has been satisfied.
- G. **As further set forth in Section 23 TERMINATION OF CONTRACT, if the Grantee fails to or is unable to comply with any of the terms and the conditions of this Contract, any costs incurred will be the Grantee's sole responsibility.**
- H. The Department may withhold two percent (2%) of the total authorized grant amount until all tasks outlined in Section 6 SCOPE OF ACTIVITIES are completed and approved and the Grantee's Project Completion Report is received and approved by the Department. The Department will disburse this withholding upon receipt and approval by the Department of the Grantee's Project Completion Report. Prior to receipt of the Project Completion Report, the Department liaison may authorize release of part or all of the withholding when situations occur that would result in an undue financial hardship on the Grantee, provided the Grantee has demonstrated effective overall management of this Project and, when applicable, satisfactorily managed any earlier NSP projects. If the Grantee fails to submit a Project Completion Report within the 60 days, the Department may consider whether these remaining funds should be reallocated by the Department to other unfunded or inadequately funded activities, whether or not related to Section 6 SCOPE OF ACTIVITIES set forth herein or to the Grantee.
- I. If actual total cost of completing the Project is less than has been projected by the Grantee in its Project budget or an approved adjustment thereto, the Department, at its discretion, may reduce the amount of NSP grant funds to be provided to the Grantee accordingly. If actual construction bids are less than the estimates included in its Project budget, the construction portion of the budget will be automatically adjusted to reflect the bid price, plus a ten percent contingency. At the Department's sole discretion, the difference between actual Project costs and the original grant award may be reallocated to other unfunded or inadequately funded NSP Projects, whether or not related to Section 6 SCOPE OF ACTIVITIES set forth herein or to the Grantee's Program.
- J. If needed, the Grantee's travel expenses, meals, and lodging will be reimbursed at the prevailing local rate at the time such expense is incurred.



- K. Unless otherwise stated herein, the Department is allowed 30 days to process a Request for Funds once the Department has received adequate supporting documentation. The Grantee may be required to 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 this Contract.
- L. If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may withhold reimbursement to the Grantee until such time as the Department and the Grantee agree on a plan to remedy the deficiency.
- M. If any obligations remain as of the date of Project closeout, the Department shall prepare and the parties shall execute a Closeout Agreement specifying the conditions and requirements governing those remaining obligations, in accordance with the requirements set forth in 24 CFR § 570.509(c).

## **Section 9. LIAISONS**

\_\_\_\_\_, NSP Program Specialist, is the Department's liaison with the Grantee regarding all administrative and technical matters concerning this Contract. \_\_\_\_\_, is the Grantee's liaison with the Department for all administrative and technical matters concerning this Contract. For purposes of this Contract, these liaisons may be contacted as follows:

### **For the Department:**

\_\_\_\_\_ (or successor)  
NSP Program Specialist, MDOC  
301 S. Park Ave.  
P.O. Box 200523  
Helena, MT 59620-0523  
406-841-2770

### **For the Grantee:**

\_\_\_\_\_ (Name)  
\_\_\_\_\_ (Title)  
\_\_\_\_\_ (Mailing Address)  
\_\_\_\_\_ (City, State, Zip)  
\_\_\_\_\_ (Telephone)

## **Section 10. OWNERSHIP AND PUBLICATION OF MATERIALS**

- A. 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 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 Grantee and the Department

- B. To the extent the funds awarded under this Contract will be used by any small business firm or non-profit organization, as defined in 37 C.F.R. 401.2, such firm(s) or organization(s) are subject to the standard patent rights clause set forth in its entirety in 37 C.F.R. 401.14 and specifically incorporated herein by this reference.

## **Section 11. ACCESS TO AND RETENTION OF RECORDS**

- A. The Grantee shall create and maintain records of the services covered by this Contract, including but not limited to financial records, supporting documents, and such other records as are required by law or other authority, and to provide the Department, HUD, Comptroller General of the United States, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)
- B. The Grantee 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 Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Grantee's offices in \_\_\_\_\_, Montana.
- C. The Grantee agrees to include in first-tier subcontracts under this Contract a clause substantially the same as paragraphs 11(a) and (b).

## **Section 12. 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 Section 6 SCOPE OF ACTIVITIES, 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, pursuant to the provisions of Section 23 TERMINATION OF CONTRACT, or reduce the contract price or award to reflect the reduced value of services received.



## **Section 13. REPORTING REQUIREMENTS**

### **A. UPDATE REPORT**

- (i) During the term of this Contract, the Grantee shall submit update reports by the deadlines set by HUD and the Department for the NSP Program. This report shall follow the report format specified in the most recent version of the CDBG/NSP Grant Administration Manual, and shall describe the status of the Project with respect to the activities set forth in Section 6 SCOPE OF ACTIVITIES, including, at a minimum, the percentage complete, costs incurred, funds remaining, number of units assisted, and projected completion date. The report must also describe any significant problems encountered in carrying out the Project and the scope of any necessary modifications the Grantee is requesting in the Project scope of activities, implementation schedule, or budget.
- (ii) The Department, at its sole discretion, may decline to honor any Request for Funds if the required update report has not been timely submitted to and approved by the Department.

### **B. PROJECT PROGRESS REPORTING**

During the term of this Contract, the Grantee will submit a Project Progress Report with any Requests for Funds submitted to the Department. This report will describe the use of the funds requested for each administrative and activity line item. The report should also describe any anticipated changes in the budgeted amounts.

### **C. STATUS OF FUNDS REPORTING**

During the term of this Contract, the Grantee will submit a Status of Funds Report with any Requests for Funds submitted to the Department.

### **D. PROJECT COMPLETION REPORT**

Within 60 days after the completion of the Project, the Grantee will prepare and submit to the Department a Project Completion Report in the form prescribed by the Department. The Project Completion Report will describe the total costs incurred for the Project, identify the final completion date, summarize any significant problems encountered in carrying out the Project, provide the final information for each item set forth in paragraph (a) in this Section, and describe how the Grantee has fulfilled all requirements as set forth in the most current version of the CDBG/NSP Grant Administration Manual, Chapter 13, *Project Closeout*. Within 15 days of approving the Project Completion Report, the Department will issue the Notice of Project Close-out.



## **Section 14. COMPLIANCE WITH LAWS**

The Grantee must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Section 109 of the Housing And Community Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Executive Order 11246 of Sept. 24, 1965, and Section 504 of the Rehabilitation Act of 1973. Any contracting, subletting, or subcontracting by the Grantee subjects contractors, subcontractors, and subrecipient entities to the same provision. In accordance with Mont. Code Ann. § 49-3-207, the Grantee agrees that the hiring of persons to perform this 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 this Contract.

## **Section 15. AVOIDANCE OF CONFLICT OF INTEREST**

The Grantee will comply with the provisions of the applicable HUD regulations of 24 C.F.R. Parts 84, 85, and 570.611, and with sections 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

## **Section 16. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

The Grantee may not assign, transfer, or subcontract any portion of this Contract without prior written approval by the Department. Grantee accepts responsibility for the adherence to the terms of this Contract by such contractors, subcontractors, or subrecipient entities and by any public or private agents or agencies to which it delegates authority to carry out any portion(s) of this Contract.

## **Section 17. SPECIAL PROJECT START-UP CONDITIONS**

- A. The Grantee will not obligate or utilize funds for any activities provided for by this Contract until:
  - (i) The Grantee completes an Environmental Review Record and the Department issues a Notice of Release of Funds; however, upon receiving written authorization from the Department, the Grantee may incur administrative costs necessary for the preparation of the Environmental Review Record and for planning activities defined as exempt under 24 CFR Part 58.34.
  - (ii) The Grantee submits to the Department evidence of the firm commitment of the other financial resources necessary for the completion of the Project as defined in Section 6 SCOPE OF ACTIVITIES and its Project Implementation Schedule, within its Project Budget.



- (iii) The Grantee submits to the Department and the Department approves an acceptable Project Management Plan, Implementation Schedule, and Program Income Plan.
- (iv) The Grantee completes the civil rights activities described in Chapter 5, “Civil Rights,” of the current version of the Department’s CDBG Grant Administration Manual. The Department, at its sole discretion, may approve a deferral of certain elements of this requirement.
- (v) [**For projects with subgrantees/subrecipients**] For any Projects or portions thereof that the Grantee intends to contract or subcontract to a third party, the Grantee submits to and obtain approval from the Department an acceptable interlocal / subrecipient agreement executed between the parties.

## **Section 18. 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 19. DEBARMENT**

- A. The Grantee certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any governmental department or agency.
- B. The Grantee certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

## **Section 20. HOLD HARMLESS AND INDEMNIFICATION**

The Grantee shall protect, defend, and save the state, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death which injury, death, or damage, in whole or in part, arises out of services performed or omissions of services in any way results from the negligent acts or omissions of the contractor, its agents, or subcontractors.



## Section 21. INSURANCE

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



Title 2, MCA. All certificates and endorsements are to be received by the Department prior to beginning any activity provided for under this 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. CONTRACT AMENDMENT**

- A. 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.
- B. The Department will agree to an amendment only if the Grantee clearly demonstrates that the modification is justified and will enhance the overall impact of the original Project. The Department will consider each request to determine whether the modification is substantial enough to necessitate reevaluating the Project's original ranking. If warranted, the Department will analyze the impact of the proposed modification on the scores assigned to the Grantee's application in the original grant competition.
- C. The Department will consider amendments to the SCOPE OF ACTIVITIES or the BUDGET for additional activities or improvements that are similar to the major components under Section 6 SCOPE OF ACTIVITIES.
- D. If the Department determines that a proposed amendment represents a substantial change in the Project activities proposed in the original application for NSP funds, the Grantee will be required to submit a separate NSP Application for consideration by the Department.



## **Section 23. PROPERTY MANAGEMENT**

Title to real property or equipment acquired under this Contract or a subcontract thereto will vest, upon acquisition, in the Grantee or subgrantee, respectively. The Grantee or subgrantee shall use, manage, and dispose of this property or equipment in accordance with the applicable requirements set forth in 24 CFR Parts 85 and 570. All real property within the Grantee's control that was acquired or improved in whole or in part using the NSP funds awarded pursuant to this Contract shall be subject to the standards set forth in 24 C.F.R. § 570.505 during the duration of this Contract term and for five years after closeout of the Project. In all cases in which equipment acquired pursuant to this Contract is sold, the proceeds shall be program income.

## **Section 24. TERMINATION OF CONTRACT**

This Contract may only be terminated in whole or in part as follows:

- A. The Department may, by written notice to the Grantee, terminate this Contract in whole or in part at any time the Grantee or any of its contractors, subcontractors, or subrecipient entities fails to perform this Contract or materially fails to comply with any term of this Contract, whether stated herein or in any applicable local, state or federal law, regulation, administrative directive, procedure, ordinance, or resolution. Upon such failure(s), the Department may take one or more of the following actions, as appropriate in the circumstances:
  - (i) Temporarily withhold cash payments pending correction of the deficiency by the Grantee or more severe enforcement action by the Department;
  - (ii) Disallow all or part of the cost of the activity or action not in compliance;
  - (iii) Wholly or partly suspend or terminate the grant for the Project;
  - (iv) Withhold further grants to the Project or to the Grantee;
  - (v) Take other remedies that may be legally available.

Any costs or expenses incurred by the Grantee from obligations arising during a suspension or after termination of the grant pursuant to this Section are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently in writing thereafter. Other necessary and not reasonably avoidable Grantee costs incurred during suspension or after termination are allowable if:

- (I) They result from obligations properly incurred by the Grantee before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, noncancellable; and



(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

- B. The Department may terminate this Contract in whole or in part at any time with the consent of the Grantee, in which case the parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion of this Contract to be terminated;
- C. The Grantee may terminate this Contract in whole or in part at any time upon written notification to the Department, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion of the Contract to be terminated. However, if, in the case of a partial termination, the Department determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the Department may terminate the award in its entirety under paragraph (a) of this section.
- D. The Department may, at its sole discretion, terminate or reduce the scope of this Contract if available funding is eliminated or reduced for any reason. If a termination or modification is required, the Department will, to the extent permitted by available NSP funds, compensate the Grantee for eligible work elements the Grantee has completed and for approved, eligible, reasonable, and necessary expenses incurred by the Grantee as of the revised termination date. The Department will give the Grantee written notice of the effective date of the modification or termination of this Contract and, if a reduction in funding is required, will provide the Grantee with a modified Project budget.

## **Section 25. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Grantees are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with Sections 39-71-401, 39-71-405, and 39-41-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Grantee nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and renewal documents must be sent to the Department.

## **Section 26. 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 27. SEPARABILITY**

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

## **Section 28. NOTICE**

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

## **Section 29. REFERENCE TO CONTRACT**

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

## **Section 30. 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 this Contract.

## **Section 31. 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 32. 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.



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

\_\_\_\_\_  
(Name), (Mayor or County Commissioner)  
(Local Government)

\_\_\_\_\_  
Date

**ATTEST:** \_\_\_\_\_  
(Name), Clerk and Recorder

**APPROVED AS TO FORM:** \_\_\_\_\_  
(Name), (Local Government) Attorney

Department of Commerce:

\_\_\_\_\_  
Anthony J. Preite, Director  
Montana Department of Commerce

\_\_\_\_\_  
Date