Community Development Division

Community Development Block Grant (CDBG)
2018 Grant Administration Manual

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INTRODUCTION

As you begin to fulfill start-up requirements and implement your CDBG or NSP project, you may have some concerns about the responsibilities you are taking on and how to meet them. Viewed in total, the mass of laws, regulations, presidential executive orders, and other may seem overwhelming. However, the same skills that you used to compete successfully for a CDBG or NSP award will help you through the process of implementing your project. We suggest that you follow a step-by-step approach through the various requirements covered in the manual.

As you get into the details of this *Grant Administration Manual*, you will see that, because the manual is written to cover most situations, it covers a number of requirements and procedures that may not apply to your project. In many cases, a particular requirement applies only once and will not have to be dealt with again. In addition, whenever possible, we have provided sample forms and formats for letters, reports, resolutions, and the other varieties of administrative procedures you will have to comply with under federal and state law. We have tried to make the written discussion of the various requirements as complete as possible.

The need for securing compliance with federal and State requirements is a responsibility the Department of Commerce must and does take seriously in its monitoring and supervision of local CDBG or NSP projects. To the extent possible, the Department's oversight of local CDBG or NSP projects is committed to simplifying project administration and working with local officials to prevent or correct problems before they become serious.

For those grantees working specifically on NSP projects, please note that this *Grant Administration Manual* is for the use of the NSP program. All information and exhibits in this manual will be used for the NSP program. However, NSP rules or regulations -- including but not limited to the Housing Economic Recovery Act of 2008 (HERA), implementing HUD regulations, or other rules adopted by the program -- may supersede any of the CDBG rules or regulations set forth herein. NSP grantees are encouraged to modify exhibits to include the NSP program. Your NSP project liaison will provide assistance with any modification or question in regard to the applicability and use with the NSP program and this manual. An online version of the NSP specific exhibits is available at the following website:

http://comdev.mt.gov/NSP/default.mcpx

CHAPTER 1 -- PROJECT START-UP

I. OVERVIEW 1-2
II. START-UP CONDITIONS 1-2
III. SPECIAL CONTRACT CONDITIONS 1-6
V. ADDITIONAL INFORMATION 1-8
V. CHAPTER I - EXHIBITS 1-10

CHAPTER I

PROJECT START-UP

Overview

This chapter offers background information on the Community Development Block Grant (CDBG) Program and summarizes the key considerations and important steps each grantee will need to take to start a successful CDBG grant award project. All grant recipients will be required to 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, as now in effect or as they may be amended during the term of the project contract; all administrative directives and procedures established by the Department, including the most recent version of the CDBG/NSP Grant Administration Manual; and all other applicable local, state, and federal laws, regulations, administrative directives, procedures, ordinances, or resolutions. This manual provides information to help grant recipients comply with these regulations.

Each grantee may incur reimbursable administrative costs as of the authorized date in its Notice of Award letter. Administrative costs will be eligible for reimbursement once the grantee meets all start-up conditions, documents compliance with state and federal requirements, and executes a contract with the Department. If the grantee fails to meet start-up conditions, a contract is not executed, a grant recipient is unable to comply with the terms and conditions of the contract, document federal or state requirements, or administrative, acquisition, or construction costs incurred are ineligible for CDBG funding, those costs will be the sole responsibility of the grantee. All CDBG projects must also meet Special Contract Conditions and demonstrates compliance with state and federal regulations to be eligible to incur acquisition or construction-related costs and complete project activities.

Start-up Conditions

Prior to executing a contract, the following start-up conditions must be completed and submitted to the Department. Additional details are listed in this chapter as well as in other chapters of this manual.

a. Updated budget and implementation schedule,
b. Compliance with federal and state audit requirements,
c. Established financial accounting system,
d. Documentation of firm commitment of non-CDBG funds,
e. Approved Project Management Plan, and
f. Executed contract with the Department.

Special Contract Conditions

Prior to completing any non-administrative project activities, the following special contract conditions must be completed by the grant recipient. Additional details are contained in this manual.

a. Completed Signatory and Depository forms,
b. Environmental requirements completed,
c. Documentation of completed Civil Rights requirements,
d. Other special conditions placed on the grant by the Department as established in the contract, and
e. Executed Interlocal or Sub-Recipient Agreement, as applicable.

Start-Up Conditions

I. Project Budget

The preliminary project budget submitted in the grant recipient's application must be updated to reflect current conditions at the time of contract execution, and will be attached to and incorporated by reference into the contract. At the time the project is ready to enter into a contract, an updated budget narrative explaining the amounts listed for each line item that CDBG will fund, will be required to be submitted. It is important that the preliminary project budget at the time of contract execution is acceptable to all of the funding sources identified. When the project is ready to begin the construction phase, the project budget will need to be revised to reflect the actual amount in the construction bid. In the event that the construction bid is less than the budgeted amount, the construction line items must be revised to reflect the reduced costs. For information on the process to follow in amending the project budget after the contract has been executed, see Chapter 4.

Program Income Plan

Program Income" is defined as any income earned by a grantee from a CDBG supported activity, such as, repayments of principal or interest to a local revolving loan fund program generated by housing rehabilitation or economic development activities. As further established in the contract, a program income plan will need to be developed for those project activities that could generate program income.

- "Program Income" funds are the monies that are received after a project has been completed and closed out and are retained at the local level as authorized by the Department. Program income can also be generated while a project is yet underway, such as when homes are sold that were assisted with CDBG first-time homebuyer funds.

  - For example, if your local government planned to retain program income received from its CDBG funded housing project, it would have had to complete a Program Income Plan as part of the required application. This Program Income Plan would have outlined the use of program income anticipated to be received in conjunction with a revolving loan fund for ongoing housing purposes to assist low and moderate-income homeowners or renters, and may have included a goal to fund other eligible CDBG activities.

  - Any community that have been receiving program income from a previous CDBG project funded after 1992 must have submitted a summary of past program income earnings, activities funded, and other information along with the CDBG grant application. Under HUD regulations, communities are also required to submit annual program income reports to THE DEPARTMENT if they have received program income from CDBG-supported activities.

As part of project start-up activities, grantees must review the Program Income Plan submitted with the grant application and ensure that it accurately reflects the local government's current plans to administer any program income funds received. CDBG guidance on the use of Program Income is included in the publication, *CDBG Program Income Manual,* available on-line at: **http://comdev.mt.gov**

II. Project Implementation Schedule

The project implementation schedule submitted in the grant recipient's application must be updated to reflect current conditions at the time of contract execution, and will be attached to and incorporated by reference into the contract. The final implementation schedule for the CDBG contract should identify all key tasks and more precisely define, if possible, when each must be accomplished to complete the overall project. All CDBG project activities must be completed as identified in the grantee's implementation schedule and the executed contract with the Department. The Department, in its sole discretion, may grant an extension to this deadline if the project is near completion and the grant recipient can demonstrate a good faith effort to complete the project on time and within the original budget.

III. Established Financial Accounting System and Audits

Local government grantees must be in compliance with the auditing and reporting requirements provided for in 2 CFR Part 200, Section 2-7-503 and 18-4-311, MCA, and demonstrate that they have an established financial accounting system in place that conforms to generally accepted accounting principles (GAAP).

The Community Development Division (CDD) staff will contact the Department of Administration, Local Government Services (LGS) Bureau and Federal Audit Clearinghouse to confirm whether a grant recipient is in compliance with the auditing and reporting requirements. A grantee can also view information related to their audit and financial status available at any time on the Department of Administration, Local Government Services website at http://sfsd.mt.gov/LGSB.

The LGS Bureau services are available at the request of any local government to help the entity comply with statutory financial and budgetary reporting requirements.

The costs of audits prepared in accordance with federal and state regulations are allowable charges to CDBG projects. Generally, the percentage of costs charged to CDBG projects cannot exceed the percentage of CDBG funds expended in relation to total funds expended by the local government during the fiscal years covered by the audit. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost. The grantee must provide the necessary information required to determine the percentage of funds applicable to the CDBG project audit when the audit report and final certifications of completion are submitted for MDOC review. Any procurement of professional services to complete an audit will need to follow procurement requirements as outlined in Chapter 3 of this manual.

IV. Obtaining Firm Commitment of Other Funding Sources

The CDBG grant recipient must provide adequate documentation of the firm commitment of all non-CDBG funds for the project, identified in the preliminary project budget submitted in the grant recipient's application. A description of acceptable documentation of non-CDBG funding sources is included in this manual.

If the CDBG grant recipient changes one of its sources of funding after executing a contract with the Department, or if the cost of the project increases substantially after obtaining the firm commitment of non-CDBG funds and additional funding is required from existing or new sources, the grantee should notify the Department immediately. The Department may, at its sole discretion, suspend distribution of CDBG funds until there is once again a firm commitment of funds for the project.

V. The Management Plan

All CDBG grant recipients must prepare and submit a signed management plan. A sample management plan is included as an exhibit in this manual. The management plan will establish how the grantee will allocate responsibility for complying with the CDBG grant and other state or federal requirements, including but not limited to the proper financial management of CDBG funds, review of contracts and requests for reimbursements, compliance with labor standards, and completion of environmental review. In all cases, the grantee must maintain effective control over and accountability for all funds.

In the management plan, the grantee may designate an existing or new public employee (such as a planning director, public works superintendent, or clerk) as the CDBG grant manager; hire a consultant to manage the grant through applicable competitive procedures for procurement of services; or contract with another local government or existing special purpose agency, such as an economic development corporation, to manage a grant. Procurement of consultant or professional services are more fully explained in Chapter 3, prior to hiring a consultant or professional service please consult your project liaison to complete the appropriate federal requirements.

If the grantee will work with any other governmental entity or non-profit organization to manage its CDBG grant, the grantee must execute an agreement establishing the responsibilities and duties between the two agencies. CDBG uses either an Interlocal Agreement for those entities that are districts or other governmental entities or a Sub-recipient Agreement for non-profit or for-profit entitles that will administer the project or own and operate the facility. This is discussed below as a Special Contract Condition. A sample agreement is included as an exhibit in this manual and explained in more details in Chapter 3, Procurement. All executed contracts or agreements, including those for engineering services or grant services, to be paid for in whole or in part by CDBG funds must be submitted to the Department. Additionally, CDBG may request a copy of any contract related to project activities.

VI.CDBG Contract

The executed contract between the grantee and the Department is the legal document that governs the administration of the grant, and will identify the following items:

- the total amount of CDBG funds to be provided;
- the scope of work;
- a preliminary project budget for the use of CDBG funds and any other funds involved in the project;
- the implementation schedule for the project;
- any special conditions placed on the grant by the Department; and
- the general terms and conditions associated with the grant.

The process of finalizing the contract will include finalizing the project budget and implementation schedule and incorporating the scope of work to be completed by the grantee. The grantee's application for CDBG grant funds, as approved by the Department, is incorporated by reference into the contract and the representations made therein are binding upon the Grantee.

At the time the project is ready to execute a contract, the CDBG liaison will contact the grantee to confirm grantee authorized representatives for signatures at the time the contract is being prepared. The contract will be reviewed in the Department and then transmitted to the grantee thru an electronic process for signatures. A copy of the final executed contract will be available electronically when all signatures have been obtained. Please contact the program staff if there are concerns or assistance needed with this process.

In the event a project can be completed for less than the grant amount, the grant contract may be amended to reflect the reduced costs. For example, if actual construction bids are less than the estimates included in the application budget, the construction budget would finalized considering the bid price, plus a contingency, see Chapter 9 for more information. The difference between actual project costs and the original grant award may be reallocated by the Department for unfunded or inadequately funded projects or added to the following year's CDBG allocation.

The Department may allow unused funds to be used for an eligible activity which further enhances the contracted project, subject to the Department's written approval. However, before the Department makes a determination to allow the additional activity to expend all or a part of the balance of remaining funds, the grantee must demonstrate that the activity will:

(1) clearly enhance the overall impact of the original project;
(2) provide at least a 51% benefit to persons of low and moderate-income;
(3) completed in a timely manner,
(4) completed with the unused funds, and
(5) demonstrates satisfactory progress toward completion of the original contracted project activities.

AMENDING THE CONTRACT

All grantees must request approval of modifications to project activities, in advance, such as those involving new activities, alteration of the existing activities or budget, adjusting the schedule for project implementation, as proposed in the grant application or defined in the grant contract. Before the Department makes a determination to allow the amendment, the grantee must provide a written justification that clearly demonstrates that the modification is appropriate 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 proposed modification and its impact on the scores originally assigned the application. Amendments will not be approved which, when re-ranked, reduce the overall score assigned during the original grant competition below the lowest score received by a selected project.

The Department will require that a public hearing with reasonable notice be conducted by the grantee if the proposed amendment is determined to be a substantial change in project activities contained in the original application for CDBG funds.

Substantial changes in project activities or the geographic area of the project may also obligate the grant recipient to publish legal notices and to conduct additional environmental review in order to comply with federal environmental requirements.

Special Contract Conditions

I. Signature and Depository forms

The Department must receive an executed Signature Certification form authorizing specific local officials to sign requests for reimbursement. At least two officials must sign each request for reimbursement. This form will be used to verify the signatures on each request for reimbursement, received throughout the course of the project, match those listed on the Signature Certificate. If local officials change during the course of the project, the Department will require an update to the certificate occur prior to proceeding with a request for reimbursement.

The Designation of Depository form provides the necessary information for reimbursement to be sent directly to the designated bank account for the grant recipient. The Designation of Depository must indicate the name and/or number of a *non-interest-bearing account* (general depository) to which the Department will authorize the direct deposit of CDBG funds.

Federal regulations provide that local governments cannot earn interest on CDBG funds deposited into the local government's account for the grant. The procedures for processing a request for reimbursement are described in Chapter 4, Financial Management.

II. Environmental Review

CDBG grants are subject to the National Environmental Policy Act (NEPA), found in 24 CFR Part 58 and Montana Environmental Policy Act (MEPA). For detailed information on MEPA, see *A Guide to the Montana Environmental Policy Act*, or *A Citizen's Guide to Public Participation in Environmental Decision making,* at: http://leg.mt.gov/css/Publications/Environmental/default.asp or http://leg.mt.gov/css/Services%20Division/Lepo/mepa/default.asp

Environmental processes must be completed prior to carrying out any choice-limiting actions, including but not limited to, acquisition or construction-related activities. Any actions taken by the grant recipient that are considered a choice-limiting action could result in the loss of CDBG funding. Please be advised that if project activities are modified to the extent that a new environmental review is required, NEPA and MEPA processes must be followed before additional work can be completed. For additional information, please review Chapter 2 for specific guidance on environmental requirements.

Until a CDBG grant recipient has a completed Environmental Review Record covering all project activities including receipt of the State's formal Release of Funds, a grantee may not incur CDBG funds for any activity except those listed as environmentally exempt under 24 CFR Part 58.34 and specifically authorized by the Department. The Department may issue a specific authorization for each grant recipient to allow them to begin incurring costs for environmentally-exempt activities that are for administrative purposes only. For additional information, please see Chapter 2 of this manual.

III. Civil Rights

To ensure that grantees comply with HUD civil rights requirements, the Department requires that the Civil Rights compliance occurs prior to the first release of funds. These actions are more fully described in Chapter 5, Civil Rights, but include:

a. Undertake actions to affirmatively further fair housing,

b. Adopt a Hatch Act Resolution,

c. Conduct a Self-Evaluation and Transition Plan. Review Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA),

d. Adopt complaint resolution procedures to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA).

CDBG Grantees must ensure accessibility (both structurally and administratively) to programs, services, and benefits for persons with physical and mental disabilities. Grantees and their contractors may not discriminate against qualified individuals with disabilities. Passing the above resolutions is an essential special contract condition that must be completed. The resolutions must be passed by the local government and actions taken before CDBG funds are drawn.

Any postponement of Civil Rights requirements, must be made in writing by the grant recipient and subsequently approved by the Department.

IV. Other special conditions

The grant recipient shall satisfy other specific requirements considered necessary by the Department to accomplish the purpose of the project as evidenced by the application to the department. These specific requirements may include meeting design requirements or those listed in the CDBG ranking report. Please contact the Department project liaison for additional information specific to the project.

V. Interlocal or Sub-recipient Agreement

If the grantee will work with any other governmental entity or non-profit organization to manage its CDBG grant, the grantee must execute an agreement establishing the responsibilities and duties between the two agencies. CDBG uses either an Interlocal Agreement for those entities that are districts or other governmental entities or a Sub-recipient Agreement for non-profit or for-profit entitles that will administer the project or own and operate the facility. As an example, the local government may choose to contract with an existing special purpose agency such as a local housing authority, human resource development council, or a water or sewer district. An interlocal agreement and other special steps may be necessary in such cases. Additional information can be found in Chapter 9 of this manual.

Additional Information

I. Federal Requirements

1. **The Federal Housing and Community Development Act of 1974** (42 USC 5301) provides the statutory basis for the CDBG program nationwide. The State of Montana assumed administrative responsibility for the "Small Cities" CDBG Program in 1982 and the distribution and use of CDBG funds allocated to the State for its local governments under 50,000 population.

   Under the Act, recipients of CDBG funding are responsible for the following:

   - carrying out their local projects in a timely and satisfactory manner;
   - carrying out their projects substantially as they are described in their CDBG applications and contract documents;
   - ensuring that only eligible activities are undertaken with CDBG funding;
   - ensuring that each activity undertaken with CDBG funding principally benefits low and moderate-income persons, aids in the prevention or elimination of slums and blight, or meets other community development needs having particular urgency;
   - maintaining a system for financial management that provides accurate information about CDBG expenditures and assures financial accountability and control;
   - promoting fair housing and equal opportunity in the implementation of project activities;
   - complying with the National Environmental Policy Act (NEPA); and
   - complying with all applicable laws and regulations. The most important federal requirements that apply to CDBG projects are briefly summarized in the "Certifications for Application" (found in the Montana CDBG Application Guidelines.) The chief elected official of each CDBG applicant signed and submitted the Certifications with the application for CDBG funds. Most of these requirements are discussed in detail in following chapters.

2. **Title 24 of the Code of Federal Regulations (CFR), Part 570, Subpart I, "State CDBG Program."** These regulations adopted by the U.S. Department of Housing and Urban Development (HUD) provide the basis for states to receive and distribute CDBG funds to local governments in their nonentitlement areas. While these implementing regulations are primarily intended to define state administrative responsibilities, they also identify many of the management and compliance issues each state must monitor at the local level. These regulations make each state accountable for conducting "such reviews and audits of the units of general local government as may be necessary or appropriate to determine whether they have satisfied the applicable performance criteria which incorporate, among other things, the requirements of this Title and other applicable laws."

3. **Title 24 of the Code of Federal Regulations (CFR), Part 570, Subparts C, J, K and O, "CDBG Program - Entitlement Grant Regulations.** HUD adopted these regulations in 1988 for the "Entitlement CDBG Program" which assists communities over 50,000 population, such as Billings, Great Falls, and Missoula. The HUD Entitlement CDBG Program regulations provide additional guidance on HUD policy regarding a variety of issues involved in the management of local state-funded CDBG projects. Copies of the current regulations for the HUD "Entitlement CDBG Program" are available from the Montana Department of Commerce (MDOC or Department) upon request.

II. Grant Administration Workshop

The Department regularly conducts a grant administration workshop for communities awarded new grants. The workshop is designed for elected local officials who are ultimately responsible for the grant; project managers who will have overall day-to-day administrative responsibility; and clerks, clerk-treasurers, clerk and recorders, or other officials who will have responsibility for overseeing CDBG finances. It is extremely important that the officials and staff that will be responsible for day-to-day grant management, especially financial management, attend this workshop. Any consultant or member of the public may also attend the workshop.

The Department recognizes any grant administration arrangement can be a critical relationship that assists with accurate and appropriate completion of regulations. CDBG funds can be used for grant administration or professional services needed to complete project activities. Regardless of the agreement and procurement documented, direct responsibility for completion of grant activities, compliance with federal and state requirements, and proper financial management of CDBG funds, rests with the governing body of the CDBG recipient. Additional information is found in Chapter 3 of this manual.

III. HUD Oversight

a. Underperformance and HUD "At-Risk" Management:

The HUD reporting system tracks all projects and provides automated alerts for those projects identified as "at-risk" or in need of correction due slow or untimely performance. The program will use the HUD alert system to communicate with grantees whose projects are underperforming to assist them with improving their performance and address the 'at-risk' status. The following three performance measures will be used to determine if a project is underperforming:

1. No draws submitted to the program within 270 days of an executed contract, or
2. No beneficiary data reported after 2 years and 9 months from the date of an executed contract, or
3. No beneficiary data reported, and project is 65% drawn.

b. Failure to Perform and HUD Remediation Plan Status:

The HUD reporting also provides automated alerts for those projects identified as failing to perform or in need of immediate correction. CDBG will use the HUD alert system to communicate with grantees whose projects are failing to provide benefit to eligible households and complete the project in a timely manner. If a grantee receives a remediation plan notice, they must prepare a corrective action plan within 30 days of notification, the plan must resolve the issue, and be approved by CDBG staff. The following three performance measures will be used to determine if a project is failing:

1. No draws submitted to the program within 12 months of an executed contract, or
2. No beneficiary data reported after 3 years from the date of an executed contract, or
3. No beneficiary data reported and project is 80% drawn.

IV. Proof of Insurance and Workmen's Compensation

Prior to release of funds, grantees must also submit to the Department of Commerce evidence of insurance coverage as set forth in the CDBG grant contract and evidence of current payment of workmen's compensation for the local government's employees.

V. Project Files

Keeping complete and detailed records is crucial to successful management of a CDBG project. Local officials and staff should maintain detailed records of day-to-day project activities. Organized project files will aid the grant recipient in documenting compliance with state and federal regulations. All records related to grant activities are to be available on request and need to be kept by the CDBG grantee for five years after the date of final closeout provided through written correspondence by the Department.

Original and complete documentation of all project files must be retained in the offices of the local governing body and be available during normal business hours to any persons authorized to review them, including the Department project liaison, legislative auditor, Comptroller General of the United State, HUD, or other authorized representative.

VI. Involving the Public

Congress and HUD have always placed strong emphasis on citizen participation in the CDBG program. Montana's CDBG Program places strong emphasis on involving the public during the development of an application for CDBG funding and to implement project activities. The need to keep the public informed and involved does not stop after a grant recipient receives notice that your grant application was selected for funding.

1. Section 104 (a)(2) of the Federal Housing and Community Development Act provides that to enhance public accountability, the grantee must in a timely manner furnish citizens information about the amount of funds available for proposed community development and housing activities, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income.

The Housing and Community Development Act requires that CDBG recipients:

- ❑ Provide for and encourage citizen participation, with particular emphasis on participation by persons of low and moderate income who are residents of slum and blight areas and of areas in which

[CDBG] funds are proposed to be used, and provide for participation of residents in low and moderate income neighborhoods as defined by the local jurisdiction;

- ❑ Provide citizens with reasonable and timely access to local meetings, information, and records relating to the grantee's proposed use of funds, and relating to the actual use of funds;

- ❑ Provide for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;

- ❑ Provide for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance. Hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for the handicapped;

- ❑ Provide for timely written answers to written complaints and grievances, within 14 working days where practicable; and

- ❑ Provide for the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

2. Media or Press Release or Events

For any special media event, press release, ribbon cutting or public meeting, prepare clear, concise background information for reporters. Reporters may be unfamiliar with the issues of concern to you and often will not have time to do background research before their deadline. You can refer the media to the Commerce Communications team: http://commerce.mt.gov/News/MediaContacts or by contacting MDOC at 841-2700.

Project signs or other project communications may be used by a grant recipient. If project signs, newsletters, flyers or other written communications are used, provide a copy of the draft sign or public communication to your department liaison for review and comment. Reasonable costs for preparing a project sign is an eligible use of grant funds and should be coordinated with other funding sources involved with the project.

3. Complaints

The Federal Housing and Community Development Act makes it clear that local citizens have the right to offer their views at any point during the development and implementation of a CDBG project. Any comment, suggestion, criticism, or complaint made by a citizen should be taken very seriously and deserves a prompt response. As a rule of thumb, the more promptly local officials or the project manager can investigate the basis for a complaint and try to offer a reasonable solution, the better.

The federal statute that governs the CDBG program and all recipients of CDBG grant funds requires that “a timely written answer to written complaints and grievances” be provided by CDBG grantees“ within 15 working days where practicable” (42 U.S.C. § 5304(a)(3)(E)). Telephoned or oral complaints also deserve a prompt response. The local government's response to any complaint must be documented.

The normal procedure if a complaint is filed with MDOC, the Governor, HUD, or a member of the congressional delegation, is to refer the complaint to local officials for response. MDOC will not dictate the form or manner of the response to local officials. The Department's staff are available to advise the community regarding any federal or State requirement that may be at question. In most cases, the final

resolution of the complaint is the authority and responsibility of the local grant recipient, unless the complaint deals with State or federal CDBG policies or requirements. When the grant recipient has reached a decision as to whether or how the complaint is to be resolved, MDOC will communicate the local government's decision to the agency or office that originally referred it to MDOC for action.

Records of all citizen comments, whether in the form of letters or written notes summarizing telephoned or oral comments, should be placed in the citizen participation file for the project, along with the community's letter of reply or notes indicating how the grant recipient responded to the comment. Federal regulations require that the Project Completion Report prepared by the grantee for project closeout include a summary of each citizen comment regarding the project, along with an assessment of the comment and a description of any action taken in response to the comment.

CHAPTER 1

EXHIBITS

1-A Sample Management Plan

1-B Sample Management Plan Format for a Public Facilities Project Administered by Local Staff

1-C Sample Management Plan Format for a Housing Project Administered with the Assistance of a Consultant

1-D Signature Certification Form

1-E Designation of Depository Form

1-F Guidelines on Firm Commitment of Non-CDBG Funding

1-G Project Start-up Checklist

EXHIBIT 1-A

PROJECT MANAGEMENT PLAN GUIDELINES

Preparation of the project management plan does not have to be a difficult task. As part of its CDBG application, each applicant prepared a preliminary management plan which described how the applicant intended to manage its project.

Preparation of the final project management plan is a matter of reviewing the preliminary plan and then more precisely defining how and by whom the project will be administered. The management plan should cover the following four basic areas:

1. Overall Administrative Structure
2. Project Management
3. Financial Management
4. Project Implementation Schedule
5.

It is not necessary that the plan be divided into these sections, as long as the basic issues are addressed. In addition, the Project Implementation Schedule should be included with the Management Plan to demonstrate how the tasks described in the plan will be dealt with chronologically.

1. Overall Administrative Structure

This element will describe how your local government will integrate project management with its existing organizational structure. The most common alternatives for management are either administration by local staff or through a contract with a private consultant. This portion of the plan should include a description of:

- the role of the mayor and council (or county commission) in supervising project administration and the expenditure of project funds and how this will be coordinated with the project manager and the grant recipient's financial officer;
- the role, if any, of the local government's attorney in preparing and reviewing any proposed contracts required for the CDBG project;
- the key persons who will be involved in project administration including the chief elected official, the local government's financial officer, any officials who will be authorized to sign requests for CDBG funds, the project manager, the recipient's attorney, and any other officials or staff who will have a direct role in administering the grant. The list should include names, titles, telephone numbers, and a brief description of their role in the project's administration.

2. Project Management

This element should describe the procedures that will be followed and the persons who will be responsible for overall project management, including assuring documentation of the recipient's compliance with all applicable CDBG Program and contract requirements (other than those pertaining to financial management) such as the environmental review process, civil rights, preparation of regular project progress/update reports and project closeout reports, etc.

For example:

- for a housing rehabilitation project, a Project Management description should address items such as: the role and composition of any advisory board; the procedures for deciding about how grants and/or loan awards will be made to individual households; how housing rehabilitation applications will be accepted from local households and how they will be reviewed; the procedures for soliciting and processing contractor bids for housing rehabilitation work for individuals households; and how contracts for such housing rehabilitation work will be awarded and monitored to assure satisfactory work is accomplished.
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- for a public facilities project, a Project Management description should address items such as: the role and responsibilities of the project engineer (or project architect) and local staff (or contracted management consultant) for compliance with general CDBG requirements; preparation of construction bid specifications to assure they meet CDBG requirements outlined in Chapter 9 of this Manual: supervising of bidding procedures; conducting pre-construction conferences; determining who will be responsible for weekly review of wages against the applicable federal Davis-Bacon wage rates and for regularly conducting on-site employee interviews with construction personnel to assure Davis-Bacon labor standards compliance (as outlined in Chapter 6 of the Manual); and project inspections.

If the CDBG grant recipient intends to contract with a consultant for project management services, a copy of the draft contract should be referenced in the management plan. All contracts need to be reviewed and approved by CDBG.

3. Financial Management

This portion of the project management plan should describe the procedures that will be used and the officials or staff that will be responsible for assuring proper expenditure of and internal control over the use of CDBG funds. The description should:

- address the procedures to be followed for reviewing and approving expenditures, preparing and submitting drawdown requests to MDOC/CDBG, processing payments, etc.;

- identify the persons who will be responsible for maintenance of the required financial records or processing CDBG funds;

- explain any arrangements with financial institutions or contractors which involve management of CDBG funds;

- describe the accounting and management system to be used, such as the Budgetary, Accounting and Reporting System (BARS) or the Town Accounting System (TAS); and

- include the role of the governing body in approving expenditures for the CDBG project.

If the project will include the "targeting" of CDBG assistance for a public facilities project to individual LMI (low or moderate income) households -- for example, by paying their assessment fees or hook-up fees -- the project management plan should a) thoroughly describe the procedures it intends to follow to screen and qualify eligible LMI households who will be recipients of such funds and b) assure that all such targeted CDBG funds will benefit low and moderate income persons/households. If the project intends to use methods such as payment of assessments for a special improvement district or payment of charges for water or sewer hookups, the plan should clearly describe how CDBG funds will be accounted for in local financial records.

If the project will include loans to individuals/households and **thus also involve some loan repayments to the local government from those individuals/households** and **thus result in generating "Program Income" as a result of CDBG project activities**, the **Management Plan must describe the procedures and policies that will govern the use of those funds during the project and following grant closeout.** Communities planning to retain such CDBG Program Income must be prepared to maintain the following records:

- sources of program income including interest earned,

- dates and amounts of program income deposits and disbursements, and

- a description of the activities funded with program income.

EXHIBIT 1-B

SAMPLE MANAGEMENT PLAN FORMAT

FOR A PUBLIC FACILITIES PROJECT
ADMINISTERED BY LOCAL GOVERNMENT STAFF

1. Administrative Structure

The City of _____ is an incorporated city with a Mayor-Council form of government. The following persons will have lead responsibility for administering the City's FY____ Community Development Block Grant (CDBG) public facilities project.

Mayor _____, as the City's chief elected official will have responsibility for all official contacts with the Montana Department of Commerce (MDOC). The Mayor and City Council will have ultimate authority and responsibility for the management of project activities and expenditure of CDBG funds. The approval of all contracts and drawdown requests will be the responsibility of the City Council. (email _____)

_____, Clerk-Treasurer, as the City's chief financial officer, will be responsible for management of, and record keeping for, the CDBG funds and other funds involved in the financing of the water project. […One-fourth…] of this position's time will be devoted to CDBG administration during the term of the project. (email _____)

_____, Director of the City-County Planning Board, will be designated as Project Manager and will be responsible for overall project management and assuring compliance with applicable federal and state requirements for the CDBG project. The Project Manager will serve as the City's liaison with MDOC for the project and will serve as the designated Environmental Certifying Officer and Labor Standards Officer. One-third of this position's time will be devoted to CDBG administration during the term of the project. (email _____)

_____, City Attorney, as the City's legal counsel, will review and advise the Mayor and Council regarding any proposed contractual agreements associated with the CDBG project and provide any other legal guidance as requested. (email _____)

_____, Project Engineer [or Architect], will be responsible for construction-related activities including preparation of preliminary and final engineering [or architectural] design plans and specifications, as well as construction inspection. Contractor compliance, scheduling, and payment requests will also be subject to the Project Engineer's [or Architect's] review and approval. (email_____)

The Mayor, Clerk-Treasurer, and Planning Director will attend the MDOC CDBG Grant Administration Workshop (as required of all CDBG grant recipients).

2. Project Management

A. The Project Manager will be responsible for:

1. Preparing the Environmental Review Record (ERR) to assure full compliance with the National and Montana Environmental Policy Acts, completion of the statutory checklist, and any other applicable environmental requirements as outlined in Chapter 2 of the CDBG Manual. The Project Manager will also be responsible for preparing any legal notices required to be published for the ERR process and conducting any required public hearings or informational meetings.

2. Preparing a request for release of funds to MDOC (upon completion of the Environmental Review).

.

3. Developing a contract with MDOC and assisting the City with all requirements related to effective project start-up and implementation.

4. Establishing and maintaining complete and accurate project files and preparing all MDOC documentation and reports incidental to administration of the grant.

5. Assisting the City with selection of the Project Engineer [or Architect], in conformance with CDBG procurement requirements, including the preparation of requests for qualifications/proposals for publication or other distribution to assure free and open competition.

6. Reviewing all proposed project expenditures or requests for payment to ensure their propriety and proper allocation of expenditures to the CDBG budget.

7. In cooperation with the Clerk-Treasurer, processing payment requests and preparing drawdown requests to MDOC, including the Request for Payment and Status of Funds Report, the Project Progress Report and all other required documentation to substantiate payment requests.

8. Monitoring the contractor selection process, including the bid advertising, tabulation and award process for conformance to CDBG requirements. The manager will review the construction contract provisions for CDBG compliance and will request MDOC clearance (debarment check) of the lowest (and second) lowest bidders before a contract (to be reviews and approved by CDBG) is awarded.

9. Attending the pre-construction conference and monthly (weekly) construction progress meetings.

10. Monitoring all contractors' compliance with applicable requirements.

11. Serving as the City's designated labor standards officer and assuring compliance with all applicable federal and state labor standards requirements. Responsibilities will include the weekly review of weekly payroll reports to assure compliance with federal Davis-Bacon prevailing wage requirements; periodic visits to the construction site to assure that required equal opportunity, labor standards, and Davis-Bacon wage

determinations have been posted; and conducting regular on-site interviews with a representative sample of construction personnel (working for the prime contractor and subcontractors) to assure federal Davis-Bacon labor standards compliance.

12. Assuring compliance with applicable acquisition, civil rights, Section 504/ADA evaluation and labor standards requirements, including the preparation of an equal employment opportunity plan, an ADA compliance plan and a fair housing ordinance, which will be adopted by the City.

13. Supervising the delivery of CDBG financial assistance to low and moderate income households (for water service hookup and meter installation …).

14. Preparing all required performance reports and project closeout documents for submittal to MDOC

15. Assist the City with the selection of an independent auditor.

16. Attending City Council meetings to provide project status reports and representing the CDBG project at any other public meetings, as deemed necessary by the Mayor.

B. The Project Engineer [or Architect] will be responsible for:

1. Design and construction engineering.

2. Acquisition of all land and easements

3. Preparation of the construction bid package for review (and approval) by CDBG for conformance with applicable CDBG requirements (as outlined in Chapter 9 of the CDBG Manual); supervision of the bid advertising, tabulation, and award process, including the preparation of the advertisements for bid solicitation, conducting the bid opening, securing a state and federal debarment check of tentatively-selected contractor(s) and issuance of the notice to proceed.

4. Conducting the pre-construction conference, with the assistance of the project manager.

5. Supervision of construction work and preparation of inspection reports.

6. Reviewing and approving all contractor requests for payment and submitting the approved requests to the City.

3. Financial Management

A. The Clerk-Treasurer's responsibilities will be as follows:

1. Establishing the CDBG bank account and transferring CDBG funds from that account to the town's treasury for disbursements, based on claims and supporting documents approved by the project manager, project engineer [or architect], and contractor. Note: Since the City uses an interest bearing account for its general disbursements, a separate non-interest bearing account will be used for CDBG funds as required by federal CDBG regulations. Balances in that account will not exceed $5,000 for a period of three days.

2. Entering all project transactions into the City's existing accounting system, and prepare checks/warrants for approved expenditures.

3. With the assistance of the Project Manager, preparing the Request for Payment and Status of Funds Reports to be submitted to MDOC. All drawdown requests will be signed by two of the three following persons: Mayor, Clerk-Treasurer, and Council President. No expenditures will be made without the approval of the Council at a regular meeting.

4. With the assistance of the Project Manager, preparing the final financial reports for project closeout.

B. The Project Manager and Clerk-Treasurer will review all proposed expenditures of CDBG funds and will prepare drawdown requests, which will be signed by the officials cited above. All disbursements will be handled in accordance with the City's established claim review procedures. Before submitting the claim to the Clerk-Treasurer, the Project Manager will attach a certification to each claim stating that the proposed expenditure is an eligible expense of the City's CDBG project and consistent with the project budget. The Council will review all claims before approving them.

C. Financial record keeping will be done in conformance with the recommendations of MDOC's Community Development Division as described in Chapter 4 of the CDBG Administration Manual. The original financial documents (claims with all supporting material attached) will be retained in the City's offices.

D. Hourly timesheets will be maintained by the Project Manager and the Clerk-Treasurer to document all time worked on the CDBG project.

A project implementation schedule, which outlines the basic steps and timetable involved in the management of the project, is attached.

E. Weekly timesheets will be maintained by the Project Manager and the Clerk-Treasurer to document all time worked on the CDBG project.

F. The City's housing and neighborhood revitalization project will generate some program income from loan repayments and the sale of the sites of unsafe, abandoned property acquired and demolished through the CDBG project. Any program income received from these sources will be deposited in the City's established community development fund. Any program income received prior to project closeout will be used to assist additional households with housing

rehabilitation needs. The use of program income received after project closeout will be determined at the discretion of the City Council.

A sample Project Implementation Schedule, which outlines the basic steps and timetable involved in the management of the project, can be found in the CDBG Application Guidelines or by contacting the Department project liaison for fillable forms. A general description/outline is provided below.

SAMPLE PROJECT IMPLEMENTATION SCHEDULE

A.	**START-UP**			
1.	Attend MDOC Workshop	City Council	May	20xx
2.	Update Management Plan, Budget, & Schedule for the CDBG contract	Council & Project Mg.	March	20xx
3.	Establish Public Facilities Project Files	Project Manager	May	20xx
4.	Award Engineering Contract	City Council	March	20xx
5.	Determine Audit Requirements	Project Manager	May	20xx
6.	Schedule Local Govt Audit(s)	Council & Project Mg.	June	20xx
7.	Authorize Final Design	City Council	March	20xx
8.	Complete ERR/Submit to CDBG	Project Manager	May	20xx
9.	Secure MDOC Approval of RROF	Project Manager	June	20xx
10.	Complete Final Design	Project Engineer	April	20xx
B.	**IMPLEMENTATION**			
1.	Submit First Drawdown Request	Clerk-Treasurer	June	20xx
2.	Present Final Design for Review	Project Engineer	April	20xx
3.	Complete Final Plans	Project Engineer	April	20xx
4.	Submit Plans to DEQ and CDBG	Project Engineer	May	20xx
5.	Secure Wage Rate Determination	Project Engineer	June	20xx
6.	Prepare Construction Bid Documents and Secure CDBG Approval	Project Engineer	June	20xx
7.	Advertise For Bids	City Council	June	20xx
8.	Bid Opening	Project Engineer	July	20xx
9.	Clearance of Low Bidders	Project Engineer	July	20xx

10.	Bid Award	City Council	July	20xx
C.	**CONSTRUCTION**			
1.	Pre-construction Conference	Project Engineer	August	20xx
2.	Submit Compliance Documents	Project Engineer	August	20xx
3.	Start Construction	Project Engineer	Sept	20xx
4.	Weekly Labor Standards Monitoring	Project Manager	Sep-Dec	20xx
5.	CDBG on-site monitoring/review	CDBG Liaison	October	20xx
6.	Submit Drawdowns (with Progress Reports) & Qrtrly Progress Reports	Project Manager Clerk-Treasurer	Ongoing As Needed	
7.	Final Inspection	Project Engineer	Dec	20xx
8.	Final Payment to Contractor	City Council	Jan	20xx
9.	In-service System Training	Project Engineer	Dec	20xx
10.	Connect Households to System	Project Engineer	Nov	20xx
11.	Final Payment to Engineer	City Council	Feb	20xx
D.	**CLOSEOUT**			
1.	Project Closeout Begins	Project Manager	Dec	20xx
2.	Project Completion Report	Project Manager	Jan	20xx
3.	Audits are conducted/reviewed	Project Manager & CDBG	Sept	20xx

EXHIBIT 1-C

SAMPLE MANAGEMENT PLAN FORMAT

FOR A HOUSING REHABILITATION PROJECT ADMINISTERED WITH THE ASSISTANCE OF A CONTRACTED CONSULTANT

I. Administrative Structure

The City of _____ is an incorporated city with a Mayor-Council form of government. The following persons will have lead responsibility for administering the City's FY____ Community Development Block Grant (CDBG) housing rehabilitation and neighborhood revitalization project.

Mayor _____, as the City's chief elected official will have responsibility for all official contacts with the Montana Department of Commerce (MDOC) and will serve as the Environmental Certifying Officer. The Mayor and Town Council will have ultimate authority and responsibility for the management of project activities and expenditure of CDBG funds. The final approval of all contracts and drawdown requests will be the responsibility of the City Council. (email _____)

_____, Clerk-Treasurer, as the City's chief financial officer, will be responsible for management of, and record keeping for, the CDBG funds and other funds involved in the financing of the water project. One-fourth of this position's time will be devoted to CDBG administration during the term of the project. (email _____)

_____, Contracted Consultant, will be designated as Project Manager and will be responsible for overall project management and insuring compliance with applicable federal and state requirements for the CDBG project. The Project Manager will serve as the City's liaison with MDOC for the project and will serve as the Labor Standards Officer. (email _____)

_____, City Attorney, as the City's legal counsel, will review and advise the Mayor and Council regarding any proposed contractual agreements associated with this MDOC/CDBG project and provide any other legal guidance as requested. (email _____)

The Mayor and Clerk-Treasurer and the Consultant will the MDOC CDBG Administration Workshop (as required of all CDBG grant recipients).

II. Project Management

A. The Project Manager (contracted consultant) will be responsible for:

1. Preparing the Environmental Review Record (ERR) to assure full compliance with the National and Montana Environmental Policy Acts, completion of the statutory checklist, and any other applicable environmental requirements. The Project Manager will also be responsible for preparing any legal notices required to be published for

the ERR process and conducting any required public hearings or informational meetings.

2. Preparing a request for release of funds to MDOC (upon completion of the Environmental Review).

3. Developing a contract with DOC and assisting the City with all requirements related to effective project start-up and implementation.

4. Establishing and maintaining complete and accurate project files and preparing all documentation and reports incidental to administration of the grant.

5. Assuring compliance with applicable acquisition, civil rights, Section 504/ADA evaluation and labor standards requirements, including the preparation of an equal employment opportunity plan, an ADA compliance plan and a fair housing ordinance, which will be adopted by the City.

6. Reviewing all proposed project expenditures or requests for payment to ensure their propriety and proper allocation of expenditures to the CDBG budget.

7. In cooperation with the Clerk-Treasurer, processing payment requests and preparing drawdown requests to DOC, including the Request for Payment and Status of Funds Report and the Project Progress Report.

8. Preparing all required performance reports and closeout documents for submittal to DOC and assist the City with the selection of an independent auditor.

9. Attending City Council meetings to provide project status reports and representing the CDBG project at any other public meetings, as deemed necessary by the Mayor.

10. Under the supervision and with the assistance of local officials, administering and implementing the City's CDBG housing and neighborhood revitalization project, in accordance with all applicable state, federal, and local requirements, with responsibilities to include:

    a. establishing, at the Consultant's expense, a local housing rehabilitation office, staffed full-time to provide complete housing rehabilitation services including:
        - assisting homeowners and landlords with applications;
        - screening applicants for eligibility;
        - inspecting homes for needed rehabilitation and making recommendations to the project advisory committee;
        - assisting applicants with loan applications and coordinating the loan review process with the borrower and the applicant;

- assisting recipients with contractor negotiations and bid awards;
- preparation of contractor bid sheets; and
- assuring title searches, credit reviews, and income verifications.

b. in cooperation with the project advisory committee, developing a marketing strategy for the project to ensure a high level of participation by eligible households and performing public information activities, including preparation of newspaper advertisements and articles regarding the project; posters, and radio notices;

c. negotiating with private lenders and public agencies to stimulate additional housing investment in the project area;

d. coordinating services with other agencies, such as Montana Power, the area's HRDC, Senior Citizens Center, and the county health and public assistance/welfare departments, to achieve maximum impact upon the needs of low and moderate income households in the project area;

e. securing State Historic Preservation Office clearance for housing rehabilitation activities, as necessary, either by district designation or by a review of individual housing units;

f. providing technical assistance to the City for adoption of appropriate codes for the acquisition and/or demolition of unsafe and abandoned property;

g. conducting informational meetings for contractors and preparing lists of eligible contractors;

h. ensuring that proper inspections are performed, required permits are obtained, and lien waivers signed; and

i. serving as staff for meetings of the project advisory committee.

B. The Mayor will appoint a five-member project advisory committee to assist the City with the implementation of the housing rehabilitation project. The committee's responsibilities will include:

1. assuring that the following certifications, plans, policies, and resolutions have been put in place:

- Hatch Act Resolution;
- Equal Employment Opportunity (EEO)/Nondiscrimination Policy;
- Drug Free Workplace Policy;

- Fair Housing Resolution; and
- Section 504 and ADA Compliance Procedures
- ADA Transition Plan

2. assisting and providing guidance to the Project Manager relating to the implementation of the City's CDBG project;

3. preparing terms for financial assistance including eligibility guidelines for LMI households, loan terms, interest rates, and policies on the deferral and/or forgiveness (as appropriate) of loan repayments; these policies will be adopted in final form by the City Council;

4. reviewing applications for assistance and making recommendations on the form of assistance (loan, grant, loan/grant combination) to be provided;

5. considering alternatives and recommending actions to be taken in the event of complaints, homeowner-contractor disputes, inadequacy of work quality, or other issues affecting the project;

6. assisting in the marketing of the project to the low and moderate income residents of the project area; and

7. recommending administrative policies for the project to the City Council, for its adoption.

III. Financial Management

A. The Clerk-Treasurer's responsibilities will be as follows:

1. Establishing the CDBG bank account and transferring CDBG funds from that account to the town's treasury for disbursements, based on claims and supporting documents approved by the project manager, project engineer, and contractor. Since the City uses an interest bearing account for its general disbursements, a separate non-interest bearing account will be used for CDBG funds. Balances in that account will not exceed $5,000 for a period of three days.

2. Entering all project transactions into the City's existing accounting system, and prepare checks/warrants for approved expenditures.

3. With the assistance of the Project Manager, preparing the Request for Payment and Status of Funds Reports to be submitted to MDOC. All drawdown requests will be signed by two of the three following persons: Mayor, Clerk-Treasurer, and Council President. No expenditures will be made without the approval of the Council at a regular meeting.

4. With the assistance of the Project Manager, preparing the final financial reports for project closeout.

B. The Project Manager will review all proposed expenditures of CDBG funds and will prepare drawdown requests, which will be signed by the officials cited above. All disbursements will be handled in accordance with the City's established claim review procedures. Before submitting the claim to the Clerk-Treasurer, the Project Manager will attach a certification to each claim stating that the proposed expenditure is an eligible expense of the City's CDBG project and consistent with the project budget. The Council will review all claims before approving them.

C. Financial record keeping will be done in conformance with the recommendations of MDOC's Community Development Division as described in Chapter 4 of the CDBG Administration Manual. The original financial documents (claims with all supporting material attached) will be retained in the City's offices.

D. To ensure timely payment of housing rehabilitation contractors, an escrow account will be established. Withdrawals from the escrow can be made by the Clerk-Treasurer, in accordance with signed approvals by the Project Manager.

E. Weekly timesheets will maintained by the Project Manager and the Clerk-Treasurer to document all time worked on the CDBG project.

F. The City's housing and neighborhood revitalization project will generate some CDBG "Program Income" from loan repayments and the sale of the sites of unsafe, abandoned property acquired and demolished through the CDBG project. Any Program Income received from these sources will be deposited in the City's established community development fund for CDBG Program Income. Any Program Income received prior to project closeout will be used to assist additional LMI households with housing rehabilitation needs. The use of Program Income received after project closeout will be limited to those activities eligible under the CDBG program and will be determined at the discretion of the City Council.

A sample Project Implementation Schedule, which outlines the basic steps and timetable involved in the management of the project, can be found in the CDBG Application Guidelines or by contacting the Department project liaison for fillable forms. A general description/outline is provided below.

SAMPLE PROJECT IMPLEMENTATION SCHEDULE

A. START-UP

1.	Attend MDOC Workshop	City Council	May	20xx
2.	Update Management Plan, Budget, & Schedule for the CDBG contract	Council & Project Mg.	March	20xx
3.	Establish Public Facilities Project Files	Project Manager	May	20xx
4.	Award Engineering Contract	City Council	March	20xx
5.	Determine Audit Requirements	Project Manager	May	20xx

6.	Schedule Local Govt Audit(s)	Council & Project Mg.	June	20xx
7.	Authorize Final Design	City Council	March	20xx
8.	Complete ERR/Submit to CDBG	Project Manager	May	20xx
9.	Secure MDOC Approval of RROF	Project Manager	June	20xx
10.	Complete Final Design	Project Engineer	April	20xx
B.	**IMPLEMENTATION**			
1.	Submit First Drawdown Request	Clerk-Treasurer	June	20xx
2.	Present Final Design for Review	Project Engineer	April	20xx
3.	Complete Final Plans	Project Engineer	April	20xx
4.	Submit Plans to DEQ and CDBG	Project Engineer	May	20xx
5.	Secure Wage Rate Determination	Project Engineer	June	20xx
6.	Prepare Construction Bid Documents and Secure CDBG Approval	Project Engineer	June	20xx
7.	Advertise For Bids	City Council	June	20xx
8.	Bid Opening	Project Engineer	July	20xx
9.	Clearance of Low Bidders	Project Engineer	July	20xx
10.	Bid Award	City Council	July	20xx
C.	**CONSTRUCTION**			
1.	Pre-construction Conference	Project Engineer	August	20xx
2.	Submit Compliance Documents	Project Engineer	August	20xx
3.	Start Construction	Project Engineer	Sept	20xx
4.	Weekly Labor Standards Monitoring	Project Manager	Sep-Dec	20xx
5.	CDBG on-site monitoring/review	CDBG Liaison	October	20xx
6.	Submit Drawdowns (with Progress Reports) & Qrtrly Progress Reports	Project Manager Clerk-Treasurer	Ongoing As Needed	
7.	Final Inspection	Project Engineer	Dec	20xx
8.	Final Payment to Contractor	City Council	Jan	20xx
9.	In-service System Training	Project Engineer	Dec	20xx

10.	Connect Households to System	Project Engineer	Nov	20xx
11.	Final Payment to Engineer	City Council	Feb	20xx
D.	**CLOSEOUT**			
1.	Project Closeout Begins	Project Manager	Dec	20xx
2.	Project Completion Report	Project Manager	Jan	20xx
3.	Audits are conducted/reviewed	Project Manager & CDBG	Sept	20xx

EXHIBIT 1-D

SIGNATURE CERTIFICATION FORM

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

This is to certify that the following officials[1] are authorized to sign requests for payment of Montana Community Development Block Grant (CDBG) funds for the (name of grantee: City, Town, or County of _____) FY 200__ CDBG grant:

1. _____ _____
Signature Title

_____ _____
Typed Name

2. _____ _____
Signature Title

_____ _____
Typed Name

3. _____ _____
Signature Title

_____ _____
Typed Name

It is understood that any two of the above signatories must sign each request for payment submitted.

[1]Suggested signatories include the chief elected official (Mayor or Chairperson of County Commission), city or county clerk or treasurer and the CDBG project manager. At least three officials should sign; and it is acceptable to have more to assure that at least two signatories will be available to sign requests for CDBG funds.

I hereby certify that I have witnessed the signing of the above named signatures.

_____ Date: _____
Signature of Witness

_____
Typed Name and Title of Witness

STATE OF MONTANA)
)ss.
County of _____)

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

(NOTARIAL SEAL)

Printed Name:_____
NOTARY PUBLIC FOR STATE OF MONTANA
Residing at_____
My Commission expires_____

EXHIBIT 1-E

PREPARATION OF THE DESIGNATION OF DEPOSITORY FORM

Block Number On Form -- and Instructions

[1] Enter name, address and zip code of depository (bank) designated to receive federal funds.

[2] Enter entire CDBG contract number.

[3] Enter **non-interest bearing** bank account number where CDBG funds are to be deposited.

[4] Enter name of CDBG grant recipient: (City or Town of _____, or_____ County.)

[5] Enter complete mailing address of CDBG recipient/grantee.

[6]. Signature of Chief Elected Officer (CEO) or Executive Officer of the CDBG grantee.

[7] Enter the title of the CEO or Executive Officer for the CDBG recipient (Mayor, City Manager, or Chairperson of the County Commission).

[8] Enter date the form was signed by CEO or Executive Officer of CDBG recipient.

[9] Enter same account number as in #3 above.

[10] Enter the American Bankers' Association (ABA) Routing Number (if you are planning to utilize electronic deposit for CDBG funds).

[11] Enter the same name of the depository (bank) as in #1 above.

[12] Enter the same address and zip code of the bank where CDBG funds will be sent, as in #1 above.

[13] Enter the signature of authorized bank officer.

[14] Enter the title of the authorized bank officer for the depository bank.

[15] Enter the date form was signed by authorized bank officer.

NOTE: Mail an original copy to the CDBG liaison and retain a photocopy for your records. It is important that there are no erasures, corrections or correction fluid on either copy. Also, all signatures should be made in ink.

MONTANA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DESIGNATION OF DEPOSITORY FOR DIRECT DEPOSIT OF CDBG FUNDS

SECTION 1 *(To be Completed by CDBG recipient)*

The [1]_____
Name, Address and ZIP Code of Grant Recipient's Bank

has been designated as the depository for all funds to be received from the Montana Department of Commerce resulting from CDBG Contract No. [2] ***MT-CDBG-_____*** for deposit to a non-interest bearing account:

[3]_____
Account Name/Number

[4]_____ [5]_____
Name of Grant Recipient *Address*

[6]_____ [7]_____
Signature of Chief Elected Official or Executive Officer *Title of Chief Elected Official or Executive Officer*

[8]_____
Date

SECTION II *(To be completed by the bank)*

The account identified in Section I has been established with this bank. All necessary documentation, including a power of attorney where necessary, which will legally enable this depository to receive state warrants from the State Auditor's Office for deposit to:

[9]_____
Account Name and/or Number

[10]_____
ABA (American Bankers' Association) Routing Number for electronic deposit

without the payee's endorsement have been received and are in this depository's custody.

[11]_____ [12]_____
Name of Bank *Address where checks should be mailed*

[13]_____ [14]_____
Signature of Authorized Bank Officer *Title of Authorized Bank Officer*

[15]_____
Date

EXHIBIT 1-F

GUIDELINES ON FIRM COMMITMENT OF NON-CDBG FUNDING

Purpose of Guidelines on Commitment of Funds

There are several reasons why guidelines on committed funds are necessary:

- To comply with MDOC's statutory responsibility to ensure that matching funds are committed for a project before CDBG funding is provided, and subsequently to comply with the terms of the contract between MDOC and the local government.
- To prevent a situation where a project is started but cannot be finished or payment to contractors is delayed because the local government's matching funds are not firmly committed.
- To clearly identify for local governments what must be done to get their matching funds committed.

Deadline for documenting firm commitment of all funds

WITHIN NINE MONTHS of the date of the announcement of the application funding status by the Department, the Grantee should have completed all necessary arrangements to assure that those resources are available for commitment to and participation in the project in order to guarantee timely project completion. Unless the Grantee can demonstrate the existence of unusual or extenuating circumstances that justify an extension of time, the Department may withdraw the tentative award and reallocate the funds.

Procedure

After the completion of the environmental review, at any time that a local government has met start-up conditions delineated in the CDBG contract and can demonstrate a firm commitment for all other funds included in the project budget, CDBG funds can be provided for all eligible project expenses incurred by the local government.

The process for demonstrating a firm commitment of funds is defined as follows for the different types or forms of project funds:

A. Non-CDBG Grants

A letter from the funding agency -- stating that funding has been approved or authorized, or when the project has been split into multiple phases by the funding agency, that a portion of the funding has been approved or authorized and the agency is committed to approving or authorizing the remainder of the funding within a reasonable amount of time -- provides the complete documentation needed to demonstrate that the non-CDBG grants are firmly committed. CDBG will advance funds for all eligible project expenses as they are incurred after the environmental Release of Funds (explained in Chapter 2 of the CDBG Grant Administration Manual).

The letter should indicate the funding agency's approval of a final (full) application for the project (and/or the existence of a signed contract between the funding agency and the local government) indicating when the agency's funds will be available to complete the project in accordance with the approved implementation schedule. When the project has been split into multiple phases by the funding agency, the letter should discuss the phasing of the project and the expected timetable for approving or authorizing the funding for the project.

B. Local Government Pledge of Funds or Budget Increase (Including Cash Reserves or Related Funds)

With a budget or a Budgetary Authority Resolution (see Exhibit 4-A as a model) approved and adopted by the governing body and specifically designating the source of local funds that will be available for the CDBG project, CDBG funds would be provided for all eligible project expenses incurred by the local government.

C. Loans/Bonds (Revenue, General Obligation, Special Improvement Districts, Rural Improvement Districts, Other)

CDBG will advance funds for all eligible project expenses as they are incurred if the conditions as described below are met.

Loans to Municipalities or Counties, **which require a vote by only the governing body** (e.g., Revenue Bond)	Loans to Districts (Revenue Bonds), or other types of financing, for all types of local governments, **which require a vote by the general population or users** (e.g., SID, G.O. Bond)
SRF loan	
• "Commitment Agreement" or "Letter of Approval for State Revolving Fund Loan Program in Lieu of Commitment Agreement," adopted by Resolution	• "Commitment Agreement" or "Letter of Approval for State Revolving Fund Loan Program in Lieu of Commitment Agreement," adopted by Resolution • Successful certified debt election results (attach supporting documents)
RUS loan	
• "Letter of Conditions" from RUS • "Letter of Intent to Meet Conditions" signed and returned to RUS • "Request for Obligation of Funds"	• "Letter of Conditions" from RUS • "Letter of Intent to Meet Conditions" signed and returned to RUS • "Request for Obligation of Funds" • Successful certified debt election results (attach supporting documents)

D. Other Forms of Funds

- MDOC will evaluate other unique funding sources for the firmness of the commitment on a case by case basis (depending on the funding source and the level of commitment).

State and Federal funds that have been authorized, but have not yet been completely appropriated, potentially may be viewed as fully committed. Matching funds in this category will be evaluated on a case-by-case basis to determine the firmness of the funds and the likelihood of the funds being received, and the project being able to proceed and be completed.

EXHIBIT 1-G
PROJECT START- UP REQUIREMENTS CHECKLIST

Project Start-Up Requirements:	
Date:	
	a. Date the grant award was announced (as status: "funded").
	b. Date of CDBG's authorization to incur administrative costs (environmentally-exempt costs). Effective date for incurring costs: _____.
	c. Date the grant contract was executed.
	d. Official signature form completed.
	e. Official depository form completed.
	f. Project Management Plan was approved by CDBG.
	g. Project Implementation Schedule approved by CDBG.
	h. Environmental Checklist/Processes completed and Notice of Release of Funds issued by CDBG.
	i. All non-CDBG resources to be involved in the project are firmly committed
	j. Interlocal (Sub-recipient or sub-grantee) Agreement, if any. – reviewed and approved by CDBG. – signed by all local parties.
	k. All required start-up Civil Rights resolutions are adopted.
	l. ADA inventory/survey and transition plan
	m. Audit compliance and financial management compliance
	n. Documentation of procurement for professional services.
	o. Updated Project Budget
	p. All special contract conditions have been fulfilled. *Other special conditions: _____
	q. Documentation of compliance with all other sections of the contract including but not limited to Insurance/Workers' Compensation coverage requirements, must be received by the Department and must be kept current for the entire term of the contract.
NOTES:	

EXHIBIT 1-H

CONTRACT TEMPLATE FOR A CDBG PROJECT – FOR CITIES AND TOWNS

COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT FOR PUBLIC FACILITIES AND HOUSING PROJECTS

CONTRACT #MT-CDBG-I_PF [HR] -__

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 Montana Community Development Block Grant Program (CDBG) for FFY 201__.

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. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for CDBG assistance, including any written modifications resulting from the review of the applications by the Department (collectively, the "Project"), is incorporated into this Contract by this reference and the representations made therein are binding upon the Grantee.

Section 4. ACCEPTANCE OF CDBG 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, as now in effect or as they may be amended during the term of this contract; all administrative directives and procedures established by the Department, including the most recent version of the CDBG Grant Administration Manual; and all 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 contain special provisions requiring such contractors, subcontractors, or subrecipient entities to also comply with all applicable local, state, and federal requirements.

(c) The Grantee expressly agrees to repay to the Department any funds advanced to the Grantee under this Contract that the Grantee, its contractors, 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, the statutes and regulations governing the CDBG Program, or any other applicable local, state, or federal requirements.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

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 activities to be performed by the Grantee will be completed according to the implementation schedule attached hereto as Attachment A and specifically incorporated herein by this reference. The Grantee may modify the implementation schedule set forth in Attachment A at any time, so long as it submits a written request to the Department and receives written acknowledgement of such adjustment from the Department. However, delays or other modifications to the implementation schedule in excess of twelve (12) months require formal Department approval and amendment of this Contract.

Section 6. SCOPE OF ACTIVITIES

The Grantee will engage in the activities set forth in the Grantee's application for CDBG assistance, including any written modifications resulting from the review of the applications by the Department. The major components of the Project include the following work for the _____ (City/Town of) Public Facilities / Housing and Neighborhood Renewal Project:

- …;
- …;
- …;
- …; and
- the 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 total amount to be awarded to the Grantee under this Contract will not exceed $_____.

(b) A copy of the preliminary Project budget is attached hereto as Attachment B to this Contract and specifically incorporated herein by this reference. After construction bids are awarded or other major Project activity cost elements are determined, the Grantee may, or if requested by the Department, shall provide the Department with a final Project budget, which, upon receipt and approval by the Department, will supersede the preliminary budget in Attachment B and thereby be incorporated as part of this Contract.

(c) Budget adjustments must be approved in advance by the Department. For budget adjustments of $5,000 or less between line items of the CDBG portion of Attachment B, 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.

(d) Unless otherwise agreed to in writing by the Department, the Grantee must expend substantially all program income it receives before requesting additional CDBG funds. The Department will deduct the amount of program income on hand, shown on the drawdown form, from the amount requested by the Grantee. The Department, at its sole discretion, may allow the Grantee to retain program income received before or after Project closeout, but such income must be treated as additional CDBG funds and subject to all applicable requirements governing the use of CDBG funds. If the Grantee is allowed to retain program income received before Project closeout, the Grantee will record receipt and expenditure of retained program income as part of the financial transactions of the Project. At the end of each calendar year during the term of this Contract, the Department may, at its sole discretion, require remittance of all or any part of any program income balances (including investments thereof) held by the Grantee, its contractors, subcontractors, and subrecipient entities. If the Grantee is allowed to retain program income received after 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 at the time of closeout.

(e) Any authorized funds not expended 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 CDBG projects.

Section 8. AMOUNT OF GRANT AND METHOD OF PAYMENT

(a) The Department will authorize the Grantee to draw up to $_____ against the funding reserved for it by the Department. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.

(b) The Department agrees to reimburse the Grantee as set forth in this Section for successfully completing the activities set forth in , 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.

(c) 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 (Date) listed in the tentative grant award 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.

(d) 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.

(e) The Department will not release any CDBG 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 CDBG funds, other than for administrative purposes, until the Department determines that this condition has been satisfied.

(f) As further set forth in Section 23, TERMINATION OF CONTRACT, in the event 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.

(g) The Department will 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. 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 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 CDBG 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 the SCOPE OF ACTIVITIES set forth herein or to the Grantee, or added to the following year's CDBG allocation.

(h) If actual total cost of completing the Project is less than has been projected by the Grantee in the budget (Attachment B) or an approved adjustment thereto, the Department, at its discretion, may reduce the amount of CDBG grant funds to be provided to the Grantee under this Contract in proportion to the overall savings. If actual construction bids are less than the estimates included in the budget in Attachment B, the construction portion of the budget will be automatically adjusted to reflect the bid price, plus a ten percent contingency. The difference between actual Project costs and the original grant award will be either reallocated by the Department to other unfunded or inadequately funded activities, whether or not related to the SCOPE OF ACTIVITIES set forth herein or to the Grantee, or added to the following year's CDBG allocation.

(i) The Department of Commerce may, at its discretion, withdraw from the Grantee the commitment of any CDBG funds that remain unobligated 24 months after the date of the announcement of the tentative grant award (_____).

(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.

(l) The Department will issue a final Project closeout approval when the grantee has fulfilled all requirements as set forth in the most current version of the CDBG Grant Administration Manual, Chapter 13, Project Closeout.

(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

_____, CDBG 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)
CDBG 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,
Business Location,
Phone Number)

Section 10. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by the Grantee pursuant to 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.

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 agrees 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. 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 the Contract or the conclusion of any claim, litigation, or exception relating to the 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.

(b) The Grantee agrees to include in first-tier subcontracts under this Contract a clause substantially the same as paragraph 11(a).

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 the 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.

Section 13. REPORTING REQUIREMENTS

(a) QUARTERLY UPDATE REPORT

i) During the term of this Contract, the Grantee will submit a quarterly update report. This report shall follow the report format specified in the most recent version of the CDBG 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, and projected completion date. The report must also describe any significant problems encountered and any necessary scope of implementation or budget modifications requested.

(ii) The Grantee will submit the quarterly update report to the Department fifteen (15) days prior to the close of each calendar quarter. The Department will not honor claims for payment until the required quarterly update report has been 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. The 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.

Section 14. COMPLIANCE WITH NONDISCRIMINATION LAWS

The Grantee must, in performance of work under the Contract, fully comply with all applicable federal, state, or local nondiscrimination 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 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.

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 assign, transfer, or subcontract any portion of this Contract, however, 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 Attachment A, within the budget set forth in Attachment B.

(iii) The Grantee submits to the Department and the Department approves an acceptable Project Management Plan and Implementation Schedule.

(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***] The Grantee submits to the Department an acceptable interlocal / subrecipient agreement executed between the Grantee, _____ County / City, and _____ (water/sewer district or other subgrantee/subrecipient entity).

(vi) [Other conditions, as needed …]

(b) Within nine (9) months of the date of the announcement of the tentative grant award letter issued by the Department (Date), the Grantee shall have completed all necessary arrangements to assure that the other financial resources necessary for the completion of the Project are available for commitment to and participation in SCOPE OF ACTIVITIES in order to guarantee timely Project completion. If the Grantee fails to secure the commitment of all other financial resources for the Project within this timeline, the Department will withdraw the tentative award and reallocate the funds, unless the Grantee can demonstrate the existence of unusual or extenuating circumstances that justify an extension of time.

Section 18. JURISDICTION AND VENUE

The laws of Montana govern this Contract. The parties agree that any litigation concerning the 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

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 the Contract by any governmental department or agency. If the Grantee cannot certify this statement, attach a written explanation for review by the Department.

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 agrees to 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, 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 the Contract.

Section 21. INSURANCE [*…for contracts with Cities and Towns…*]

(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 State, its officers, officials, employees, and volunteers are to be covered as additional insureds for all claims arising out of the use of grant proceeds provided by the State of Montana.

(b) General Liability Insurance. At its sole cost and expense, the Grantee shall purchase occurrence coverage with minimum combined single limits of $1 million per occurrence and $2 million aggregate per year, or as established by statutory Tort limits of $750,000 per claim and $1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under Section 2-9-211, MCA.

(c) Professional Liability Insurance. Grantee shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of $1,000,000 per occurrence and $2,000,000 aggregate per year. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

(d) Property Insurance. At its sole cost and expense, the Grantee shall maintain property and hazard insurance, including course of construction coverage, and earthquake insurance in areas where there is a shaking level above 10g (see map at http://rmtd.mt.gov/aboutus/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. 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 not approve amendments to the SCOPE OF WORK or the BUDGET that will affect high priority activities or improvements that would materially alter the circumstances under which the original application was ranked by the Department.

(d) If the Department determines that a proposed amendment represents a substantial change in the Project activities proposed in the original application for CDBG funds, the Grantee will hold a local public hearing on the amendment with reasonable notice and may require further environmental review.

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 CDBG 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:

1) 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 the 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 the 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 CDBG 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.

CONTRACTS WILL BE TERMINATED PURSUANT TO THE PROVISIONS OF SECTION 24, TERMINATION OF CONTRACT, IF THE GRANTEE FAILS TO PROVIDE THE REQUIRED DOCUMENTATION.

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

Section 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 source, 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 28. NOTICE

All notices required under the provisions of the 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 the 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

The 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) Date
(Local Government)

ATTEST: _____
(Name), Clerk and Recorder

APPROVED AS TO FORM: _____
(Name), (Local Government) Attorney

Department of Commerce:

_____

Dore Schwinden, Director Date
Montana Department of Commerce

ATTACHMENT A: Date: _____

QUARTERLY PROJECT IMPLEMENTATION SCHEDULE

Contract # MT-CDBG-1_PF[HR]-__ [City, Town of…]

	QUARTERS, 2011				*QUARTERS, October 2013*			
TASK	**1st**	**2nd**	**3rd**	**4th**	**1st**	**2nd**	**3rd**	**4th**
PROJECT START UP								
Sign contract with MDOC/CDBG.								
Attend CDBG grant administration workshop.								
CDBG letter (…/.../10) of authorization to incur costs (effective as of (…/.../10).								
Conduct environmental review and cultural resource survey.								
Secure CDBG's Environmental Release of Funds.								
Secure and document firm commitment and approval of other funding.								
Identify audit requirements. Establish audit schedule for the project's duration. Include the project in upcoming audits (State Fiscal Years 2010, 2011, October 2013 as applicable).								
Submit progress reports (CDBG Exhibit 4-F) with each drawdown request.								
Submit quarterly update reports (CDBG Exhibit 4-N).								
PROJECT DESIGN	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Advertise (RFQ) for and select engineer/architect.								
Commence design.								
Complete project design.								
Prepare construction bid documents.								
Secure CDBG's (and other funding agencies') approval of bid documents.								

PROJECT DESIGN… continued	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Finalize acquisition of land to be used.								
Submit progress reports (CDBG Exhibit 4-F) with each drawdown request.								
Submit quarterly update reports (CDBG Exhibit 4-N).								
ADVERTISEMENT FOR CONSTRUCTION BIDS	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Review CDBG contract requirements.								
Publish bid solicitation advertisement after securing CDBG's and other funding agencies' approval.								
Open bids and examine proposals.								
Request CDBG state and federal debarment/ eligibility review of selected contractor and its principals (lowest responsible bidder) and of all subcontractors.								
Award contract to selected contractor.								
Send a complete copy of the signed contract and contract package to the project's CDBG liaison.								
Submit progress reports (CDBG Exhibit 4-F) with each drawdown request.								
Submit quarterly update reports (CDBG Exhibit 4-N).								
PROJECT CONSTRUCTION	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Conduct pre-construction conference.								
Issue the Notice to Proceed.								
Begin construction.								
Monitor engineer and other contractors.								

PROJECT CONSTRUCTION	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Conduct labor compliance reviews:								
… Complete Weekly payroll reviews (with a copy to CDBG with drawdown requests)								
… Conduct Contractors' employee interviews								
Hold construction progress meetings.								
Final Inspection.								
CDBG staff conducts on-site monitoring of the project. (See CDBG Manual Exhibit 12-A, CDBG Monitoring Guide.)								
Submit progress reports (CDBG Exhibit 4-F) with each drawdown request.								
Submit quarterly update reports (CDBG Exhibit 4-N).								
PROJECT CLOSE OUT	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Submit CDBG project completion report. (See CDBG Manual Chapter 13, Project Closeout, and Chapter 13 Exhibits).								
Submit CDBG conditional closeout certification.								
CDBG approves conditional closeout.								
Submit progress reports with each drawdown request. Submit quarterly update reports.								
Include the project in upcoming audits (State Fiscal Years 2011, October 2013, 2013 as applicable).								
Submit CDBG final closeout certification, final audit and final drawdown request.								
CDBG approves final closeout.								

ATTACHMENT B: Date: _____

BUDGET FORM FOR MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG)

Contract MT-CDBG-_____ [City, Town of…]

ADMINISTRATIVE/ FINANCIAL COSTS	SOURCE:	SOURCE:	SOURCE:	SOURCE:	TOTAL
Personnel Costs					
Office Costs					
Professional Services					
Legal Costs					
Audit Fees					
Travel & Training					
Loan Fees					
Loan Reserves					
Interim Interest					
Bond Cost					
TOTAL ADMINISTRATIVE/ FINANCIAL COSTS					
ACTIVITY COSTS:					
Preliminary Engineering					
Final Engineering Design					
DEQ Plan Review					
Construction Inspection					
Construction					
Contingency					
TOTAL ACTIVITY COSTS					
TOTAL PROJECT COSTS					

EXHIBIT 1-I

CONTRACT TEMPLATE FOR A CDBG PROJECT – FOR COUNTIES

COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT FOR PUBLIC FACILITIES AND HOUSING PROJECTS

CONTRACT #MT-CDBG-I_PF[HR]-__

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 Montana Community Development Block Grant Program (CDBG) for FFY 201__.

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. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for CDBG assistance, including any written modifications resulting from the review of the applications by the Department (collectively, the "Project"), is incorporated into this Contract by this reference and the representations made therein are binding upon the Grantee.

Section 4. ACCEPTANCE OF CDBG 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, as now in effect or as they may be amended during the term of this contract; all administrative directives and procedures established by the Department, including the most recent version of the CDBG Grant Administration Manual; and all 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 contain special provisions requiring such contractors, subcontractors, or subrecipient entities to also comply with all applicable local, state, and federal requirements.

(c) The Grantee expressly agrees to repay to the Department any funds advanced to the Grantee under this Contract that the Grantee, its contractors, 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, the statutes and regulations governing the CDBG Program, or any other applicable local, state, or federal requirements.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

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 activities to be performed by the Grantee will be completed according to the implementation schedule attached hereto as Attachment A and specifically incorporated herein by this reference. The Grantee may modify the implementation schedule set forth in Attachment A at any time, so long as it submits a written request to the Department and receives written acknowledgement of such adjustment from the Department. However, delays or other modifications to the implementation schedule in excess of twelve (12) months require formal Department approval and amendment of this Contract.

Section 6. SCOPE OF ACTIVITIES

The Grantee will engage in the activities set forth in the Grantee's application for CDBG assistance, including any written modifications resulting from the review of the applications by the Department. The major components of the Project include the following work for the _____ (County) Public Facilities / Housing and Neighborhood Renewal Project:

- …;
- …;
- …;
- …; and
- the 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 total amount to be awarded to the Grantee under this Contract will not exceed $_____.

(b) A copy of the preliminary Project budget is attached hereto as Attachment B to this Contract and specifically incorporated herein by this reference. After construction bids are awarded or other major Project activity cost elements are determined, the Grantee may, or if requested by the Department, shall provide the Department with a final Project budget, which, upon receipt and approval by the Department, will supersede the preliminary budget in Attachment B and thereby be incorporated as part of this Contract.

(c) Budget adjustments must be approved in advance by the Department. For budget adjustments of $5,000 or less between line items of the CDBG portion of Attachment B, 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.

(d) Unless otherwise agreed to in writing by the Department, the Grantee must expend substantially all program income it receives before requesting additional CDBG funds. The Department will deduct the amount of program income on hand, shown on the drawdown form, from the amount requested by the Grantee. The Department, at its sole discretion, may allow the Grantee to retain program income received before or after Project closeout, but such income must be treated as additional CDBG funds and subject to all applicable requirements governing the use of CDBG funds. If the Grantee is allowed to retain program income received before Project closeout, the Grantee will record receipt and expenditure of retained program income as part of the financial transactions of the Project. At the end of each calendar year during the term of this Contract, the Department may, at its sole discretion, require remittance of all or any part of any program income balances (including investments thereof) held by the Grantee, its contractors, subcontractors, and subrecipient entities. If the Grantee is allowed to retain program income received after 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 at the time of closeout.

(e) Any authorized funds not expended 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 CDBG projects.

Section 8. AMOUNT OF GRANT AND METHOD OF PAYMENT

(a) The Department will authorize the Grantee to draw up to $_____ against the funding reserved for it by the Department. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.

(b) The Department agrees to reimburse the Grantee as set forth in this Section for successfully completing the activities set forth in , 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.

(c) 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 (Date) listed in the tentative grant award 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.

(d) 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.

(e) The Department will not release any CDBG 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 CDBG funds, other than for administrative purposes, until the Department determines that this condition has been satisfied.

(f) As further set forth in Section 23, TERMINATION OF CONTRACT, in the event 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.

(g) The Department will 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. 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 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 CDBG 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 the SCOPE OF ACTIVITIES set forth herein or to the Grantee, or added to the following year's CDBG allocation.

(h) If actual total cost of completing the Project is less than has been projected by the Grantee in the budget (Attachment B) or an approved adjustment thereto, the Department, at its discretion, may reduce the amount of CDBG grant funds to be provided to the Grantee under this Contract in proportion to the overall savings. If actual construction bids are less than the estimates included in the budget in Attachment B, the construction portion of the budget will be automatically adjusted to reflect the bid price, plus a ten percent contingency. The difference between actual Project costs and the original grant award will be either reallocated by the Department to other unfunded or inadequately funded activities, whether or not related to the SCOPE OF ACTIVITIES set forth herein or to the Grantee, or added to the following year's CDBG allocation.

(i) The Department of Commerce may, at its discretion, withdraw from the Grantee the commitment of any CDBG funds that remain unobligated 24 months after the date of the announcement of the tentative grant award (_____).

(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.

(l) The Department will issue a final Project closeout approval when the grantee has fulfilled all requirements as set forth in the most current version of the CDBG Grant Administration Manual, Chapter 13, Project Closeout.

(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

_____, CDBG 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)
CDBG 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,
Business Location,
Phone Number)

Section 10. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by the Grantee pursuant to 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.

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 agrees 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. 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 the Contract or the conclusion of any claim, litigation, or exception relating to the 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.

(b) The Grantee agrees to include in first-tier subcontracts under this Contract a clause substantially the same as paragraph 11(a).

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 the 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.

Section 13. REPORTING REQUIREMENTS

(a) QUARTERLY UPDATE REPORT

i) During the term of this Contract, the Grantee will submit a quarterly update report. This report shall follow the report format specified in the most recent version of the CDBG 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, and projected completion date. The report must also describe any significant problems encountered and any necessary scope of implementation or budget modifications requested.

(ii) The Grantee will submit the quarterly update report to the Department fifteen (15) days prior to the close of each calendar quarter. The Department will not honor claims for payment until the required quarterly update report has been 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. The 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.

Section 14. COMPLIANCE WITH NONDISCRIMINATION LAWS

The Grantee must, in performance of work under the Contract, fully comply with all applicable federal, state, or local nondiscrimination 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 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.

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 assign, transfer, or subcontract any portion of this Contract, however, 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 Attachment A, within the budget set forth in Attachment B.

(iii) The Grantee submits to the Department and the Department approves an acceptable Project Management Plan and Implementation Schedule.

(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***] The Grantee submits to the Department an acceptable interlocal / subrecipient agreement executed between the Grantee, _____ County / City, and _____ (water/sewer district or other subgrantee/subrecipient entity).

(vi) [Other conditions, as needed …]

(b) Within nine (9) months of the date (Date) of the announcement of the tentative grant award letter issued by the Department, the Grantee shall have completed all necessary arrangements to assure that the other financial resources necessary for the completion of the Project are available for commitment to and participation in SCOPE OF ACTIVITIES in order to guarantee timely Project completion. If the Grantee fails to secure the commitment of all other financial resources for the Project within this timeline, the Department will withdraw the tentative award and reallocate the funds, unless the Grantee can demonstrate the existence of unusual or extenuating circumstances that justify an extension of time.

Section 18. JURISDICTION AND VENUE

The laws of Montana govern this Contract. The parties agree that any litigation concerning the 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

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 the

Contract by any governmental department or agency. If the Grantee cannot certify this statement, attach a written explanation for review by the Department.

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 agrees to 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, 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 the Contract.

Section 21. INSURANCE [*…for CBDG contracts with Counties…*]

(a) General Requirements. Grantee shall maintain and shall assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, primary liability insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the duties and obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for all claims arising out of the use of grant proceeds provided by the State of Montana.

(b) Primary Insurance. Grantee's insurance coverage shall be primary insurance with respect to the State of Montana, its elected or appointed officers, officials, employees, or volunteers and shall not contribute with it.

(c) General Liability Insurance. At its sole cost and expense, the Grantee shall purchase occurrence coverage with minimum combined single limits of $1 million per occurrence and $2 million aggregate per year, or as established by statutory Tort limits of $750,000 per claim and $1,500,000 per occurrence as provided by a self-insurance pool insuring counties, cities, or towns, as authorized under Section 2-9-211, MCA.

(d) Professional Liability Insurance. Grantee shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of $1,000,000

per occurrence and $2,000,000 aggregate per year. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met:

(1) the commencement date of the contract must not fall outside the effective
(2) the claims made policy must have a three
(3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

(e) Property Insurance. At its sole cost and expense, the Grantee shall maintain property and hazard insurance, including course of construction coverage, and earthquake insurance in areas where there is a shaking level above 10g (see map at http://rmtd.mt.gov/aboutus/publications/files/NEHRP.pdf) for loss or damage for any building and all related improvements and contents therein on the premises on a replacement cost basis throughout the term of the contract.

(f) General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana or by a domiciliary state and with a Best's rating of at least A-, or by a public entity self-insured program either individually or on a pool basis as provided by Title 2, MCA. All certificates and endorsements are to be received by the Department prior to beginning any activity provided for under the Contract. Grantee shall notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of Grantee's insurance policy at any time, including endorsements.

Section 22. 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 not approve amendments to the SCOPE OF WORK or the BUDGET that will affect high priority activities or improvements that would materially alter the circumstances under which the original application was ranked by the Department.

(d) If the Department determines that a proposed amendment represents a substantial change in the Project activities proposed in the original application for CDBG funds, the Grantee will hold a local public hearing on the amendment with reasonable notice and may require further environmental review.

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 CDBG 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:

1) 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 the 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 the 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 CDBG 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.

CONTRACTS WILL BE TERMINATED PURSUANT TO THE PROVISIONS OF SECTION 24, TERMINATION OF CONTRACT, IF THE GRANTEE FAILS TO PROVIDE THE REQUIRED DOCUMENTATION.

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

Section 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 source, 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 28. NOTICE

All notices required under the provisions of the 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 the 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

The 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), (County Commissioner) (Local Government) Date

ATTEST: _____
(Name), Clerk and Recorder

APPROVED AS TO FORM: _____
(Name), (Local Government) Attorney

Department of Commerce:

_____

Dore Schwinden, Director
Montana Department of Commerce Date

ATTACHMENT A: Date: _____

QUARTERLY PROJECT IMPLEMENTATION SCHEDULE

Contract # MT-CDBG-1_PF[HR]-__ [County of…]

	QUARTERS, 2011				*QUARTERS, October 2013*			
TASK	**1st**	**2nd**	**3rd**	**4th**	**1st**	**2nd**	**3rd**	**4th**
PROJECT START UP								
Sign contract with MDOC/CDBG.								
Attend CDBG grant administration workshop.								
CDBG letter (…/.../10) of authorization to incur costs (effective as of (…/.../10).								
Conduct environmental review and cultural resource survey.								
Secure CDBG's Environmental Release of Funds.								
Secure and document firm commitment and approval of other funding.								
Identify audit requirements. Establish audit schedule for the project's duration. Include the project in upcoming audits (State Fiscal Years 2010, 2011, October 2013 as applicable).								
Submit progress reports (CDBG Exhibit 4-F) with each drawdown request.								
Submit quarterly update reports (CDBG Exhibit 4-N).								
PROJECT DESIGN	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Advertise (RFQ) for and select engineer/architect.								
Commence design.								
Complete project design.								
Prepare construction bid documents.								
Secure CDBG's (and other funding agencies') approval of bid documents.								

PROJECT DESIGN… continued	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Finalize acquisition of land to be used.								
Submit progress reports (CDBG Exhibit 4-F) with each drawdown request.								
Submit quarterly update reports (CDBG Exhibit 4-N).								
ADVERTISEMENT FOR CONSTRUCTION BIDS	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Review CDBG contract requirements.								
Publish bid solicitation advertisement after securing CDBG's and other funding agencies' approval.								
Open bids and examine proposals.								
Request CDBG state and federal debarment/ eligibility review of selected contractor and its principals (lowest responsible bidder) and of all subcontractors.								
Award contract to selected contractor.								
Send a complete copy of the signed contract and contract package to the project's CDBG liaison.								
Submit progress reports (CDBG Exhibit 4-F) with each drawdown request.								
Submit quarterly update reports (CDBG Exhibit 4-N).								
PROJECT CONSTRUCTION	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Conduct pre-construction conference.								
Issue the Notice to Proceed.								
Begin construction.								
Monitor engineer and other contractors.								

PROJECT CONSTRUCTION	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Conduct labor compliance reviews:								
… Complete Weekly payroll reviews (with a copy to CDBG with drawdown requests)								
… Conduct Contractors' employee interviews								
Hold construction progress meetings.								
Final Inspection.								
CDBG staff conducts on-site monitoring of the project. (See CDBG Manual Exhibit 12-A, CDBG Monitoring Guide.)								
Submit progress reports (CDBG Exhibit 4-F) with each drawdown request.								
Submit quarterly update reports (CDBG Exhibit 4-N).								
PROJECT CLOSE OUT	**1st 2011**	**2nd**	**3rd**	**4th**	**1st October 2013**	**2nd**	**3rd**	**4th**
Submit CDBG project completion report. (See CDBG Manual Chapter 13, Project Closeout, and Chapter 13 Exhibits).								
Submit CDBG conditional closeout certification.								
CDBG approves conditional closeout.								
Submit progress reports with each drawdown request. Submit quarterly update reports.								
Include the project in upcoming audits (State Fiscal Years 2011, October 2013, 2013 as applicable).								
Submit CDBG final closeout certification, final audit and final drawdown request.								
CDBG approves final closeout.								

ATTACHMENT B: Date: _____

BUDGET FORM FOR MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG)

Contract MT-CDBG-I_PF[HR]- ___ [County of…]

ADMINISTRATIVE/ FINANCIAL COSTS	SOURCE:	SOURCE:	SOURCE:	SOURCE:	TOTAL
Personnel Costs					
Office Costs					
Professional Services					
Legal Costs					
Audit Fees					
Travel & Training					
Loan Fees					
Loan Reserves					
Interim Interest					
Bond Cost					
TOTAL ADMINISTRATIVE/ FINANCIAL COSTS					
ACTIVITY COSTS:					
Preliminary Engineering					
Final Engineering Design					
DEQ Plan Review					
Construction Inspection					
Construction					
Contingency					
TOTAL ACTIVITY COSTS					
TOTAL PROJECT COSTS					

CHAPTER 2 -- ENVIRONMENTAL REVIEW

I. OVERVIEW 2-2
II. APPLICABLE REQUIREMENTS 2-7
A. FEDERAL 2-7
B. STATE 2-10
III. GRANTEE RESPONSIBILITIES 2-11
IV. ENVIRONMENTAL FINDING LEVEL A 2-15
V. ENVIRONMENTAL FINDING LEVEL B 2-17
VI. ENVIRONMENTAL FINDING LEVEL C 2-24
VII. ENVIRONMENTAL FINDING LEVEL D 2-29
VIII. ENVIRONMENTAL FINDING LEVEL E 2-35
IX. OTHER ENVIRONMENTAL ISSUES 2-36
A. LEAD-BASED PAINT 2-36
B. ASBESTOS 2-37
C. RADON 2-38
EXHIBITS 2-40

CHAPTER 2

ENVIRONMENTAL REVIEW

I. OVERVIEW

This chapter discusses the key environmental requirements that CDBG recipients must comply with to assure protection of the environment and to consider how environmental conditions could impact their CDBG projects.

Different programs require the preparation of an environmental analysis at different times in the application funding process depending upon whether they are subject to federal or state laws, or both. Increasingly, federal and state funding programs are encouraging more thorough analysis of potential environmental impacts during the initial project planning stage, rather than waiting until the funding decision has been made.

Practical experience has shown that it is far better to identify potential problems in the planning process while the project is still being developed and to avoid them entirely, rather than to have to develop time consuming and expensive mitigation measures when a project is underway.

This is why, as part of the CDBG application, grantees are asked to prepare an environmental checklist. Completion of the checklist is intended to ensure that CDBG applicants adequately considered potential environmental impacts while the project was still being planned. It is important to note, as you prepare an environmental review, that every impact category listed in exhibits in this manual has application, with the exception of two: 'Coastal Zone Management' and 'Coastal Barriers'. Every other impact category listed must be carefully considered. Federal, State, and Tribal cooperating agencies must be contacted to provide comments and sources of information, as instructed on the environmental review form. The review must also consider possible impact to sites of historic and cultural importance both on and off tribal lands.

The checklist was designed to alert applicants to considerations that may have been addressed in the location, design, or construction of a public facilities project to avoid potential adverse environmental impacts or expensive mitigation or construction costs.

For example, could the project impact important wildlife habitat or alter an identified historic structure? Or, could the environment affect the project? For example, is there an identified floodplain surrounding the project area that could, at some time, threaten CDBG-funded facilities or are there soils or geologic conditions that could make building construction more expensive?

The environmental checklist submitted with your application also allows the Montana Department of Commerce and other funding agencies to initially consider whether proposed projects might have adverse impacts and, if negative impacts appeared possible, whether applicants had proposed reasonable measures to mitigate them.

Before any CDBG project gets underway, federal and state law require that both the CDBG recipient and the Montana Department of Commerce (MDOC) conduct a final and thorough review of potential environmental impacts from the project. Two key laws govern this environmental review process:

- The **National Environmental Policy Act (NEPA) of 1969** establishes national policies and

procedures for protecting and enhancing environmental quality. Under NEPA, CDBG recipients are responsible for analyzing the potential environmental impact of a proposed project and making a formal determination regarding its probable impact. Under federal regulations, MDOC cannot release funds for a CDBG project until the CDBG recipient has certified that a review of the project activities demonstrates that no significant impact on the human environment is likely to occur or that actions have been initiated that would mitigate any potential impacts to the extent practicable.

❑ The **Montana Environmental Policy Act (MEPA) of 1971** was modeled after NEPA. MEPA seeks to avoid adverse impact on the natural and human environment by mandating careful consideration of the potential impacts of any development activity assisted with state funds or approved by a state agency. Under MEPA, the MDOC is responsible for analyzing the potential environmental impact of a proposed project and making a formal determination regarding its probable impact before authorizing it to begin. MDOC cannot release funds for a CDBG project until it has determined that the project will not have a significant impact on the quality of the human environment.

The significance of MEPA compliance and MDOC's consideration of potential environmental impacts from a CDBG project was elevated by a landmark Montana Supreme Court decision in October 1999. A unanimous court ruled that under Montana's 1972 Constitution, Montanans have an inalienable right to a clean and healthful environment and to be free from unreasonable degradation of that environment. The court said that no state agency can allow an activity that has the potential to degrade the environment.

A. KEY ENVIRONMENTAL REVIEW STEPS

The key environmental review steps that apply to CDBG funded projects are summarized below and explained in detail in the following pages. In addition, HUD has provided the matrix entitled, "HUD Guide to Environmental Clearance: NEPA-Related Statues, Authorities, and Requirements" (see exhibits in this manual) that summarizes the environmental issues that must be addressed, applicable activities, thresholds for action, source documentation, action required, and further information.

1. The grantee cannot incur or obligate costs for non-exempt activities (except certain administrative costs) and MDOC cannot release funds for the project until the environmental requirements have been satisfied and the CDBG contract has been signed and all contract conditions fulfilled.

2. An Environmental Certifying Official must be designated by the local government for its CDBG project.

3. An Environmental Review Record (ERR) must be maintained by the grantee for its CDBG project. A full copy of the ERR should be mailed to the MDOC after its completion.

4. Grantees are strongly urged to initiate the historic preservation review process as soon as possible in order to avoid time delays with project start up activities.

5. "Exempt" projects do not need to satisfy federal environmental laws and regulations, but documentation justifying that they are "exempt" must be submitted to and approved by MDOC and maintained in the ERR. Finding A discusses "Exempt" activities in greater detail.

6. "Categorically Excluded" projects are "Exempt" from NEPA but may or may not be "Exempt" from other applicable environmental laws and regulations. "Environmental

Findings B and C explain the forms which must be completed, notices which must be published, time periods which must be allowed for public comment and information which must be submitted to MDOC.

7. Projects that are not "Exempt" or "Categorically Excluded" must undergo a more formal environmental review, either in the form of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). For an "EA," Environmental Finding D explains the forms which must be completed, notices which must be published, time periods which must be allowed for public comment, and information which must be submitted to MDOC.

8. If a Finding of No Significant Impact (FONSI) results under Finding D, the Consolidated Environmental Assessment form and a FONSI / NOI / RROF notice must be prepared and disseminated before funds may be released by MDOC.

B. SOURCES OF ENVIRONMENTAL INFORMATION

Exhibits found at the end of this chapter contains a listing of State and federal agencies that are sources of environmental information. For instance, the Montana Natural Heritage Program maintains an excellent database of environmental information for Montana.

ENVIRONMENTAL ACRONYMS

The following acronyms are used throughout this Chapter:

EA	-	Environmental Assessment
EIS	-	Environmental Impact Statement
FONSI	-	Finding of No Significant Impact
ERR	-	Environmental Review Record
ROF	-	Release of Funds
RROF	-	Request for Release of Funds
NOI / RROF	-	Notice of Intent to Request Release of Funds

C. OUTLINE OF CDBG'S ENVIRONMENTAL REVIEW PROCESS

The environmental review process presented in this chapter is based on the following outline.

1. Receive Authorization from MDOC to Incur Costs for Environmentally-Exempt Activities.

2. Pass resolution designating the Environmental Certifying Official.

3. Initiate Historic Preservation Review.

4. Undertake Remaining Environmental Review and Make One of the Following Five Environmental "Findings" (Findings A through E) described on the following pages.

FINDING A: All project activities can be considered "Exempt".

If so:

1. Prepare Finding of Exemption (see exhibits).
2. Submit requests to MDOC for drawdown of funds, as needed.

OR

If **all** activities **cannot** be considered "Exempt," proceed to Finding B.

FINDING B: All project activities can be considered "Categorically Excluded" *AND* **no activities are affected by federal statutes or executive orders.**

If so:

1. Review the list of possible "Categorically Excluded" activities.
2. Complete the Statutory Checklist (see exhibits).
3. If **all** activities **can** be "Categorically Excluded" and **no** activities are affected by Federal Statutes or Executive Orders, the project is also considered "Exempt" and applicant can proceed as follows:
    a. Prepare Finding of Exemption (see exhibits).
    b. Submit requests to MDOC for drawdown of funds.

OR

If **all** activities **cannot** meet these criteria, proceed to Finding C.

FINDING C: All project activities can be considered "Categorically Excluded" *AND* **some activities are affected by federal statutes and executive orders.**

If so:

1. Review the list of possible "Categorically Excluded" activities.
2. Complete the Statutory Checklist (see exhibits).
    a. Prepare a Finding of Categorical Exclusion (see exhibits).
    b. Prepare a NOI / RROF.
    c. Submit RROF and Certification to MDOC.

OR

If **all** activities **cannot** be considered "Exempt" or "Categorically Excluded," proceed to Finding D.

FINDING D: Preparation of an Environmental Assessment (EA) *AND a* **Finding Of No Significant Impact (FONSI) is necessary.**

If so:

1. Review examples of activities which require preparation of an EA.
2. Prepare an Environmental Assessment (see exhibits).
3. If completion of the EA results in Finding of No Significant Impact," proceed as follows:

a. Prepare a combined FONSI / NOI / RROF.
b. Submit RROF to MDOC.

FINDING E: Preparation of an Environmental Assessment (EA) *AND* Finding Of Significant Impact is necessary.

If so:

Consult MDOC for further action.

II. APPLICABLE REQUIREMENTS

A. FEDERAL REQUIREMENTS

In summary, the key federal environmental requirements with which grantees must comply include:

1. **Section 104(f) of the Housing and Community Development Act of 1974**. This section of the Act expresses the intent that the policies of the National Environmental Policy Act of 1969 (NEPA) and other provisions of law which further the purpose of NEPA be effectively implemented in connection with the expenditure of funds under CDBG. Such other provisions of law which further the purpose of NEPA are specified in regulations issued pursuant to Section 104(f) of the Act and contained in 24 CFR Parts 51 and 58.

2. **National Environmental Policy Act of 1969** (42 U.S.C. Section 4321, et seq. and 24 CFR Part 58). The purpose of this Act is to attain the widest use of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences. The federal environmental review procedures are a part of this process.

3. **24 CFR Part 58 - Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities** (April 30, 1996). This provides guidance to grantees for the implementation of NEPA for CDBG projects. It defines the grantee's and the State's responsibilities in conducting an environmental review and details the procedures necessary to ensure compliance with the applicable regulations.

4. **24 CFR Part 51 - Environmental Criteria and Standards: Subpart B, Noise Abatement and Control; Subpart C**, Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature; and Subpart D, Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields. These regulations provide standards for determining whether the proposed location of a HUD-assisted project will be in an unacceptable proximity to sources of noise or hazardous operations which pose risk to human health and welfare. In addition, these regulations prohibit the use of HUD assistance in areas determined to have high risk potential near airports. With respect to noise and hazardous operations, guidance is provided which establishes mitigating procedures which, in some cases, will reduce the noise level or danger from hazardous operations to an acceptable level or degree.

5. **Clean Air Act (42 U.S.C. 7401, et seq.) This Act prohibits engaging in, supporting in any way or provid**ing financial assistance for, licensing or permitting, or approving any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards.

6. **Flood Disaster Protection Act of 1973: Public Law 93-234, 87 Stat. 975, (42 U.S.C. 4001-4128). Section** 102(a) required, on and after March 2, 1974, the purchase of flood insurance, as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of HUD as an area having special flood hazards.

7. **Executive Order 11988, May 24, 1977: Floodplain Management (42 FR 26951, et seq.) The intent of this** Executive Order is to avoid, to the extent possible, adverse impacts

associated with the occupancy and modification of floodplains and avoid direct or indirect support of floodplain development wherever there is a practical alternative.

8. **Executive Order 11990, May 24, 1977: Protection of Wetlands (42 FR 26961, et seq.). The intent of th**is Executive Order is to avoid adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands, wherever there is a practical alternative. The grant recipient must avoid undertaking or providing assistance for new construction located in wetlands unless there is no practical alternative to such construction and the proposed action includes all practical measures to minimize harm to wetlands.

9. **Section 106 of the National Historic Preservation Act of 1966** (16 U.S.C. 470, as amended). Compliance with these procedures should include consulting with the State Historic Preservation Office (SHPO) to identify properties listed in or eligible for inclusion in the National Register of Historic Places that may exist within a proposed CDBG project's area of potential environmental impact. Compliance also includes consulting with, as needed, the SHPO, the keeper of the National Register of Historic Places, and the Advisory Council on Historic Preservation to evaluate the significance of historic or prehistoric properties which could be affected by CDBG work and to determine how to avoid or mitigate adverse effects to significant properties from project activities.

10. **Lead-based Paint (LBP). Title IV of the Lead-based Paint Poisoning Prevention Act** (42 U.S.C. 4831). This prohibits the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance of any kind; and **HUD Lead-Based Paint Requirements for Housing Rehabilitation Projects.** See exhibits for a summary, and for the complete rules, see https://www.hud.gov/program_offices/healthy_homes/enforcement/lshr_summary.

11. **Asbestos.** In Montana, asbestos is regulated by the Administrative Rules of Montana (ARM), Chapter 42. In addition to the ARM requirements, grantees may also be affected by the federal Environmental Protection Agency's *National Emission Standard For Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M*, which pertains to asbestos. The other regulation that commonly applies to asbestos abatement projects is the Occupational Safety and Health Administration's (OSHA) Construction Standard. See Section IX of this chapter for more about CDBG requirements for handling asbestos.

12. **Radon**. The U.S. Congress has set a long-term goal that indoor radon gas levels be no more than outdoor levels. See EPA's website for more information on radon at https://www.epa.gov/radon Other sources of information are available in the form of several booklets produced by the EPA. The booklets are available by request from MDOC. The State of Montana's radon contact phone number for general information about radon is (406) 444-6768. See Section IX of this chapter for more about CDBG requirements for handling radon.

13. **Solid Waste Disposal Act**, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.). The purpose of this Act is to promote the protection of health and the environment and to conserve valuable material and energy resources.

14. **Safe Drinking Water Act of 1974** (42 U.S.C. Section 201, 300(f) et seq. and 21 U.S.C. Section 349), as amended, particularly Section 1424(e) (42 U.S.C. Section 300h-303(e)) which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental

Protection Agency (EPA) determines may contaminate an aquifer which is the sole or principal drinking water source for an area.

15. **Federal Water Pollution Control Act** (P.L. 92-500), as amended (33 U.S.C. 1251-1376), including **The Clean Water Act of 1977**, Public Law 92-212 (33 U.S.C. Section 1251, et seq.). This provides for the restoration and maintenance of the chemical, physical, and biological integrity of the nation's water.

16. **Endangered Species Act of 1973**, as amended (16 U.S.C. 1531 et seq.). The intent of this Act is to ensure that all federally assisted projects seek to preserve endangered or threatened species. Federally authorized and funded projects must not jeopardize the continued existence of endangered and threatened species or result in the destruction of or modification of the habitat of such species which is determined by the U.S. Department of the Interior, after consultation with the state, to be critical.

17. **Fish and Wildlife Coordination Act of 1958**, as amended, (U.S.C. 661 et seq.). This Act requires that wildlife conservation receive consideration and is coordinated with other features of water resource development programs.

18. **Wild and Scenic Rivers Act of 1968**, as amended (16 U.S.C. 1271, et seq.). The purpose of this Act is to preserve selected rivers or sections of rivers in their free-flowing condition, to protect the water quality of such rivers and to fulfill other vital national conservation goals. Federal assistance by loan, grant, license or other mechanism cannot be provided to water resources construction projects that would have a direct and adverse effect on any river included or designated for study or inclusion in the National Wild and Scenic River System.

19. **Farmlands Protection Policy Act of 1981** (7 U.S.C. 4201(b) and 4202) and any applicable regulations (7 CFR Part 658). The purpose of this Act is to establish compliance procedures for any federally assisted project which will convert farmlands designated as prime, unique, statewide or locally important, to non-agricultural uses.

20. **Executive Order 12898** - **Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**, February 11, 1994 (59 FR 2629), 3 CFR, 1994 comp.

- ❑ **Other applicable federal laws and regulations include**:

- ❑ **Executive Order 11593 - Protection and Enhancement of the Cultural Environment**;

- ❑ **National Flood Insurance Program** (44 CFR 59-79)

- ❑ **Executive Order 11288 - Prevention, Control, and Abatement of Water Pollution** by Federal Activities;

- ❑ **Executive Order 11296 - Evaluation of Flood Hazard** in Locating Federally Owned or Financed Buildings, Roads and Other Facilities, and in Disposing of Federal Lands and Properties;

- ❑ **Executive Order 11514** - Protection and Enhancement of Environmental Quality;

- ❑ **Reservoir Salvage Act of 1960** as amended by the **Archeological and Historic Preservation Act of 1974** (16 U.S.C. 469).

B. STATE REQUIREMENTS

MCA (MONTANA CODES ANNOTATED) WEBSITE https://leg.mt.gov/bills/mca/index.html
Some of the key State environmental requirements which may affect local projects include the following:

- **Montana Environmental Policy Act** (MEPA), Title 75, Chapter 1, MCA;
- **Stream Preservation Act**, Title 87, Chapter 5, Part 5, MCA;
- **The Natural Streambed and Land Preservation Act of 1975 - Lakeshore Preservation Act**, Title 75, Chapter 7, Parts 1 and 2, MCA;
- **Montana Solid Waste Management Act**, Title 75, Chapter 10, Part 2, MCA;
- **Solid Waste Management Act**, Title 75, Chapter 10, Part 1, MCA;
- **Clean Air Act of Montana**, Title 75, Chapter 2, MCA;
- **Water Quality Act of Montana**, Title 75, Chapter 5, MCA;
- **Public Water Supply**, Title 75, Chapter 6, MCA;
- **Floodplain and Floodway Management**, Title 76, Chapter 5, MCA;

III. GRANTEE RESPONSIBILITIES

The CDBG complexities of the NEPA environmental review process are often difficult to understand. The procedures outlined on the following pages are intended to present the process as simply as possible. If questions arise, grant recipients should contact the CDBG program specialist assigned to their project.

In addition, if at any time during the period of the CDBG project it becomes necessary to substantially revise or amend the project scope of work, it may be necessary to repeat the environmental review process to assess the impact of proposed changes. In these cases the CDBG program specialist should be contacted for guidance.

1. RECEIVE AUTHORIZATION FROM MDOC TO INCUR COSTS FOR "ENVIRONMENTALLY EXEMPT" ACTIVITIES

Following the announcement of grant awards, grant recipients must execute a grant contract with MDOC. **Costs cannot be incurred against the CDBG grant until the grant contract is signed and specific authorization to incur costs is received from the CDBG program specialist.**

When the grant contract has been executed, the CDBG program specialist will issue a specific authorization for each grant recipient to begin incurring costs for "environmentally exempt" activities. "Environmentally exempt" activities include administrative activities such as project planning and management, administrative and engineering consultant selection, engineering and design, and environmental review activities, including the historic preservation review. (See Chapter 1 - Project Start Up.)

Administrative activities are "exempt" from the environmental review requirements. These are the only costs that can be incurred before the Environmental Review Record (ERR) is completed and funds are released. It is important to note that expenditures for such costs are paid by the grantee until reimbursement at a later date by MDOC.

As emphasized in Chapter 1, **reimbursement is contingent upon the grantee's completion of the ERR, release of funds by MDOC, the signing of the grant contract between the grantee and MDOC, and fulfillment of all special conditions incorporated in the contract. Unless all of these items are completed, MDOC cannot reimburse the local government for any costs incurred.**

2. DESIGNATE THE ENVIRONMENTAL CERTIFYING OFFICIAL

As a second step, all grantees must adopt a resolution designating an Environmental Certifying Official **(see Exhibits)** who will be responsible for all further activities associated with the environmental review. The certifying official may be the chief elected official or any other official or staff of the recipient jurisdiction. This person should be capable of defending any information provided to the public or MDOC, or any conclusions or determinations arrived at, as part of the environmental review process. In some instances, a local government employee with technical expertise to conduct the review may receive this designation, such as the local planning or community development director.

In other cases where a consultant will conduct the research for the environmental review, MDOC requires that the local government designate a local official or staff member as the

Environmental Certifying Official. That official would then be responsible for monitoring the technical work performed by the consultant and signing off on the appropriate certifications.

For purposes of federal law, the designated Environmental Certifying Official will be considered a federal official, and will be responsible for assuring compliance with all of the environmental requirements, and will represent the grantee in any challenge to the local government's compliance with environmental requirements.

3. INITIATE HISTORIC PRESERVATION REVIEW

During project start up, special attention must be paid to the federal requirements for historic preservation. To avoid delay, it is important at the onset that grantees consider the potential effect of the project on historic properties and archaeological resources. As a part of project start up, grant recipients should review (see exhibits).

As explained in exhibits in this manual, a crucial initial step grant recipient must take is to formally request comments from the Montana State Historical Preservation Office (SHPO) regarding possible historical impacts. A model letter to be sent to SHPO is provided **(**see exhibits**). Grantees must retain a copy of the response received from SHPO in the Environmental Review Record file.**

Section 106 of the National Historic Preservation Act [36 CFR Part 800] requires that federally assisted undertakings take into account the effect of the project on properties included in or eligible for the National Register of Historic Places. In particular circumstances, prior to approval of an undertaking, the federal Advisory Council on Historic Preservation must be allowed an opportunity to comment.

Montana CDBG recipients are required to plan and carry out their projects to minimize harm to historic properties and to consider mitigating measures where appropriate. Section 106 requires that the historic preservation review process described in **the exhibits in this manual,** be completed prior to the approval of the expenditure of any Federal funds on an undertaking or prior to the issuance of any license or permit.

Prior to the release of funds, the CDBG Program Specialist must have written evidence that the Montana State Historic Preservation Office has been contacted and has been provided a reasonable time in which to respond. Likewise, it is imperative that any written response received from SHPO be attached and included within the project's formal Environmental Review Record.

4. ENVIRONMENTAL RE-EVALUATION WHEN SUPPLEMENTAL HUD FUNDS ARE AWARDED

If a responsible entity, as the result of the receipt of additional HUD funds, embarks on a continuation of activities that were subject to a HUD-approved environmental review, a new environmental review may not need to be conducted if the thresholds listed in exhibits in this manual (and also listed below) are met. The previous environmental review record must have included the newly-funded activities. In these cases, the city or county must re-evaluate the environmental findings in conformance with 24 CFR 58.47, subject to approval by MDOC.

A city or county must submit a determination that the original environmental findings need not be reevaluated because none of the thresholds requiring that the review be reevaluated were met; specifically;

- There are no substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;

- There are no new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; and

- The grant recipient proposes the selection of an alternative not in the original finding.

5. UNDERTAKE REMAINING ENVIRONMENTAL REVIEW AND MAKE ONE OF THE FOLLOWING FIVE ENVIRONMENTAL "FINDINGS"(DETERMINATION LEVELS)

Each CDBG grantee must prepare and maintain a complete written record of the environmental review undertaken. This written record or file is called the Environmental Review Record (ERR) **and must be available for public review in the general offices of the local government.**

It must contain a description of the project and each of its component activities carried out by the grant recipient, including any documents, notices, information, and public comments received pertinent to the environmental review. Public comments and concerns, as well as their appropriate resolution by the grantee, are extremely important and must be addressed and fully documented in the ERR.

Environmental reviews on Montana CDBG projects will have one of the following five alternate environmental "findings": **Alternatives A through E** -- relative to CDBG environmental requirements**.**

Grantees should examine the alternative findings beginning in alphabetical order, progressing through the options until an alternative appropriate to all CDBG project activities is identified. Each alternative is progressively more complicated and detailed than the preceding.

All CDBG projects will fall under one of the following five alternative determinations:

1. Environmental Finding A:	**All project activities can be considered exempt.**
2. Environmental Finding B:	**All project activities can be "Categorically Excluded" AND no activities are affected by federal statutes or Executive Orders.**
3. Environmental Finding C:	**All project activities can be "Categorically Excluded" AND**

some activities are affected by federal statutes and Executive Orders.

4. Environmental Finding D: Preparation of an Environmental Assessment (EA) is necessary AND a Finding of No Significant Impact (FONSI) is necessary.

5. Environmental Finding E: Preparation of an Environmental Assessment (EA) is necessary AND a Finding of Significant Impact is necessary.

Following the announcement of grant awards, MDOC submits summaries of each project to the Environmental Quality Council and the State Historic Preservation Office for their initial review. These state agencies are advised that an ERR for any project will be prepared and that a copy of the ERR will be available at MDOC for their review upon completion.

Grantees should check with their CDBG program specialist prior to publication of their environmental finding to determine whether MDOC has received requests for the ERR from other agencies.

An ERR Statutory Checklist **(see exhibits)** has been prepared to assist local communities with the environmental review process.

It is MDOC policy that, unless it is aware of any evidence to the contrary or circumstances indicate otherwise, a CDBG project considered "exempt" or "categorically excluded" from NEPA requirements, will not be considered a major action of state government significantly effecting the quality of the human environment. Therefore, such projects are deemed "categorically excluded" from MEPA requirements pursuant to rule 8.2.304(5) A.R.M. and the preparation of an environmental assessment or an environmental impact statement will not normally be required.

MDOC may, at its discretion, request the preparation of an environmental assessment by the recipient of a CDBG grant at any time prior to the submittal of the grant recipient's environmental finding, if available information indicates that proposed project activities may significantly affect the quality of the human environment.

IV. ENVIRONMENTAL FINDING LEVEL A

FINDING A:

<u>ALL</u> PROJECT ACTIVITIES CAN BE CONSIDERED EXEMPT.

If so:

1. **Prepare Finding of Exemption (see exhibits).**
2. **Submit requests to MDOC for drawdown of funds, as needed.**

OR

If <u>all</u> activities cannot be considered exempt, proceed to Finding B.

Grantees do not have to comply with environmental requirements of NEPA or other applicable federal environmental laws **if** the **entire project** (non-administrative as well as administrative activities) is **determined to be exempt**.

In these cases, under the Montana CDBG program, the project would also be excluded from the requirements of the Montana Environmental Policy Act (MEPA); however, the project must still comply with all other Montana environmental laws.

Most grants funded under the Montana CDBG Program involve exempt *and* non-exempt activities.

Examples of "exempt activities" include:

- ❑ Administrative and management activities;
- ❑ Environmental review activities;
- ❑ Engineering and design costs associated with eligible projects;
- ❑ Interim assistance to respond to imminent threat or physical deterioration, provided that the assistance does not alter environmental conditions;
- ❑ Certain public service activities that will not have a physical impact or result in any physical change; and
- ❑ Certain "categorically excluded" projects (see Environmental Finding B) provided that there are no circumstances which require compliance with Federal laws or statutes.

A. <u>QUALIFYING FOR EXEMPTION – ENVIRONMENTAL FINDING A</u>

To qualify for exemption, **all activities** of the project must be determined by the certifying official to be **exempt.**

If **<u>all</u> activities are exempt**, the certifying official must prepare a Finding of Exemption for All Project Activities **(see exhibits)** which lists the exempt activities and cites the appropriate statutory authority.

In addition, in some cases certain CDBG assisted projects, such as some economic development projects, that are "categorically excluded" are also exempt from the requirements of NEPA or other federal environmental laws. In these cases, a Finding of Exemption can be made**.** Pease contact the assigned CDBG program officer for guidance.

The Finding of Exemption must then be submitted to MDOC with the original copy retained in the grantee's ERR file. MDOC will then review the Finding, and if approved, send a letter of concurrence to the grantee and release project funds. A copy of this letter must be retained in the ERR file.

B. ERR FILE REQUIREMENTS FOR FINDING A

In the event the entire project is "exempt", the ERR file (packet of documents to be submitted to MDOC) need only contain the following (see exhibits):

- ❑ Designation by adopted resolution of Environmental Certifying Official;
- ❑ Finding of Exemption for All Project Activities;
- ❑ Finding of Exemption, (if applicable);
- ❑ Information documenting compliance with the Section 106 historic preservation process, as presented earlier in this chapter; and
- ❑ Any other accompanying documentation and applicable correspondence to and from MDOC.

V. ENVIRONMENTAL FINDING LEVEL B

FINDING:

ALL PROJECT ACTIVITIES CAN BE "CATEGORICALLY EXCLUDED"

AND

NO ACTIVITIES ARE AFFECTED BY FEDERAL STATUTES AND EXECUTIVE ORDERS.

If so:

1. **Review the list of possible "categorically excluded" activities.**
2. **Complete the Statutory Checklist (see exhibits).**
3. **If all activities can be "categorically excluded" and no activities are affected by Federal Statutes or Executive Orders, the project is also considered "exempt" and applicant can proceed as follows:**

   a. **Prepare Finding of Exemption (**see exhibits**).**

   b. **Submit requests to MDOC for drawdown of funds.**

OR

If all activities cannot meet these criteria, proceed to Finding C. Examples of "categorically excluded" activities, are described in the following section.

A. POSSIBLE "CATEGORICALLY EXCLUDED" ACTIVITIES

Unless the project is documented in the ERR as being "exempt" (as in Environmental Finding A), the grantee must determine whether it is "Categorically Excluded" from NEPA requirements. To be considered "Categorically Excluded", all activities of the overall project must meet the definition.

First-time Home Buyer projects will generally fall under an Environmental Finding B. An environmental site specific checklist for home buyer projects must be completed for each home to be assisted with CDBG project funds. (Please see exhibits

As a general guide, "Categorically Excluded" activities are those that do NOT result in a major change in land use or activity at a site (for example, replacing water pipes in the same trench).

The following activities are categorically excluded under NEPA but may be subject to review under authorities:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and

will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets)

1. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
2. Rehabilitation of buildings and improvements when the following conditions are met:

    a. In the case of multifamily residential buildings:
        (1) Unit density is not changed more than 20 percent;
        (2) The project does not involve changes in land use from residential to non-residential; and
        (3) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

    b. In the case of non-residential structures, including commercial, industrial, and public buildings:
        (1) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
        (2) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

3.. An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.

4. Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.

5. Combinations of the above activities.

In addition, **demolition activities** where no new, replacement construction is involved may be considered as categorically excluded; however, the demolition must have SHPO approval. In addition, the grant recipient should be aware that if there are hazardous materials on the site, an environmental assessment could be required.

"Categorical Exclusion" refers to exclusion from NEPA requirements – “categorically excluded” means that the requirements of NEPA do **not** apply because the project falls under one of the specific categories just described.

Projects that are "Categorically Excluded" do not require preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). In these cases, the project would also be excluded from the requirements of the Montana Environmental Policy Act (MEPA); **however, the project must still comply with all other Montana environmental laws.**

B. THE STATUTORY CHECKLIST -- APPLICABLE TO ENVIRONMENTAL FINDINGS B AND C

When considering "Categorically Excluded Activities", the Environmental Certifying Official must present evidence that the proposed CDBG project will meet the environmental requirements contained in other applicable federal laws, other than NEPA.

This is achieved through completion of the Statutory Checklist (see exhibits).

The exhibits include the Statutory Checklist format and a listing of the applicable federal laws and executive orders. By completing the checklist, the certifying official considers the effect of the CDBG project on a variety of potential environmental concerns as well as the effect of the environment on the project (such as noise or air traffic hazards). For each compliance factor (air quality, floodplains, etc.) The certifying official must determine whether the factor:

- ✓ is not applicable to the project;
- ✓ requires further consultation;
- ✓ requires additional review;
- ✓ requires a permit;
- ✓ requires permits and such permits have been obtained; or
- ✓ requires compliance with conditions and/or the undertaking of mitigation actions.

The certifying official should be certain to retain all of the documentation (letters, test results, maps, notes on comments of authorities contacted) which were gathered to support the documentation.

Situations which require additional consultation are those in which contact with the appropriate federal or federally authorized agency is necessary. The consultation can result in no need to further address the requirements, the placement of conditions on the grantee prior to the release of funds, or in some cases, may halt the project until mitigating measures are identified, and steps taken to achieve compliance**.**

If permits are required, a listing of the specific permits needed and the procedures by which they will be obtained should be attached to the Statutory Checklist.

If mitigating actions are required, the certifying official should fully describe the actions the grantee will take to assure compliance.

Completion of the Statutory Checklist (see exhibits) is required only for "Categorically Excluded" activities -- i.e., where there are no major changes in land use or activities at a proposed site.

1. **Suggestions for Preparing the Statutory Checklist**

To help local, State, and federal agencies respond more effectively to inquiries, MDOC suggests preparation of a letter (including a contact phone number) which describes the project. Attach a map to show the project's location. The map can be photocopied from the project application. Follow-up phone calls to agency officials are also suggested.

a. **Historic Preservation** -- As part of the Statutory Checklist, special attention should be paid to historic preservation requirements. Though historic preservation requirements are one element of the Statutory Checklist, due to timeline constraints, historic preservation requirements are one of the earliest environmental steps grantees should initiate. (See **exhibits**, Historic Preservation Review Process.)

b. **Floodplains and Wetlands** -- In addition, special attention should be paid to requirements related to floodplains and wetlands. The grantee must determine whether a proposed project is located in or will affect a floodplain or wetlands area. If assistance is needed in determining whether the project is located in or would affect a floodplain, please contact:

Floodplain Management Section
Montana Department of Natural Resources and Conservation
1424 9th Avenue
State of Montana
Helena, Montana 59620-1601
Telephone Number: 444-6664

The federal authority for grantee obligations related to floodplains and wetlands appears in Executive Orders 11988 and 11990, respectively. **If the proposed CDBG project is located in or will affect a floodplain,** the grantee must follow the **"Eight-Step Decision Making Process"** to achieve compliance **(See exhibits)** and must provide documentation that the eight steps have been carried out.

To provide adequate documentation, it is recommended that recipients develop a narrative outlining specifically how each of the eight steps have been complied with. To assist grant recipients in the documentation of the eight-step process, (see exhibits). This document (or equivalent narrative information) should be included in the recipient's environmental review record.

If any of the project activities will be situated in floodplains or wetlands, the grantee is **required to publish two notices** related to determination of the impact of the project in the local newspaper. In communities that do not have a local newspaper, the notice should be posted in public buildings such as the town hall, post office, schools, and/or libraries.

It is recommended that the **Early Public Notice for Floodplains and/or Wetlands** (see exhibits) and the **Notice of Explanation for Floodplains and/or Wetlands** (see exhibits) be reviewed by the CDBG liaison before publication. Both notices must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action (the listing of these contacts is listed in the exhibits). The two notices may be combined with other project notices wherever appropriate.

The **first** notice is the Early Public Notice for Floodplains and/or Wetlands (see exhibits) which identifies the nature of the project activity and solicits public comment for a *minimum of* 15 *calendar* days. It is recommended that the Early Public Notice include an announced date for a public hearing to be held during the 15-day comment period to give the public an opportunity to discuss any floodplain or wetlands-related concerns in regard to the project. If a public hearing is held, it is recommended that a minimum of seven days be provided between the publication date of the Early Public Notice and the hearing date.

The **second** notice, the Notice of Explanation for Floodplains and/or Wetlands (see exhibits), must be published after the 15-day comment period of the Early Public Notice has expired. This notice should include the determination as to the impact of the proposed project, whether there are any reasonable alternatives to the proposed activity, and any alternative chosen, if applicable. No activities associated with the final approval can be undertaken until at least 7 additional days have passed since the date of publication of the second notice. This period allows for public response to the proposed final determination.

Along with documentation of the eight-step process, the CDBG grantee must submit proof of publication and compliance with the minimum public notice requirements with its environmental finding. The purchase of floodplain insurance is required if a structure financed with CDBG funds is constructed within a floodplain. For the assistance of grant recipients, the publication Further Advice on Executive Order 11988 Floodplain Management is available from MDOC.

All required minimum time periods are counted as calendar days. The first day of a time period begins on the day following the publication date of any notice.).

NOTE: The National Flood Insurance Program (NFIP)

Sometimes, after having exhausted all practical alternatives, it is necessary to construct or re-construct a CDBG-assisted facility (such as a wastewater lift station) in a flood plain. In these cases, special flood insurance should be purchased coordinated through the National Flood Insurance Program (NFIP). For more information, contact the Floodplain Management Section of the Department of Natural Resources and Conservation noted on the preceding page.

c. **HUD Environmental Standards** -- As part of the Statutory Checklist, attention should also be paid to HUD Environmental Criteria and Standards), relating to the following three areas:

(1) noise abatement and control;

(2) siting of HUD-assisted projects near hazardous operations; and

(3) siting of HUD-assisted projects in airport runway clear zones, clear zones and accident potential zones.

Noise abatement and control standards refer to encouraging land use patterns for housing and other noise sensitive land uses that will provide a suitable separation between them and major noise sources, including consideration of noise attenuation measures. The HUD

publication *The Noise Guidebook* to assist recipients in assessing noise impacts for projects is available on-line at:

https://www.hudexchange.info/resource/313/hud-noise-guidebook/
Projects located within 15 miles of a military or civilian airport with scheduled jet aircraft operations, within 3000 feet (approximately six-tenths of a mile) of a railroad track, and/or 1000 feet from a 4-lane highway need to assess noise impacts to the proposed project. This document sets forth procedures whereby people without technical training can assess the exposure of a housing site or public facility such as a Head Start to present and future noise conditions. The noise assessment procedures would be especially applicable to a proposed CDBG-assisted housing rehabilitation or new construction project located in the vicinity of an airport, a highway with significant truck traffic, or in close proximity to a rail line.

Siting of HUD-assisted projects near hazardous operations refers to hazards such as petroleum products operations or explosive or flammable chemical facilities, large propane storage tanks, or similar natural gas storage facilities. In addition to the HUD guidelines, to assist grant recipients in evaluating this factor, the publication Siting of HUD-Assisted Projects Near Hazardous Facilities is available from MDOC.

Siting of HUD-assisted projects in runway clear zones refers to the goal of promoting compatible land uses around civil airports and military airfields, and at the same time discouraging incompatible development. The goal of these special environmental standards is to prevent the location of incompatible land uses, especially within airport runway clear zones. More specific guidance is provided in the HUD publication, A Guide to HUD Environmental Criteria and Standards..

d. **HUD Lead-based Paint Standards** -- As part of the Statutory Checklist, attention should also be paid to HUD Lead-based Paint Standards) and Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act that appear within Title X of the Housing and Community Development Act of 1992.

e. **EPA and OSHA Asbestos Standards and Regulations** -- The State of Montana is delegated by EPA to administer sections of the asbestos NESHAP (National Emission Standard for Hazardous Air Pollutants) regulations, through the Montana Department of Environmental Quality's (DEQ) Asbestos Control Program. OSHA's asbestos standard also has been adopted in part by the Department of Environmental Quality's Asbestos Control Program. For more information about Asbestos requirements, see pages 29 and 30 of this chapter.

DEQ's Asbestos Control Program website can be found here: http://deq.mt.gov/Public/asbestos

C. FINDING OF EXEMPTION FOR FINDING B

If, after completing the Statutory Checklist and Site-Specific Checklist, the grant recipient determines (1) that each and every project activity is Categorically Excluded and (2) that the proposed project is not affected by any of the federal laws and executive orders listed in the Statutory Checklist, **then** the grantee can claim "Exemption".

The grant recipient must prepare a written "Finding of Exemption for All Project Activities" **(see exhibits)** and submit it along with the Statutory Checklist to MDOC.

Environmental Finding B is <u>SELDOM utilized for CDBG Housing and Public Facilities projects</u> because most activities are <u>affected</u> by at least one of the federal laws and executive orders listed in the Statutory Checklist. (Environmental Findings C and D, described in the following sections are much more typical.)

D. ERR FILE REQUIREMENTS FOR ENVIRONMENTAL FINDING B

The ERR file (the packet of documents to be submitted to MDOC) must contain the following documentation (see exhibits):

- Designation by adopted resolution of Environmental Certifying Official;
- Statutory Checklist;
- Site-Specific Checklist
- Finding of Exemption for All Project Activities;
- Information documenting compliance with the Section 106 historic preservation process, as presented earlier in this chapter
- Any other accompanying documentation and applicable correspondence to and from MDOC should also be included in the ERR file.

VI. ENVIRONMENTAL FINDING LEVEL C

FINDING C:

ALL PROJECT ACTIVITIES CAN BE "CATEGORICALLY EXCLUDED"

AND

SOME ACTIVITIES ARE AFFECTED BY FEDERAL STATUTES AND EXECUTIVE ORDERS.

If so:

1. **Review the list of possible "categorically excluded" activities.**

2. **Complete the Statutory Checklist (**see exhibits**) and Site-Specific Checklist, (**see exhibits**), as applicable.**

3. **If all activities can be "categorically excluded" and some activities are affected by Federal Statutes and Executive Orders, proceed as follows:**

    a. **Prepare a Finding of Categorical Exclusion (**see exhibits**).**

    b. **Prepare a NOI/RROF (**see exhibits**)**

    c. **Submit a RROF and Certification to MDOC (**see exhibits**)**

OR

If all activities cannot be considered "exempt" or "categorically excluded", proceed to Finding D

The Statutory Checklist (see exhibits**) discussed under Finding B must also be completed for Finding C.** If a grant recipient does determine that a project is Categorically Excluded and determines after completing the Statutory Checklist that any of the Federal laws and executive orders listed in the Statutory Checklist are applicable to some project activities, the grant recipient must follow the steps outlined below.

A. FINDING OF "CATEGORICAL EXCLUDED"

After completing the Statutory Checklist, the certifying official must prepare and submit to MDOC, along with a copy of the Statutory Checklist, a Finding of Categorical Exclusion **(**see exhibits**)** which lists each activity identified as "Categorically Excluded," and gives the statutory or regulatory authority for that determination.

In these cases under the Montana CDBG program, the project would also be excluded from the requirements of the Montana Environmental Policy Act (MEPA); **however, the project must still comply with all other Montana environmental laws.**

Environmental Finding C is a common finding for Montana CDBG Housing and Public Facilities projects which involve a construction activity in which no major change in land use or activity at a site is proposed (for example, housing rehabilitation projects or simply replacing outdated water or sewer pipe in the same trench with larger diameter pipe.)

If it is determined that there is some continuing impact that requires mitigation, MDOC may direct the grantee to proceed to Environmental Finding D and complete an EA.

1. **Publication, Distribution, and Submission to MDOC of a Notice of Intent to Request Release of Funds (NOI / RROF), (**see exhibits)

   As a next step, grantees must publish, distribute, and submit to MDOC a Notice of Intent to Request Release of Funds (NOI / RROF) (see exhibits).

   As a minimum, the notice should be sent to the local news media, to individuals and groups known to be interested in the project, and to appropriate local, State, and federal agencies. See the exhibits for a list of the agencies and groups which the grantee must provide with a copy of the NOI / RROF.

   The NOI / RROF must be published at least once in a newspaper of general circulation in the community. In the cases where there is no regularly published local or area-wide newspaper, the grantee must post the notice prominently at the local post office. The notice should also be prominently displayed in other public buildings or sites.

   The NOI / RROF **(see exhibits)** indicates the grantee's intention to submit to MDOC a Request for Release of Funds no sooner than seven days following the publication of the notice. This gives the public and State and federal agencies **at least seven days** to submit comments to the grantee before any other action is taken. It also establishes **a minimum of 15 days** during which the public may later comment to MDOC, after MDOC has received the request. After receipt of the Request, MDOC must wait a minimum of 15 calendar days for public comment prior to the release of funds.

   All required minimum time periods are counted as **calendar days. The first day of a time period begins on the day following the publication date of any notice**.

2. **Submission of the Request for Release of Funds (RROF) and Certification to MDOC, (**see exhibits**)**

At least seven days following publication of the NOI / RROF and after all local comments are considered, the grantee should submit the RROF (see exhibits) to MDOC.

The RROF also contains a Certification which must be signed following the seven-day local comment period, by the Environmental Certifying Officer indicating that the Environmental Review has been conducted in the prescribed fashion.

Proof of publication of the NOI / RROF must also accompany the RROF that is sent to MDOC.

As noted, MDOC must wait a minimum of 15 calendar days after receipt of the RROF for public comment prior to the release of funds. A sample time-line illustrating minimum calendar periods for publication and public comment is noted below:

March 15, 201__	Local publication date of NOI / RROF
March 16-22, 201__	Minimum 7-day local comment period
March 23, 201__	Grantee Mails RROF to MDOC, allowing three days for delivery
March 26, 201__	MDOC receives RROF
March 27 - April 10, 201__	MDOC 15-day comment period
April 11, 201__	MDOC release of funds

The Environmental Review Record must be complete. In addition to being reviewed by MDOC CDBG staff, your Environmental Review Record may later be reviewed in detail by HUD environmental specialists to assure local and State compliance with federal environmental requirements. The most pertinent information in the ERR must also be sent to MDOC, including in particular the Statutory Checklist and the historic preservation and floodplain elements (if applicable).

B. ERR FILE REQUIREMENTS FOR FINDING C

The ERR file (the packet of documents to be submitted to MDOC) must contain the following documentation (see exhibits):

- Designation by adopted resolution of Environmental Certifying Officer;
- Statutory Checklist;
- Eight-Step Decision Making Process (if applicable);
- Documentation of Eight-Step Decision Making Process (if applicable);
- Early Public Notice (if applicable);
- Notice of Explanation (if applicable);
- Information documenting compliance with the Section 106 historic preservation process, as presented earlier in this chapter, Notice to State Historic Preservation Office; (see exhibits)
- Finding of Categorical Exclusion;
- Notice of Intent to Request Release of Funds (NOI/RROF); Proof of Publication of NOI/RROF;
- Request for Release of Funds and Certification (RROF);
- NOI/RROF and FONSI/NOI/RROF Distribution List;

- All accompanying documentation, evidence of publication of notices, and comments received, with your responses; and

- Copies of applicable correspondence to and from MDOC, such as the letter of authorization to incur administrative costs.

MDOC will review the information listed above including the NOI/RROF and the RROF. If all of the required review periods as provided in the NOI/RROF have expired, and no basis for withholding funds is found, MDOC will send a letter formally releasing CDBG funds for the project.

After the contract has been executed, a management plan has been developed and approved, all special contract conditions fulfilled, and the required forms for drawdown of CDBG funds completed, the grantee can then submit a request for needed CDBG monies to MDOC.

VII. ENVIRONMENTAL FINDING LEVEL D

FINDING D:

PREPARATION OF AN ENVIRONMENTAL ASSESSMENT IS NECESSARY

AND

A FINDING OF NO SIGNIFICANT IMPACT IS NECESSARY.

If so:

1. **Review examples of activities which require preparation of an EA.**
2. **Prepare an EA and/or the Site-Specific Checklist (see exhibits), as applicable.**
3. **If completion of the EA results in a "Finding of No Significant Impact" (FONSI), proceed as follows:**
   a. **Prepare a combined FONSI / NOI / RROF.**
   b. **Submit the RROF to MDOC.**

A. THE ENVIRONMENTAL ASSESSMENT (EA)

When is an Environmental Assessment (EA) needed? If the project involves any activities which are neither "exempt" nor "categorically excluded," the grantee must prepare an Environmental Assessment (EA).

Department of Commerce (DOC) CDBG staff have prepared a new consolidated EA form (see exhibits) for achieving compliance with both State and Federal requirements that we hope will simplify the Federal and State environmental review processes.

As part of your CDBG application, you already prepared an environmental checklist. If it is necessary for you to prepare the consolidated EA form, you will find that it is very similar to the environmental checklist. In most cases, you will likely find that you already have the necessary information to complete the form without the need to do additional research. (See exhibits for Consolidated Environmental Assessment form).

Preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) is a typical finding for a CDBG Housing and Public Facilities project which involves a major change in land use or activity at a proposed site and no significant adverse impacts on the environment are identified.

Examples of grant activities which require preparation of an EA include:

- ❑ Rehabilitation which requires a change in land use; and
- ❑ Installing public facilities such as a first-time community-wide sewage collection and treatment system.

The Consolidated Environmental Assessment (EA) form presented in the exhibits consists of the following components:

- Project Identification;
- Instructions for Completing this Form; and
- Evaluation of Environmental Impact.

The form should be filled out completely, noting documentation of sources and providing additional supplementary narrative where noted in the instructions. The environmental reviews required under the Montana Environmental Policy Act (MEPA) and the review required as part of the Statutory Checklist, have been consolidated into one single form. The Consolidated Environmental Assessment Form with all attachments must be included in the grant recipient's ERR.

Suggestions for Preparing the Environmental Assessment

To help local, State, and federal agencies respond more effectively to your inquiries, we suggest that you prepare a letter (including your phone number) which describes the project and attach a map to show the project's location. The map can be photocopied from the project application. Follow-up phone calls to agency officials are also suggested.

Environmental Assessments Prepared by Montana Department of Environmental Quality (DEQ) or USDA Rural Development (RD)

In some instances, the CDBG program can accept an Environmental Assessment (EA) prepared by DEQ or USDA RD providing that the project scope is identical. In these instances, the HUD requirements dealing with noise, hazardous facilities, and airport runway clear zones must be addressed and attached to the EA document (page 2-M.4). It may also be possible to issue a joint inter-agency environmental notice for DEQ State Revolving Fund or USDA RD co-funded projects (see exhibits). Please contact your CDBG liaison for further instructions in all cases involving coordination of inter-agency environmental reviews.

B. LEVEL OF CLEARANCE FINDING FOR ENVIRONMENTAL FINDING D

Based on the information provided in the EA, the certifying official must then make one of two following findings:

1. The project " . . . is not an action significantly affecting the quality of the human environment, and no Environmental Impact Statement (EIS) is required," **or**

2. The project ". . . is an action significantly affecting the quality of the human environment, and an EIS is required."

C. COMBINED FINDING OF NO SIGNIFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS -- FONSI / NOI / RROF

If completion of the EA results in a "Finding of No Significant Impact," the Environmental Certifying Official can proceed with preparing the notices and certifications required to remove the contract conditions related to environmental considerations.

The Montana CDBG program uses a **Combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI / NOI / RROF) (see exhibits).** Under this procedure, a minimum of 15 days for public comment must be provided at the local level, announcing the intent to Request a Release of Funds, and another 15 days provided at the MDOC level for public comment.

To carry out this step, the grantee must publish and distribute the FONSI / NOI / RROF **(see exhibits)** notice. As a minimum, the notice should be sent to the local news media, to individuals and groups known to be interested in the project, and to appropriate local, State, and federal agencies. **See the exhibits for a list of the agencies and groups which the grantee must provide with a copy of the FONSI / NOI / RROF.**

The FONSI / NOI / RROF must be published at least once in a newspaper of general circulation in the community. In cases where there is no regularly published local or area-wide newspaper, the grantee must post the notice prominently at the local post office. The notice should also be prominently displayed in other public buildings or sites.

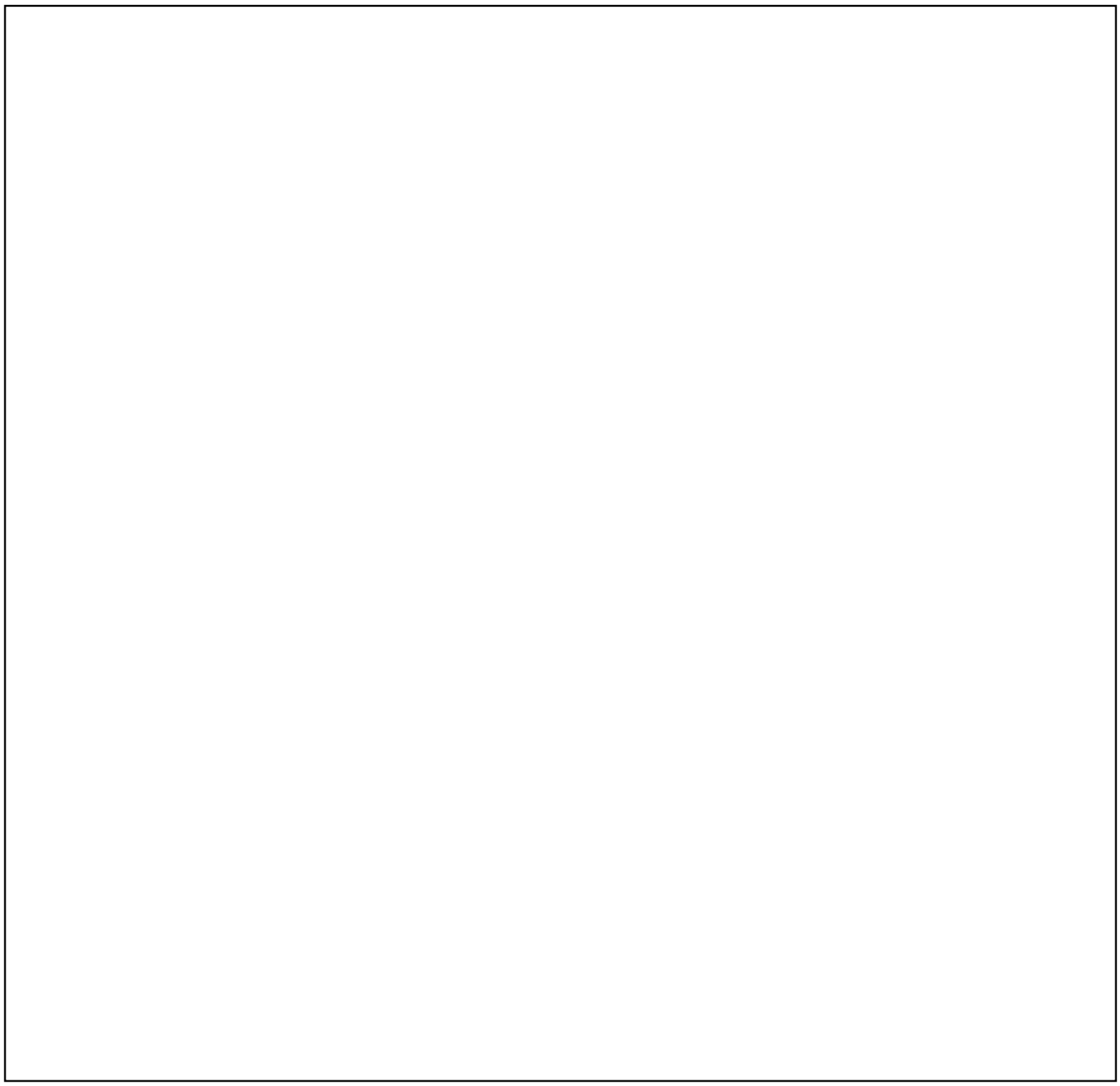
The FONSI / NOI / RROF (see exhibits) states the grantee's "Finding of No Significant Impact" and indicates the grantee's intention to submit to MDOC a Request for Release of Funds no sooner than 15 days following the publication of the notice.

This gives the public and State and federal agencies **at least 15 days** to submit comments to the grantee before any other action is taken. The notice further establishes **a minimum of 15 days** during which the public may comment to MDOC, **after MDOC has received the request.** MDOC must wait a minimum of 15 calendar days after receipt of the Request for Release of Funds (RROF) for public comment prior to release of funds.

All required minimum time periods are counted as **calendar days. The first day of a time period begins on the day following the publication date of any notice**. The FONSI / NOI / RROF and affidavit of publication and posting, including a distribution list of all agencies, groups, and individuals receiving a copy should be included in the ERR file that is sent to MDOC.

The grantee may wish to utilize additional efforts to inform the public, announcing the availability of the environmental assessment. Such extra efforts could include holding public meetings or hearings locally, maintaining mailing lists of persons interested in a particular action and notifying them of the availability of the environmental assessment, and distributing copies of the assessment for local review and comment.

D. REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION (RROF)



After the local comment period of 15 days and after all public comments have been considered, the grantee should then promptly submit a Request for Release of Funds and Certification (RROF) (see exhibits) to MDOC, accompanied by proof of publication of the FONSI / NOI / RROF.

► **Note: This document should only be signed by the Environmental Certifying Officer after the 15 day local comment period is completed.**

After (1) a period of at least 15 calendar days from the date the RROF is received by MDOC and (2) MDOC has reviewed the environmental information required under NEPA and MEPA and (3) MDOC has determined that all applicable special conditions are satisfied and there is no basis to withhold funds, then (4) **MDOC will send a letter of Release of Funds to the grantee**.

Assuming that the contract has been executed, a management plan has been developed, all special grant conditions have been fulfilled, and the required forms for drawdown of funds completed, the grantee can then submit a drawdown request for needed CDBG funds to MDOC. A sample timeline is presented below:

March 15, 201__	Local publication of FONSI / NOI / RROF
March 16-30, 201__	Minimum 15-day local comment period
April 2, 201__	Grantee mails RROF to MDOC, allowing three days for mail delivery
April 5, 201__	MDOC receives RROF
April 6-20, 201__	MDOC 15-day comment period
April 21, 201__	MDOC release of funds

E. ERR FILE REQUIREMENTS FOR FINDING D

The following must be maintained in the ERR file (the packet of documents to be submitted to MDOC) must contain the following documentation for an Environmental Assessment and Finding D (see exhibits):

- Designation by adopted resolution of Environmental Certifying Officer;
- Eight-Step Decision Making Process (if applicable);
- Documentation of Eight-Step Decision Making Process (if applicable);
- Early Public Notice (if applicable);
- Notice of Explanation (if applicable);
- Information documenting compliance with the Section 106 historic preservation process, as presented earlier in this chapter, including the Notice to State Historic Preservation Office;
- Consolidated Environmental Assessment (EA) Form;
- Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI / NOI / RROF)
- Request for Release of Funds (RROF) and Certification;
- NOI / RROF and FONSI / NOI / RROF Distribution List;
- Combined FONSI / NOI / RROF **for SRF/CDBG jointly-funded projects**
- Combined FONSI / NOI / RROF **for RD/CDBG jointly-funded projects**
- Proof of publication for each public notice;

- All accompanying documentation, evidence of notices of publication, and any comments received; and

- Copies of applicable correspondence to and from MDOC, such as a letter of authorization to incur administrative costs.

A complete copy of the ERR must also be sent to MDOC. By keeping a copy of the ERR on file with the MDOC, other State and federal agencies located in Helena can contact the MDOC, if necessary, to review project environmental materials. It is important that your environmental submission be complete. In addition to being reviewed by MDOC CDBG staff, your Environmental Review Record may later be reviewed in detail by HUD environmental specialists to assure local and State compliance with federal environmental requirements.

VIII. ENVIRONMENTAL FINDING LEVEL E

FINDING E:

PREPARATION OF AN ENVIRONMENTAL ASSESSMENT (EA) IS NECESSARY

AND

FINDING OF SIGNIFICANT IMPACT IS NECESSARY

If so:

Consult MDOC for further action.

If there is a Finding of Significant Impact, immediately contact MDOC for further guidance. MDOC will work directly with the grantee to determine a course of action for fulfillment of the environmental requirements.

IX. OTHER ENVIRONMENTAL ISSUES

A. LEAD-BASED PAINT

Many homes and apartments built before 1978 have paint that contains lead, which is referred to as lead-based paint (LBP). LBP is defined as paint on surfaces with lead in excess of 1.0 milligram per square centimeter (1.0 mg/cm^2) as measured by an x-ray fluorescence detector, or 0.5 percent by weight. If CDBG funds are to be spent on a unit or provide assistance to a tenant, compliance requirements must be strictly adhered to so that homebuyers, homeowners and tenants avoid LBP hazards.

Lead from paint, chips and dust can pose serious health hazards if not taken care of properly. Lead-based paint is a potential threat to all people, but a serious threat to the health of children 6 years (72 months) of age or under. The most common sources of childhood exposure to lead come from breathing or swallowing lead dust, or by eating soil or paint chips containing lead. If a child (age six or under) with an identified elevated blood lead level occupies a particular CDBG-assisted unit, then the grantee is responsible for inspection, testing and abatement of the LBP hazard. Contact your CDBG Program Specialist for detailed information.

Lead-based paint regulations apply to all activities using CDBG funds and will be fully enforced by HUD. The **only types of housing** that are **not covered by the regulations** are listed below.

- Housing built after January 1, 1978, when lead paint was banned for residential use;
- Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there;
- Zero-bedroom dwellings, including efficiency apartments, and single-room occupancy housing;
- Property that has been found to be free of lead-based paint by a certified lead-based paint inspector;
- Property where all lead-based paint has been removed; and/or
- Any rehabilitation or housing improvement that does not disturb a painted surface.

For housing that has been kept in good repair and upon a visual assessment, does not have deteriorated paint, LBP is not considered to be a hazard. Grantees who intend to perform the initial visual inspection of housing units may take an on-line training course provided by HUD at: **https://apps.hud.gov/offices/lead/training/visualassessment/h00101.htm** If deteriorated paint is present, follow the summary of requirements regarding LBP in CDBG (see exhibits) which outlines the various compliance requirements.

Rehabilitation work is not considered to be a hazard if the work disturbs:

- less than 2 square feet of lead-based paint in any interior room or space,
- less than 10% of a component with a small surface area, such as interior window sills, baseboards and trim, or
- less than 20 square feet on any exterior surface.

The amount of CDBG funds spent per unit on rehabilitation activities determines the depth of requirements necessary to comply with LBP regulations. If there is deteriorated paint and/or more than 2 sq. ft. of LBP will be disturbed, the lead hazard must be evaluated, then stabilized, reduced or abated, and finally cleared. See the exhibits for guidance on the requirements regarding LBP.

See the exhibits for the procedures to follow for homebuyer assistance programs.

Regardless of the housing's state of repair, homeowners and tenants must still be informed of the possible LBP risks. Before ratification of a contract for housing sale or lease, grantees must provide all information known to prospective tenants, homeowners, or purchasers, on the presence of lead-based paint for all structures built before 1978. (CDBG can provide sample disclosure forms for homebuyers and for renters).

Grantees are also required to give homebuyers and renters information regarding how to protect their families from lead in the home. Resources can be found on the EPA website here: **https://www.epa.gov/lead/protect-your-family-lead-your-home** Grantees also need to obtain and keep signed Acknowledgements of Receipt (see exhibits) of this pamphlet on file for the period of affordability, plus three years. Homebuyers and tenants are granted 10 calendar days to inspect and assess lead-based paint hazards (at their own expense) before being obligated to purchase or rent the housing.

If a grantee conducts an evaluation and hazard reduction activity, HUD requires specific notification procedures. See the exhibits for the following notices:

Notice of Lead-Based Paint Inspection
Notice of Lead-Based Paint Risk Assessment
Notice of Lead Hazard Evaluation or Presumption
Notice of Lead Hazard Reduction

HUD requires Environmental Protection Agency (EPA) certified personnel to provide LBP risk assessment, LBP abatement services and LBP clearance services for activities that receive more than $25,000 of CDBG rehabilitation assistance per unit. Workers, who are not EPA-certified may do the abatement work *if* an EPA-certified supervisor is at the work site at all times. The exhibits provide guidance regarding LBP compliance.

When assistance is provided to a participant who will live in a structure built before 1978, Grantees must inform the participant of the potential LBP risk. Additionally, the Grantee must provide firm evidence of LBP compliance in individual participant files.

B. ASBESTOS

Asbestos is the name for a group of naturally occurring minerals that separate into strong, very fine fibers. Because of its heat resistance and durability, asbestos has been used extensively in construction and industrial applications. In residential applications, asbestos has be used most commonly in materials used for purposes of reinforcement, heat and cold insulation, condensation control, fire protection, sound dampening, decoration, and texturing.

Asbestos is a health concern because it is a carcinogen. Asbestos can break down into very small fibers that can become airborne and stay airborne for a long time. Exposure generally occurs by inhalation or ingestion. Because of their durability, these fibers can remain in the body for many years and thereby become the cause of asbestos-related diseases, such as asbestosis, mesothelioma, and other cancers.

An asbestos containing material (ACM) is any material that contains more than 1% asbestos. "Friable" asbestos materials pose the greatest health risk because of their ability to easily become airborne, and are thus the most regulated ACM. The EPA defines "friability" as the ability of a dry asbestos-containing material to be crumbled, pulverized, or reduced to powder *by hand pressure*. Examples of a friable ACM include thermal system insulation and spray-on fireproofing. ACM such

as floor tile, roofing, and asbestos cement products are typically non-friable; however, demolition and renovation activities can often render non-friable ACM friable.

The State of Montana is delegated by EPA to administer sections of the asbestos NESHAP (National Emission Standard for Hazardous Air Pollutants) regulations, through the **Montana Department of Environmental Quality's Asbestos Control Program.** The Asbestos Control Program regulates "asbestos abatement" activities in buildings where **three (3) or more linear or square feet of *friable*** (easily crumbled, pulverized, or reduced to powder**) or *potentially friable* ACM are abated**. According to the Asbestos Control Program, **asbestos abatement** includes "the removal, encapsulation, enclosure, repair, renovation, demolition, placement, transportation, and/or disposal of friable or *potentially-friable* ACM."

The most likely scenario for asbestos issues in a CDBG project is during rehabilitation of a structure. If a CDBG project meets the above definition of an "asbestos abatement project", there are certain requirements that must be met:

- Asbestos abatement projects require an inspection by a Montana Accredited Asbestos Inspector prior to renovation or demolition activities.
- All ACM that will be impacted by renovation or demolition activities must be removed before demolition or renovation activities begin.
- Asbestos abatement projects require a permit from the Asbestos Control Program and must be done by persons with a Montana Contractor/Supervisor or Worker accreditation. A list of *Asbestos Consultants/Contractors/ Laboratories* is provided in the exhibits for your use and information.
- The Asbestos Control Program must be notified 10 working days prior to asbestos abatement and demolition activities.

  DEQ's Asbestos Control Program website can be found here: http://deq.mt.gov/Public/asbestos

Another agency having regulatory authority over asbestos abatement projects is the Federal Occupational Safety and Health Administration (OSHA). OSHA regulates worker safety and health as they relate to asbestos in the construction industry. Like the Asbestos Control Program, OSHA's asbestos standard also requires an asbestos inspection prior to initiating construction activities, as part of its hazard communication requirement. DEQ's Asbestos Control Program regulations have adopted by reference some of OSHA's asbestos regulations; however, for more complete information on OSHA's regulatory and reporting requirements, contact OSHA at https://www.osha.gov/

C. RADON

Radon is a naturally occurring gas, produced by the breakdown of uranium in soil, rock and water. Air pressure inside a home is usually lower than pressure in the soil around the home's foundation. Because of this difference in pressure, a house can act like a vacuum, drawing radon in through the foundation cracks and other openings. Radon may also be present in well water and can be released into the air in a home when water is used for showering and other household uses. In most cases, radon entering a home through water is a small risk compared to radon entering a home from the soil.

For additional radon information visit https://www.epa.gov/radon

The amount of radon in the air is measured in “Pico curies of radon per liter of air,” or “pCi/L”. The U.S. Congress has set a long-term goal that indoor radon levels be no more than outdoor levels. There are about 0.4 pCi/L of radon normally found in the outside air. The Environmental Protection Agency (EPA) recommends fixing a structure if the results of testing show radon levels of 4 pCi/L or higher.

A radon disclosure statement must be provided on at least one document prior to the execution of any contract for purchase of all inhabitable real property. The buyer shall acknowledge receipt of the disclosure statement by signing a copy of the disclosure statement.

If a seller knows the building has been tested for radon gas, the seller must provide a copy of the results of that test and evidence of any subsequent mitigation or treatment. If testing was not accomplished, a statement will appear on the transaction documents stating testing was not accomplished, in addition to a statement about the health hazards caused by the presence of radon.

Other sources of information are available in the form of several booklets produced by the EPA. The booklets are available by request from MDOC. The State of Montana's radon information hotline for general information is 1-800-546-0483. **If radon becomes an issue in your CDBG project, contact your CDBG Program Specialist for assistance.**

CHAPTER 2

EXHIBITS

2-A.1 Designation of Environmental Certifying Official

2-A.2 Resolution Designating Environmental Certifying Officer

2-B.1 Abbreviated Environmental Checklist

2-B.2 MDOC/CDBG Environmental Review Record Checklist

2-C Statutory Checklist of Applicable Statutes and Regulations

2-D Eight-Step Decision Making Process

2-E Documentation of Eight-Step Decision Making Process

2-F Early Public Notice for Floodplains and/or Wetlands

2-G Notice of Explanation for Floodplains and/or Wetlands

2-H Historic Preservation Review Process

2-I Notice to State Historic Preservation Office

2-J Finding of Categorical Exclusion

2-K Notice of Intent to Request Release of Funds (NOI / RROF)

2-L Request for Release of Funds and Certification (RROF) For a Finding of Categorical Exclusion

2-M Consolidated Environmental Assessment (EA) Form

2-N Combination Notice: Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI / NOI / RROF)

2-O NOI / RROF and FONSI / NOI / RROF Distribution List

2-P Finding of Exemption for All Project Activities

2-Q Request for Release of Funds and Certification (RROF) For an Environmental Assessment

2-R Finding of Exemption for All Project Activities (for Certain Categorically Excluded Activities)

2-S Sources of Environmental Information

2-T Combined FONSI / NOI / RROF for SRF/CDBG jointly-funded projects

2-U Combined FONSI/NOI/ RROF for USDA RD/CDBG jointly-funded projects

2-V HUD Lead-Based Paint Requirements for Housing Rehabilitation Projects

2-W Lead-Based Paint – Homebuyer Assistance

2-X Acknowledgment of Receipt

2-Y Lead-Based Paint Notices:
- **2-Y.1 Notice of Lead-Based Paint Inspection**
- **2-Y.2 Notice of Lead-Based Paint Risk Assessment**
- **2-Y.3 Notice of Lead Hazard Evaluation or Presumption**
- **2-Y.4 Notice of Lead Hazard Reduction**

2-Z Asbestos Consultants, Contractors and Laboratories

2-AA Re-evaluation Form for Supplemental Assistance -- Environmental Re-evaluation when Supplemental HUD Funds are Awarded

2-BB Site-Specific Checklist

2-CC HUD Guide to Environmental Clearance: NEPA-Related Statues, Authorities, and Requirements

EXHIBIT 2-A

DESIGNATION OF ENVIRONMENTAL CERTIFYING OFFICIAL

(Sample - To Be Completed on Local Government Letterhead)

(*Date)*

(*Name of CDBG Program Specialist*)
Montana Department of Commerce
Community Development Division
301 S. Park
P.O. Box 200523
Helena, MT 59620

Dear (*Name of CDBG Program Specialist):*

This is to notify you that _____*(Name)*_____, _____*(Title*)_____, is designated as the Environmental Certifying Official responsible for all activities associated with the environmental review process to be completed in conjunction with the 200__ CDBG grant awarded to *(Name of Grantee*) ___, Montana.

Sincerely,

_____
Signature*****

_____
Typed Name and Title

***The chief elected official should sign this letter (mayor or chairperson of county commission).**

Sample of Resolution for Designating the Environmental Certifying Official

RESOLUTION NO. _____

WHEREAS, in 20__ the (*insert Grantee's Name*) applied for federal, state, local and private funding to (*insert information regarding the type of housing project being funded*);

WHEREAS, all necessary funding has been received to permit the project to go forward; and

WHEREAS, an Environmental Certifying Official may be designated by formal resolution.

NOW, THEREFORE, BE IT RESOLVED that:

(*Name of Environmental Certifying Official*) is designated as the Environmental Certifying Official to produce an Environmental Review Record;

The (*name of Grantee*) will ensure that it and all of its contractors or agents shall conduct all program matters in a non-discriminatory manner such that all persons regardless of race, gender, age, disability, or other protected class shall be treated equally and further each shall comply with the policies and procedures delineated in the 20__ (*insert name of Grantee and/or Project Name*) Management Plan, approved by the Montana Department of Commerce Community Development Block Grant Program.

BE IT FURTHER RESOLVED that the above designation shall become effective on _____ _____, 20___.

NAME OF GRANTEE _____ County, Montana

By _____
Chief Elected Official

Attest _____

EXHIBIT 2-AA

STATEMENT OF NEED FOR RE-EVALUATION OF ENVIRONMENTAL ASSESSMENT

SHOULD BE PRINTED ON GRANT RECIPIENT'S LETTERHEAD

STATEMENT OF NEED FOR
RE-EVALUATION OF ENVIRONMENTAL ASSESSMENT
FOR ___(project name here)_____ (PER 24 CFR 58.47)

The _____ project was reviewed for NEPA compliance on ___/___/___ (the original review materials can be found in _____ file).

The original Environmental Assessment, prepared by _____, and completed on ___/___/___ **need not be re-evaluated because none of the thresholds in 58.47 requiring that the review be re-evaluated were met:**

- **58.47(a)(1):** There are no substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;
- **58.47(a)(2):** There are no new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; and
- **58.47(a)(3):** The grant recipient proposes the selection of an alternative not in the original finding.

Therefore, the existing review is still valid and no further action will be taken.

_____

Responsible Entity

Name and Title of Preparer (ECO) Date

Grant Recipient (if different than RE)

EXHIBIT 2-B

CDBG Environmental Review Requirements Checklist

2-B.1: ABBREVIATED ENVIRONMENTAL CHECKLIST	
NOTE: See 2-B.2 for a more detailed checklist	
Date:	**Environmental Requirement, if applicable**
	The appropriate Level of Environmental Findings is LEVEL [_____]. Confirmed by the CDBG liaison on ___ /___ / ___.
	a. Environmental Certifying Official designated (requires a resolution if not the chief elected official **Exhibit 2-A**).
	b. Historic Preservation Review complete, if applicable.
	c. SHPO contacted and agreement negotiated, if applicable.
	d. Floodplain compliance complete, if applicable.
	e. Statutory Checklist (**Exhibit 2-C**) complete, if applicable.
	f. NOI / RROF published, if applicable.
	g. EA (**Exhibit 2-M**) complete, if applicable.
	h. EA and FONSI / NOI / RROF notice sent to applicable state and federal agencies for comment, if applicable.
	i. FONSI / NOI / RROF published, if applicable.
	j. Requirement for local comment period met.
	k. RROF submitted to Commerce.
	l. Responses to comments prepared and distributed.
	m. All other environmental conditions and start-up conditions fulfilled.
	n. Notice of (Environmental) Release of Funds issued by CDBG.

EA - Environmental Assessment
FONSI - Finding of No Significant Impact
RROF - Request for Release of Funds
NOI / RROF - Notice of Intent to Request Release of Funds
SHPO - State Historic Preservation Office

NOTES:

Name of Grantee: _____
Grant Fiscal Year: _____
Date of Review: _____

Environmental Requirement, if applicable	Yes	No	N/A	See Comments
I. Grantee received Commerce's authorization to incur administrative costs for environmentally-exempt activities. Date:				
II. Environmental Certifying Official designated				
III. Historic preservation review initiated (Arrangements made with SHPO)				
IV. Environmental Review/Level of Finding				
FINDING LEVEL "A" - Exempt Activities				
Finding of Exemption				
FINDING LEVEL "B" - Categorically Excluded Activities No activities affected by federal statutes or executive orders				
Finding of Categorically Excluded				
Statutory Checklist, Exhibit 2-C for Finding B				
• Compliance with historic preservation requirements				
• Compliance with floodplain management requirements				
• Compliance with HUD environmental standards (Lead-based Paint, Asbestos, Airport Clear Zone)				
FINDING LEVEL "C" - Categorically Excluded Activities Some activities affected by federal statutes and executive orders				
Statutory Checklist, Exhibit 2-C, including documentation of affects of federal statutes and executive orders for Finding C				
• Compliance with historic preservation requirements				
• Compliance with floodplain management requirements				
• Compliance with HUD environmental standards				
Finding of Categorical Exclusion prepared				
NOI / RROF prepared and published				
Dates of 7-day local comment period for NOI / RROF (do not count date of publication) Dates: _____				
Dates of 15-day Commerce comment period for NOI / RROF (do not count date of publication) Dates: _____				
RROF and Certification submitted to Commerce				

NOTES:

Environmental Requirement, if applicable	Yes	No	N/A	See Comments
FINDING LEVEL "D" - Preparation of an EA				
Complete EA Form, Exhibit 2-M				
• Compliance with historic preservation requirements				
• Compliance with floodplain management requirements				
• Compliance with HUD environmental standards				
FONS I / NO I / RROF prepared and published				
Dates of 15-day local comment period for FONSI / NOI / RROF (do not count date of publication) Dates: _____				
Dates of 15-day Commerce comment period for FONSI / NOI / RROF (do not count date of publication) Dates: _____				
RROF submitted to Commerce				
FINDING LEVEL "E" - Finding of Significant Impact				
EA prepared				
Finding of Significant Impact				
Contact Commerce				
Does any information in the ERR indicate either (1) the proposed project would significantly impact the environment or (2) the grantee should consider mitigating measures to avoid significant impacts (attach comments, if necessary)?				
NOTES:				

EXHIBIT 2BB

CDBG ENVIRONMENTAL SITE SPECIFIC CHECKLIST

CDBG Project # _____ Address: _____

Grantee Contract # _____ Owner: _____

Date of Construction of proposed home:_____

The Montana CDBG Program is subject to the National Environmental Policy Act (NEPA) and the Montana Environmental Policy Act (MEPA). Together these laws and associated regulations require that CDBG grant recipients must evaluate any possible effects a specific project site could have on the environment and consider mitigating actions where adverse effect could be present.

Source or Documentation may be cited from Statutory Checklist as applicable.

1. Site Suitability
   Is the Project site or area generally physically suitable for the proposed CDBG activity in terms of slope, erosion, or soils?

   YES _____ NO _____

   Compliance Source and/or Documentation: _____

2. Floodplain
   Is the project area within or adjacent to an identified 100-year floodplain, similar flood-prone area, or area of storm water drainage discharge?

   NO _____ YES _____ Based on FEMA Map # _____

   If yes, the CDBG owner must have proof of flood insurance throughout the period of affordability.

3. Surface Water and Aquifers
   Would the proposed project have a potential adverse impact on either surface water quality or an identified underground aquifer (water bearing zone)?

   NO _____ YES _____

   Compliance Source and/or Documentation: _____

4. Wildlife Habitat/Endangered Species
   Would the project in general have a potential adverse impact on existing wildlife or fish habitat? Would the proposed project have a potential adverse impact on either an endangered animal or plant species?

   NO _____ YES _____

Compliance Source and/or Documentation: _____

5. Wetlands
Would the proposed project alter or disturb wetlands? "Wetlands" generally include swamps, marshes, bogs or similar areas such as sloughs, wet meadows, river overflows, mud flats, and natural ponds.

NO _____ YES _____

Compliance Source and/or Documentation: _____

6. Air Quality
Would the proposed project have an adverse effect on existing area air quality?

NO _____ YES _____

Compliance Source and/or Documentation: _____

7. Historic Properties and Archeological Resources
Is the house associated with the proposed project older than 50 years or located within an identified Historic District?

NO _____ YES _____

Would the proposed project have any effect on historic structures, properties, or archeological resources?

NO _____ YES _____

Compliance Source and/or Documentation: _____

8. Farmlands
Would the proposed project impact prime, unique, or statewide designated or locally important farmland?

NO _____ YES _____

Compliance Source and/or Documentation: _____

9. Noise
a. Is the proposed project located within the noise contours of an airport?

NO _____ YES _____ (Noise level must be under 65DNL (Day Night Level))

b. Is the proposed project located within 1000 feet from a major highway?

NO _____ YES _____

c. Is the proposed project located within 3000 feet from nearest railroad?

NO _____ YES _____

d. Would aircraft, highway, or railroad noise adversely affect the proposed project?

NO _____ YES _____

Compliance Source and/or Documentation: _____

10. Hazardous Facilities

Is there a facility that produces or stores flammable material that is visible from the project site? Hazardous facilities could consist of chemical or petrochemical gas or liquid storage facilities, including propane gas storage tanks.

NO _____ YES _____

If yes, please refer to the *HUD Explosive and Flammable Material Handbook* or call your CDBG Program Officer.

Compliance Source and/or Documentation: _____

11. Airport Clear Zones

Is the proposed project located within the crash zone (2500 feet) of an airport?

NO _____ YES _____

Compliance Source and/or Documentation: _____

12. Lead-Based Paint Inspection

Beginning April 2010, contractors performing renovation, repair and painting projects that disturb lead based paint in homes, childcare facilities and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. Lead-hazard information for renovation, repair and painting activities is found in the EPA lead hazard information pamphlet: *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools.* The pamphlet is available online at: http://www.epa.gov/lead/pubs/renovaterightbrochure.pdf

Homes built prior to 1978 must be inspected for Lead-Based Paint:

LBP Found: No _____ Yes _____ N/A_____

Name of Lead based paint inspector _____ Date: _____

Attach copy of Lead Based Paint Inspector Certification

13. Asbestos Inspection

OSHA asbestos standard (29 CFR 1926.1101) and EPA asbestos sections of NESHAP (National Emission Standard for Hazardous Air Pollutants), administered by Montana Department of Environmental Quality's Asbestos Control Program

Do Clean Air Act asbestos requirements apply to this site? _____ No _____ Yes
If yes, explain how Clean Air Act will be complied with:_____
_____
_____

If yes, Attach inspection and testing documents

14. Do any specifically local environmental concerns exist not already addressed? Please Describe:
_____
_____
_____

I certify that the findings listed above accurately reflect the status of compliance with applicable laws and regulations for the identified property.

Signature:_____ Title: _____

Date: _____

EXHIBIT 2-C

Statutory Checklist

Checklist of Applicable Statutes and Regulations

Project Local Government and Contract Number: _____

Are all activities of this project <u>exempt</u> from NEPA procedures? Yes___ No___
(**If yes**, this Statutory Checklist **need not be filled out**.)

Are activities of this project <u>categorically excluded</u> from NEPA procedures? Yes___ No___
(**If yes**, this Statutory Checklist and all required actions **must be completed**.)

Precise citations for the applicable statutes and regulations in the 13 areas below are printed on pages 2-C.2 and following. See Pages 2-19 and following of Chapter 2 for additional explanation of the Statutory Checklist.

Area Of Statutory-Regulatory Compliance							
Column Codes are explained on page 2-C-2.	***NA***	***CR***	***RR (*)***	***PR (*)***	***DOC/ APO***	***CMA R(*)***	***(*) = Attach evidence that required actions have been taken.***
							Note Compliance Documentation
1. **Historic Properties**							
2. **Floodplain Management**							
3. **Wetlands Protection**							
4. **Noise**							
5. **Air Quality**							
6. **Man-made Hazards**							
Lead-based Paint							
Asbestos							
Thermal/Explosive Hazards							
Airport Clear Zones							
7. **Water Quality**							
Surface Water/Water Quality							
Groundwater & Aquifers[1]							
8. **Solid Waste Disposal**							
9. **Farmlands Protection**							
10. **Wild & Scenic Rivers**							
11. **Endangered Species, Fish & Wildlife**							
12. **Environmental Justice (E.O. 12898)**							
13. **State or Local Statutes**							

[1]Including the Missoula Sole Source Aquifer; contact DOC for further information regarding Missoula area projects.

First-time Home Buyer Projects will need to complete the site specific environmental review checklist found on pages 6 and 7 of this Exhibit prior to providing funding to assist in each home purchase.

Codes used in the columns in the Statutory Checklist on page 2-C-1:

NA: Not applicable to this project.

CR: Consultation required.

RR (*): Review required.

PR: Permits required.

DOC/APO: Determination of consistency. Approvals, permits obtained.

CMAR (*): Conditions and/or mitigation actions required.

(*)*Attach evidence that required actions have been taken*.

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INDEX OF APPLICABLE FEDERAL STATUTES AND REGULATIONS INCLUDED IN THE HUD STATUTORY CHECKLIST AND COMPLIANCE CERTIFICATION

1. Historic Properties

a. National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.) particularly sections 106 and 100 (216 U.S.C. 470 and 470h-2).

b. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp.

c. Federal historic preservation regulations:
   (1) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG; and
   (2) 36 CFR part 801 with respect to UDAG

d. The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. et seq.)

2. Floodplain

a. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR. 1977 Comp, as interpreted in HUD regulations at (24 CFR Part 55.

b. Executive Order 11990 Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., and Applicable State Legislation or Regulations.

3. Coastal Zone Management

The Coastal Zone Management Act of 1972

4. Noise

HUD Regulations 24 CFR Part 51, Subpart B, (7/12/79).

5. Air Quality

Clean Air Act of 1970 as Amended (42 U.S.C. 7401-7642), EPA Regulation 40 CFR Part 50, and Partially 40 CFR Part 51, 52, 61.

6. Man-made Hazards

a. HUD Regulation 24 CFR Part 51, Subpart C, (2/10/84) Hazardous Facilities.

b. Also 24 CFR Part 51, Subpart D, (1/6/84) Airport Runway Clear Zones.

7. Water Quality

a. Federal Water Pollution Control Act, as Amended (33 U.S.C. 1251-1376).

b. Safe Drinking Water Act of 1974 (42 U.S.C. 300f-300j-10), as Amended.

c. U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR Parts 100-149.

d. Missoula, Montana Sole Source Aquifer, in accordance with Section 1424 (e) of the Safe Drinking Water Act, 42 U.S.C.A. Section 300h-3 (1982).

8. Solid Waste Disposal

a. Solid Waste Disposal Act as Amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6987).

b. U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR Parts 240-265.

9. Farmlands

a. Farmland Protection Policy Act of 1981 (U.S.C. 4201 et. seq).

b. U.S. Department of Agriculture implementing regulations (7 CFR Part 658).

10. Wild and Scenic Rivers Act of 1968

16 U.S.C. 1271 et. seq., as amended: particularly sections 7(b) and 7(c), and 16 U.S.C. 1278 (b) and (c).

Note: In Montana, this act applies to the North Fork of the Flathead River from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence with the South Fork; and the South Fork from its origin to Hungry Horse Reservoir; and, the Missouri River consisting of the segment from Fort Benton, one hundred and forty-nine miles downstream to Fred Robinson Bridge.

11. Endangered Species, Fish and Wildlife

a. Endangered Species Act of 1973 as Amended **(16 U.S.C. 1531-1543).**

b. Fish and Wildlife Coordination Act (16 U.S.C. 661-666c).

12. Environmental Justice

Executive Order 12898 -- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. P. 859. (24 CFR Part 58.5, April 30, 1996)

13. Lead-based Paint

HUD Lead-based Paint Standards (24 CFR Part 35) and Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act that appear within Title X of the Housing and Community Development Act of 1992.

14. Asbestos

OSHA's asbestos standard (29 CFR 1926.1101) and EPA asbestos sections of NESHAP (National Emission Standard for Hazardous Air Pollutants), administered by Montana Department of Environmental Quality's Asbestos Control Program

CERTIFICATION

I certify that the findings on the preceding Community Development Block Grant Statutory Checklist accurately reflect the status of compliance with applicable laws and regulations for the proposed CDBG project.

_____

Type Name and Title of
Environmental Certifying Officer

_____

Signature

_____

Date

Exhibit 2-CC: HUD Guide to Environmental Compliance: NEPA-Related Statutes, Authorities and Requirements

Region VIII Office
Denver, Colorado

24 CFR Part 58.5 – NEPA-Related Federal laws and authorities

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**

Important: (1) Information contained herein is for general guidance only. Applicable authorities and regulations take precedence over guidance material and should be consulted as necessary to achieve full compliance. (2) HUD cannot attest to the accuracy of information provided by web sites external to HUD, and access to these sites does not constitute an endorsement by HUD, or any of its employees, of the sponsors of the site or the products presented on the site. (3) Contact the HUD Environmental Officer in your area for information or assistance related to compliance with HUD environmental requirements. [http://www.hud.gov/offices/cpd/environment/contact/localcontacts/#RegionVIII] **RIGIROZZI_HUD_REGION VIII_VERSION 1010**

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
1. Air Quality Clean Air Act of 1970, as amended (42 U.S.C. 7401 *et seq*.), particularly 7506 (c) & (d). 40 CFR parts 6, 51, and 93 (EPA)	▪ Acquisition of undeveloped land ▪ Change of land use ▪ Demolition ▪ Major rehabilitation ▪ New construction	▪ Project is located in an EPA-designated non-attainment area or maintenance area for one or more of six "criteria pollutants," called National Ambient Air Quality Standards (NAAQS). ▪ Project site contains hazardous pollutants (HAPS) such as asbestos-containing materials (ACM) certain projects i.e. building demolition and renovation requires testing, removal, and disposal of ACMs in accordance with state regulations. Criteria pollutants (NAAQS): http://www.epa.gov/air/criteria.html	Designated non-attainment and maintenance areas are listed on EPA web site: http://www.epa.gov/oar/oaqps/greenbk/ HAPS list available at : http://www.epa.gov/appcdwww/aptb/hap_list.pdf County-level air quality data: http://www.epa.gov/oar/oaqps/greenbk/multipol.html Maps of non-attainment areas: http://www.epa.gov/oar/data/	A determination of conformity with the State Implementation Plan (SIP) is required with respect to the proposed activity and the specific pollutant for which the area was designated a non-attainment or maintenance area. Document that the activity does/does not require SIP compliance. Contact the MPO or EPA to determine if the proposed activity is one that requires a permit under the SIP. If yes, obtain letter of consistency showing that the project is consistent with the SIP. If suspected to be present, contact the applicable state health agency about requirements for testing, removal, and disposal.	Conformity to SIP is made by: ▪ Regional or Metropolitan Planning Organization (MPO); or ▪ EPA Regional Office. Status of non-attainment areas and EPA policy questions are addressed by EPA Regional Office. State and Regional Agency contacts for SIPS and HAPS: http://www.epa.gov/iaq/whereyoulive.html Region 8 Air and Radiation Program http://www.epa.gov/region8/air HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/airpollution.cfm

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
2. Airport Hazards (Clear Zones & APZ) 24 CFR Part 51-D "Siting of HUD-Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields" (HUD)	▪ Acquisition for construction ▪ Change in land use ▪ Increase in density ▪ Major ('substantial') rehabilitation ▪ New construction Where airport is: ▪ Civil airport designated in Nat'l Plan of Integrated Airport System (NPIAS): http://www.faa.gov/airports/planning_capacity/npias/reports/ ▪ All military air installations (Note: See also Clear Zone notification requirement, page 8.)	Project is located within 2,500 feet of the end of a civil airport runway or 15,000 feet of the end of a military airfield runway. HUD policy is to promote compatible land uses in RCZ/CZ/APZ.	Airport clear zone and accident potential zone (APZ) maps are available from airport operations authority. ▪ Civil airport: The Airport Layout Plan shows the Runway Clear Zone (RCZ), [a.k.a. Runway Protection Zone]. ▪ Military airfield: The AICUZ Study shows the CZ and APZ.	RCZ/CZ: New construction, major rehabilitation, and activities that significantly prolong physical or economic life of the property are prohibited. APZ: HUD assistance in APZ is discouraged, and project must be compatible with DOD land use guidelines for APZs.	Contact airport operator or nearest FAA District office. Airport locations: http://www.airnav.com/airports/ and http://www.faa.gov/airports/planning_capacity/npias/reports/ Military Bases: http://www.globalsecurity.org/military/facility/conus.htm and http://www.globemaster.de/bases.html HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/airport.cfm
3. Coastal Zone Management Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et. seq., particularly section 1424(e)).	▪ Acquisition of undeveloped land ▪ Change of land use ▪ Major rehabilitation ▪ New construction	Project is located in a state having a Coastal Zone Management (CZM) Program. **MT is not located with CZM areas and the CZMA requirements are not applicable.**	CZMP maps are on NOAA (Nat'l Oceanic & Atmospheric Administration) web site: http://coastalmanagement.noaa.gov/mystate/welcome.html	State CZM agency (or its approved local designee) must concur with a finding (or issue permit) in evidence that project is consistent with approved State CZM plan.	NOAA: http://coastalmanagement.noaa.gov/ HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/coastal.cfm
4. Contamination	▪ Acquisition	Project is located on or	Documentation may consist	Due diligence must be	EPA Envirofacts Data:

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
and Toxic Substances 24 CFR Part 58.5 (i) (2) (HUD).	▪ Conversion from Non-residential to residential. ▪ Demolition ▪ Leasing ▪ New construction ▪ Rehabilitation	near site that contains hazardous materials or contaminants that could affect the health and safety of occupants or that conflict with the intended utilization of the property. Particular attention to be given to any site located on or in general proximity to landfills, dumps, industrial sites, gas stations or other locations that contain hazardous wastes or materials. HUD policy is to ensure that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.	of Phase I environmental site assessment* (ASTM standard E1527-05, as amended) and, if applicable, Phase II assessment. Additional/alternative documentation may include: ▪ Site inspection(s) by knowledgeable professional(s). ▪ Search of EPA and other databases for sites and facilities posing real or potential contamination concerns (including NPL (Superfund), TRI, RCRA sites and facilities). ▪ Analysis of past uses of the site and adjacent properties as documented by Sanborn Fire Insurance Rate Maps (or equivalent historic maps). ASTM Phase I and Phase II protocols are available at: http://www.astm.org/cgi-bin/SoftCart.exe/index.shtml?E+mystore Current ASTM Phase I standard (E1527-05): http://www.astm.org/cgi-bin/SoftCart.exe/DATABASE.CART/PAGES/E1527.htm?L+mystore+iweh6695+1022889987 NOTE: A person may purchase property with the knowledge that the property is contaminated without being held potentially liable	exercised to ascertain the presence of contamination. In many cases, a Phase I environmental site assessment (ASTM standard E1527-05, as amended) must be performed.* If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required. Based upon the Phase II results, remediation, mitigation and monitoring measures may be required. Such measures must be consistent with Federal, State and local laws and regulations, and must be implemented by qualified professionals. Specific forms of remediation are not prescribed by HUD and may vary depending on the nature of the hazard.	http://www.epa.gov/enviro/ EPA Toxic Release Inventory (TRI): http://www.epa.gov/enviro/html/toxic_releases.html EPA Maps: http://www.epa.gov/emefdata/em4ef.home HUD Maps (select "Map Your Community"): http://egis.hud.gov/egis/ EPA CERCLIS/NPL database Text - http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm Map http://www.epa.gov/superfund/sites/ ATSDR "ToxFAQs" summaries about hazardous substances: http://www.atsdr.cdc.gov/substances/index.asp Right-To-Know Network: ▪ EPA databases, including TRI (Toxic Release Inventory); NPL & CERCLIS; RCRA: http://www.rtk.net/ Scorecard.Org: ▪ Releases of toxic chemicals ▪ Cancer risks from hazardous air pollutants ▪ Superfund sites

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
			for the cleanup of the contamination. Conducting "all appropriate inquiries" (AAI) into the previous ownership and uses of a property is one of the requirements for claiming CERCLA liability protection. The federal (USEPA) standard for performing AAI is effective 11/01/06. The AAI final rule is found at 40 CFR 312. http://www.epa.gov/swerosps/bf/aai/index.htm The ASTM E1527-05 Phase I standard is consistent and complaint with EPA's final rule for AAI and may be used to comply with the provisions of AAI.		▪ Facilities emitting criteria air pollutants http://www.scorecard.org/community/ej-index.tcl FAQs about USTs: http://www.epa.gov/swerust1/faqs/index.htm EPA Cleanup Guidance: http://clu-in.org/ HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/hazardous.cfm
5. Endangered Species Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), particularly section 7 (16 U.S.C. 1536) 50 CFR Part 402 "Endangered Species Act" (DOI & Commerce)	▪ Acquisition of undeveloped land ▪ Conversion of land use ▪ Demolition ▪ Major rehabilitation ▪ New construction	Project is likely to affect, or may affect, any Federally listed endangered or threatened species or habitat.	Contact the US Fish and Wildlife Service (FWS) office to determine if a listed species or habitat is present in the project action area or may be affected by the project. General information on listed species and habitats: http://www.fws.gov/endangered/wildlife.html USFWS Critical Habitat online mapper: http://crithab.fws.gov/	If a listed species or habitat is present, consultation is required under Section 7 of the Endangered Species Act to determine if the proposed activity will adversely affect the subject species or habitat. Step-by-step consultation: http://www.fws.gov/midwest/endangered/section7/s7process/7a2process.html When required, a biological assessment must be prepared by a qualified professional (e.g., biologist or botanist) explaining the likely effect on the species or	Section 7 consultation: http://www.fws.gov/midwest/endangered/section7/index.html U.S. Fish & Wildlife Ecological Services Field offices: ▪ Colorado- http://www.fws.gov/mountain-prairie/es/Colorado/index.htm ▪ Utah- http://www.fws.gov/utahfieldoffice/ ▪ Montana- http://www.fws.gov/mountain-prairie/es/Montana/index.htm

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
				habitat.	▪ North Dakota- http://www.fws.gov/mountain-prairie/es/NorthDakota/ ▪ South Dakota- http://www.fws.gov/mountain-prairie/es/SouthDakota/index.htm ▪ Wyoming- http://www.fws.gov/wyominges/ HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/endangeredspecies.cfm
6. Environmental Justice E.O. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"	Applies when an adverse impact or condition occurs with respect to an environmental issue; *and,* When the activity is: ▪ Acquisition ▪ Change of land use ▪ Demolition ▪ Major rehabilitation ▪ New construction	Project entails adverse health or environmental effects which disproportionately impact a minority or low-income population relative to the community at large. The potential for new or continued adverse health or environmental effects must be considered.	EPA's Geographic Assessment Tool provides information relevant to EJ assessments: http://www.epa.gov/enviro/ej/ Census and geospatial data from local and regional planning agencies. Census data and maps also available at: http://factfinder.census.gov/home/saff/main.html and: http://www.census.gov/ Tract-level data on race & income: http://www.ffiec.gov/geocode/default.htm	Perform an EJ analysis using census, geographic and other data to determine if a low-income/minority population is disproportionately impacted. If susceptible populations are impacted: • Mitigation or avoidance of adverse impacts must be considered to the extent practicable; and, • Public participation processes must involve the affected population(s) in the decision-making process.	EJ maps & analysis: http://www.scorecard.org/community/ej-index.tcl EPA Maps: http://www.epa.gov/compliance/environmentaljustice/assessment.html CEQ guide to NEPA & EJ http://www.epa.gov/compliance/resources/policies/ej/ej_guidance_nepa_ceq1297.pdf Human Health & Toxicology: • CDC (NIOSH) http://www.cdc.gov/niosh/topics/chemical.html • ATSDR http://www.atsdr.cdc.gov/ • EPA (IRIS) http://cfpub.epa.gov/ncea/iris/index.cfm HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/environmentaljustice.cfm
7. Explosive and	Residential project	Project is located within	Site inspection, aerial photo	Calculate the acceptable	Contact HUD Field

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
Flammable Operations Housing and Community Development Act of 1974, as amended. 24 CFR Part 51 Subpart C "Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature" (HUD)	when the activity is: ▪ Conversion of land use from non-residential to residential use ▪ New construction ▪ Rehabilitation, where unit density increased ▪ Vacant building made habitable or, Any project for industrial, commercial, institutional, or recreational use where people may congregate.	sight of or within a one-mile proximity to a stationary hazardous facility that stores, handles or processes chemicals or petrochemicals of an explosive or flammable nature, such as liquid propane, gasoline or other above-ground storage tanks. Mobile tanks, (including railroad cars), buried tanks, residential tanks for 1-4 unit housing, and tanks with less than 100-gallon capacity and having common fuels are excluded.	analysis and/or contact local fire protection or emergency management agencies as to presence of hazardous industrial operations in vicinity of project. Contact local operator of such facility to determine the type and volume of fuels and chemicals of an explosive or flammable nature.	separation distance (ASD) per guidebook HUD-1060-CPD (1996), "Siting of HUD-Assisted Projects Near Hazardous Facilities," and apply appropriate mitigation measures or reject the site. Mitigation may include construction of a barrier of adequate size and strength to protect the building and occupants.	Environmental Officer for tanks having over 1 million-gallon capacity. HUD explosive/ flammable hazard guidebook: http://www.hud.gov/offices/cpd/environment/training/guidebooks/hazfacilities/ HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/explosive.cfm and http://www.hud.gov/offices/cpd/environment/review/qa/hazardfacilities.cfm

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
8. Farmland Protection Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq*.), particularly sections 1504(b) & 1541 7 CFR Part 658, "Farmland Protection Policy" (USDA)	▪ Acquisition of undeveloped land ▪ Conversion of undeveloped land ▪ New construction ▪ Site clearance	Project is located in area that includes prime farmland, unique farmland, or land of statewide or local importance. Can include forest land, pastureland or cropland, but not water or urbanized land. Urban land is exempt if the land is "already in" or "committed" to urban development per 7 CFR 685.2(a).	Limited coverage of USDA online maps at: http://www.nrcs.usda.gov/technical/NRI/maps/ NRCS soil maps (95% of nation's counties): http://websoilsurvey.nrcs.usda.gov/app/ Alternatively, contact local Natural Resources Conservation Service (NRCS) office to determine the potential presence of protected farmland.	Site assessment by NRCS is required to determine impact of the farmland conversion. Form #AD-1006 rates 12 criteria. Sponsor must submit form to NRCS, which has 45 days to make a determination. Form AD-1006 and instructions: http://www.nrcs.usda.gov/programs/fppa/pdf_files/AD_1026_Instruct.pdf	County offices for Natural Resources Conservation Services (NRCS) listed at: http://offices.sc.egov.usda.gov/locator/app NRCS and FPPA: http://www.nrcs.usda.gov/programs/fppa/ HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/farmlandprotection.cfm
9. Floodplain Management E.O. 11988, "Floodplain Management", particularly section 2(a). 24 CFR Part 55 "Floodplain Management" (HUD)	▪ Acquisition for construction or for existing bldg >4 units ▪ Disposition >4 units ▪ Financing >4 units ▪ Leasing >4 units ▪ New construction ▪ Substantial Rehabilitation (rehab cost >50% pre-rehab value or >20% density increase)	Project is located within a Special Flood Hazard Area (100-year floodplain), or, if a critical action (e.g., nursing home; hospital; fire station) is located in a 500-year floodplain.	FEMA Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Map (FHBM). FIRMETTE maps, which cover small areas (approx. 1 sq. mile), can be obtained at no charge on-line: http://www.store.msc.fema.gov For unmapped areas, FEMA Community Status Book can provide information on flood hazards: www.fema.gov/fema/csb.shtm	Avoid direct or indirect support of floodplain development wherever there is a practicable alternative. Approval of project requires compliance with the decision-making provisions of §55.20, i.e., the "eight-step" process. Project may be approved only if there is no practicable alternative outside the floodplain. Project must apply appropriate mitigation.	FEMA: http://www.fema.gov/business/nfip/fmapinfo.shtm HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/floodplainmgmt.cfm 8-Step" Public Notices: http://www.fema.gov/plan/ehp/ehplaws/eo11988.shtm State Floodplain Managers: http://www.floods.org/StatePOCs/map.asp

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
10. Historic Preservation National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq*.), particularly sections 106 & 110. 36 CFR Part 800 "Protection of Historic Properties" (ACHP)	Any undertaking having the potential to cause effect, such as: ▪ Acquisition ▪ Demolition ▪ Disposition ▪ Ground disturbance ▪ New construction ▪ Rehabilitation	Project's area of potential effects [see §800.16(d)] contains: ▪ A property listed in, or eligible for listing in, the National Register of Historic Places; or, ▪ An historic district listed in, or eligible for listing in, the National Register of Historic Places; or, ▪ Compelling evidence of the high probability of archeological resources eligible for listing in the National Register of Historic Places. National Register Eligibility Criteria: http://www.achp.gov/nrcriteria.html HUD tribal database: www.hud.gov/offices/cpd/environment/tribal/	Information on historic resources available from National, State, Tribal and local registers/sources: ▪ National Register http://www.nr.nps.gov/ ▪ State Historic Preservation Office (SHPO) http://ncshpo.org ▪ Tribal Historic Preservation Office (THPO) http://www.nathpo.org ▪ Certified Local Government (CLG) preservation staff.	Afford the Advisory Council on Historic Preservation a reasonable opportunity to comment, consistent with the procedures of 36 CFR Part 800 implementing the Section 106 process. Consultation with the SHPO is required. Consultation with THPO and interested parties and public participation may be required. The Section 106 process includes initiation of the process [§800.3], identification of historic properties [§800.4], assessment of adverse effects [§800.5], and resolution of adverse effects [§800.6]. A Memorandum of Agreement (MOA) stipulates how adverse effects will be resolved. Guidance on writing MOAs: http://www.npi.org/tools.html HUD database of Section 106 agreements (MOA & PA): http://www.hud.gov/offices/cpd/environment/section106/index.cfm	Advisory Council: http://www.achp.gov Federally-recognized Indian tribes: http://www.cast.uark.edu/other/nps/nacd/ National Register database: http://www.nr.nps.gov/ National Register: http://www.cr.nps.gov/nr/index.htm Preservation staff of a CLG (Certified Local Govern't) – local contact. NPS technical info: http://www.cr.nps.gov/hps/tps/index.htm Other resource links: http://www.nal.usda.gov/ric/ricpubs/preserve.html HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/historicproperties.cfm

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
11. Noise Control Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978. 24 CFR Part 51 Subpart B "Noise Abatement and Control" (HUD)	Residential and other noise-sensitive developments (e.g., hospitals, nursing homes, etc.) Required: ▪ Acquisition for residential or noise-sensitive use ▪ Conversion of land use from non-residential to residential ▪ New construction Encouraged: ▪ Rehabilitation	Project is located within: ▪ 1,000 feet of a major/busy roadway, ▪ 3,000 feet of a railway, ▪ 15 miles of an airport (civil or military). HUD interior noise goal is 45 decibels (DNL) or lower. HUD exterior noise goal is 55 decibels (DNL) or lower, although 65 DNL is considered acceptable.	Noise assessment data sources include: local or state highway departments; local or regional planning departments; public works departments; railroad dispatch offices; and airport operators. Airport noise contour maps are shown on Airport Layout Plan (civil airport) or AICUZ Study (military airfield). Civil airports subject to HUD noise requirements are those designated in the FAA's "National Plan of Integrated Airport System" (NPIAS): http://www.faa.gov/airports/planning_capacity/npias/reports/ • Both Commercial Service (CS) and Primary (P) airports have noise contours maps available General Aviation (GA) airports with less than 9000 enplanements may be assumed to not present a community noise concern; otherwise, consult airport operator	Perform noise assessment in accordance with the Noise Assessment Guidelines (NAG) in guidebook HUD-953-CPD(1). For airports, use the airport's noise contour maps to determine noise levels (the contour lines are expressed in DNL noise levels). Projected noise levels: ▪ 65-75 DNL – "Normally Unacceptable;" requires mitigation or attenuation. ▪ >75 DNL "Unacceptable;" requires rejection. Noise barrier calculator: http://www.hud.gov/offices/cpd/environment/mitigation.cfm Noise hazard calculation (overall site DNL): Obtain necessary data and enter into the HUD online calculator tool: http://www.hud.gov/offices/cpd/environment/dnlcalculatortool.cfm Noise barrier calculator tool: http://www.hud.gov/offices/cpd/environment/mitigation.cfm	Barrier guidance (FHWA): http://www.fhwa.dot.gov/environment/keepdown.htm HUD noise guidebook: http://www.hud.gov/offices/cpd/environment/training/guidebooks/noise/

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
12. Water Quality (Sole Source Aquifers) Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq*., and 21 U.S.C. 349), particularly section 1424(e) 40 CFR Part 149 "Sole Source Aquifers" (EPA)	▪ Acquisition of undeveloped land ▪ Change of land use ▪ New construction	Project is located within area of an EPA-designated sole source aquifer, unless project utilizes municipal water and sewer and has appropriate local drainage.	Designated sole source aquifers are listed on EPA web site: http://www.epa.gov/region8/water/solesource.html	Review of project by Regional EPA Office of Ground Water is required if activity is of a type and size specified in an agreement between EPA and HUD. Project may require memorandum of understanding (MOU) with EPA describing compliance to be followed.	EPA: http://cfpub.epa.gov/safewater/sourcewater/ EPA regional source water assessment program contact: http://cfpub.epa.gov/safewater/sourcewater/sourcewater.cfm?action=Contacts EPA – TMDL maps: http://www.epa.gov/OWOW/tmdl/index.html EPA – Septic Systems: http://cfpub.epa.gov/safewater/sourcewater/sourcewater.cfm?action=Septic HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/aquifer.cfm
13. Wetland Protection E.O. 11990, "Protection of Wetlands," particularly sections 2 & 5. Draft 24 CFR Part 55 "Floodplain Management" (42 FR 26961 – 5/25//97)	▪ Acquisition of undeveloped land ▪ Change of land use ▪ New construction	Project is located within, or has impact upon, a wetland.	National Wetlands Inventory maps are listed on FWS site: http://www.fws.gov/wetlands/data/index.html NWI maps are useful as a preliminary screen. Where site inspection or other information indicates potential for a wetland, delineation of a wetland by a qualified professional should occur.	Avoid adverse impacts upon wetlands and direct or indirect support of new construction in wetlands wherever there is practicable alternative. Approval of project requires compliance with the decision-making provisions of §55.20, i.e., the "eight-step" process. Project may be approved only if there is no practicable alternative outside the wetland.	U.S. Army Corp of Engineers: http://www.usace.army.mil/CECW/Pages/reg_faq.aspx and http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx U.S. Fish and Wildlife Service: http://wetlands.fws.gov/ EPA: http://www.epa.gov/owow/wetlands/ HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/wetland.cfm

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
14. Wild & Scenic Rivers Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq*.), particularly section 7(b) & (c). 36 CFR Part 297 "Wild and Scenic Rivers" (USDA)	▪ Acquisition of undeveloped land ▪ Change of land use ▪ Major rehabilitation ▪ New construction	Project is located within one (1) mile of a designated Wild & Scenic River, or river being studied as a potential component of the Wild & Scenic River system.	Designated wild and scenic rivers are listed on the National Park Service site: http://www.rivers.gov/wildriverslist.html GIS shape files (maps) can also be downloaded from this site. Study Rivers (potential wild and scenic rivers): http://www.rivers.gov/study.html National River Inventory (NRI) listed rivers: http://www.nps.gov/ncrc/programs/rtca/nri/	Determination from the Forest Service must be obtained finding that the project will not have a direct and adverse effect on a designated river, nor invade or diminish values associated with such a river. Consultation with Forest Service is recommended to identify and eliminate direct and adverse effects.	National Park Service: http://www.nps.gov/rivers/ and http://www.nps.gov/ncrc/programs/rtca/nri/auth.html NEPA /CEQ Guidance: http://www.nps.gov/ncrc/programs/rtca/nri/hist.html Publications: http://www.rivers.gov/publications.html#guidelines HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/rivers.cfm

24 CFR Part 58.6 – Other Requirements

1. Airport Clear Zones 24 CFR Part 51 Subpart D "Siting of HUD-Assisted Projects in Clear Zones and Accident Potential Zones" (HUD)	▪ Purchase or sale of property	Project is located within 2,500 feet of the end of a civil airport runway or 15,000 feet of the end of a military airfield runway.	Airport clear zone maps available from airport operations authority.	Purchase or sale of a property in a CZ requires notification to buyer per 24 CFR Part 58.6(d). The notice informs the prospective buyer of potential hazards from airplane accidents and the potential by airport or airfield operators who may wish to purchase the property at some point in the future.	Contact airport operator or nearest FAA District office. Sample notice and HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/airport.cfm

Environmental Issue/Impact (Statute, Authority &/or Regulation)	**Applicable Activities**	**Threshold for Action** (Analysis/Evaluation/ Consultation)	**Source Documentation** (Map/On-line Listing/ Agency Contacts)	**Action Required**	**Further Information**
2. Coastal Barriers Coastal Barrier Resources Act, as amended (16 U.S.C. 3501)	▪ All activities having a physical impact	Project is located in a community listed in the Coastal Barrier Resources System (CBRS). **MT is not located with CBRA areas and the CBRA requirements are not applicable.**	Coastal barriers also displayed on FEMA Flood Insurance Rate Maps (FIRM).	Federal funding is prohibited for projects located within a designated coastal barrier.	FEMA: http://www.fema.gov/pdf/nfip/manual200505/18cbrs.pdf HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/coastal.cfm
3. Flood Insurance Federal Disaster Protection Act of 1973, as amended. National Flood Insurance Reform Act of 1994 (42 U.S.C. sec 4001f) 44 CFR Parts 59-77 "Regulations of the National Flood Insurance Program" (FEMA)	All HUD programs that provide assistance to buildings. Exceptions: ▪ Leasing without rehab, acquisition or improvements ▪ Loans < $5,000 repaid within 1 year ▪ Maintenance ▪ State-administered formula grants (i.e., CDBG, HOME & ESG programs) Inapplicable: ▪ Improvements or repairs costing less than the deductible of a standard flood insurance policy on a building (current FEMA deductible is $500).	Project is located within Special Flood Hazard Area (SFHA is the 100-year floodplain).	FEMA Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM). FIRMETTE maps, which cover small areas (approx. 1 sq. mile), can be obtained at no charge on-line: http://www.store.msc.fema.gov	Property owner must purchase and maintain flood insurance protection. Coverage is limited to the building and improvements only. No coverage is available for land. Coverage requirements: ▪ Grants – Life of building, regardless of transfer of ownership, and for total project cost (up to maximum coverage limit). ▪ Loans – Term of loan and for amount of loan (up to maximum limit).	FEMA "Mandatory Purchase of Flood Insurance" Guidelines: http://www.fema.gov/business/nfip/ Nat'l Flood Insurance Program (NFIP): http://www.fema.gov/business/nfip/index.shtm and FEMA "FloodSmart": http://www.floodsmart.gov/floodsmart/pages/index.jsp Community status of participation in National Flood Insurance Program: www.fema.gov/fema/csb.shtm HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/floodinsurance.cfm http://www.hud.gov/offices/cpd/environment/review/qa/floodplainmgmt.cfm

EXHIBIT 2-D

EIGHT-STEP DECISION-MAKING PROCESS

Note: Be sure to maintain documentation of each step and include it in the Environmental Review Record (ERR)

STEP 1. **Determine whether the proposed action is located in a floodplain and/or wetland.**

For information on floodplains or insurance, contact:

Floodplain Management Section
Montana Department of Natural Resources and Conservation
48 N. Last Chance Gulch
State of Montana
Helena, Montana 59620-1601
Phone Number: 444-6654

STEP 2. **Notify and involve the public at the earliest possible time of a proposal to consider an action in a floodplain and/or wetland.**

Refer to **Exhibit 2-F,** Early Public Notice for (Floodplains and/or Wetlands), regarding the public comment period and public hearing to discuss the proposed project.

STEP 3. **Identify and evaluate practicable alternatives to locating the proposed action in a floodplain and/or wetland.**

STEP 4. **Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain and/or wetland.**

STEP 5. **Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain and/or wetland, and to restore and preserve its natural and beneficial values.**

STEP 6. **Reevaluate the proposed action to determine:**

a) Whether it is still practicable in light of its exposure to flood hazards in the floodplain and/or wetland, the extent to which it will aggravate the current hazards to other floodplains and/or wetlands, and its potential to disrupt floodplain and/or wetland values; and

b) Whether alternatives preliminarily rejected at Step 3 of this section are practicable in light of the information gained in Steps 4 and 5 of this section.

STEP 7. **If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain and/or wetland, publish a final notice**

Refer to **Exhibit 2-G**, Notice of Explanation for Floodplains and/or Wetlands, regarding public comment period.

STEP 8. **Upon completion of the decision making process in Steps 1 through 7, implement the proposed action.**

EXHIBIT 2-E

DOCUMENTATION OF EIGHT-STEP DECISION MAKING PROCESS

The following form is for CDBG recipients to document compliance with the eight-step decision making process outlined in **Exhibit 2-D** required for projects located in or affecting a floodplain. Grant recipients must provide narrative specific to the steps outlined below (attach and reference additional narrative, maps, or studies, as appropriate):

1. DETERMINE IF PROPOSED ACTION IS LOCATED IN OR AFFECTS A FLOODPLAIN.

   Describe how determination was made that the proposed CDBG project is located in or affects a floodplain.

2. INVOLVE PUBLIC IN DECISION-MAKING PROCESS.

   Describe steps taken to involve the public and solicit responses. Attach proof of publication of **Exhibit 2-F**, Early Public Notice.

3. DETERMINE IF THERE IS A PRACTICABLE ALTERNATIVE.

   For purposes of the eight-step process, “practicable” is defined as capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost, or technology. In some cases relocation of the proposed project away from a floodplain to another site may be the practicable and best alternative.

4. IDENTIFY IMPACTS.

   Assess the direct and indirect impact of the proposed project in regards to the floodplain. For example, it might be found that locating a certain project within the floodplain might create a hazard to life or property, or as an alternative, locating some projects within the floodplain might increase the possibility of water pollution from wastes, such as may be the case with a sewage treatment plant located in the floodplain.

5. MITIGATE ADVERSE IMPACTS.

   Determine how projected impacts can be adjusted by altering the project or using alternative construction methods to minimize impacts. If applicable, determine how the public could be protected from hazards or potential hazards.

6. REEVALUATE ALTERNATIVES.

After completing an evaluation of the proposed action, including evaluation of practicable alternatives and possible, adverse impacts, determine whether it is necessary in light of the further review concluded, to reevaluate the original alternatives considered. At this point a recommendation can be made to proceed with the proposed action, an alternate action, a limitation of the proposed project or alternate action, or take no action.

7. ANNOUNCE AND EXPLAIN DECISION TO THE PUBLIC.

Attach **Exhibit 2-G**, Notice of Explanation for Floodplains and/or Wetlands. Attach proof of publication, such as affidavit of publication or copy of newspaper notice containing date of publication and title of newspaper. At this stage, the public is formally informed of the determination as to the impact of the proposed project, any mitigation proposed, and whether there are any practicable alternatives to the proposed activity.

8. IMPLEMENT ACTION WITH APPROPRIATE MITIGATION.

Describe proposed steps to implement the project, including appropriate mitigation. Deviations from the proposed plan of action that would involve significant changes from the circumstances presented to the public as part of the Early Public Notice and Notice of Explanation should not be undertaken without repeating the eight-step process. Where appropriate, the CDBG grant recipient should also provide assurance that some agency will be responsible for the proper operation, maintenance, and replacement of the proposed project features either located in or affecting the floodplain.

EXHIBIT 2-F

EARLY PUBLIC NOTICE FOR FLOODPLAINS AND/OR WETLANDS

Date of Publication of Notice

The *(name of grantee: City, Town or County of _____)*, Montana, is considering a *(describe proposed project, proposed location and the total number of acres or square footage of floodplain involved for example: housing rehabilitation program for residences along Second Avenue between Main Street and Broadway Street, totaling 1.5 acres of floodplain involved)* as a CDBG project under the Montana CDBG program. The project is located in the 100 year floodplain and/or wetland. The *(City, Town or County)* is interested in discussing alternatives to this project and receiving public comment regarding possible adverse impacts that could result from the project and suggestions for how to mitigate them. A public hearing is scheduled at *(time)* on *(date)* at *(location)* to discuss the proposed project. Please attend or send written comments to: *(name of Environmental Certifying Officer and mailing address).* Comments will be received until *(date, a minimum of 15 calendar days shall be allowed for comment on the public notice).* A full description of the proposed action may be reviewed at *(Name of Public Office, such as City Hall or Planning Department, address, phone number and the hours of operation).*

*(Name)*_____

Environmental Certifying Officer

COMMENT: After a minimum of 15 days following the publication of the Early Public Notice, a Notice of Explanation (**Exhibit 2-G**) must be published, allowing a minimum of 7 calendar days for public comment. Proof of publication must be submitted to DOC.

EXHIBIT 2-G

NOTICE OF EXPLANATION FOR FLOODPLAINS AND/OR WETLANDS

Date of Publication of Notice[1]

The (*Name of Grantee: City, Town or County*) of _____, Montana intends to undertake a project located in the100-year floodplain and/or wetland. The project involves (*describe the proposed **project and reasons why the proposal must be located in the floodplain**. For example: housing rehabilitation and floodproofing of residences along Second Avenue between Main Street and Broadway Street. This program will provide improved housing conditions for 25 low and moderate income families. Proposed housing improvements cannot be undertaken in any other location because relocation costs would exceed available program resources. Failure to provide the rehabilitation and flood proofing assistance would result in the continued unsafe and unhealthy living conditions for the 25 families.)*

It is the *(City's, Town's or County's)* judgement that the proposed improvements outweigh consideration of Executive Order _____.[2] **[Note: At this point grantees must add proper justification for this finding, such as providing mitigation through floodplain insurance, conformance with adopted floodplain regulations, or structural flood proofing. Also provide a short statement explaining the ramifications of *any/all* practical alternatives considered, but not selected; *and all mitigation measures that are to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.*]** A more detailed description of the project and the FEMA flood maps are available for citizen review at *(Name of Public Office, such as City Hall or Planning Department, name of City or Town),* Montana. Comments will be received until *(date, a minimum of 7 calendar days shall be allowed for comment on the public notice).*

(Name)
Environmental Certifying Officer
Complete Mailing Address

[1] Publish a minimum of 15 days following publication of Early Public Notice (Exhibit 2-F). A minimum of 7 calendar days shall be allowed for public comment. Proof of publication must be submitted to DOC.

[2] For a situation involving floodplains, enter Number 11988.
For a situation involving wetlands, enter Number 11990.

EXHIBIT 2-H

HISTORIC PRESERVATION REVIEW PROCESS

KEY DEFINITIONS USED IN THE SECTION 106 PROCESS

Key definitions related to historic preservation requirements and the Section 106 process are listed below:

Area of Potential Effects: the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

Historic Property: any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

National Register: the National Register of Historic Places maintained by the Secretary of the Interior.

National Register Criteria: the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register.

State Historic Preservation Officer (SHPO): the official appointed or designated to administer the State Historic Preservation Program.

Undertaking: any project, activity, or program that can result in changes in the character or use of historic properties, if any such properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. "Undertakings" include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.

THE SECTION 106 PROCESS

The following procedures outline the Section 106 process that Community Development Block Grant (CDBG) recipients must follow. All of the following steps apply equally to archaeological sites as well as to historic properties.

First: Determine if the Project is an "Undertaking" Under Section 106

It is the responsibility of the CDBG recipient, in consultation with SHPO, to determine whether or not a proposed CDBG activity constitutes an "undertaking" according to the definition noted above. For instance, in some cases, such as an economic development project involving CDBG financial assistance to a business that will result in no physical change or disturbance, the CDBG project would not constitute an "undertaking." In these cases, along with the documentation noted below, the Section 106 process would be completed. The CDBG Program Officer assigned to your project should also be consulted prior to making the determination. SHPO can be contacted at the following address:

State Historic Preservation Office
1410 Eighth Avenue
P.O. Box October 201302
Helena, MT 59620-1202

Telephone: 444-7715

Required Documentation - Documentation would only be required in the case of a determination that a project did not constitute an "undertaking" under Section 106. A letter to your CDBG Program Officer signed by the Environmental Certifying Official stating the determination and a letter of concurrence signed by SHPO are required.

Second: Establish Area of Potential Effects

Assuming a proposed CDBG project does constitute an "undertaking," grantees must consider and propose the undertaking's "area of potential effects" according to the definition noted above. The "area of potential effects" should be delineated on maps in a preliminary fashion according to the best judgment of the grantee. Later, at the next level, it may be necessary to adjust the "area of potential effects" after consulting with SHPO.

Third: Identify Historic Properties or Archaeological Sites within the Area of Potential Effects

Assuming that an undertaking and area of potential effects has been established, the grantee must review any existing information on historic properties or archaeological sites potentially affected by the undertaking, including any information concerning the likelihood that unidentified historic properties or archaeological sites may exist in the area of potential effects.

It is necessary to formally request the views of the Montana SHPO regarding further actions to identify historic properties that may be affected by completing Exhibit 2-I and providing the required information and attachments.

It is also the responsibility of the grantee to seek information locally on potential historic properties or archeological sites and potential effects of the CDBG project by contacting local organizations and individuals with knowledge of historic properties, including any local historical societies and Indian tribes.

By contacting SHPO, local individuals, and organizations or groups familiar with local historic properties or archaeological sites, the recipient will be able to determine whether there is a need for further actions, such as field surveys. If the need for a special study or survey is indicated, your CDBG Program Specialist should be contacted immediately for further guidance.

Comment: The Region VIII office of the U.S. Department of Housing and Urban Development (HUD) discourages the use of CDBG funds for archaeological field surveys unless there is documented empirical evidence that significant archaeological resources have been identified within 1000 feet of the site of the proposed CDBG project or disturbance.

Fourth: Locate Any Historic Properties

The grantee, in consultation with SHPO, must make reasonable efforts to identify any historic properties or archaeological sites that may be affected by the undertaking and gather sufficient information to assist SHPO to evaluate the eligibility of these properties for the National Register [36 CFR Part 800.4 (b)].

Fifth: Evaluating Historical Significance

The grantee must assist SHPO to perform an evaluation of eligibility of historic properties for the National Register of properties that may be affected by the undertaking and that have not been previously evaluated for eligibility. If the grantee does not agree with SHPO as to the eligibility of particular historic properties or archaeological sites for the National Register, the grantee has the right to request a determination of eligibility from the Keeper of the National Register [36 CFR Part 800].

Sixth: When No Historic Properties are Found

In the event that SHPO and the grantee agree that no historic properties or archaeological sites exist that may be affected by the undertaking, written determination of this finding must be obtained from SHPO. In such cases, SHPO will issue a finding that the proposed activity does not pose a threat to significant cultural resources and that no further cultural resource review appears warranted for the proposed undertaking. The grantee should also notify interested persons and organizations of this determination and make the documentation leading to the decision available to the public. In these circumstances, the grantee is not required to take further steps in the Section 106 process [36 CFR part 800.4 (d)].

Seventh: Assess Effects

Grantees will progress to this stage if historic properties or archaeological sites exist that have been identified according to the preceding process and that may be affected by the undertaking. Where such properties or sites exist, it is necessary for the grantee to assess the effect of the CDBG project on these properties, in coordination with SHPO, and make one of the following three determinations of effect:

< **Option #1: Finding of No Effect;**

< **Option #2: An Effect is Found, but Effect is Not Adverse; or**

< **Option #3: An Effect is Found and Effect is Adverse.**

Under Section 106, the criteria for determining an "effect" and "adverse effect" are as follows [36 CFR Part 800.9]:

Criteria of Effect: An “undertaking” has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

Criteria of Adverse Effect: An “undertaking” is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, or association. Adverse effects may include outright physical destruction, damage, or alteration of all or part of the property, change in character or setting, or addition of inappropriate elements such as noise.

Option #1 - Finding of No Effect

In consultation with SHPO, the grantee may make a finding of "no effect." When the grantee concludes the undertaking will have no effect on historic properties or archaeological sites, the grantee shall notify SHPO by letter as well as any interested local historic preservation organization or individuals. Unless SHPO objects within 15 days of receiving such notice, the grantee is not required to take any further steps in the Section 106 process.

Required Documentation - A letter to your CDBG Program Officer, signed by the Environmental Certifying Official, stating the finding of "no effect" and a letter of concurrence signed by SHPO are required, along with the following materials:

1. A description of the undertaking including photographs, maps, and drawings, as necessary;

2. A description of the efforts used to identify historic properties or archaeological sites;

3. A statement of how and why the finding of "no effect" was found applicable; and

4. The views of SHPO, affected local governments, Indian tribes, Federal or state agencies, and the public, if any were provided, as well as a description of the means employed to gather those views.

Option #2 - An Effect is Found but Effect is Not Adverse

When a grantee finds, in consultation with SHPO, that the project or "undertaking" would have an effect on a historic property or archaeological site according to the "criteria of effect" noted above, the grantee must next decide if that effect is **adverse** or **not adverse**. This is done by the grantee applying the "criteria of adverse effect" noted above. If the grantee finds the effect is "not adverse," the recipient must obtain SHPO concurrence (in writing) with this determination and notify and submit to the Advisory Council on Historic Preservation summary information documenting the reasons for the finding. (See below for address of the Advisory Council.)

If the Advisory Council does not object to the finding of "no adverse effect" within 30 days of receipt of the notice, or if the Council objects but proposes changes that the grantee accepts, the Section 106 process is ended at this point. If the Advisory Council objects to the finding or the grantee does not agree with the changes proposed by the Council, the effect shall be considered adverse.

Required Documentation - For a finding of "no adverse effect," the following documentation must be maintained in the grantee's Environmental Review Record file:

1. A description of the undertaking including photographs, maps, and drawings, as necessary;

2. A description of the historic properties that may be affected by the undertaking;

3. A description of the efforts used to identify historic properties or archaeological sites;

4. A statement of how and why the criteria of "adverse effect" were found inapplicable; and

5. The views of SHPO, affected local governments, Indian tribes, Federal or state agencies, and the public, if any were provided, as well as a description of the means employed to gather those views.

Option #3 - An Effect is Found and Effect is Adverse

When an adverse effect on historic properties or archaeological sites is found, the grantee must notify the Advisory Council and consult with SHPO on ways to avoid or reduce the effects. The Council may participate in the consultation process. Interested individuals or public or private organizations should be informed through normal local public involvement procedures. The grantee can meet with interested members of the public or conduct a public information meeting for this purpose.

If the grantee and SHPO agree upon how the effects will be taken into account, they will execute a Memorandum of Agreement. The Council may choose to participate in this agreement. The SHPO should be consulted further as to developing the particular language of the Memorandum.

Required Documentation - For a finding of "no adverse effect," the following documentation must be maintained in the grantee's Environmental Review Record file:

1. A description of the undertaking including photographs, maps, and drawings, as necessary;

2. A description of the efforts used to identify historic properties or archaeological sites;

3. A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate;

4. A description of the undertaking's affects on historic properties;

5. A description and evaluation of any alternative or mitigation measures proposed;

6. A description of any alternative or mitigation measures that were considered but not chosen and the reasons for their rejection; and

7. A description of the grantee's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons.

HOW TO NOTIFY THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

The address for the Advisory Council on Historic Preservation is:

Advisory Council on Historic Preservation
Suite 401
730 Simms Street
Golden, CO 80401

PROGRAMMATIC AGREEMENTS

In the case of complicated CDBG projects where numerous, repeated historic reviews would have to be initiated (such as a housing rehabilitation project.) SHPO recommends that grantees execute a "programmatic agreement" with SHPO and the Advisory Council describing how the process of identification of possible historic properties and determination of effect will be administered for all individual project activities. Execution of a programmatic agreement can expedite the review of numerous properties. For example, a programmatic agreement may be desirable for a grantee administering a housing rehabilitation project that may involve individual historic reviews for dozens of residences proposed for rehabilitation. Grantees who believe that this type of arrangement may assist in the completion of their CDBG projects should contact their CDBG Program Officer for further guidance.

EXHIBIT 2-I

NOTICE TO STATE HISTORIC PRESERVATION OFFICE

(Date)

State Historic Preservation Office
Montana Historical Society
1410 Eighth Avenue
Helena, Montana 59620

Re: Consultation under 36 CFR Part 800 Community Development Block Grant Program

Dear _____:

The (name of Grantee) has approval for a Montana Community Development Block Grant (CDBG) of (*amount*) from the Montana Department of Commerce. This grant will involve *(include description of project, for example: replacing water lines, or providing housing rehabilitation grant assistance to low/moderate income families in 25 owner-occupied, single-family houses. The target area is Second Avenue between Main and Broadway Streets.)*

We request that you review the enclosed data and notify us either of (1) any sites, structures, or districts already listed in or determined eligible for listing in the National Register of Historic Places which could be affected by the proposed project or (2) your recommendations regarding the need for archeological or historical and architectural inventory of the project area. We understand that the effects of the proposed undertaking on properties listed in or determined to be eligible for listing in the National Register (already determined or determined as a result of inventory) will be discussed with you and the Advisory Council on Historic Preservation later.

(Please use this portion of the letter to describe the land and structures within the project area. For projects affecting tracts without structures, what has been the previous land use, has it been farmed, has it been an industrial park, are sewer and water lines already constructed through it, is it an improved roadway, etc.? For projects affecting standing structures, what are the general dates or the dates of buildings throughout the neighborhood or subdivision, what patterns of modifications have occurred to the buildings, etc.?) I am enclosing the following materials (aerials, maps, photos, etc.) that will give you a better understanding of the area and resources that will be affected.

If we do not receive a reply within 30 days, we will assume that you know of no properties or sites which are included in or eligible for inclusion in the National Register, which may be affected by the proposed undertaking. Also, if we do not identify any cultural property during

our review process, we will proceed with the project assuming that cultural resources have been adequately addressed.

Sincerely,

_____

Signature and Typed Name of
Environmental Certifying Officer
Mailing Address
Telephone Number

NOTE: Please enclose maps, legal description, and pertinent photographs.

EXHIBIT 2-J

FINDING OF CATEGORICAL EXCLUSION

(Sample - Complete on Local Government Letterhead)

(Date)

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

Dear *(Name of CDBG liaison):*

It is the finding of the *(Name of Grantee: City, Town or County of)*, Montana, that the following activities approved for funding under the Montana CDBG program are defined as categorically excluded under 24 Part 58.35 of the Environmental Review Procedures for Title I Community Development Block Grant Programs, and that these activities are in compliance with the environmental requirements of related federal authorities. The activities and the statutory authority for exclusion are listed below:

List applicable activities, descriptions, and authority. **For example:**

1. *Second Street Improvements -- Paving of previously graveled road.*

   Authority -- Section 58.35(a)(1)(ii): improvements replace or upgrade existing facilities.

2. *Local Residential Rehabilitation Grant Program -- Rehabilitation of 20 owner-occupied, single-family homes.*

   Authority -- Section 58.35(a)(4): Rehabilitation and improvements within the specified guidelines.

Compliance with the environmental requirements of other federal authorities is indicated on the attached Statutory Checklist.

Sincerely,

_____
Signature of Environmental Certifying
Official or Chief Elected Official

EXHIBIT 2-K

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS (NOI/RROF)

Date of Publication of Notice

*Name of Grantee: City, Town or County of*_____
Mailing Address
City, Montana Zip

Telephone Number of Grantee

TO ALL INTERESTED AGENCIES, GROUPS AND PERSONS:

On or before *(date[1]),* the above-named *(City, Town or County)* will request the Montana Department of Commerce to release funds under Title I of the Housing and Community Development Act of 1974, as amended, (PL93-383) for the following project:

PROJECT, TITLE OR NAME: *(For Example: Second Avenue Housing Rehabilitation Program.)*

PURPOSE OR NATURE OF PROJECT: *(For Example: Rehabilitation of 25 owner-occupied, single-family homes.)*

LOCATION (CITY, COUNTY, STATE): *(For Example: Second Avenue between Broadway Street and Main Street, City, County, Montana.)*

ESTIMATED COST OF PROJECT:

An Environmental Review Record documenting review of all project activities in respect to impacts on the environment has been made by the above-named *(City, Town, or County).* This Environmental Review Record is on file at the above address and is available for public examination or copying, upon request.

The *(City, Town, or County of _____)* will undertake the project described above with Community Development Block Grant funds provided by the Montana Department of Commerce, under Title I of the Housing and Community Development Act of 1974, as amended. The *(City, Town, or County of _____)* is certifying to the Department of Commerce that the *(City, Town or County of _____)* and *(Mayor _____ or Commissioner _____)*, in his or her official capacity as *(Mayor or Chairperson of the County Commission),* consent to accept the jurisdiction of the federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making, and action; and that these responsibilities have been satisfied. The legal effect on the certification is that upon its approval, the *(City, Town, or County*) may use the CDBG funds, and the Department of Commerce will have satisfied its responsibilities under the National Environmental Policy Act of 1969 as delegated to the State of Montana through the 1981 Amendments to the Housing and Community Development Act.

The Department of Commerce will accept an objection to its approval of the release of funds and acceptance of the certification only if it is on one of the following bases:

---

[1] This date must be a minimum of 7 days **following** the Date of Publication or 10 days following the posting of this notice .

(a) that the certification was not in fact executed by the chief executive officer or other officer approved by the Department of Commerce;

(b) that the applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process;

(c) the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by DOC; or

(d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental design.

Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and may be addressed to the CDBG Program, Department of Commerce, Community Development Division, P.O. Box 200523, 301 S. Park Avenue, Helena, Montana 59620.

Objections to the release of funds on bases other than those stated above will not be considered by the Department of Commerce. No objection received after *(Date*[2]) will be considered by the Department of Commerce.

Name of Mayor or Commissioner

City or Town Hall or County Courthouse

_____, *Montana Zip Code*

Name and Address of Chief Elected Official or Environmental Certifying Officer

[2] This date must be a minimum of 15 days **following** the anticipated date that the grantee will request release of funds from the Department of Commerce as provided for in Paragraph One of this Notice. It is advisable to allow 18 or 19 days to allow several days for mailing time. Proof of publication is required.

EXHIBIT 2-L

MONTANA DEPARTMENT OF COMMERCE

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

REQUEST FOR RELEASE OF FUNDS (RROF)
(Pursuant to Section 104(h) of Title I of the Housing and Community Development Act of 1974 as Amended)

ENVIRONMENTAL FINDING OF CATEGORICAL EXCLUSION

1. NAME OF GRANTEE	2. GRANT NUMBER
3. ADDRESS (Include Street, City, State, ZIP Code)	4. REQUEST DATE

5. REQUEST FOR RELEASE OF FUNDS. Release of approved grant funds for the following project is requested.

PROJECT **GRANTEE** (If Other than applicant)

6. CERTIFICATION. With reference to the above project, I the undersigned officer of the applicant, certify:

That the applicant has at least seven (7) days prior to submitting this request for release of funds and certification, published and disseminated, in the manner prescribed by 24 CFR 58.45 a notice to the public (a copy of which is attached) in accordance with 24 CFR 58.70):

That the applicant has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named above; that the applicant has complied with the National Environmental Policy Act of 1969; that the applicant has complied with environmental procedures, permit requirements and the statutory obligations of the laws cited in 25 CFR 58.5; and that the applicant has taken into account the environmental criteria, standards, permit requirements and other obligations applicable to the project under the other related laws and authorities cited in 24 CFR 58.5;

That the level of environmental clearance carried out by the applicant in conjunction with this project ( ) did ( ) did not require the preparation and dissemination of an environmental impact statement;

That the dates upon which all statutory and regulatory time periods for review, comment, or other response or action in regard to this clearance began and ended as indicated below; applicant is in compliance with the requirements of 24 CFR Part 58;

ITEM	COMMENCE	EXPIRE
	MO/DAY/YR	MO/DAY/YR
7-day Notice of Intent to Request Release of Funds: Publication		
15-day DOC Decision Period		
Other (Specify)		

That I am authorized to, and do, consent to assume the status of responsible federal officer under the National Environmental Policy Act of 1969 and each provision of the law specified in 24 CFR 58.5 insofar as the provisions of these laws apply to state and federal responsibilities for environmental review, decisionmaking and action assumed and carried out by the applicant; that by so consenting, I assume the responsibilities, where applicable, for the conduct of environmental review, decisionmaking, and action as to environmental issues, preparation and circulation of draft, final and supplemental environmental impact statements, and assumption of lead agency or cooperating agency responsibilities for preparation of such statements on behalf of State and Federal agencies, when these agencies consent to such assumption. That I am authorized to consent to, and do, accept on behalf of the applicant and personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my official capacity as certifying officer of the applicant.

_____ _____

Date

_____

(Signature, Title and Address of Certifying Officer or Chief Elected Official)

WARNING -- Section 1001 of Title 18 of the United States Code and Criminal Procedures shall apply to this certification. Title 18 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter with the jurisdiction of any department or agency of the united States, shall be fined not more than $10,000 or imprisoned not more that five years or both.

EXHIBIT 2-M

MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

CONSOLIDATED ENVIRONMENTAL ASSESSMENT FORM

INTRODUCTION

The following form is for the use of Community Development Block Grant (CDBG) recipients who must prepare an Environmental Assessment (EA) as required by HUD Environmental Review procedures for the CDBG program (24 CFR 58.36). Satisfactory completion of this form will meet the requirements of the federal Housing and Community Development Act as well as the national Environmental Policy Act (NEPA).

CDBG recipients must also demonstrate compliance with the environmental requirements of the other related federal environmental laws and regulations listed in the HUD Statutory Checklist (24 CFR 58.5). For this reason, the Statutory Checklist requirements have been combined into this single consolidated form. An index of the applicable federal statutes and regulations is found at the end of this form. Where noted, the numbers that appear to the right of the environmental subject areas listed in the checklist correspond to the listing of statutes found in the index.

The requirements of the Montana Environmental Policy Act (MEPA) and the uniform State administrative rules adopted pursuant to the Act have also been integrated into the consolidated form.

PROJECT IDENTIFICATION

Recipient:

(City, Town, or County)

Chief Elected Official:

Environmental Certifying Officer:

CDBG Contract #:

Project Name:

(Example: Lonesome Dove Water Distribution System)

Person Preparing this Environmental Assessment:

Phone Number:

Instructions for Completing this Form

The following instructions should be presented and evaluated in a level of detail which is appropriate to the following considerations:

(a) the complexity of the proposed action;

(b) the environmental sensitivity of the area affected by the proposed action;

(c) the degree of uncertainty that the proposed action will have a significant impact on the quality of the human environment;

(d) the need for and complexity of mitigation required to avoid significant environmental impacts.

In all cases, the CDBG grant recipient should reference and attach additional narrative providing the specific information requested or documentation supporting the evaluation of the impact of the proposed project or activity as it relates to each environmental subject area. The narrative should also note, where applicable, the source of the evaluation, including date of contact, page reference to pertinent source documents, and the name and title or persons contacted, along with the name of the specific organization or agency.

Environmental information and assistance in preparing an environmental assessment can be obtained from a wide variety of sources. Possible sources of information include existing plans and studies, knowledgeable local residents and officials such as the county sanitarian, city or county planning board or department, local officials with the U.S. Soil and Conservation Service (SCS) or local conservation district, as well as local representatives of the State Fish, Wildlife & Parks Department, to list just a few examples. Grant recipients may also contact the State and federal agencies listed in **Exhibit 2-O** for information and assistance.

The Department of Commerce Community Development Bureau maintains copies of environmental assessments prepared on previous projects that may be useful to grant recipients, as well as full copies of applicable federal and State environmental statutes and related information. Copies of the HUD publication, *Environmental Review Guide for Community Development Block Grant (CDBG) Programs*, can be requested form the CDBG program specialist assigned to your project.

EVALUATION OF ENVIRONMENTAL IMPACT

Provide the information requested below and attach additional narrative as appropriate.

1. Describe the proposed action or activity, including construction and end-product (attach maps and graphics as necessary).

2. Describe the project site and surrounding area(s), including existing site use and environmental conditions (attach map as applicable).

3. Describe the benefits and purpose of the proposed action.

4. Describe all sources of project funding:

5. Describe any project plans or studies which are relevant to the project.

6. Proposed implementation schedule.

7. Compliance with any applicable local plans, ordinances, or regulations.

	Project is in Compliance		
	Yes	No	Not Applicable
Local Comprehensive (Growth Management) Plans including housing, land use and public facilities elements	□	□	□
Local zoning ordinances or land use regulations, such as permit systems or soil conservation district requirements	□	□	□

8. Evaluation of impact, including cumulative and secondary impacts, on the **Physical Environment:**

Please complete the following checklist. Attach narrative containing more detailed analysis of topics and impacts that are potentially significant.

Key Letter: **N** - No Impact/Not Applicable; **B** - Potentially Beneficial; **A** - Potentially Adverse; **P** - Approval/ Permits Required; **M** - Mitigation Required

KEY	**Impact Categories--** **PHYSICAL ENVIRONMENT**	**Source of Documentation** **Note date of each contact or page reference. Attach additional material as applicable. Where appropriate, please fully explain in attached materials.**
_____	Soil Suitability, Topographic and/or Geologic Constraints	
	HUD Environmental Criteria--24 CFR Part 51:	
_____	51(b) Noise--Suitable Separation Between Housing & Other Noise Sensitive Activities & Major Noise Sources (Aircraft, Highways & Railroads)[8] *	
_____	51(c) Hazardous Facilities--Acceptable Separation Distance from Explosive and Flammable Hazards (Chemical/ Petrochemical Storage Tanks & Facilities--ex., Natural Gas Storage Facilities & Propane Storage Tanks)[7] *	
_____	51(d) Airport Runway Clear Zones--Avoidance of Incompatible Land Use in Airport Runway Clear Zones[7*]	
_____	EPA Hazardous Waste Sites, or Other Hazards or Nuisances Not Covered Above	
_____	Lead-based Paint[13]	
_____	Asbestos[14]	
_____	Effects of Project on Surrounding Air Quality or Any Effects of Existing Air Quality on Project[1] *	
_____	Groundwater Resources & Aquifer[a] [10] *	
_____	Surface Water/Water Quality, Quantity & Distribution [10.*]	
_____	Floodplains & Floodplain Management[5] *	

*See index at end of form.

[a]Including Sole Source Aquifer. Contact DOC for further information regarding Missoula-area projects.

Key Letter: **N** - No Impact/Not Applicable; **B** - Potentially Beneficial; **A** - Potentially Adverse; **P** - Approval/ Permits Required; **M** - Mitigation Required

KEY	**Impact Categories--** **PHYSICAL ENVIRONMENT**	**Source of Documentation** **Note date of each contact or page reference. Attach additional material as applicable. Where appropriate, please fully explain in attached materials.**
_____	Wetlands Protection[11] *	
_____	Agricultural Lands, Production, & Farmland Protection[3] *	
_____	Vegetation & Wildlife Species & Habitats, Including Fish[4] *	
_____	Unique, Endangered, Fragile, or Limited Environmental Resources, Including Endangered Species[2] *	
_____	Unique Natural Features	
_____	Access to and Quality of Recreational & Wilderness Activities, and Public Lands, Including Federally Designated Wild & Scenic Rivers[12] *	

9. Evaluation of impact, including cumulative and secondary impacts, on the **Human Population** in the area to be affected by the proposed action:

Please complete the following checklist. Attach narrative containing more detailed analysis of topics and impacts that are potentially significant.

Key Letter: N - No Impact/Not Applicable; **B** - Potentially Beneficial; **A** - Potentially Adverse; **P** - Approval/Permits Required; **M** - Mitigation Required

KEY	**Impact Categories--** **HUMAN POPULATION**	**Source of Documentation** **Note date of each contact or page reference. Attach additional material as applicable. Where appropriate, please fully explain in attached materials.**

Key Letter: N - No Impact/Not Applicable; **B** - Potentially Beneficial; **A** - Potentially Adverse; **P** - Approval/Permits Required; **M** - Mitigation Required

KEY	**Impact Categories--** **HUMAN POPULATION**	**Source of Documentation** **Note date of each contact or page reference. Attach additional material as applicable. Where appropriate, please fully explain in attached materials.**
_____	Visual Quality--Coherence, Diversity, Compatible Use, and Scale Aesthetics	
_____	Historic Properties, Cultural, and Archaeological Resources[6] *	
_____	Changes in Demographic (Population) Characteristics	
_____	Environmental Justice[13] *	
_____	General Housing Conditions--Quality & Quantity	
_____	Displacement or Relocating of Businesses or Residents	
_____	Human Health	
_____	Local Employment & Income Patterns--Quantity and Distribution of Employment	
_____	Local and State Tax Base & Revenues	
_____	Educational Facilities	
_____	Commercial and Industrial Facilities, Production & Activity	
_____	Health Care	

Key Letter: N - No Impact/Not Applicable; **B** - Potentially Beneficial; **A** - Potentially Adverse; **P** - Approval/Permits Required; **M** - Mitigation Required

KEY	**Impact Categories--** **HUMAN POPULATION**	**Source of Documentation** **Note date of each contact or page reference. Attach additional material as applicable. Where appropriate, please fully explain in attached materials.**
_____	Social Services	
_____	Social Structures & Mores (Standards of Social Conduct/Social Conventions)	
_____	Land Use Compatibility	
_____	Energy Consumption	
_____	Solid Waste Disposal[9] *	
_____	Waste Water--Sewage System	
_____	Storm Water	
	Community Water Supply	
_____ _____	Public Safety: Police	
_____	Fire	
_____	Emergency Medical	
_____	Parks, Playgrounds, & Open Space	
_____	Cultural Facilities, Cultural Uniqueness, &	

Key Letter: N - No Impact/Not Applicable; **B** - Potentially Beneficial; **A** - Potentially Adverse; **P** - Approval/Permits Required; **M** - Mitigation Required

KEY	Impact Categories-- HUMAN POPULATION	Source of Documentation **Note date of each contact or page reference. Attach additional material as applicable. Where appropriate, please fully explain in attached materials.**
_____	Diversity	
_____	Transportation--Air, Rail & Auto (Including Local Traffic)	
_____	Consistency with Other State Statutes or Local Ordinances, Resolutions, or Plans (*to be added by local community)*	

10. Describe and analyze reasonable alternatives to the proposed activity whenever alternatives are reasonably available and prudent to consider, and discuss how the alternatives could be implemented, if applicable.

11. Where applicable, list and evaluate mitigation actions, stipulations, and other controls which will be enforced by the local government or another governmental agency.

12. Is the proposed project in compliance with all applicable Federal, State, and local laws and regulations?

□ Yes □ No

LEVEL OF CLEARANCE FINDING:

Based on the foregoing environmental review, it is concluded that:

[ ] FINDING: A request to the Montana Department of Commerce for release of funds for the within project **is not** an action significantly affecting the quality of the human environment, and no EIS is required. A Finding of No Significant Impact (FONSI) can be made.

OR

[ ] FINDING: A request to the Montana Department of Commerce for release of funds for the within project **is** an action significantly affecting the quality of the human environment, and an EIS is required.

Finding Executed by:

Name (Typewritten):

Title: Environmental Certifying Officer

Signature:

Date:

INDEX OF APPLICABLE FEDERAL STATUTES AND REGULATIONS INCLUDED IN THE CHECKLIST

1. Air Quality

a. Clean Air Act (42 U.S.C. 7401 et seq.) as amended; particularly section 17(c) and (d) (42 U.S.C. 7506(c) and (d)).

b. Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-- 40 CFR parts 6, 51, and 93).

2. Endangered Species

a. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended; particularly section 7 (16 U.S.C. 1536).

3. Farmlands

a. Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

b. Farmland Protection Policy (U.S. Department of Agriculture 7 CFR Part 658).

4. Fish and Wildlife

a. Fish and Wildlife Coordination Act (16 U.S.C. 661-666c).

5. Floodplain

a. Executive Order 11988, Floodplain Management, May 24 1977 (42 FR 26951, 3 CFR, 1977 Comp., as interpreted in HUD regulations at 24 CFR Part 55.

b. Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128).

c. National Flood Insurance Program (44 CFR 59-79).

6. Historic Properties

a. The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in □58.17 for Section 17 projects.

b. Executive Order 11593 - Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., particularly section 2(c).

c. 36 CFR Part 800 with respect to HUD programs other than Urban Development Grants (UDAG)

d. The Reservoir Salvage Act of 1960 as amended by the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly section 3 (16 U.S.C 469a-1).

7. Man-made Hazards

a. Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature, 24 CFR Part 51, Subpart C, (49 FR 5103, 2/10/84).

b. HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, 9/10/79.

c. Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields, 24 CFR Part 51, Subpart D (49 FR 880, 1/6/84)

8. Noise

a. Noise Abatement and Control, 24 CFR Part 51, Subpart B, (44 FR 40861, 7/12/79, as amended at 61 FR 13333, 3/26/96).

9. Solid Waste Disposal

a. Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6987).

b. U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR Parts 240-265.

10. Water Quality

a. Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1376).

b. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. 69-01-6978, 300f-300j-10).

c. U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR Parts 100-149.

d. Missoula, Montana Sole Source Aquifer, in accordance with Section 1424 (e) of the Safe Drinking Water Act, 42 U.S.C. Section 300h-3 (1982).

11. Wetlands

a. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., particularly sections 2 and 5; and Applicable State Legislation or Regulations.

12. Wild and Scenic Rivers

a. Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et. seq.) as amended, particularly section 7(b) and (c), (16 U.S.C. 1278 (b) and (c)).

Note: *In Montana, this act applies to the North Fork of the Flathead River from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence with the South Fork; and the South Fork from its origin to Hungry Horse Reservoir; and, the Missouri River consisting of the segment from Fort Benton, one hundred and forty-nine miles downstream to Fred Robinson Bridge.*

13. Environmental Justice

a. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. P. 859. (24 CFR Part 58.5, April 30, 1996)

14. Lead-based Paint

HUD Lead-based Paint Standards (24 CFR Part 35) and Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act that appear within Title X of the Housing and Community Development Act of 1992.

15. Asbestos

OSHA's asbestos standard (29 CFR 1926.1101) and EPA asbestos sections of NESHAP (National Emission Standard for Hazardous Air Pollutants), administered by Montana Department of Environmental Quality's Asbestos Control Program.

EXHIBIT 2-N

COMBINED NOTICE: FINDING OF NO SIGNIFICANT IMPACT and NOTICE TO PUBLIC OF REQUEST FOR RELEASE OF FUNDS (FONSI/NOI/RROF)

Date of Publication of Notice

_____
City, Town or County

_____
Mailing Address

_____
City, State, Zip Code Telephone

TO ALL INTERESTED AGENCIES, GROUPS AND PERSONS:

On or before *(date*[1]) the above-named *(City, Town or County*) will request the Montana Department of Commerce (DOC) to release Community Development Block Grant (CDBG) funds provided under Title I of the Housing and Community Development Act of 1974, as amended (PL 93-383) for the following project:

_____
CDBG Project Title or Name

_____
Purpose or Nature of the CDBG Project *(Insert brief description*.)

_____ Location -
City, County, State - of CDBG Project)

Finding of No Significant Impact

It has been determined that such request for release of funds will not constitute an action significantly affecting the quality of the human environment and accordingly the above named *(City, Town, or County*) has decided not to prepare an Environmental Impact Statement under the National Environmental Policy Act of 1969 (PL 91-190).

The reasons for the decision not to prepare such Statement are as follows (*Set forth reasons for decision.*):

(insert response)

[1] Earliest date for submittal of REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION (Exhibit 2-Q) is one day after termination of public comment period set for the Finding of No Significant Impact.

An Environmental Review Record documenting review of all project activities in respect to impacts on the environment has been made by the above-named *(City, Town, or County*). This Environmental Review Record is on file at the above address and is available for public examination and copying upon request between the hours of _____ and _____.

No further environmental review of such project is proposed to be conducted prior to the request for release of CDBG project funds.

Public Comments on Findings

All interested agencies, groups and persons disagreeing with this decision are invited to submit written comments for consideration by the *(City, Town, or County*) to the *(office of the undersigned or other specified place)* on or before (*date*[2]*).* All such comments so received will be considered and the *(City, Town, or County*) will not request release of funds or take any administrative action on the project prior to the date specified in the preceding sentence.

Release of Funds

The *(City, Town, or County of*) will undertake the project described above with CDBG funds provided by DOC under Title I of the Housing and Community Development Act of 1974, as amended. *(City, Town, or County*) is certifying to DOC that *(City, Town or County and chief executive officer/other certifying official as approved by DOC),* in *his or her* official capacity as (*office)* consents to accept the jurisdiction of the Federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making, and action; and that these responsibilities have been satisfied. The legal effect on the certification is that upon its approval, the *(City, Town, or County of*) may use the CDBG funds and DOC will have satisfied its responsibilities under the National Environmental Policy Act of 1969.

Objections to State Release of Funds

The Department of Commerce will accept an objection to its approval of the release of funds and acceptance of the certification only if it is on one of the following bases:

(a) that the certification was not in fact executed by the chief executive officer or other officer approved by the Department of Commerce;

(b) that the applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process;

(c) the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by DOC; or

(d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental design.

[2] A minimum of 15 days after publication, or 18 days after the posting of this notice.

Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and may be addressed to: Department of Commerce, Community Development Division, 301 S. Park Avenue, P.O. Box 200523, Helena, Montana 59620.

Objections to the release of funds on bases other than those stated above will not be considered by DOC. No objection received after *(date*[3]*)* will be considered by DOC.

_____
Name of Environmental Certifying
Officer or Chief Elected Official

_____
Date

_____
Street Address

_____
City, County, State, Zip Code

[3] Estimate this date as a minimum of 15 days after the date that the Grantee anticipates **DOC will receive the request.** See 24 CFR Part 58. It is advisable to allow 18 or 19 days to allow several days for mailing time. **Proof of publication is required.**

EXHIBIT 2-O

NOI / RROF AND FONSI / NOI / RROF DISTRIBUTION LIST

CHECK APPLICABLE AGENCIES

State Agencies

_____ Montana Department of Commerce
Community Development Division
301 S. Park
P.O. Box 200523
Helena, MT 59620-0523
Ph: 841-2770

_____ Montana Department of Fish, Wildlife & Parks
Resource Assessment Unit
P.O. Box 200701
1420 East Sixth Avenue
Helena, MT 59620-0701
Ph: 444-5670

_____ Montana Department of Environmental Quality
P.O. Box 200901
1520 East Sixth Avenue
Helena, MT 59620-0901
Ph. 444-5263

_____ Montana Department of Natural Resources & Conservation
1625 Eleventh Avenue
P.O. Box 201601
Helena, MT 59620-1601
Ph. 444-6743

_____ Montana Environmental Quality Council
P.O. Box 201704
Helena, MT 59620-1704
Ph. 444-3742

_____ Montana State Historic Preservation
Preservation Officer
P.O. Box 201202
1410 Eighth Avenue
Helena, MT 59620-1202
Ph. 444-7717

Federal Agencies

_____ U.S. Environmental Protection Agency
Montana Office, Federal Building
10 W. 15th Street STE 3200
Helena, Montana 59626
Attention: EIS Review
Ph. 457-5000

_____ U.S. Fish & Wildlife Service
Sub-office Coordinator
2900 Fourth Ave. N, Room 301
Billings, MT 59101
Ph. 247-7366

_____ National Park Service

Local Agencies

_____ Local Conservation District
(List Name and Address)

_____ Local Government Planning Agency
(List Name and Address)

_____ Local Historical Society
(List Name and Address)

Other:

_____ Appropriate Tribal Historic Preservation Office

Visit the following website and select the appropriate county to identify the appropriate office(s) and officer(s) to contact:
http://egis.hud.gov/tdat/Tribal.aspx

_____ Please contact the Montana SHPO office for a list of all other interested parties that need to be contacted. Please write the name and contact information of the other parties contacted at SHPO's direction in the space below.

EXHIBIT 2-P

FINDING OF EXEMPTION FOR ALL PROJECT ACTIVITIES

(Sample - Completed on local government letterhead.)

(Date)

(Name of CDBG Program Officer)
Montana Department of Commerce
301 S. Park Avenue
P.O. Box 200523
Helena, MT 59620-0523

Dear *(Name of CDBG Program Officer*):

On _____, 200__, the *Town (City or County)* of _____ received notice from the Montana Department of Commerce that the *(City's, Town's, or County's)* application for an *(economic development) (housing) (public facilities)* project under the Montana Community Development Block Grant (CDBG) Program has been tentatively approved.

Pursuant to this notification, it is the finding of the *(Town,City, or County)* that all of the following project activities approved for funding under the State-administered CDBG Program are defined as "exempt" under 24 CFR Part 58.34, and meets the conditions specified therein for such exemption, of the Environmental Review Procedures for the Title I CDBG Program, and that the costs associated with conducting these activities are defined as reimbursable under 24 CFR Part 570.200(h) of the CDBG Regulations:

(List all project activities here.)

Sincerely,

_____
Signature of
Environmental Certifying Officer
or Chief Elected Official

EXHIBIT 2-Q

REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION (RROF) FOR AN ENVIRONMENTAL ASSESSMENT

(Pursuant to Section 104(h) of Title I of the Housing and Community Development Act of 1974 as Amended)

ENVIRONMENTAL -- FOR ENVIRONMENTAL ASSESSMENT*

1. NAME OF GRANTEE	2. GRANT/CONTRACT NUMBER
3. ADDRESS (Include Street, City, State, ZIP Code.)	**4. REQUEST DATE**

5. REQUEST FOR RELEASE OF FUNDS. Release of approved grant funds for the following project is requested.

PROJECT **GRANTEE** (If Other than applicant)

6. CERTIFICATION. With reference to the above project, I the undersigned officer of the applicant, certify:

- That the applicant has at least fifteen (15) days prior to submitting this request for release of funds and certification, published and disseminated, in the manner prescribed by 24 CFR 58.43 a notice to the public (a copy of which is attached) in accordance with 24 CFR 58.70);

- That the applicant has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named above; that the applicant has complied with the National Environmental Policy Act of 1969; that the applicant has complied with environmental procedures, permit requirements and the statutory obligations of the laws cited in 25 CFR 58.5; and that the applicant has taken into account the environmental criteria, standards, permit requirements and other obligations applicable to the project under the other related laws and authorities cited in 24 CFR 58.5;

- That the level of environmental clearance carried out by the applicant in conjunction with this project [ ] did [ ] did not require the preparation and dissemination of an environmental impact statement;

- That the dates upon which all statutory and regulatory time periods for review, comment, or other response or action in regard to this clearance began and ended as indicated below; applicant is in compliance with the requirements of 24 CFR Part 58;

	COMMENCE MO/DAY/YR	**EXPIRE** MO/DAY/YR
15-day Notice of No Significant Impact: Publication		
15-day DOC Decision Period		
Other (Specify)		

- That I am authorized to, and do, consent to assume the status of responsible federal officer under the National Environmental Policy Act of 1969 and each provision of the law specified in 24 CFR 58.5 insofar as the provisions of these laws apply to state and federal responsibilities for environmental review, decisionmaking and action assumed and carried out by the applicant; that by so consenting, I assume the responsibilities, where applicable, for the conduct of environmental review, decisionmaking, and action as to environmental issues, preparation and circulation of draft, final and supplemental environmental impact statements, and assumption of lead agency or cooperating agency responsibilities for preparation of such statements on behalf of State and Federal agencies, when these agencies consent to such assumption.

- That I am authorized to consent to, and do, accept on behalf of the applicant and personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my official capacity as certifying officer of the applicant.

_____

_____

_____
Signature, Title and Address of Certifying Officer or Chief Elected Official

_____
Date

WARNING -- Section 1001 of Title 18 of the United States Code and Criminal Procedures shall apply to this certification. Title 18 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter with the jurisdiction of any department or agency of the united States, shall be fined not more than $10,000 or imprisoned not more that five years or both.

EXHIBIT 2-R

FINDING OF EXEMPTION FOR ALL PROJECT ACTIVITIES (FOR CERTAIN CATEGORICALLY EXCLUDED ACTIVITIES)

(Sample - Complete on Local Government Letterhead)

(Date)

(Name of CDBG liaison)
Montana Department of Commerce
Community Development Division
301 S. Park Avenue
PO Box 200523
Helena, MT 59620-0523

Dear *(Name of CDBG liaison):*

On _____, 200__ the *(name of community)* received notice from the Montana Department of Commerce that the application for a *(economic development, housing, or public facility)* project under the Montana Community Development Block Grant (CDBG) Program has been tentatively approved. Pursuant to this notification, it is the finding of *(name of community)* that the following activities approved for funding under the State administered CDBG Program are defined as categorically excluded under 24 CFR Part 58.35. Furthermore, it is the finding of *(name of community)*, after completion of the Statutory Checklist, that the activities listed below are also exempt under 24 CFR 58.34 (a) (10):

(Describe All Project Activities Here)

Sincerely,

_____
Signature of Chief Elected Official

EXHIBIT 2-S

POTENTIAL AGENCY CONTACTS FOR ENVIRONMENTAL RESOURCES

State Agencies:

DOC Department of Commerce, Census and Economic Information Center, 301 S. Park, PO Box 200505, Helena, MT 59620-0505. Phone (406) 841-2739.

DEQ Department of Environmental Quality, Permitting and Compliance Division, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901. Phone (406) 444-4323.

FWP Department of Fish, Wildlife and Parks, 1420 E. 6th, Helena, MT 59620. Phone (406) 444-2535.

DOLI Department of Labor and Industry, 1327 Lockey, PO Box 1728, Helena, MT 59624. Phone (406) 444-9091.

DNRC Department of Natural Resources and Conservation, 1625 11th Ave., PO Box 201601, Helena, MT 59620-1601. Phone (406) 444-2074

DOT Department of Transportation, 2701 Prospect Ave., PO Box 201001, Helena, MT 59620. Phone (406) 444-6200.

SHPO State Historic Preservation Office, 1410 8th Ave., PO Box October 201302, Helena, MT 59620. Phone (406) 444-7715.

Federal Agencies:

BIA Bureau of Indian Affairs, 316 N. 26th St., Billings, MT 59101. Phone (406) 247-7970.

BLM Bureau of Land Management, PO Box 30157, Billings, MT 59107. Phone (406) 538-7461.

FAA Federal Aviation Administration, 2725 Skyway Dr., Helena, MT 59602. Phone (406) 449-5271.

NPS National Park Service, PO Box 25287, Denver, CO 80225-0287. Phone (303) 969-2850.

NRCS Natural Resource Conservation Service, 10 E. Babcock St., Bozeman, MT 59771. Phone (406) 587-6811.

OSHA Occupational Safety and Health Administration, 2900 4th Ave. N., Billings, MT 59101. Phone (800) 488-7087.

USACE U.S. Army Corps of Engineers, 10 W. 15th St., Ste. 2200, Helena, MT 59626. Phone (406) 441-1375.

USDOT U.S. Department of Transportation, 2880 Skyway Dr., Helena, MT 59602. Phone (406) 449-5303.

USEPA U.S. Environmental Protection Agency, Montana Office, 10 W. 15 Street Ste. 3200, Helena, MT 59626. Phone (406) 457-5000.

USFWS U.S. Fish and Wildlife Service, Ecological Services, 100 N. Park, Ste. 320, Helena, MT 59601. Phone (406) 449-5225.

USFS U.S. Forest Service, Region 1, PO Box 7669, Missoula, MT 59807. Phone (406) 329-3150.

SUMMARY OF SOURCES FOR ENVIRONMENTAL INFORMATION

Environmental Resources	Contact	Type of Information Available
General Land Use	Local planning agencies	Zoning, land use classifications
Important Farmland	NRCS	Soil surveys
Formally classified lands	DNRC, FWP, NPS, BLM, USFS, BIA, USACE	State lands, monuments, landmarks, wild and scenic rivers, wilderness areas, State or national parks, reservations, recreational areas
Floodplains	DNRC, County Disaster Coordinator	Floodplain information
Wetlands	NRCS, USACE, FWP, USFWS	Soil surveys, National Wetland Inventory maps, and Section 404 issues
Cultural resources	SHPO, THPO	Historic and archaeological sites. Visually sensitive areas
Biological resources	USFWS, FWP	Threatened and endangered species, critical habitats, species of special concern
Water quality	USEPA, DEQ, DNRC, FWP	Discharge permits, water appropriation permits, sole source aquifers, nondegradation, underground storage tanks
Socio-Economic / Environmental Justice	Census Bureau, DEQ, USEPA, Local civic organizations	Economic data, location of minority and low-income populations
Air quality	DEQ	State Implementation Plan
Transportation	FAA, MDOT, USDOT	Airports, highway safety
Noise	DOT, DOLI, USEPA, OSHA, FAA	Noise levels/restrictions

EXHIBIT 2-T

(Sample) COMBINED FONSI/NOI/RROF for SRF/CDBG funded projects

Date: _____

COMBINED NOTICE OF
FINDING OF NO SIGNIFICANT IMPACT and
NOTICE TO PUBLIC OF REQUEST FOR RELEASE OF FUNDS
(FONSI/NOI/RROF)

TO ALL INTERESTED GOVERNMENTAL AGENCIES AND PUBLIC GROUPS

On or before _____, (…*Tamarack County*…) will request the Montana Department of Commerce (DOC) to release Community Development Block Grant (CDBG) funds provided under Title I of the Housing and Community Development Act of 1974, as amended (PL 93-383) for the following project:

Project	(…*Pinedale Wastewater Improvements Project* …)
Location	(…*Pinedale, Montana* …)
SRF Project Number	(…*C301181-AA* …)
Total Cost	(… *$870,000* …)

As required by state and federal rules for determining whether an Environmental Impact Statement is necessary, an environmental review has been performed on the aforementioned project.

Project Summary

The community of (…*Pinedale* …), through its Preliminary Engineering Report (PER) for the (…*Pinedale County Water & Sewer District* …), has identified the need to (…*upgrade portions of its wastewater collection and treatment system*…). The purpose of this project is to (…*provide a long-term solution to MPDES discharge violations and meet a Department of Environmental Quality (DEQ) Administrative Order calling for improvements*…)

(…*The community of Pinedale is currently served by a gravity collection system and an extended aeration wastewater treatment package plant. The sewer mains for the collection system range in size (4" to 10") and are in poor to fair shape. Evidence of extensive deterioration in the collection system has been noted. The treatment plant is also deteriorating rapidly and is estimated to be able to remain in operation for only a few years. The Pinedale County Water and Sewer District is operating under a MPDES discharge permit (MT-0099999) to the Water River, which flows into the Missouri River near Pinedale, Montana. The existing system is operating below standards and is currently under a DEQ Administrative Order due to several violations with regards to the fecal coliform, BOD_5, and Total Suspended Solids (TSS) limits. A disinfection system has recently been added to control fecal coliform concentrations. The collection and treatment system in Pinedale is old, failing, and discharging inadequately treated wastewater to the Water River. Therefore, it is recommended that a treatment facility that meets current standards be constructed*…).

The recommended alternative from the PER includes the following improvements:

- (…*Replace all 6" sewer mains with 8" and 10" sewer mains* …)
- (…*Replace sewer mains that have broken vitrified clay pipe* …)
- (…*Replace sewer mains that are allowing infiltration of water and foreign material* …
- (… *Construct a new wastewater treatment package plant utilizing ultraviolet technology for disinfection* …)

Finding of No Significant Impact

It has been determined that such request for release of funds will not constitute an action significantly affecting the quality of the human environment and accordingly (…*Tamarack County, the Pinedale County Water and Sewer District* …), and the DEQ have decided not to prepare an Environmental Impact Statement under the National Environmental Policy Act of 1969 (PL 91-190).

The reasons for the decision not to prepare such Statement are:
(…The project will provide improvements to the environment by eliminating MPDES permit violating discharges to the Water River and the land use for the general area will not change. The new system will ultimately reduce safety, health, and environmental hazards…)

Environmentally sensitive characteristics such as wetlands, floodplains and threatened or endangered species are not expected to be adversely impacted as a result of the proposed project. No significant negative long-term environmental impacts were identified.

An Environmental Review Record prepared by the aforementioned (…*Tamarack County, and Pinedale County Water and Sewer District* …) and an Environmental Assessment prepared by the DEQ documenting review of all project activities in respect to impacts on the environment are attached to this Finding of No Significant Impact and Request for Release of Funds. These documents are available for public scrutiny on the DEQ web site (http://www.deq.mt.gov/ea.mcpx) and also available for public examination and copying upon request between the hours of 9:00 AM and 4:00 PM at the following locations:

Dept. of Environmental Quality 1520 East Sixth Avenue P.O. Box 200901 Helena, Montana 59620-0901	(…*Pinedale Water & Sewer District* *P.O. Box 55* *Pinedale, Montana 59001*…)	*(…Tamarack County Court House* *800 River Road* *Slick, Montana 59000*…)

No further environmental review of such project is proposed to be conducted prior to the request for release of CDBG project funds.

Release of Funds

Anticipated funding for the project is through a combination of the following: a Community Development Block Grant (CDBG), (…*a Treasure State Endowment Program (TSEP) Grant, a Renewable Resource Grant Program (RRGP) from the Department of Natural Resources and Conservation (DNRC)* …) and a State Revolving Fund (SRF) Loan.

(…*Tamarack County and The Pinedale County Water and Sewer District* …) will undertake the project described above with CDBG funds provided by DOC under Title I of the Housing and Community Development Act of 1974, as amended. The (…*County* …) is certifying to DOC that (...*Tamarack County...)* and chief executive officer/other certifying official (… *…., Tamarack Commission Chair* …) as approved by DOC, in her/his official capacity as commissioner and environmental certifying officer consents to accept the jurisdiction of the Federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making, and action; and that these responsibilities have been satisfied. The legal effect on the certification is that upon its approval, the (…*County*…) may use the CDBG funds and DOC will have satisfied its responsibilities under the National Environmental Policy Act of 1969.

Public Comments and/ or Objections on Findings

For purposes of CDBG funding, all interested agencies, groups and persons disagreeing with the Finding of No Significant Impact are invited to submit written comments for consideration by the (…*County* …) to the (…*Tamarack County Court House* …) on or before (date[1]*)*. All such comments so received will be considered and the (…*County* …) will not request release of funds or take any administrative action on the project prior to the date specified in the preceding sentence.

Comments supporting or disagreeing with this decision may also be submitted to DEQ and DOC for consideration. DOC will accept an objection to its approval for State Release of Funds only if it is on one of the following bases:

1. that the certification was not in fact executed by the certifying officer or other officer of the applicant approved by DOC;

2. that the applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process;

3. the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by DOC; or

4. another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental design.

Objections to be considered by DEQ and/or DOC must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and may be addressed to one of the following agencies:

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

2. Department of Environmental Quality, Planning, Prevention & Assistance Division, 1520 East Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901.

[1] A minimum of 15 days after publication, or 18 days after posting of this notice.

DOC will not consider objections to the release of funds on bases other than those stated above. After evaluating the objections and comments received, the agencies will make a final decision. However, no administrative action will be taken on the project for at least 30 calendar days after publication of the Finding of No Significant Impact. For CDBG funding purposes, no objection received after (date [2]) will be considered by DOC.

The following documents have been utilized by the DEQ and (…*Tamarack County Water and Sewer District* …) in the preparation of this Environmental Assessment and Environmental Review Record:

1. (… *Wastewater Facility Plan for Pinedale Special Sewer District #1, Hinsdale, Montana, September 1999 report prepared by Extra Engineering, Inc., Slick, MT*…)

2. (…*Preliminary Engineering Report, Pinedale County Water & Sewer District, Pinedale, Montana, Preliminary Engineering Report prepared by Extra Engineering, Inc., Slick, MT*…)

Sincerely,

Todd Teegarden P.E., TFA Chief Planning, Prevention & Assistance Division Department of Environmental Quality	(…*David Renner, County Commissioner,* *Environmental Certifying Officer* *Tamarack County, Montana*…)

[2] Estimate this date as a minimum of 15 days after the date DOC receives request for release of funds and proof of publication.

EXHIBIT 2-U

COMBINED FONSI/NOI/ RROF FOR USDA RD/CDBG JOINTLY-FUNDED PROJECTS

COMBINED NOTICE OF FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT and NOTICE TO PUBLIC OF REQUEST FOR RELEASE OF FUNDS (FONSI/NOI/RROF)

PUBLICATION DATE: _____

(…*Sunset County Water and Sewer District*…)
(…*P.O. Box 25*…)
(…*Sunset City MT 59191 Telephone: (406) 777-1178*…)

TO ALL INTERESTED AGENCIES, GROUPS AND PERSONS:

The USDA Rural Development office and the Montana Community Development Block Grant Program are considering an application for financial assistance to the (…*Sunset County Water and Sewer District, Sunset City, Montana*….) The specific elements of this proposed action are (…*constructing a wastewater collection system and treatment facility to serve the community of Sunset County. The treatment of the effluent will occur at a site north of Sunset County, with land application of the effluent for agronomic intake*….)

On or before (date[1]), the above-named (…*Sunset County Water and Sewer District, Sunset City, Montana*, …) will also request the Montana Department of Commerce (DOC) to release Community Development Block Grant (CDBG) funds provided under Title I of the Housing and Community Development Act of 1974, as amended (PL 93-383) for the following project: (…*Sunset County Water and Sewer District Wastewater System Improvements, CDBG Contract #MT-CDBG-03PF-09*…)

Finding of No Significant Impact

It has been determined that such request for release of funds will not constitute an action significantly affecting the quality of the human environment and accordingly the above named (…*Sunset County Water and Sewer District*…) has decided not to prepare an Environmental Impact Statement under the National Environmental Policy Act of 1969 (PL 91-190).
The reasons for the decision not to prepare such Statement are as follows:

- A consolidated environmental assessment, which is on file at the (…*Sunset County Courthouse and at the Sunset County Water and Sewer District in Sunset City*…), itemizes the physical environment and human population of the project area.

- The potential environmental impacts have been assessed by USDA Rural Development determining that the proposed action will not significantly affect the quality of the human environment.

[1] A minimum of 15 days after publication, or 18 days after posting of this notice.

$ The proposed action is not located within a minimum required distance of any delineated 100-year flood plain.

An Environmental Review Record documenting review of all project activities in respect to impacts on the environment has been made by the above-named (…*Sunset County Water and Sewer District*…) This Environmental Review Record is on file at the (…*Sunset County Water and Sewer District, P.O. Box 25, Sunset City, Montana 59191* …), and is available for public examination and copying upon request between the hours (… *of 9:00 a.m. and 3:00 p.m.* …) Requests to review the RD environmental assessment upon which this determination is based should be directed to Rural Development/Rural Utilities Service, (…*900 Technology Blvd., Suite B, P.O. Box 850, Bozeman, Montana 59715-0850…)*.

No further environmental review of such project is proposed to be conducted prior to the request for release of CDBG project funds.

Public Comments on Findings

All interested agencies, groups and persons disagreeing with this decision are invited to submit written comments for consideration by (… *Sunset County Water and Sewer District*…) to the office of the undersigned, or to Rural Development/Rural Utilities Service*, (… 900 Technology Blvd., Suite B, P.O. Box 850, Bozeman, Montana 59715-0850*…) on or before (…*May 30, 2003*…) All such comments so received will be considered and the (… *Sunset County Water and Sewer District*...) will not request release of funds or take any administrative action on the project prior to the date specified in the preceding sentence.

State Release of Funds

(…*The Sunset County Water and Sewer District*…) will undertake the project described above with CDBG funds provided by DOC under Title I of the Housing and Community Development Act of 1974, as amended. The (…*Sunset County Water and Sewer District*…) is certifying to DOC that (… *Ellen S. Steel* ...), in (… *her / his* …) official capacity as (… *Sunset County Commissioner*…), consents to accept the jurisdiction of the Federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making, and action; and that these responsibilities have been satisfied. The legal effect on the certification is that upon approval, the (… *Sunset County Water and Sewer District* ...) may use the CDBG funds and DOC will have satisfied its responsibilities under the National Environmental Policy Act of 1969.

Objections to State Release of Funds

DOC will accept an objection to its approval only if it is on one of the following bases:

(a) that the certification was not in fact executed by the certifying officer or other officer of the applicant approved by DOC;

(b) that the applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process;

(c) the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by DOC; or

(d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental design.

Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and may be addressed to: Department of Commerce, Community Development Division, 301 S. Park Ave., P.O. Box 200523, Helena, Montana 59620-0523.

Objections to the release of funds on bases other than those stated above will not be considered by DOC. No objection received after (***date***[2]) will be considered by DOC.

(… *Ellen S. Steel* …)
Name of Chief Elected Official

(… *April 24, 2003* …)
Date

(… *Sunset County Courthouse* ...)
Address

(… *Sunset City, Montana 59191* …)
City, County, State, Zip Code

[2] Estimate this date as a minimum of 15 days after the date that the Grantee anticipates **DOC will receive the request.** See 24 CFR Part 58. It is advisable to allow 18 or 19 days to allow several days for mailing time. **Proof of publication is required.**

EXHIBIT 2-V

HUD LEAD-BASED PAINT REQUIREMENTS FOR HOUSING REHABILITATION PROJECTS

HUD's LBP requirements **do not apply** if any one of the following exist:

- The structure was built after January 1, 1978; or
- Is officially certified as free of lead-based paint by an EPA-certified lead-based paint inspector; or
- A visual inspection identifies no deteriorated paint, and rehabilitation work shall disturb
  - less than two square feet (2 sq. ft.) of paint in any one interior room;
  - less than 10% of the total surface area on any interior component; and
  - less than 20 sq. ft. on exterior painted surfaces

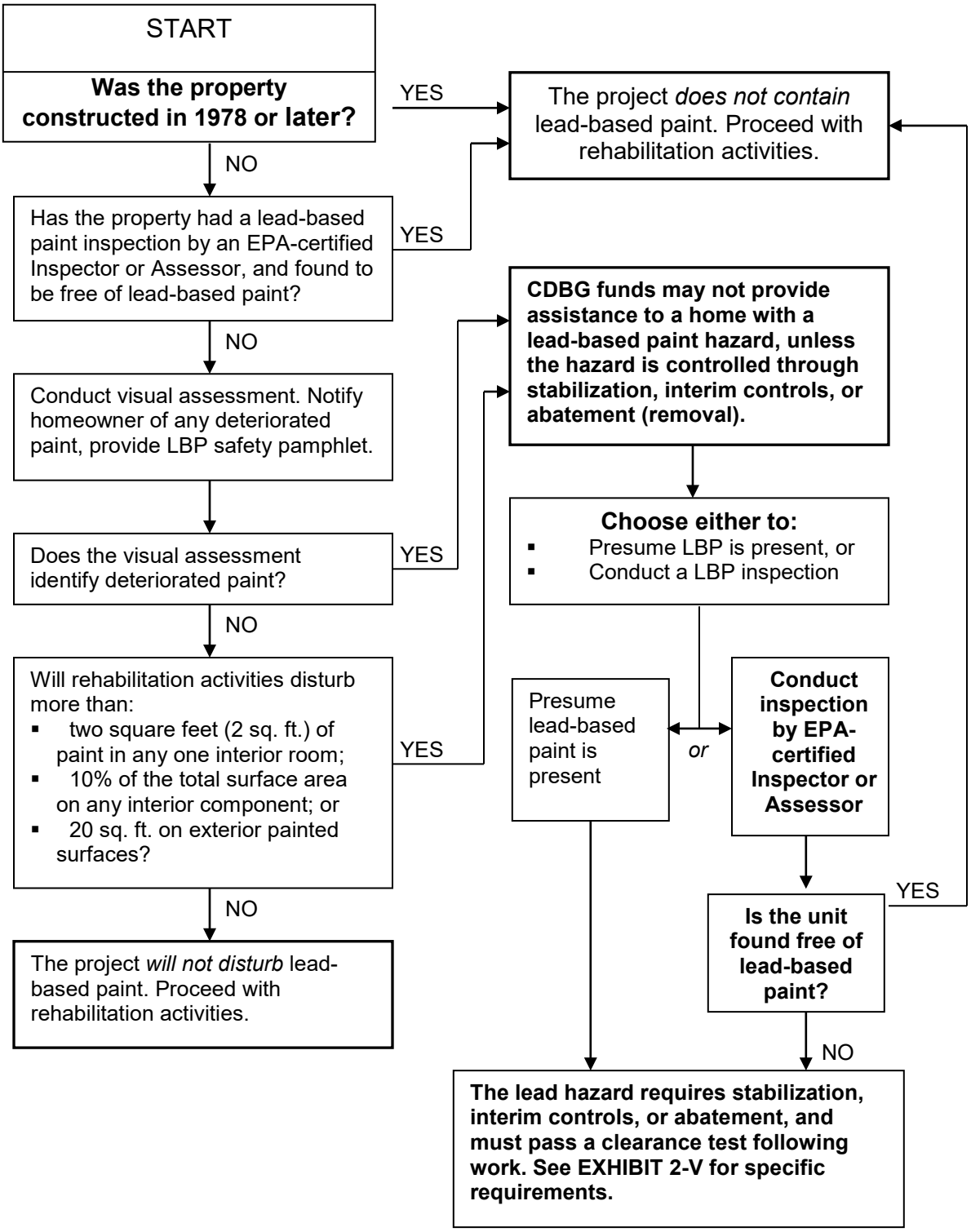
Amount of CDBG Funds	***Lead-Based Paint Requirements***
A. Property receiving **$5,000 or less** in rehabilitation work per unit	1) **<u>Notification</u>:** a) Grantees must supply occupants with the lead information pamphlet (*Protect Your Family From Lead In Your Home*) and document its delivery. See *Exhibit 2-X*, CDBG Manual. b) Grantees must notify owners of defective paint surfaces. c) Owners must disclose the presence of LBP to current and prospective homebuyers/occupants. See Exhibit *2-Y.3*, CDBG Manual. 2) **<u>Paint Testing</u>:** An EPA-certified LBP Inspector or Assessor must inspect the unit(s). Grantees may presume the presence of lead-based paint in lieu of conducting an inspection. [i] (See *Notes,* page I-4 below*.)* 3) **<u>Lead Hazard Reduction/Control</u>:** a) HUD-qualified workers must perform the stabilization work (implementation of interim controls). These persons do not need to be EPA-certified LBP supervisors or workers. [ii] (See *Notes*, page I-4 below.) b) Use safe work practices during rehabilitation. 4) **<u>Clearance</u>:** (Necessary only for the LBP hazard reduction work area.) An EPA-certified LBP Risk Assessor or Clearance Technician must certify the unit as safe for occupancy. [i] 5) **<u>Notification</u>:** Owners, occupants, and prospective occupants or purchasers must be notified of the results of any lead hazard reduction work. See *Exhibit 2-Y.4,* CDBG Manual.

B. Property receiving **more than $25,000** per unit in rehabilitation work	1) **Notification:** a) Grantees must supply occupants with the lead information pamphlet (*Protect Your Family From Lead In Your Home*) and document its delivery. See *Exhibit 2-X,* CDBG Manual. b) Grantees must notify owners of defective paint surfaces. c) Owners must disclose the presence of LBP to current and prospective homebuyers/occupants. See *Exhibit 2-Y.3,* CDBG Manual. 2) **Paint Testing**: An EPA-certified LBP Inspector or Assessor must inspect the unit(s). Grantees may presume the presence of lead-based paint in lieu of conducting an inspection. [i] 3) **Risk Assessment:** A Risk Assessment by an EPA-certified LBP Risk Assessor is required. [i] 4) **Abatement (Removal) of LBP hazards:** a) Rehabilitation will include mandatory abatement (removal) of all LBP. b) EPA-certified persons must do all work. EPA-certified Inspectors, Risk Assessors, Supervisors and Workers are the only persons who may do work on a project involving greater than $25,000 worth of rehabilitation on a unit. [i] Note: A HUD-qualified worker may do the abatement work, but an EPA-certified supervisor *must* be on the work site *at all times*. [ii] 5) **Clearance:** The LBP abatement work area must be cleared to assure it is safe for occupancy. An EPA-certified Risk Assessor or Clearance Technician must do the clearance. [i] 6) **Notification**: Owners, occupants and prospective occupants or purchasers must be notified of the results of any lead hazard reduction work. See *Exhibit 2-Y.4*, CDBG Manual. 7) **Ongoing LBP maintenance:** The property owners are responsible for maintaining a lead-free environment. If, upon annual inspection *(if such an inspection is required by the property's on-going funding sources)*, the presence of chipping, peeling or cracking paint is identified, EPA-certified personnel must inspect and assess the lead risk in the unit; HUD-certified workers must stabilize the deteriorated paint; and an EPA-certified person must perform clearance testing.

[i] To be considered an EPA-certified inspector, assessor, clearance technician or supervisor, one must complete a weeklong training course and successfully pass the EPA-administered exam.

[ii] HUD-certified workers must complete an eight-hour, HUD-sponsored lead safety-training program. Contact your HOME Program Officer for current information on HUD training, or go to: http://www.leadsafetraining.org/

Lead-based Paint Flowchart
for Single- and Multi-Family Rehabilitation



Lead-based Paint Flowchart for Homebuyer Assistance

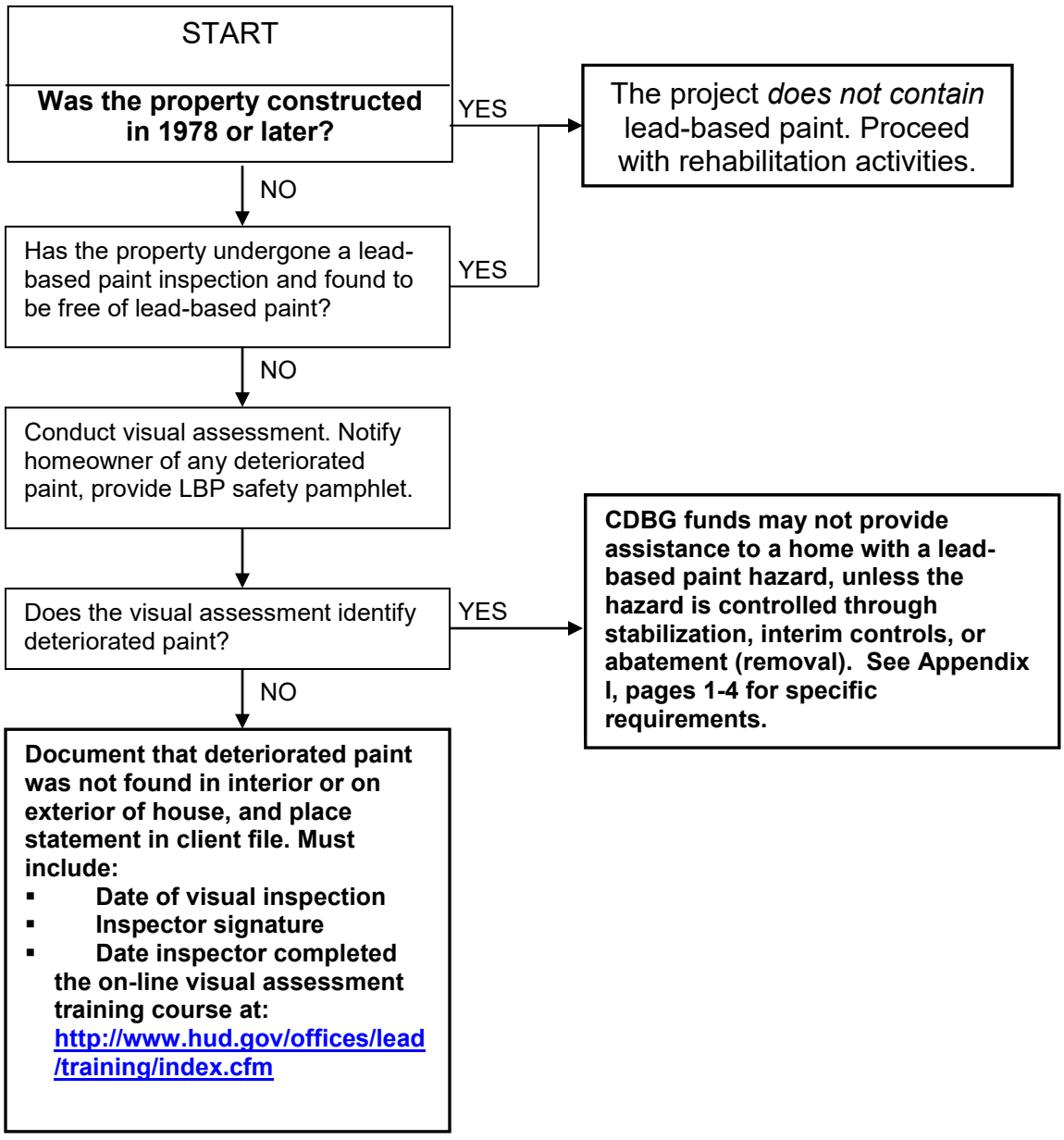


EXHIBIT 2-W

LEAD BASED PAINT HOMEBUYER ASSISTANCE

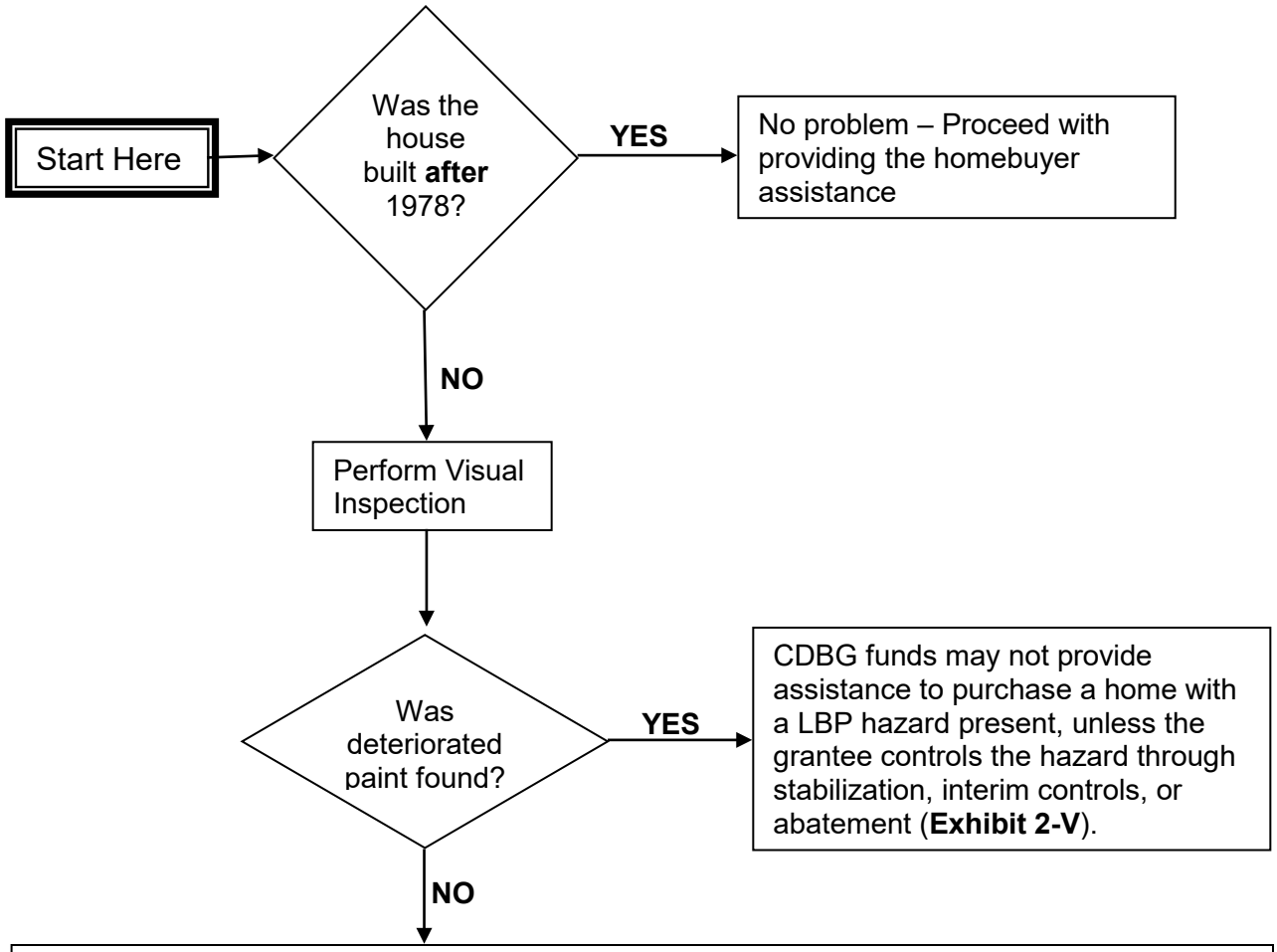


EXHIBIT 2-X

ACKNOWLEDGMENT OF RECEIPT

I have received a copy of the pamphlet, *'**Protect Your Family From Lead In Your Home**'*, informing me of the potential risk of lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

Printed Name: _____

Signature: _____

Date: _____

Unit Address: _____

_____

_____

Certification of Attempted Delivery

(For use when an occupant is unavailable for signature or refuses to sign the acknowledgment of receipt)

Date: _____

Unit Address: _____

_____

_____

Method of Delivery of Pamphlet: _____

Name(s) of the person(s) delivering the Pamphlet: _____

_____

_____

Reason for lack of acknowledgment: (e.g. occupant refuses to sign, no adult occupant available)

_____

_____

Signature of Renovator: _____

_____

_____

Date of Signature: _____

Refusal to Sign Certification

I certify that I have made a good faith effort to deliver the pamphlet, ***'Protect Your Family From Lead In Your Home'***, to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

Printed Name: _____

Signature: _____

Date: _____

Unit Address: _____

_____

_____

Attempted Delivery Dates and Times: _____

_____

Unavailable For Signature Certification

I certify that I have made a good faith effort to deliver the pamphlet, ***'Protect Your Family From Lead In Your Home'***, and that the occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door.

Printed Name: _____

Signature: _____

Date: _____

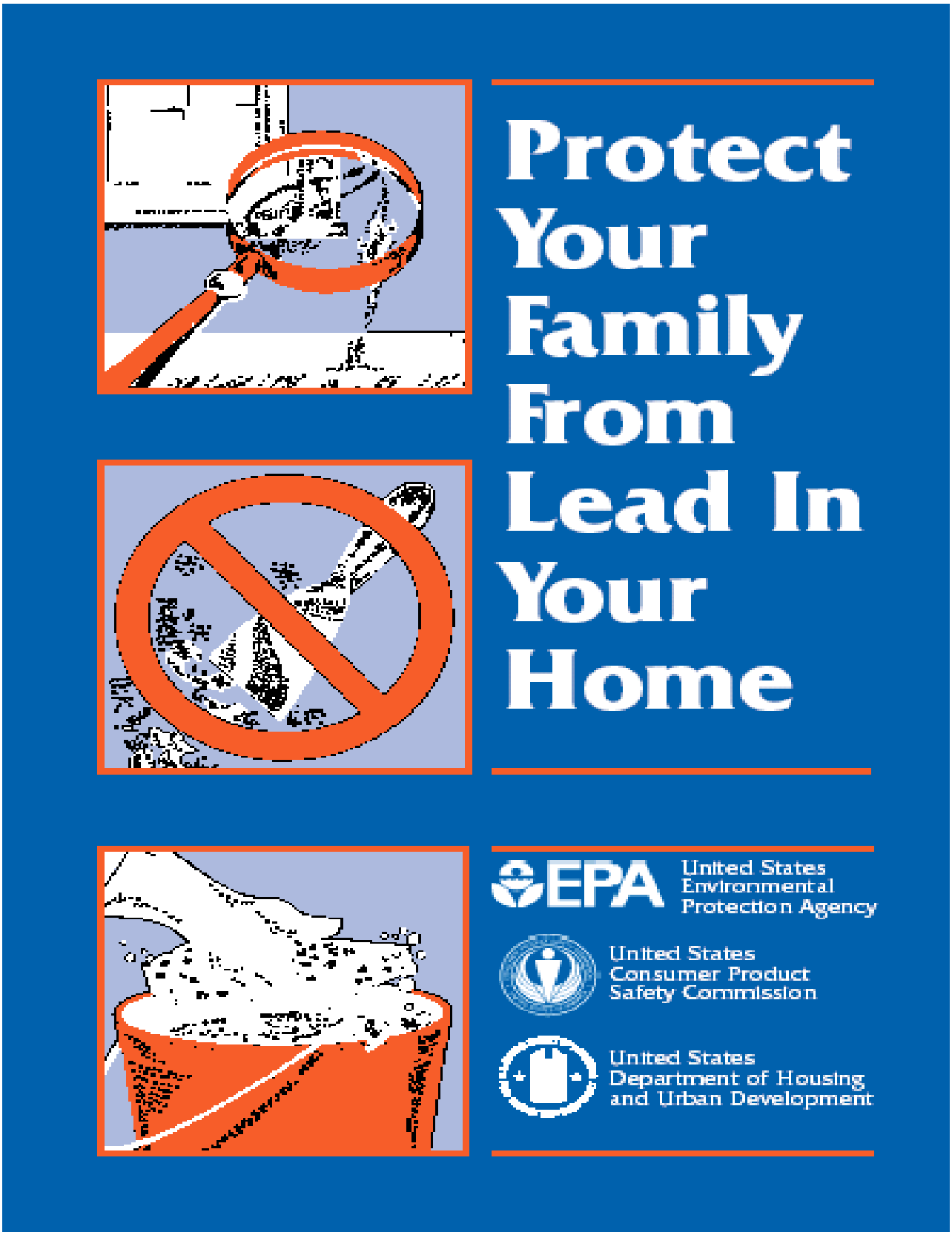
Unit Address: _____

_____

_____

Attempted Delivery Dates and Times: _____

_____



Available on-line at: http://www.epa.gov/lead/pubs/leadprot.htm

Simple Steps To Protect Your Family From Lead Hazards

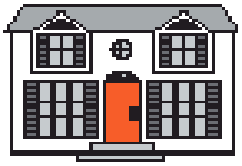
If you think your home has high levels of lead:

- Get your young children tested for lead, even if they seem healthy.
- Wash children's hands, bottles, pacifiers, and toys often.
- Make sure children eat healthy, low-fat foods.
- Get your home checked for lead hazards.
- Regularly clean floors, window sills, and other surfaces.
- Wipe soil off shoes before entering house.
- Talk to your landlord about fixing surfaces with peeling or chipping paint.
- Take precautions to avoid exposure to lead dust when remodeling or renovating (call 1-800-424-LEAD for guidelines).
- Don't use a belt-sander, propane torch, high temperature heat gun, scraper, or sandpaper on painted surfaces that may contain lead.
- Don't try to remove lead-based paint yourself.

Recycled/Recyclable
Printed with vegetable oil based inks on recycled paper (minimum 50% postconsumer) process chlorine free.

Are You Planning To Buy, Rent, or Renovate a Home Built Before 1978?

Many houses and apartments built before 1978 have paint that contains high levels of lead (called lead-based paint). Lead from paint, chips, and dust can pose serious health hazards if not taken care of properly.

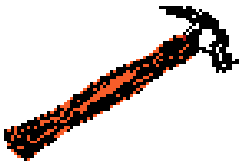


OWNERS, BUYERS, and RENTERS are encouraged to check for lead (see page 6) before renting, buying or renovating pre-1978 housing.

Federal law requires that individuals receive certain information before renting, buying, or renovating pre-1978 housing:

LANDLORDS have to disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a disclosure about lead-based paint.

SELLERS have to disclose known information on lead-based paint and lead-based paint hazards before selling a house. Sales contracts must include a disclosure about lead-based paint. Buyers have up to 10 days to check for lead.



RENOVATORS disturbing more than 2 square feet of painted surfaces have to give you this pamphlet before starting work.

IMPORTANT!

Lead From Paint, Dust, and Soil Can Be Dangerous If Not Managed Properly

FACT: Lead exposure can harm young children and babies even before they are born.

FACT: Even children who seem healthy can have high levels of lead in their bodies.

FACT: People can get lead in their bodies by breathing or swallowing lead dust, or by eating soil or paint chips containing lead.

FACT: People have many options for reducing lead hazards. In most cases, lead-based paint that is in good condition is not a hazard.

FACT: Removing lead-based paint improperly can increase the danger to your family.

If you think your home might have lead hazards, read this pamphlet to learn some simple steps to protect your family.

1

Lead Gets in the Body in Many Ways

Childhood lead poisoning remains a major environmental health problem in the U.S.

Even children who appear healthy can have dangerous levels of lead in their bodies.

People can get lead in their body if they:

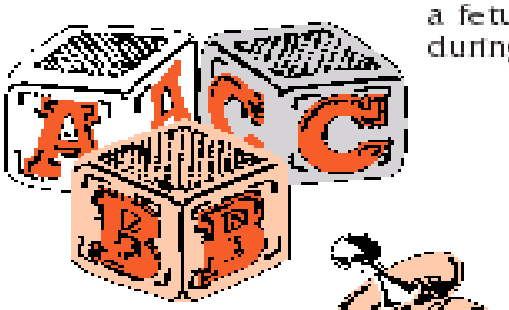
- Breathe in lead dust (especially during renovations that disturb painted surfaces).
- Put their hands or other objects covered with lead dust in their mouths.
- Eat paint chips or soil that contains lead.

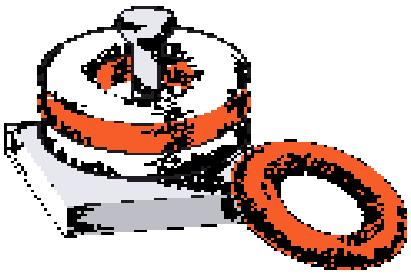
Lead is even more dangerous to children under the age of 6:

- At this age children's brains and nervous systems are more sensitive to the damaging effects of lead.
- Children's growing bodies absorb more lead.
- Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.

Lead is also dangerous to women of childbearing age:

- Women with a high lead level in their system prior to pregnancy would expose a fetus to lead through the placenta during fetal development.





2

Lead's Effects

It is important to know that even exposure to low levels of lead can severely harm children.

In children, lead can cause:

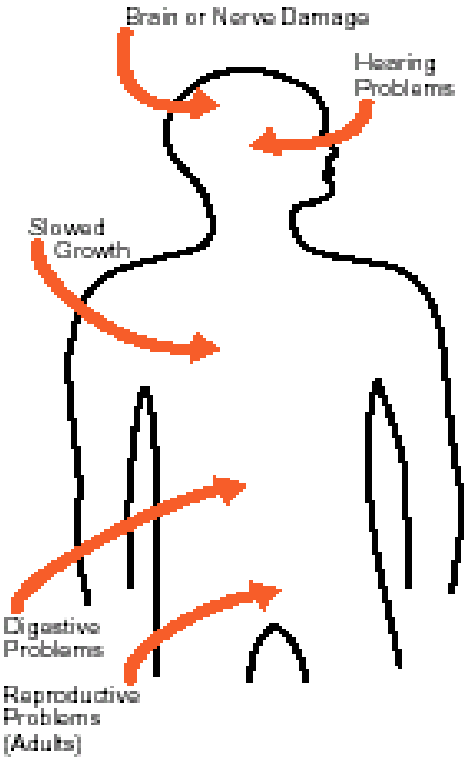
- Nervous system and kidney damage.
- Learning disabilities, attention deficit disorder, and decreased intelligence.
- Speech, language, and behavior problems.
- Poor muscle coordination.
- Decreased muscle and bone growth.
- Hearing damage.

While low-lead exposure is most common, exposure to high levels of lead can have devastating effects on children, including seizures, unconsciousness, and, in some cases, death.

Although children are especially susceptible to lead exposure, lead can be dangerous for adults too.

In adults, lead can cause:

- Increased chance of illness during pregnancy.
- Harm to a fetus, including brain damage or death.
- Fertility problems (in men and women).
- High blood pressure.
- Digestive problems.
- Nerve disorders.
- Memory and concentration problems.
- Muscle and joint pain.



Lead affects the body in many ways.

3

Where Lead-Based Paint Is Found

In general, the older your home, the more likely it has lead-based paint.

Many homes built before 1978 have lead-based paint. The federal government banned lead-based paint from housing in 1978. Some states stopped its use even earlier. Lead can be found:

- In homes in the city, country, or suburbs.
- In apartments, single-family homes, and both private and public housing.
- Inside and outside of the house.
- In soil around a home. (Soil can pick up lead from exterior paint or other sources such as past use of leaded gas in cars.)

Checking Your Family for Lead

Get your children and home tested if you think your home has high levels of lead.

To reduce your child's exposure to lead, get your child checked, have your home tested (especially if your home has paint in poor condition and was built before 1978), and fix any hazards you may have. Children's blood lead levels tend to increase rapidly from 6 to 12 months of age, and tend to peak at 18 to 24 months of age.

Consult your doctor for advice on testing your children. A simple blood test can detect high levels of lead. Blood tests are usually recommended for:

- Children at ages 1 and 2.
- Children or other family members who have been exposed to high levels of lead.
- Children who should be tested under your state or local health screening plan.

Your doctor can explain what the test results mean and if more testing will be needed.

Identifying Lead Hazards

Lead-based paint is usually not a hazard if it is in good condition, and it is not on an impact or friction surface, like a window. It is defined by the federal government as paint with lead levels greater than or equal to 1.0 milligram per square centimeter, or more than 0.5% by weight.

Deteriorating lead-based paint (peeling, chipping, chalking, cracking or damaged) is a hazard and needs immediate attention. It may also be a hazard when found on surfaces that children can chew or that get a lot of wear-and-tear, such as:

- Windows and window sills.
- Doors and door frames.
- Stairs, railings, banisters, and porches.

Lead from paint chips, which you can see, and lead dust, which you can't always see, can both be serious hazards.

Lead dust can form when lead-based paint is scraped, sanded, or heated. Dust also forms when painted surfaces bump or rub together. Lead chips and dust can get on surfaces and objects that people touch. Settled lead dust can re-enter the air when people vacuum, sweep, or walk through it. The following two federal standards have been set for lead hazards in dust:

- 40 micrograms per square foot ($\mu g/ft^2$) and higher for floors, including carpeted floors.
- 250 $\mu g/ft^2$ and higher for interior window sills.

Lead in soil can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. The following two federal standards have been set for lead hazards in residential soil:

- 400 parts per million (ppm) and higher in play areas of bare soil.
- 1,200 ppm (average) and higher in bare soil in the remainder of the yard.

The only way to find out if paint, dust and soil lead hazards exist is to test for them. The next page describes the most common methods used.

5

Checking Your Home for Lead

Just knowing that a home has lead-based paint may not tell you if there is a hazard.

You can get your home tested for lead in several different ways:

- A paint **inspection** tells you whether your home has lead-based paint and where it is located. It won't tell you whether or not your home currently has lead hazards.
- A **risk assessment** tells you if your home currently has any lead hazards from lead in paint, dust, or soil. It also tells you what actions to take to address any hazards.
- A combination risk assessment and inspection tells you if your home has any lead hazards and if your home has any lead-based paint, and where the lead-based paint is located.

Hire a trained and certified testing professional who will use a range of reliable methods when testing your home.

- Visual inspection of paint condition and location.
- A portable x-ray fluorescence (XRF) machine.
- Lab tests of paint, dust, and soil samples.

There are state and federal programs in place to ensure that testing is done safely, reliably, and effectively. Contact your state or local agency (see bottom of page 11) for more information, or call **1-800-424-LEAD (5323)** for a list of contacts in your area.

Home test kits for lead are available, but may not always be accurate. Consumers should not rely on these kits before doing renovations or to assure safety.

What You Can Do Now To Protect Your Family

If you suspect that your house has lead hazards, you can take some immediate steps to reduce your family's risk:

- **If you rent, notify your landlord of peeling or chipping paint.**
- **Clean up paint chips immediately.**
- **Clean floors, window frames, window sills, and other surfaces weekly.** Use a mop or sponge with warm water and a general all-purpose cleaner or a cleaner made specifically for lead. REMEMBER: NEVER MIX AMMONIA AND BLEACH PRODUCTS TOGETHER SINCE THEY CAN FORM A DANGEROUS GAS.

- **Thoroughly rinse sponges and mop heads after cleaning dirty or dusty areas.**
- **Wash children's hands often, especially before they eat and before nap time and bed time.**
- **Keep play areas clean.** Wash bottles, pacifiers, toys, and stuffed animals regularly.
- **Keep children from chewing window sills or other painted surfaces.**
- **Clean or remove shoes before entering your home to avoid tracking in lead from soil.**
- **Make sure children eat nutritious, low-fat meals high in iron and calcium,** such as spinach and dairy products. Children with good diets absorb less lead.

7

Reducing Lead Hazards In The Home

Removing lead improperly can increase the hazard to your family by spreading even more lead dust around the house.

Always use a professional who is trained to remove lead hazards safely.

In addition to day-to-day cleaning and good nutrition:

- You can **temporarily** reduce lead hazards by taking actions such as repairing damaged painted surfaces and planting grass to cover soil with high lead levels. These actions (called "interim controls") are not permanent solutions and will need ongoing attention.
- To **permanently** remove lead hazards, you should hire a certified lead "abatement" contractor. Abatement (or permanent hazard elimination) methods include removing, sealing, or enclosing lead-based paint with special materials. Just painting over the hazard with regular paint is not permanent removal.

Always hire a person with special training for correcting lead problems—someone who knows how to do this work safely and has the proper equipment to clean up thoroughly. Certified contractors will employ qualified workers and follow strict safety rules as set by their state or by the federal government.

Once the work is completed, dust cleanup activities must be repeated until testing indicates that lead dust levels are below the following:

- 40 micrograms per square foot ($\mu g/ft^2$) for floors, including carpeted floors;
- 250 $\mu g/ft^2$ for interior windows sills; and
- 400 $\mu g/ft^2$ for window troughs.

Call your state or local agency (see bottom of page 11) for help in locating certified professionals in your area and to see if financial assistance is available.

Remodeling or Renovating a Home With Lead-Based Paint

Take precautions before your contractor or you begin remodeling or renovating anything that disturbs painted surfaces (such as scraping off paint or tearing out walls):

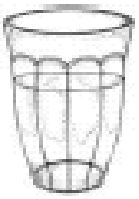
- **Have the area tested for lead-based paint.**
- **Do not use a belt-sander, propane torch, high temperature heat gun, dry scraper, or dry sandpaper** to remove lead-based paint. These actions create large amounts of lead dust and fumes. Lead dust can remain in your home long after the work is done.
- **Temporarily move your family** (especially children and pregnant women) out of the apartment or house until the work is done and the area is properly cleaned. If you can't move your family, at least completely seal off the work area.
- **Follow other safety measures to reduce lead hazards.** You can find out about other safety measures by calling 1-800-424-LEAD. Ask for the brochure "Reducing Lead Hazards When Remodeling Your Home." This brochure explains what to do before, during, and after renovations.

If you have already completed renovations or remodeling that could have released lead-based paint or dust, get your young children tested and follow the steps outlined on page 7 of this brochure.

If not conducted properly, certain types of renovations can release lead from paint and dust into the air.

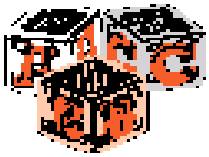
9

Other Sources of Lead

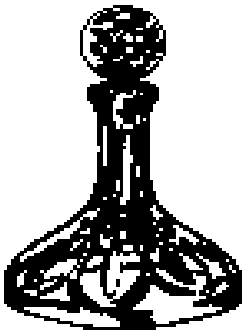


While paint, dust, and soil are the most common sources of lead, other lead sources also exist.

- **Drinking water.** Your home might have plumbing with lead or lead solder. Call your local health department or water supplier to find out about testing your water. You cannot see, smell, or taste lead, and boiling your water will not get rid of lead. If you think your plumbing might have lead in it:
  - Use only cold water for drinking and cooking.
  - Run water for 15 to 30 seconds before drinking it, especially if you have not used your water for a few hours.
- **The job.** If you work with lead, you could bring it home on your hands or clothes. Shower and change clothes before coming home. Launder your work clothes separately from the rest of your family's clothes.

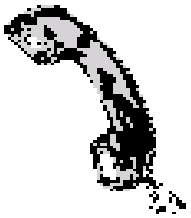


- Old painted **toys** and **furniture.**
- Food and liquids stored in **lead crystal** or **lead-glazed pottery or porcelain.**
- **Lead smelters** or other industries that release lead into the air.



- **Hobbies** that use lead, such as making pottery or stained glass, or refinishing furniture.
- **Folk remedies** that contain lead, such as "greta" and "azarcon" used to treat an upset stomach.

For More Information



The National Lead Information Center

Call **1-800-424-LEAD (424-5323)** to learn how to protect children from lead poisoning and for other information on lead hazards. To access lead information via the web, visit **www.epa.gov/lead** and **www.hud.gov/offices/lead/.**

EPA's Safe Drinking Water Hotline

Call **1-800-426-4791** for information about lead in drinking water.

Consumer Product Safety Commission (CPSC) Hotline

To request information on lead in consumer products, or to report an unsafe consumer product or a product-related injury call **1-800-638-2772**, or visit CPSC's Web site at: **www.cpsc.gov.**

Health and Environmental Agencies

Some cities, states, and tribes have their own rules for lead-based paint activities. Check with your local agency to see which laws apply to you. Most agencies can also provide information on finding a lead abatement firm in your area, and on possible sources of financial aid for reducing lead hazards. Receive up-to-date address and phone information for your local contacts on the Internet at **www.epa.gov/lead** or contact the National Lead Information Center at **1-800-424-LEAD.**

For the hearing impaired, call the Federal Information Relay Service at **1-800-877-8339** to access any of the phone numbers in this brochure.

11

EPA Regional Offices

Your Regional EPA Office can provide further information regarding regulations and lead protection programs.

EPA Regional Offices

Region 1 (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)

Regional Lead Contact
U.S. EPA Region 1
Suite 1100 (CPT)
One Congress Street
Boston, MA 02114-2023
1 (888) 372-7341

Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands)

Regional Lead Contact
U.S. EPA Region 2
2890 Woodbridge Avenue
Building 209, Mail Stop 225
Edison, NJ 08837-3679
(732) 321-6671

Region 3 (Delaware, Maryland, Pennsylvania, Virginia, Washington DC, West Virginia)

Regional Lead Contact
U.S. EPA Region 3 (3WC33)
1650 Arch Street
Philadelphia, PA 19103
(215) 814-5000

Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Regional Lead Contact
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-8998

Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Regional Lead Contact
U.S. EPA Region 5 (DT-8J)
77 West Jackson Boulevard
Chicago, IL 60604-3666
(312) 886-6003

Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Regional Lead Contact
U.S. EPA Region 6
1445 Ross Avenue, 12th Floor
Dallas, TX 75202-2733
(214) 665-7577

Region 7 (Iowa, Kansas, Missouri, Nebraska)

Regional Lead Contact
U.S. EPA Region 7
(ARTD-RALI)
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7020

Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Regional Lead Contact
U.S. EPA Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466
(303) 312-6021

Region 9 (Arizona, California, Hawaii, Nevada)

Regional Lead Contact
U.S. Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 947-4164

Region 10 (Alaska, Idaho, Oregon, Washington)

Regional Lead Contact
U.S. EPA Region 10
Toxics Section WCM-128
1200 Sixth Avenue
Seattle, WA 98101-1128
(206) 553-1985

12

CPSC Regional Offices

Your Regional CPSC Office can provide further information regarding regulations and consumer product safety.

Eastern Regional Center
Consumer Product Safety Commission
201 Varick Street, Room 903
New York, NY 10014
(212) 620-4120

Western Regional Center
Consumer Product Safety Commission
1301 Clay Street, Suite 610-N
Oakland, CA 94612
(510) 637-4050

Central Regional Center
Consumer Product Safety Commission
230 South Dearborn Street, Room 2944
Chicago, IL 60604
(312) 353-8260

HUD Lead Office

Please contact HUD's Office of Healthy Homes and Lead Hazard Control for information on lead regulations, outreach efforts, and lead hazard control and research grant programs.

U.S. Department of Housing and Urban Development
Office of Healthy Homes and Lead Hazard Control
451 Seventh Street, SW, P-3206
Washington, DC 20410
(202) 755-1785

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U.S. EPA Washington DC 20460
U.S. CPSC Washington DC 20207
U.S. HUD Washington DC 20410

EPA747-K-99-001
June 2003

13

http://www.epa.gov/lead/pubs/leadprot.htm

EXHIBIT 2-Y1

NOTICE OF LEAD-BASED PAINT INSPECTION

Address/location of property or structure(s) this summary notice applies to:

_____

_____

Lead-based paint inspection description:
Date(s) of inspection: _____

Summary of inspection results: (Check all that apply.)

(a) _____ No lead-based paint was found.
(b) _____ Lead-based paint was found.
(c) _____ A brief summary of the findings of the inspection is provided below (required if lead-based paint is found).

Summary of where lead-based paint was found: (List at least the housing unit numbers and common areas (for multifamily housing), and building components (including type of room or space, and the material underneath the paint).

_____

_____

_____

_____

_____

_____

_____

(Attach more sheets, if required.)

_____
NAME (Contact person for more information about the Inspection)

_____
Organization

_____

_____
Address

_____
Phone Number

_____
NAME (Person who prepared this Notice of Inspection)

_____
Organization

_____

_____
Address

_____
Phone Number

EXHIBIT 2-Y2

Notice Of Lead-Based Paint Risk Assessment

Address/location of property or structure(s) this summary notice applies to:

_____

_____

Lead-based paint risk assessment description:
Date(s) of risk assessment: _____

Summary of risk assessment results (Check all that apply):

(a) _____ No lead-based paint hazards were found.
(b) _____ Lead-based paint hazards were found.
(c) _____ A brief summary of the findings of the risk assessment is provided below (required if any lead-based paint hazards were found).

Summary of types and locations of lead-based paint hazards:
(List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based paint hazards found.)

_____

_____

_____

_____

_____

_____

_____

_____
NAME (Contact person for more information about the risk assessment)

_____
Organization

_____

_____
Address

_____
Phone Number

_____
NAME (Person who prepared this Notice of Risk Assessment)

_____
Organization

_____

_____
Address

_____
Phone Number

EXHIBIT 2-Y3

Notice Of Lead Hazard Evaluation Or Presumption

Notice that lead-based paint or lead-based paint hazards are presumed to be present at (provide address/location of property or structure(s):

_____

_____

Type of presumption: (Check all that apply.)

(a) _____ Lead-Based paint is presumed to be present

(b) _____ Lead-Based paint hazard(s) is (are) presumed to be present.

Summary of presumption: (List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based hazards presumed to be present.)

_____

_____

_____

_____

_____

_____
NAME (Contact person for more information about the presumption)

_____
Organization

_____

_____
Address

_____
Phone Number

_____
NAME (Person who prepared this Notice of Presumption)

_____
Organization

_____

_____
Address

_____
Phone Number

EXHIBIT 2-Y4

Notice Of Lead Hazard Reduction

Notice of completion of lead-based paint hazard reduction activity at (provide address/location of property or structure):

_____

_____

Hazard reduction activity start date: _____
Hazard reduction activity end date: _____

Summary of presumption: (List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of hazard reduction activities performed at the locations listed.)

_____

_____

Dates of clearance testing and/or soil analyses: _____

Locations of building components with lead-based paint remaining in the rooms, spaces or areas where activities were conducted: _____

_____

Summary of results of clearance testing and soil analyses:
(a) _____ No clearance testing was performed.
(b) _____ Clearance testing showed clearance was achieved.
(c) _____ Clearance testing showed clearance was not achieved.

_____
NAME (Contact person for more information about hazard reduction)

_____
Organization

_____

_____
Address

_____
Phone Number

_____
NAME (Person who prepared this Summary Notice)

_____
Organization

_____

_____
Address

_____
Phone Number

EXHIBIT 2-Z

ASBESTOS REGULATIONS

http://deq.mt.gov/Asbestos/default.mcpx

This article taken from the Fall 2003 edition of *Big Sky Clearwater*, published by the Montana Department of Environmental Quality (DEQ), discusses some of the asbestos regulations that relate to public and commercial building owners; it also provides some ways of dealing with asbestos containing materials (ACM).

For additional information, contact the *Montana DEQ Asbestos Control Program*:
(406) 444-5300
http://deq.mt.gov/Asbestos/default.mcpx
and
http://svc.mt.gov/deq/mail/AsbestosMail.asp

Please note: Various asbestos regulations apply to each asbestos situation. Asbestos regulations that apply to public and commercial buildings differ from those that apply to schools, single-family dwellings, and other buildings. The intent of asbestos regulations is to prevent asbestos releases and exposures.

As a Public or Commercial Building Owner, What Asbestos Regulations Govern My Asbestos and Me?

In Montana, activities involving asbestos in commercial buildings are governed by one or more regulatory authorities, such as State of Montana DEQ, Federal EPA, and OSHA; in many cases jurisdictions and regulations overlap.

The Asbestos Control Program of the Department of Environmental Quality (DEQ) regulates and permits asbestos abatement projects, accredits asbestos-related occupations, provides compliance assistance, and administers certain sections of the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation. The Asbestos Control Program regulates asbestos abatement activities involving three (3) or more square or linear feet of ACM. Asbestos abatement activities must be permitted through the Asbestos Control Program and must be conducted by accredited asbestos personnel following proper asbestos abatement, transportation, and disposal procedures.

Most of the asbestos activity in Montana involves building renovation and demolition activities. The NESHAP has a specific standard that addresses building renovations and demolitions; 40 CFR 61.145. In order to determine which requirements apply to a building owner or contractor of a renovation or demolition, an asbestos inspection is required. An asbestos inspection not only locates, quantifies, and assesses the condition of asbestos, it also provides information as to whether an asbestos containing material is regulated and regulated by which authority. According to EPA and Asbestos Control Program regulations, an accredited asbestos inspector must perform the asbestos inspection. Typically, samples of suspect asbestos containing materials are collected by the inspector for laboratory analysis. Sample analytical costs range from $15-30/sample. Asbestos Control Program regulations require sample analysis be done by a laboratory approved by the National Institute of Standards and Technology (NIST). In some cases it can be assumed a material contains asbestos, saving an owner some money.

The [Montana DEQ] Asbestos Control Program maintains a list of accredited and approved

asbestos inspectors and laboratories available for your reference. Contact them for specific cost and inspection information.

In a demolition or renovation where regulated ACM is identified by the asbestos inspection, the regulated ACM would need to be removed by an accredited asbestos abatement contractor following proper abatement procedures under an asbestos abatement project permit issued by the Asbestos Control Program. The building owner or abatement contractor would apply for the permit using a form available from the Asbestos Control Program called the "Montana Asbestos Abatement Project Permit Application and NESHAP Demolition/Renovation Notification." A permit fee based on the asbestos abatement contract volume would apply. A seven (7) or ten (10) day notification period, depending on the asbestos abatement contract volume, would also apply.

In a demolition where no regulated ACM is identified by the asbestos inspection, the owner or demolition contractor must notify the Asbestos Control Program of the demolition using the same form as above, "Montana Asbestos Abatement Project Permit Application and NESHAP Demolition/Renovation Notification." No fee applies to demolition notifications where no regulated ACM is identified; however, a ten (10) day notification period is required.

In a renovation where no ACM is identified by the asbestos inspection, no notification to the Asbestos Control Program is required!

Even though the Asbestos Control Program is delegated by EPA to administer the NESHAP, EPA is also active in Montana regulating asbestos on Indian Reservations, in private and public kindergarten through twelfth grade schools, and other buildings. Montana is part of EPA's Region VIII including North and South Dakota, Wyoming, Utah, and Colorado.

Another asbestos authority is Federal OSHA (Occupational Safety and Health Administration). OSHA regulates worker safety and health as they relate to asbestos in the general and construction industries. Prior to initiating construction activities, OSHA's asbestos standard also requires an asbestos inspection as part of its hazard communication requirement. The Asbestos Control Program's regulations have adopted by reference some of OSHA's asbestos regulations; however, for more complete information on OSHA's regulatory requirements, contact OSHA's office in Billings at (800) 488-7087.

City or county governments such as local building permitting offices or local environmental health or sanitarian's office may also have asbestos requirements, contact them before initiating demolition or renovation work. City or county governments issue building permits for general renovation/demolition activities; however, don't be tricked assuming that permit will satisfy the Asbestos Control Programs asbestos abatement permit and demolition/renovation notification requirements.

A final asbestos authority is the landfill. Prior to initiating asbestos work, contact your local landfill and learn about their asbestos disposal requirements. In many cases landfills do not accept ACM and the last place you want to learn that is at a landfill's gate. According to State of Montana Refuse Disposal Rules and the Asbestos Control Program regulations, asbestos must be disposed of in a State-approved Class II landfill.

Options: A Solution Exists!

At this point you may be scratching your head over asbestos regulations; however, rest assured that regulations exist to prevent asbestos exposure; they also may assist in limiting certain liabilities. As an owner of a commercial building that may contain asbestos, you have a few options. Armed with an asbestos inspection telling you where ACM is located, one option is to leave the ACM in place. If

you do not have plans to renovate or demolish your building, the option of leaving the ACM in place is economical. Providing the ACM is in good condition, not causing exposures, and not prone to damage, the ACM can be left in place, managed, and monitored periodically for damage.

A second option is to encapsulate the ACM. Encapsulation involves treating the ACM with a substance that surrounds or embeds asbestos fibers. There are commercially available encapsulants and mastics specifically manufactured for such applications.

Another option is enclosure. Enclosure involves installing an airtight, impermeable, and permanent barrier around the ACM to prevent the release of asbestos. Removal is another option involving the physical removal of the material. Removal may be the only option in building demolitions or renovations.

Encapsulation, enclosure, and removal fall into the definition of asbestos abatement. In Montana, asbestos abatement actions include encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition, transportation, and disposal of friable or potentially friable asbestos containing material. Abatement actions of three (3) or more square or linear feet of ACM must be permitted through the Asbestos Control Program.

As mentioned earlier, accredited asbestos personnel following proper abatement, transportation, and disposal procedures must perform abatement actions. The Asbestos Control Program has lists of accredited asbestos personnel available for your reference.

Asbestos regulations and abatement options can be confusing; however, we at the Montana DEQ Asbestos Control Program are available to discuss your asbestos issues, so before you deal with asbestos, contact us at the Asbestos Control Program for compliance assistance:

Montana Department of Environmental Quality
Asbestos Control Program
1520 E. Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

Office Phone: 406-444-5300
Fax: 406-444-1374

http://deq.mt.gov/Asbestos/default.mcpx
and
http://svc.mt.gov/deq/mail/AsbestosMail.asp

ASBESTOS CONSULTANTS/CONTRACTORS/LABORATORIES

ASBESTOS CONSULTANTS

ACM
Lyn Lang
P.O. Box 324
East Helena, MT
(406) 431-7457

ASPEN CONSULTING & ENGINEERING, INC.
Alice M. Santos
P.O. Box 4822
Helena, MT 59604
(406) 457-5188

CA-I
Norm Irish
2638 Rimrock Road
Billings, MT 59102
(406) 656-0718
Fax: (406) 656-6910

CASNE & ASSOCIATES, INC.
Ed Casne
P O Box 5957
Helena, MT 59604
(406) 443-1656
Fax: (406) 449-3845

EASTERN MONTANA ENVIRONMENTAL
Dave Hrubes
#1 Royal Avenue
Richey, MT 59259
(406) 773-5889
Fax: (406) 773-5554

FALLS ENVIRONMENTAL
Cheyenne Evanson
PO Box 313
Black Eagle, MT 59414
(406) 727-3578 office
(406) 590-1171 cell

INDUSTRIAL SAFETY & CONSULTING
Ralph DeLong
P O Box 9217
Helena, MT 59604
(406) 443-3369 or
(888) 844-3369
Fax: (406) 443-0733

MAXIM TECHNOLOGIES, INC.
Roger W. Herman, Jr.
600 South 25th Street
P O Box 30615
Billings, MT 59107
Voice: (406) 248-9161
Fax: (406) 248-9282

Roger Herman Jr
201 S. Wallace #B3A
Bozeman, MT 59715
(406) 582-8780-Bozeman
(406) 248-9161-Billings

Richard Leferink & Dave Simonson
303 Irene Street (59601)
P.O. Box 4699 (59604)
Helena, MT
(406) 443-5210
Fax: (406) 449-3729

Don May
2436 Dixon
P.O. Box 2730
Missoula, MT 59806
(406) 543-3045
Fax: (406) 543-3088

Peter Klevberg
1601 2nd Avenue North
Great Falls, MT 59401-3259
(406) 453-1641
Fax: (406) 771-0743

MCS ENVIRONMENTAL, MOUNTAIN LABS
Wade Johnston & Dan Bennett
5562 Alloy South
Missoula, MT 59808-9621
(406) 728-7755 or *(800) 735-7095*
Fax: (406) 728-7367

MORRISON MAIERLE
Tom Heinecke
1228 Whitefish Stage Rd.
Unit 3A

Kalispell, MT 59901
(406) 752-2216
Fax: (406) 752-2391

Great Falls, MT 59401-3259
(406) 453-1641
Fax: (406) 771-0743

NORTHERN BUILDING INSPECTION SERVICE

Ken Whitaker
P O Box 333
Denton, MT 59430
(406) 567-2438

NORTHERN INDUSTRIAL HYGIENE

Kevin Oliver
100 North 27th Street, Suite 550
Billings, MT 59101
(406) 245-7766
Fax: (406) 254-1428

PIONEER ENGINEERING, INC.

Walter Ware P.E.
409 Timmons
Box 756
Scobey, MT 59263
(406) 487-5170

303 Irene Street (59601)
P.O. Box 4699 (59604)
Helena, MT
(406) 443-5210
Fax: (406) 449-3729

Don May
2436 Dixon
P.O. Box 2730
Missoula, MT 59806
(406) 543-3045
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Missoula, MT 59806
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Fax: (406) 543-3088

Peter Klevberg
1601 2nd Avenue North

RESOURCE TECHNOLOGIES, INC.

Cal Zanella
601 Nikles Drive, Suite 14
Bozeman, MT 59715
(406) 585-8005
Fax: (406) 585-0069

TERRACON CONSULTANTS WESTERN, INC.

Merle Listoe & Rick Foust
2110 Overland Ave., Suite 124
Billings, MT 59102
(406) 656-3072
Fax: (406) 656-3578

"Y" ENVIRONMENTAL

Yon Malkuch
PO Box 433
Sheridan, WY 82801
(307) 672-3937
Fax: (307) 674-6334

ASBESTOS CONTRACTORS

BRICKLEY CONSTRUCTION CO., INC.
Bruce Ingraham & Jim Chelini
222 E. Park
Butte, MT 59701
(406) 723-7885
Fax: (406) 723-7886

ENVIROCON, INC.
Michael S. Stevenson
PO Box 16655
Missoula, MT 59808
(406) 523-1181

ENVIRONMENTAL CONTRACTORS
Frank Kolendich & Steve Shroeder
P O Box 80107
Billings, MT 59108
(406) 652-6337
Fax: (406) 652-1724

Craig Foust & Steve Schaff
PO Box 459
Missoula, MT 59806
(406) 327-0271
Fax: (406) 327-0276

ENVIRONMENTAL MANAGEMENT SERVICES
Richard Galbraith
P.O. Box 4598
Helena, MT 59604
(406) 227-5614

FALLS ENVIRONMENTAL
Cheyenne Evanson
PO Box 313
Black Eagle, MT 59414
(406) 727-3578 office
(406) 590-1171 cell

INTERSTATE INSULATION AND CONTRACTING
Dallas Cranford, Owner
Randy Warnke, President
3010 Rimrock Road
Billings, MT 59102
(406) 655-3388

IRS ENVIRONMENTAL, INC.
Robert Reed & Carl Burnham
East 12415 Trent
Spokane, WA 99216
(509) 927-7867
Fax: (509) 928-3933

JACKS TECHNICAL ASSISTANCE, INC.
Jack Campbell
#4 Wood Court
Helena, MT 59601
(406) 443-1392

QUALITY URETHANE
Curt Bedwell
808 4th Avenue SW
Great Falls, MT 59404
(406) 727-8103
Fax: (406) 454-0731

SAFETECH, INC.
Leonard Cranford
4515 Rimrock Road
Billings, MT 59106
(406) 651-0011
Fax: (406) 651-027

SCOTT FITZPATRICK
PO Box 1729
Helena, MT 59624
(406) 439-1979

SPECIALTY CONTRACTORS, INC.
Lowell Thomson & Jim Gwinn
P O Box 998
Post Falls, ID 83834-9980
(509) 535-0666
Fax: (509) 536-9672

WESTERN STATES ABATEMENT
Dick Galbraith
P O Box 4598
Helena, MT 59604
(406) 227-5614
Fax: (406) 227-5606

Wayne Schwoob
P O Box 16105
Missoula, MT 59808-6105
(406) 543-4093
Fax: (406) 543-4872

LABORATORIES (PLM, PCM, TEM, SEM)

NORTHERN ANALYTICAL LABORATORIES, INC.
Kathy Smit
PO Box 30315/602 South 25th Street
Billings, MT 59107
(406) 254-7226
Fax: (406) 254-1389

BRAUN INTERTEC ENVIRONMENTAL, INC.
Beth Regan & Steve Felton
6875 Washington Avenue South
PO Box 39108
Minneapolis, MN 55439-0108
(612) 942-4828
Fax: (612) 942-4844

EMSL ANALYTICAL, INC
107 Hadden Avenue
Westmont, NJ 08108
(800) 220-3675

RESERVOIRS ENVIRONMENTAL SERVICES, INC.
Robert Dickson & Paul LoScalzo
1827 Grant Street
Denver, CO 80203
(303) 830-1986 or (800) 678-7374
Fax: (303) 863-9196

MCS ENVIRONMENTAL/MOUNTAIN LABS
Wade Johnston & Dan Bennett
5562 Alloy South
Missoula, MT 59808-9621
(406) 728-7755 or (800) 735-7095
Fax: (406) 728-7367

DISCLAIMER: This list is for informational purposes only. Asbestos-related work must be performed by state-accredited asbestos personnel. Prior to hiring an asbestos contractor, consultant, or laboratory verify that the personnel or lab are accredited. You may call the Program for such information at (406) 444-3490
Last Update: November 14, 2018 G:\AWM\Web Support\Asbestos\ACP_Cons_Cont_Lab_lst.doc

CHAPTER 3 -- PROCUREMENT STANDARDS

I. OVERVIEW 3-2
A. PROCUREMENT STANDARDS 3-2
B. REQUIREMENTS 3-2
II. APPLICABLE REQUIREMENTS 3-3
A. FEDERAL 3-3
B. STATE 3-3
III. GRANTEE RESPONSIBILITIES 3-4
A. CODE OF ETHICS 3-4
B. CONFLICTS OF INTEREST 3-4
C. GENERAL PROCUREMENT POLICIES 3-6
D. CONTRACTING WITH DISADVANTAGED BUSINESS ENTERPRISES 3-7
E. PROCUREMENT PROCEDURES 3-7
F. SELECTING THE METHOD OF PROCUREMENT 3-8
G. SOLICITING PROPOSALS 3-17
H. PRIOR COMMITMENTS TO CONSULTANTS 3-18
I. REVIEWING PROPOSALS AND SELECTING THE CONSULTANT 3-19
J. CHECKING REFERENCES 3-20
K. MDOC DEBARMENT CHECK AND REVIEW OF PROCUREMENT PROCEDURES 3-21
L. CONTRACT PRICING AND METHOD OF COMPENSATION 3-22
M. PREPARING THE CONTRACT 3-24
N. RECORD KEEPING REQUIREMENTS 3-25
O. CONTRACT ADMINISTRATION AND SUPERVISION 3-25
EXHIBITS 3-27

CHAPTER 3

PROCUREMENT STANDARDS

I. OVERVIEW

This chapter provides guidance to grant recipients regarding the State and federal requirements that govern the procurement of supplies, equipment, construction, and professional or other services with CDBG funds. The principal focus of this chapter is the procedures required for the selection of consultants to provide architectural, engineering, audit, or project management services.

The procedures required for the selection of contractors for public facilities or building construction are discussed in detail in Chapter 9, Construction Management: Public Facilities and New Housing Construction.

Local officials should carefully review this chapter before entering into any agreements to purchase equipment or materials or to retain the services of a consultant or contractor.

A. PROCUREMENT STANDARDS

All procurement of supplies, equipment, and professional or other services must conform to procedures set out in the HUD "Administrative Requirements for Grants" 2 CFR Part 200 and appropriate attachments as well as procedures established by Montana law.

B. REQUIREMENTS

1. All contracts entered into by grantees must contain certain Montana Department of Commerce (MDOC) CDBG-required clauses to assure compliance with all applicable State laws and regulations. This chapter identifies the required clauses.

2. All contracts must be reviewed and approved by MDOC before they are executed.

3. Prior to contract award, the names and addresses of all tentatively-selected contractors (whether for construction or professional services such as engineering, architectural design, or grant administration) must be submitted to MDOC for comparison with the General Service Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs.

4. Grantees must retain written documentation regarding the procurement procedures used for each contract.

5. Grantees must establish procedures to assure ongoing review of contractor performance and contract expenditures during the term of any CDBG-funded project.

II. APPLICABLE REQUIREMENTS

A. FEDERAL

1. HUD "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally-Recognized Indian Tribal Governments" . All CDBG recipients must follow the "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Units". A copy of this document is available upon request from the Montana Department of Commerce (MDOC) CDBG staff.

2. 2 CFR Part 200 govern the procurement procedures for all CDBG program compliance.

B. STATE

Title 7, Chapter 5, Parts 23 and 43, MCA also govern the procurement of construction and purchasing contracts by CDBG local government grantees. These laws must always be followed by these entities, regardless of their participation in the CDBG grant program.

CDBG grantees should be prepared to provide information to the Department about how they intend to procure or procured grant administration, professional services and construction services in accordance with the procurement laws applicable to them, including but not limited to the list of vendors to be or that were solicited, a copy of any advertisements, a copy of the request for proposals, or the information detailing the scope of work if price is the only consideration.

All executed contracts or agreements for grant services to be paid for in whole or in part by CDBG funds must be submitted to the Department. Additional guidance on procurement procedures can be found on the CDBG Toolkit webpage.

Architectural, Engineering, and Land Surveying Services

Section 18-8-201 to 212, MCA, establishes a qualifications-based selection procedure for architectural, engineering and surveying services costing $20,000 or more which are funded by state and local public agencies (state agencies, local governments, school districts, special districts, or authorities of local governments).

Montana Public Notice Requirements.

Requirements for publication of notices for municipalities are set forth in Section 7-1-4127, MCA, Publication of notice–content–proof.

Requirements for publication of notices for counties are set forth in Section 7-1-2121, MCA, Publication and content of notice–proof of publication.

Grant recipients should be aware that Section 18-8-203, MCA, dealing with the procurement of architectural, engineering, and land surveying services, states that units of state and local government must publish a notice of their need for these services. However, because Section 18-8-203, MCA does not establish a specific timeframe or method of publication, it can be read in conjunction with Sections 7-1-4127, MCA, Publication of notice–content–proof (for municipalities); and 7-1-2121, MCA, Publication and content of notice– proof of publication for counties for further guidance regarding publication timeframes.

The publication requirements contained in the statutes listed in the chart below apply to the procurement of architectural, engineering, and land surveying services. In all cases, MDOC strongly recommends that recipients publish their notices in the appropriate regional newspapers, in addition to advertising in local newspapers. This practice will help assure greater competition, lower costs and provide a better selection of choices for the local government. This helps CDBG grant recipients document outreach to disadvantaged business enterprises.

Summary of Notice Requirements in Montana Statutes				
Statute	**Title of Statute**	**Counties**	**Municipalities**	**NOTES**

18-8-203, MCA	*Public notice of agency requirement*	X	X	Sets forth requirements regarding when agencies must publish notice for professional services.
7-1-4127, MCA	*Publication of notice*		X	Sets forth requirements related to type of media and newspapers acceptable for publication purposes.

5. Rules of Conduct for Public Officials and Employees (Sections 2-2-104 and 2-2-121, MCA). These sections of Montana law set out the Code of Ethics for state and local officials and employees.

III. GRANTEE RESPONSIBILITIES

The Montana statutes cited above and the HUD "Administrative Requirements for Grants" provides the basic framework of requirements for the procurement of all supplies, equipment, construction, and services using CDBG funds by local governments and any subrecipient. The key requirements are summarized in the following sections. If local officials have any questions regarding these requirements, they should contact MDOC CDBG staff for guidance.

A. CODE OF ETHICS

In Title 2, Chapter 2, Part 1, MCA, the Montana Legislature established a Code of Ethics for all officers and employees of State and local government and sets out state policy on conflicts of interest for state and local public officials.

Montana's Code of Ethics for public officials and employees (cited above in section A) includes similar conflict of interest regulations that also apply to procurement activities for any local CDBG project. In some circumstances, the State of Montana conflict of interest provisions may be even more restrictive than the federal prohibitions. Sections 2-2-201 and 7-3-4367, MCA, prohibit any municipal or county employee from entering into a contract with his or her employer.

B. CONFLICTS OF INTEREST

HUD conflict of interest regulations apply to all situations involving a potential conflict of interest found in 2 CFR Part 200.112, 24 CFR Part 570.489(h), and 24 CFR Part 92.356.

The general conflict of interest rule is as follows: no persons covered by the conflict of interest provisions who exercise or have exercised any functions or responsibilities with respect to activities assisted with HUD-funded projects administered by the Montana Department of Commerce (Commerce) CDD or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from the HUD-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HUD-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

Persons Covered are defined as an employee, agent, consultant, officer, or elected or appointed official of the recipient or of any designated entities receiving HUD funds provided by CDD.

Any circumstances that may result in a real or perceived conflict of interest must be remedied by considering factors for exceptions, publicly disclosing the conflict, and an opinion of the local government grantee's attorney that the interest for which the exception is sought would not violate state or local law.

Upon the written request of a local government grantee, Commerce may grant an exception to the conflicts prohibited on a case-by case basis when the local government grantee has satisfactorily met the threshold requirements, taking into account the cumulative effects of the factors to be considered for exceptions. Commerce will consider an exception only after the grantee has provided the following documentation:

1. A disclosure of the nature of the conflict, accompanied by documentation of a public disclosure of the conflict and a description of how the public disclosure was made;
2. An opinion of the local government grantee's attorney that the interest for which the exception is sought would not violate state or local law; and
3. Documentation demonstrating that the cumulative effect of the required factors to be considered justifies an exception.

Commerce will review the following factors when determining whether to grant an exception to the prohibited conflicts:

1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

2. Whether an opportunity was provided for open competitive bidding or negotiation;

3. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

4. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

5. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

6. Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

7. Any other relevant considerations.

Local government grantees should provide Commerce with relevant information relating to the above factors. For example, the local government grantee requesting an exception should report and document whether or not an opportunity was provided for open competitive bidding or negotiation (see factor number 2) with their request for an exception or shortly thereafter.

Combining Engineering and Grant Administration Services

A frequently-asked question regarding "conflict of interest" is whether the same firm may be selected to provide both engineering services and grant administration services. According to HUD policy, a conflict generally exists in situations where a local government awards a contract to a firm to manage or administer its CDBG project while at the same time the firm is to provide a service or product under the community's CDBG project.

HUD regulations require that a grantee's financial management system provide for effective control over and accountability for all funds. The regulations prohibit arrangements where a firm would, in effect, be reviewing its own work. Under no circumstances would it be appropriate to have an engineering consultant directly involved in managing CDBG funds for the project or placed in a position which they would in effect, be signing off for their own work.

C. GENERAL PROCUREMENT POLICIES

Under the HUD "Administrative Requirements for Grants", CDBG recipients are:

- required to review proposed procurements to avoid purchase of unnecessary or duplicate items;
- required to consider consolidating or breaking out procurement to obtain a more economical purchase;
- required to analyze the alternatives of lease versus purchase, where appropriate, and perform any other appropriate analysis in order to determine the most economical procurement approach;
- encouraged to enter into state and local inter-governmental agreements for procurement or use of common goods and services to achieve greater economy and efficiency, where feasible;
- encouraged to use federal and state excess and surplus property in lieu of purchasing new equipment and property whenever it is feasible and reduces project costs;
- required to make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources;
- required to maintain records sufficient to detail the significant history of a procurement. These records must include, but are not necessarily limited to, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price;
- permitted to use "time and material" type contracts only in very limited situations:

    a. after a determination is made that no other contract is suitable; and

    b. if the contract includes a ceiling price that the contractor exceeds at his/her own risk.

- responsible for, in accordance with good administrative practice and sound business judgment, the settlement of all contractual and administrative issues arising out of procurement activities; and

- required to have protest procedures to handle and resolve disputes relating to procurement, and in all instances disclose information regarding the protest to the Montana Department of Commerce.

D. CONTRACTING WITH DISADVANTAGED BUSINESS ENTERPRISES

Disadvantaged Business Enterprises (DBEs), is a term used to collectively refer to both women-owned business enterprises, and minority-owned business enterprises. CDBG grantees are required to take affirmative steps to assure that DBEs are utilized when possible, as sources of supplies, equipment, construction and professional and other services.

Grantees should encourage the prime contractors on their projects to utilize qualified DBE firms to the maximum extent possible. Please see Chapter 5, III. Grantee's Responsibilities, C. Contractor Affirmative Action for full description of requirements.

E. PROCUREMENT PROCEDURES

1. Full and Open Competition

All procurement transactions should be conducted in a manner that provides full and open competition. Procurement procedures should avoid any provisions that would restrict or eliminate competition. Grant recipients may choose to combine the procurement of services in order to reduce procurement costs and time. As an example a local government can procure for more than just grant administration in one procurement process; a local government could combine the services for grant administration, planning, or other services so long as the procurement allows for "and/or" language to encourage all types of services providers the ability to respond. Additionally, local governments can combine their efforts by designating a lead local government to conduct the procurement on behalf of a larger group to provide services to more than one governmental entity.

Some of the situations considered to be restrictive of competition include:

- placing unreasonable requirements on firms in order for them to qualify to do business;

- requiring unnecessary or unreasonable levels of prior experience and excessive bonding;

- non-competitive pricing practices between firms or between affiliated companies;

- non-competitive awards to consultants that are on retainer contracts;

- organizational conflicts of interest;

- specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and

- any arbitrary action in the procurement process.

2. **Geographic Preference**

As a federally funded program, CDBG recipients should conduct procurement in a manner that avoids the use of administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals. Including criteria in a request for proposals such as "knowledge of community" or "experience with community" would be considered to "unduly restrict competition" and are discouraged.

3. **Written Selection Procedures**

CDBG recipients should have written selection procedures that provide, at a minimum, that all solicitations:

a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description should not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, describe those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors or must be clearly stated.

b. Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

F. SELECTING THE METHOD OF PROCUREMENT

The HUD "Administrative Requirements for Grants" permits five procurement methods. CDBG recipients should select the most appropriate method based upon the recipient's needs and the nature of the services required. The following is a summary of basic selection alternatives and the requirements associated with them. If local officials have any questions regarding these requirements, they should consult the MDOC CDBG staff assigned as liaison for their project.

1. ***Procurement by micro-purchases***

- acquisition of supplies or services generally no greater than $3,000. Contact your CDBG liaison for additional details,

2. ***Procurement by small purchase procedures***
   - securing supplies, services, or other property that do not cost more than $100,000, additional details below,
3. ***Procurement by sealed bids***
   - formal, firm fixed price contracts, generally construction contracts further discussed below and in Chapter 9 of this manual
4. ***Procurement by competitive proposals***
   - Fixed price contract or cost-reimbursement type contract such as professional services, typically a Request for Proposal or Request for Qualification, and
5. ***Procurement by noncompetitive proposals***
   - Solicitation of a proposal from only one source, also called Sole Source procurement, additional details below.

Procurement by HUD's Small Purchase Procedures:

HUD's "Small Purchase Procedures" can be used where the procurement will not cost more than $100,000 in the aggregate, and where the procurement is relatively simple and informal procurement for services, supplies, or other property. Can be used for grant management or other consulting services.

As you procure services using HUD's Small Purchase Procedures, keep in mind:

a. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. In all cases, the local government should obtain price or rate quotations from a minimum of two qualified sources. However, the grant recipient would determine the number of adequate qualified sources to speak with.

b. This process would need to be documented to demonstrate that procurement procedures were carried out and the service, property or supply selected was done so according to proper procurement procedures. If a local government's procurement policy is more restrictive than MDOC procedures, the local government's policy will govern the procurement procedures to be followed.
   1. The Grantee needs to record the rate or quote received along with other identifying information (name, address, and phone) and document the questions asked.

c. The grant recipient may ask other questions, so long as price or rate quotes were included. The questions must be asked equally and fairly to all firms and the notes or documentation of the firms contacted and questions asked would need to be provided as documentation and then a determination of which firm was selected.

d. The local government also needs to advertise for Section 3 compliance and contact DBE/MBE/WBE firms as well in coordination with the small purchase procurement procedures.
   1. For DBE/MBE/WBE firms contact the Montana Department of Transportation (MDT) to obtain a list of Disadvantaged Business Enterprises (DBEs) certified firms within the region that appear in MDT's directory in order to invite proposals from qualified DBE firms.

      CONTACT:
      Montana Department of Transportation (MDT)
      2701 Prospect Ave.
      P.O. Box 201001

Helena, MT 59620-1001
Phone: 406-444-6337
Website: http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml

e. MDOC recommends that local governments follow prudent purchasing practices and receive competitive telephone or written quotations for all small purchase procurement. According to MCA 7-5-4302 advertisement is required for equipment purchases over $80,000. Fax quotations are an acceptable form of written documentation.

f. When price quotations are obtained orally, adequate written documentation, such as detailed notes describing telephone contacts (who, what, when, etc.), must be maintained in all local CDBG files.

Procurement by HUD's Sealed Bid Procedures

Competitive sealed bidding is the standard procurement process followed for construction activities involved in CDBG public facility and new housing construction projects.

Chapter 9 (Construction Management: Public Facilities and New Housing) includes a detailed step-by-step discussion of the procedures involved in selecting a construction contractor and the requirements that are applicable to CDBG-funded construction contracts. Grantees should also refer to the current applicable provisions of Montana law for advertising requirements (Section 7-5-2301, MCA, for county governments and Section 7-5-4302, MCA, for municipalities) when the competitive sealed bid method is used.

Procurement by competitive sealed bids (after formal advertising) is used when the following conditions exist:

a. A complete, adequate and realistic specification or purchase description is available;

b. Two or more responsible suppliers are willing and able to compete effectively for the business;

c. The procurement lends itself to a firm fixed-price contract (a specified price to be paid when the items or services are delivered); and

d. Selection of the successful bidder can appropriately be made principally on the basis of price.

Bids are publicly solicited (advertised in newspapers) and kept in confidence until there is a public bid opening. A firm-fixed price contract is awarded to the responsible bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price. When using formal advertising, the following requirements apply:

1. The invitation for the bids must be publicly advertised and bids must be solicited from an adequate number of known suppliers or contractors, providing them sufficient time prior to the date set for opening the bids.

2. The invitation for bids, including specifications and attachments, must clearly describe the items or services required in order for the bidders to properly respond.

3. All bids must be opened publicly at the time and place stated in the invitation for bids.

4. A firm-fixed price contract award must be made in writing to the lowest responsive and responsible bidder.

5. Any or all bids may be rejected if there is a sound documented reason.

Procurement by HUD's Competitive Procedures

1. **Requests for Proposals (RFPs)** are:

   - required for any services over $100,000,
   - recommended for procurement actions under $100,000 that are complex and/or where qualifications and desired work products cannot easily be handled by telephone rate quotation; and
   - Can be used for grant management or other consulting services.

2. **Procurement of Architectural, Engineering, or Surveying services -- Use the Request for Qualifications (RFQ) Process**

   Under Montana law (18-8-201, MCA), the selection of a consultant for architectural, engineering, or surveying services requires a competitive solicitation and negotiation process (usually called the Request for Qualifications process, RFQ) for projects for which the fees are estimated to exceed $50,000.

   Procurement by Competitive Proposals

   The phrase "procurement by competitive proposals" is often used interchangeably with the term "Procurement by RFP" (Requests for Proposals), but there is also a method called "Procurement by RFQ" (Request for Qualifications).

   These methods of procurement are generally used when conditions are not appropriate for the use of sealed bids. An RFQ/RFP is a written announcement that invites consultants to compete for the provision of services to your local government.

   Procurement by competitive proposals via the RFQ method is the procurement procedure required by Montana law (Section 18-8-212, MCA) for retaining professional services such as an architect, surveyor, or engineer for your CDBG project. The law applies to state agencies, local governments, special districts, "or any other entity or authority of local government, in corporate form or otherwise." It therefore applies to all procurement of these professional services by CDBG recipients.

   Grant recipients should be aware that section 18-8-203, MCA, dealing with the procurement of architectural, engineering, and land surveying services, states that units of state and local government must publish a notice of their need for these services.

   Because the retention of consultant services for engineering or project management is a major concern for most CDBG recipients during the start-up phase of their project, the following discussion will cover the issues involved in this method of procurement in greater detail.

Generally accepted guidelines for procurement by competitive proposals include:

- Requests for Qualifications (RFQs) are publicized which identify all evaluation factors and their relative importance.
- Any response to publicized requests for proposals is honored to the maximum extent practical.
- Proposals must be requested from an adequate number of qualified sources.
- CDBG recipients must have a method for conducting technical evaluations of the proposals received and for selecting awardees.
- All proposals received should be evaluated according to written criteria established in advance which describe the significant factors to be used to determine the contract award.

The contract award is made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered

PREPARING A REQUEST FOR QUALIFICATIONS OR REQUEST FOR PROPOSALS

Although the RFQ/RFP process may appear time-consuming, taking the time up front to make sure that your community hires a competent engineer or architect, or other consultant will, in the long term, likely save money and prevent problems. The RFQ/RFP should include:

- the name of the local government issuing the RFQ/RFP;
- a brief description of the project including location, purpose, timeframe, and present status;
- a general description of the scope of the services to be provided by the consultant;
- the amount budgeted for the proposed scope of services;
- the method of payment to be used;
- the timeframe for performing the work, including any major milestones or deadlines involved, this could include longer periods of time as it relates to services request. As an example: an engineer may be procured for a service that would last for a term longer than a single task under a service so long as the procurement meets the minimum federal requirements;
- information required of each respondent to make the selection, including consultant qualifications, related experience on similar projects, current and projected workloads, capability to meet time and budget requirements, and identity of and qualifications of professional personnel to be assigned to the project;
- the methods and criteria to be used in evaluating the proposals, and the relative weight of each of the criteria;

- the name and telephone number of a local person who can be contacted for further information regarding the RFQ/RFP; and

- directions for submitting a response to the RFQ/RFQ.

The entire project scope should be included in the RFQ/RFP. For instance, engineering services for the planning, design and construction phases of the project should be specifically listed in the RFQ/RFP and be addressed by the responding firms. You can always change engineering firms, but if you hire them to do the facility plan (planning phase) only, and later want to use the same firm for the design, you would need to go through this same procurement process again.

You should not go into precise detail about the scope of the services the consultant is expected to perform. You do not want the response to be just a repeat of your RFQ/RFP. Allow the consultants to demonstrate their knowledge and experience by filling in the details of how they would approach the problem and the alternatives that you should consider.

The RFQ should be concise and to the point, containing all the important information needed for the firms to respond in a factual manner. However, do not overdo the RFQ/RFP document; include only the necessary information. A wordy or unclear RFQ/RFP will unnecessarily increase the time each firm spends preparing their response and your time in reviewing the proposals.

You should, however, be sure to specify any services or equipment the consultant will be expected to provide, such as requiring that they open a local office or provide secretarial or financial management services. These can significantly affect how the consultant will budget his or her time and resources. The RFQ/RFP should also describe any unique problems involved in the project and any previous studies that would be available for their review.

> CDBG recipients may want to consider including the amount budgeted for architectural, engineering, or grant administration services in the RFQ/RFP.
>
> This may help a consultant decide whether to go to the effort of responding. Knowledge of the available budget will also help the consultant fit the proposal to your financial resources to make sure that time and resources are used most efficiently.

Your RFQ/RFP should not only describe the criteria to be used in evaluating the proposals but also the relative weight attached to each. This is important for the consultant to better understand the priorities of your concerns and how to respond to them.

The directions for submitting the RFQ/RFP should specify the date and time of the submittal deadline and the number of copies required. Since proposals are sometimes hand delivered, be sure to include an office address where someone will be available to accept them.

Your RFQ/RFP document should also include the names, telephone and fax numbers, and Internet addresses (if available) of people that will be available and knowledgeable enough to answer questions about the RFQ/RFP. Do not just list the chief elected official if that person is not likely to be available during normal business hours.

Consultants interested in responding will usually contact you before they decide to submit a proposal. MDOC recommends that you be frank in answering the consultant's questions.

Consultants should be allowed to review your CDBG application so that they can gain a better understanding of what your community hopes to accomplish through the project. MDOC retains extra copies of funded applications for review by the public or consultants.

Chapter 3 exhibits contain *sample* formats for an RFP for grant management services and an RFQ for engineering services. Both provide only the outline for the content of an RFP/RFQ; each must be carefully adapted to reflect the unique activities and considerations involved in your CDBG project.

Non-competitive or Sole Source Procurement (Requires Prior CDBG Approval)

Sole source procurement (also known as "procurement by noncompetitive proposals") is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. The only circumstances under which a contract funded with CDBG monies may be awarded by sole source procurement negotiation are when at least one of the following applies:

a. sole source procurement would be permissible under Montana law; and

b. the items or services required are available only from one source;

c. a public emergency exists such that the urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods described above; or

d. after solicitation from a number of sources, competition is determined to be inadequate.

Housing and Urban Development procurement requirements found in 2 CFR Part 200 make clear that sole source procurement is permissible only when at least one of the above conditions applies and procurement by other procedures is not feasible. CDBG recipients proposing sole source procurement must provide cost data to demonstrate that proposed costs are reasonable and appropriate.

An example of a situation where MDOC would approve a sole source procurement would be where an engineering firm has been selected for a prior phase of a federally-funded public facility project and where CDBG funds will be used to complete a pre-existing and continuing project. In such cases, the original procurement of the engineering services must have been done in compliance with the procurement regulations of the federal funding agency involved.

The fact that a contractor is currently performing other consultant services for the CDBG grant recipient is not an adequate justification alone for a noncompetitive negotiated contract award. In all cases, noncompetitive negotiation which would involve CDBG funds must have prior approval from MDOC.

G. SOLICITING PROPOSALS

CDBG recipients should be able to document that proposals were solicited from an adequate number of qualified sources and that full and open competition took place prior to its selection of a consultant. Encouraging adequate competition is of obvious interest and benefit to CDBG recipients in terms of retaining the most qualified consultant at a reasonable cost. The more responses, the better the community's chance of hiring the best qualified firm.

For the procurement of architectural, engineering, and land surveying services, recipients should refer to the Montana Public Notice Requirements discussed at the beginning of this chapter.

The CDBG recipient must be able to demonstrate reasonable efforts to solicit from an adequate number of qualified sources. If the RFP/RFQ is advertised in a newspaper with only local distribution but can be can also be advertised at least once in a newspaper with regional distribution in their area of the State, in addition to local advertising.

Advertising the local government's request for proposals does not mean that the entire text of the RFP/RFQ must be included in an advertisement. The advertisement can briefly announce that the community is requesting proposals and that a copy of the detailed RFP/RFQ is available upon request. This approach, in lieu of publishing the entire text of the RFP/RFQ, could substantially reduce advertising costs. However, it will mean that the grant recipient may need to allow additional time for persons or firms to request and receive a copy of the RFP/RFQ and to respond. A reasonable amount of time can be determined by implementing standard practices at the local level, however, less time for response may unnecessarily restrict competition.

H. PRIOR COMMITMENTS TO CONSULTANTS

A CDBG grantee may have contracted with a consultant, architect, or engineer to prepare the original CDBG application.

This contract cannot be renewed or extended without further competition unless it can be clearly documented that the original hiring process met all federal and state requirements and included a scope of services that could extend beyond grant writing at the grantee's discretion. Professional services provided for a longer period than originally procured must be re-advertised.

The original consultant may respond to the grantee's new RFP/RFQ, and it is perfectly legitimate to consider that consultant's prior performance when making the selection. The RFP/RFQ process does not preclude you from hiring an engineer that has previously worked for you and who performed well. It does mean that you must give other qualified firms a reasonable opportunity to make a proposal a project.

A community may receive a proposal for what is called a "loss leader" arrangement, where the consultant offers to prepare or assist with a grant application at cut rates or for no cost in return for favorable consideration in the selection process for a project manager, architect or engineer. No such arrangement, whether based on an oral or written agreement, can be valid or binding on the grantee since it clearly violates federal requirements mandating "full and open competition."

Also, using an evaluation criterion such as "*familiarity with project or community*", for example, would be considered to be *restricting competition* because it would favor a consultant or firm that had worked with the community previously and could possibly discourage competition by other consultants.

I. REVIEWING PROPOSALS AND SELECTING THE CONSULTANT

The local government should appoint a committee of three to five people to review the responses to the RFP/RFQ. Members of the committee should be familiar with the RFP/RFQ and work to be accomplished through the contract. Try to include a person who is very familiar with the problems of the public facility or with the new housing construction project, such as the local public works supervisor or a local housing construction expert.

It may also be helpful to have a member of the committee with technical knowledge or experience appropriate to the project. The committee should try to keep to a minimum the time between the proposal deadline, evaluation of the proposals, and the final selection of the consultant. Forty-five days is a reasonable time period.

Grantees should have a method for conducting technical evaluations of the proposals received and for selecting awardees. Documentation of the procurement conducted is required to be retained for CDBG compliance. Grant recipients rank the proposals according to the evaluation factors listed in their RFP/RFQ and assign points to each, based on a pre-established number of points for each evaluation criterion which is consistent with their relative importance as described in the RFP/RFQ. Under State law, the ranking criteria for selection of engineers, architects and surveyors must include, at a minimum:

- the qualifications of the professional personnel to be assigned to the project;
- the consultant's capability to meet time and project budget requirements;
- location;
- present and projected workloads;
- related experience on similar projects; and
- recent and current work for the entity issuing the RFP/RFQ.

Ask the same questions of each firm. After ranking the responses in order of their scores on the evaluation factors and checking references, the committee will make their recommendation. Once it has reached a final decision, the local government should notify all of the respondents of the results in writing, as soon as possible.

J. CHECKING REFERENCES

Before you make your final selection of a consultant, the grant recipient may request a list of prior clients, including their name, description of the work performed, addresses, and the name and phone number of a person to contact. A list of their most recent projects is usually best. You should contact several references for each respondent being considered. Some useful questions might be:

- Were you satisfied with the quality and timeliness of the work?
- Was the consultant knowledgeable about funding programs and related requirements?
- Was the consultant willing and able to work closely and effectively with local staff?
- Were the costs or charges reasonable in relation to the work actually performed?
- Did you experience any problems that would discourage you from hiring them again?

Also check to see if the work done for these clients is similar to what you want the consultant to do. The ability to write a grant application, for example, does not mean that the same consultant has the capability to assist you with the management of a grant.

K. MDOC DEBARMENT / ELIGIBILITY CHECK OF CONTRACTORS AND REVIEW OF PROCUREMENT PROCEDURES USED

The name of the firm, principals of the firm, and address of the firm or consultant that has tentatively been selected must be provided to the CDBG Program Specialist assigned to your project – who will conduct a Federal and State debarment check of the firm and its principals. Once the check has been completed, the specialist will notify the grantee of the firm's status.

- ✓ This debarment check must be completed prior to issuance of a contract award; therefore, this debarment check should take place before local officials spend substantial time negotiating with a firm that has tentatively been selected.
- ✓ Before the community enters into a contract, local officials must send their assigned CDBG Program Specialist a copy of the advertisement used to publicize the RFP/RFQ, a copy of the RFP/RFQ itself, and a summary of the procedures followed to select the consultant, including copies of the evaluation forms used to compare the responses. MDOC can then review the procurement practices used by the CDBG recipient to assure that they are in compliance with federal and state requirements.
- ✓ CDBG recipients must retain all documentation in their CDBG project files to demonstrate the basis for selection or rejection of consultants, consultant qualifications, contract specifications, and scope of work.

Federal regulations prohibit grantees and sub-recipients from making any contract award or permit any contract award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs (Executive Order 12549).

The System for Award Management (or SAM, website: https://www.sam.gov/portal/public/SAM/) consolidates the debarment lists used by individual federal agencies. Use of the list is required for all HUD-funded programs.
It is also a state requirement to check for debarments through the listing of the State of Montana Debarred Vendors. The state requires that agencies may not enter into contracts with these vendors until the debarment period has expired. (See Section 18-4-241, MCA and ARM 2.5.402.) In addition, participants in contracts associated with a CDBG project must certify that neither they nor their principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, voluntarily excluded, or otherwise ineligible.

When a grant recipient receives only one response to a competitive solicitation, the procurement process may be reviewed by MDOC to determine whether it was unduly restrictive or tailored to a particular contractor or supplier. The burden of proof will be on the local government to demonstrate that it made reasonable efforts to assure maximum open and free competition and that its procurement procedures did not have the effect of unnecessarily restricting competition.

L. CONTRACT PRICING AND METHOD OF COMPENSATION

A **response to an RFP/RFQ** should not be confused with a **competitive bid**.

- A **bid** is an estimate of cost in response to detailed specifications such as for construction projects where selection can be made principally on the basis of price.

- A **response to an RFP/RFQ** is a description of how a consultant proposes to approach solving your problem.

Communities should not choose an engineer or architect only on the basis of cost. The main focus in selecting the consultant is to evaluate the quality of the proposal and the consultant's "demonstrated competence and qualifications for the type of professional services required."

In an RFP process, competition is primarily on the basis of qualifications, not on the basis of cost.

Specific costs should be discussed only after the consultant has been selected. It is well worth spending a little extra to get a qualified engineer or architect who will design a sound project that will provide cost-effective service for years to come.

Once the local government has made the final selection of a consultant, the next step is to negotiate the terms for compensation for the consultant's services at a "fair and reasonable" cost. Montana's law in regard to selection of architects, engineers, and surveyors, requires the local government to "negotiate a contract with the most qualified firm . . . at a price which the agency determines to be fair and reasonable."

The community needs to have a good sense of what a reasonable rate for a service is. Local officials can consult the professional engineering and architectural associations **--** such as the ***Consulting Engineers Council of Montana*** *(*629 Ave. D, Billings, MT 59101; telephone: 259-7300) or the ***AIA Montana/American Institute of Architects*** (P.O. Box 20996, Billings, MT 59104; telephone: 259 7300) -- to determine what "fair and reasonable" rates would be.

For other types of consulting services, local officials can also consider comparative prices in the area for similar services. Ask the consultant to briefly explain the firm's estimated fee and basis of charges or billing. Make sure you understand exactly what services will be provided. Is there a distinction between basic services and additional services? What circumstances could significantly change the estimate?

If the local government and the selected respondent cannot come to agreement on the scope of services and a mutually satisfactory fee, local officials should formally terminate the negotiations in writing and repeat the process of negotiating a scope of services and negotiating terms with the second-ranked respondent.

Once an overall price is negotiated that is fair and equitable to both parties, grantees should negotiate payment terms. Most consultants will prefer to receive payments in installments during the term of the project, rather than in one lump sum at the end of work activities.

Whenever possible, the grant recipient should assure that reimbursement is on the basis of the accomplishment of measurable objectives, such as key tasks or milestones in the scope of services or implementation schedule rather than an incremental time-payment basis in order to give the local government adequate control over contractor performance.

Cost Reimbursable Contracts and Specified Ceiling

In order to be eligible for CDBG reimbursement, contractors will be required to submit itemized invoices describing services furnished, total hours worked to accomplish each item, amount

being billed for each item, a description of any other eligible reimbursable expenses incurred during the billing period, and total amount being billed. In addition, a narrative description in sufficient detail must be submitted to justify the amount claimed on invoices.

MDOC will require itemized billing for professional services in order to provide adequate documentation of services rendered for projects using public funding. The CDBG program has authority to grant exceptions to this requirement.

For many years, MDOC policy for CDBG project administration allowed "fixed price contracts" for consulting services. In recent years, both local officials and staff from other state and federal funding programs have expressed concern about the use of fixed price contracts for professional services because of the lack of accountability and cost control this method provides, particularly when a project includes multiple federal and state funding sources. The reality is that the true costs for completing work tasks associated with the management of community projects are highly variable, depending upon the type of project and the unique issues that are involved.

Cost reimbursable contracts with a specified ceiling for compensation (as described above) are required by MDOC as the basis for project management contracts since the amount of funding available for administration is usually limited by the budget submitted in the community's original grant application.

Compensation for management services and architectural and engineering services must be on an hourly basis, not to exceed a specified amount, for each work element to be performed under the contract's scope of services.

The "costs plus a percentage of costs" system of compensation is prohibited by federal law. Similarly, "percentage of construction costs" methods (contingent fees) are usually prohibited for any publicly funded contract.

Use of Retainages

In negotiating payment terms for management services contracts, communities can provide for a retainage or holdback of a percentage of the contract funds (typically about five percent) pending completion of conditional project closeout and the resolution of any monitoring findings which may be related to the consultant's performance. The retainage concept might also be applied to an architectural contract by retaining some CDBG funds until a building constructed with CDBG funds has been inspected and approved for building code compliance.

For public facilities, the final payment of the engineering fee could be retained until the "as built" construction drawings have been submitted to the Department of Environmental Quality and, if applicable, an operation and maintenance manual has been provided to the grantee.

See exhibits in this chapter and Chapter 9 for additional guidance on retainages.

M. PREPARING THE CONTRACT

The grant recipient's negotiation with the selected consultant will include the scope of services, timetable, contract cost, and payment terms. In most cases, the consultant will prepare a draft scope of services based on the proposal submitted in response to the RFP. This draft scope of services should include detailed descriptions of the services and product s to be provided, along with a work schedule indicating the time line for completion of the more significant tasks, services and products that will be provided.

Grant recipients negotiating scopes of services for project management can review the sample management plans in this manual to get an idea of the activities that can be included in a scope of services.

Put It in Writing

The community should insist that any "understanding" between the consultant and the local government be written into the contract. "Gentlemen's agreements" can cause problems, even when involving apparently minor issues. The more time that is spent on describing who will be doing what, when, and for what fee, the smoother relations will be later on.

Several points that should be clarified in the contract to protect the community's interests are:

1. State that only those key individuals who are identified in the firm's proposal for specific tasks are permitted to charge their time and expenses to the job. This should not apply to clerical and support staff whose costs were not specified in the consultant's original proposal.

2. All commitments stated in the contract must be honored unless changes are approved in writing.

3. It is important that the contract allow a fair and reasonable profit for the consultant. The basis for this could be previous experience, contacts with other municipalities, or published professional guidelines.

Preparation of the contract itself is relatively simple once these issues have been agreed upon. MDOC has prepared a *sample* professional services agreement which includes the standard "boilerplate" language used in such contracts and the clauses required for CDBG-funded contracts found in this chapter's exhibits. This *sample* is a stand-alone contract and includes all CDBG required clauses. It is the grantee's responsibility to include provisions related to all applicable CDBG requirements in any contract or agreement through which CDBG funds are passed on to a contractor or subcontractor.

Chapter 3 exhibits include the CDBG required supplemental conditions to be included in an architect's, engineer's, or grant administrator's standard contract for professional services -- if they prefer to use their existing contract format. In both sample formats, the required clauses have been noted with an asterisk. These required clauses cover issues such as procedures dealing with breach of contract and termination, patents and copyrights, and access to and retention of records.

Chapter 3 exhibits include a checklist of required clauses for professional services contracts.

The grant recipient's attorney should be involved in the preparation of the contract to assure that all applicable requirements have been addressed and that the community's interests are represented.

The draft contract must be submitted to MDOC for review and approval prior to signing to make sure that all required CDBG contract conditions and clauses have been included and there are no other CDBG issues that need attention.

N. RECORD KEEPING REQUIREMENTS

All CDBG recipients must maintain records regarding any procurement that will be funded by CDBG. Regardless of the method of procurement used, CDBG recipients must develop and retain adequate documentation to demonstrate their reasons for choosing the method of procurement, the basis for selection or rejection of consultants, consultant qualifications, contract specifications, and scope of work.

This documentation should include copies of the RFP or RFQ, legal advertisements, affidavits from newspapers verifying publication, and other related consultant selection materials. Your CDBG procurement files must also document the basis for the contract or purchase price.

When a grant recipient receives only one response to a competitive solicitation, the procurement process may be reviewed by MDOC to determine whether it was unduly restrictive or tailored to a particular contractor or supplier. The burden of proof will be on the local government to demonstrate that it made reasonable efforts to assure maximum open and free competition and that its procurement procedures did not have the effect of restricting or eliminating competition.

Financial information in support of any contract payments must also be maintained. This documentation includes vouchers, invoices, contracts, checks, budget transfer memoranda, and other transaction documentation. The recipient must also be able to document that vouchers and invoices were reviewed to verify financial and contractual compliance before payment was made.

O. CONTRACT ADMINISTRATION AND SUPERVISION

CDBG recipients should establish and maintain procedures to monitor contractor performance to ensure that they are performing in accordance with the scope of services, timetable, and any other terms and conditions specified in their contracts or purchase orders. Ongoing monitoring of the contractor's performance and progress in completing contracted work tasks will prevent problems which may affect the quality, timely completion, or cost of the contract for your overall CDBG project.

All payment requests must be carefully reviewed, before they are approved to make sure that costs are reasonable and are consistent with the terms of your contract or purchase order. Local officials should require narrative progress reports with each billing. The consultant should be requested to report on each separate product specified in the budget. Billing should list hours spent on each budget category by employee type.

If you do not understand an item on an invoice or believe a charge is not adequately documented, you should contact your consultant and resolve the questions before payment is approved. Please refer to Section M (Contract Pricing and Method of Compensation) of this Chapter regarding CDBG's requirements for invoices for professional services. This policy should help ensure adequate documentation for services rendered on publicly funded projects.

Some communities have found that their relationship with a consultant goes more smoothly if a specific person, such as the mayor or clerk, is assigned to act as day-to-day liaison with the consultant and to review progress reports and requests for payment. A common frustration of consultants is that too often no one is available to give them direction or feedback on issues involving the project. Communication with the consultant can also be improved by having regular meetings with the town council or an advisory group to keep local officials and residents up to date on project progress and to invite their suggestions regarding any problems that might be encountered.

If grant recipients are encountering problems with nonperformance by a contractor, they should contact MDOC CDBG staff for guidance. All contracts should include provisions for termination.

CHAPTER 3 EXHIBITS

Sample Format for an RFP for Management Services

Sample Format for an RFQ for Engineering Services

Sample Format for Advertising the Availability of a Request for Proposals or a Request for Qualifications

Sample Format for a Professional Services Contract

Sample Format for CDBG Supplemental Conditions to Standard Contracts For Architectural, Engineering, And Grant Administration Services

Checklist of Required Contract Clauses for Engineering, Architectural, and Grant Administration Services Contracts

Procurement Checklist

Sample Consultant's Invoice

Compensation

EXHIBIT 3-A

SAMPLE FORMAT FOR REQUESTS FOR PROPOSALS FOR MANAGEMENT SERVICES

Note: The following is intended only as an example of a format which may be used to issue an RFP for project management services.

Grantees should consider the content of their RFPs very carefully before they are issued. In particular, local officials should exercise care in drafting the scope of services and the factors to be used in evaluating proposals to assure that they are both complete and appropriate for your community and project.

The (*Town or City or County of*) has been given a federal Community Development Block Grant (CDBG) award in the amount of $_____ by the Montana Department of Commerce (DOC) for *(description of project including purpose, location, time frame, and present status)*.

Contingent upon this award, the *(Town or City Council or County Commission)* is soliciting proposals for management services to assist the *(Town, City or County)* in the administration of this project in compliance with all applicable requirements under the Montana CDBG Program as described in the current edition of the Montana CDBG Program Grant Administration Manual. Payment terms will be negotiated with the selected offeror. The fee for project management services will be paid with CDBG funds.

The services to be provided will include:

1. Preparing all written reports, checklists, or legal notices required to assure compliance with federal and state environmental requirements;

2. Drafting a management plan and contract for review and approval by the DOC;

3. Establishing and maintaining project files and preparing all documentation and reports required for administration of the grant;

4. Assisting the *(Town, City or County)* with the selection of a project engineer, in conformance with applicable procurement requirements, including the preparation of a request for proposals;

5. Reviewing all proposed project expenditures to ensure their propriety and proper allocation to the project budget;

6. Participating in the pre-construction conference and periodic construction progress meetings;

7. Serving as the *(Town's, City's or County's)* designated Labor Standards Officer and assuring compliance with all applicable labor standards requirements;

8. Assuring compliance with all applicable civil rights requirements, including preparation of an equal employment opportunity plan and a fair housing resolution;

9. Attending *(Town or City Council or County Commission)* meetings to provide project status reports and representing the CDBG project at any other public meetings deemed necessary; and

10. Preparing all required performance reports and closeout documents and assisting the *(Town, City or County)* with the determination of applicable audit requirements.

The services will not include the disbursement or accounting of funds distributed by the *(Town's, City's or County's) financial* officer, legal advice, fiscal audits, or assistance with activities not related to the CDBG project.

Responses should include:

1. the firm's legal name, address, and telephone number;

2. the principal(s) of the firm and their experience and qualifications;

3. the experience and qualifications of the staff to be assigned to the project

4. a description of firm's prior experience, including any similar projects (in particular those funded by CDBG), size of community, location, total construction cost, and name of local official knowledgeable regarding the firm's performance. Include at least three references;

5. a description of the firm's current work activities, how these would be coordinated with the project, and the firm's anticipated availability during the term of the project; and

6. the proposed work plan and schedule for activities to be performed.

Note: The evaluation factors listed below are only examples. Local officials should include any factors which they believe are appropriate to the work tasks to be involved, with relative weightings for each according to their priority. **HUD regulations require that the RFP "identify all evaluation factors and their relative importance."**

Respondents will be evaluated according to the following factors:

A.	Quality of the Proposal	___%
B.	Consultant Qualifications and Experience (including reference checks)	___%
C.	Availability and Capacity of the Consultant	___%

The selection of finalists to be interviewed will be based on an evaluation of the written responses. The award will be made to the most qualified offeror whose proposal is deemed

most advantageous to the *(Town, City, or County)*, all factors considered. Unsuccessful offerors will be notified in writing as soon as possible.

Questions and responses should be directed to *Mayor or Commissioner), (Address), (Town)*, Montana, *(…zip…).* All responses must be postmarked no later than *(…date…)*. Please state "CDBG Management Services Proposal" on the outside of the response package.

Respondents may review the CDBG application which includes a description of the proposed project including activities, budget, schedule, and other pertinent information by visiting the *(Town, City, or County)* offices during regular office hours. A copy of the application is also available for review at the offices of the Community Development Division, Montana Department of Commerce, 301 S. Park Avenue, P.O. Box 200523, Helena MT 59620-0523.

This solicitation is being offered in accordance with federal and state requirements governing procurement of professional services. Accordingly, the *(Town or City Council, or County Commission)* reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.

EXHIBIT 3-~~C~~B

SAMPLE FORMAT FOR REQUESTS FOR QUALIFICATIONS FOR ENGINEERING SERVICES

Note: The following is intended only as an example of a format which may be used to issue a *Request for Qualifications* (RFQ) for engineering services. ~~RFQ: See pages 9-8 and 9-9 and pages 3-18 through 3-25 of the CDBG Grant Administration Manual.~~

~~Grantees should consider the content of their RFQs very carefully before they are issued. In particular, local officials should exercise care in drafting the scope of services and the factors to be used in evaluating proposals to assure that they are both complete and appropriate for your community and project.~~

~~Also see also Exhibit 3-D for a sample format for advertising the availability of the RFQ.~~

This can be adapted for requesting qualifications for **architectural services**, which must, like engineering services be procured by an RFQ process in accord with *Section 18-8-201 to 212, MCA (and especially 18-8-204)*.

The *(Town or City or County of)* has received a federal Community Development Block Grant (CDBG) award in the amount of $_____ by the Montana Department of Commerce (MDOC) for *(description of project including purpose, location, time frame, and present status)*.

Contingent upon this award, the *(Town or City Council of or the County Commission)* is soliciting offerors of a statement of qualifications in response to this Request for Qualifications for engineering services to assist the *(Town, City or County)* in both (a) designing and (b) supervising construction of this project in compliance with all applicable requirements under the Montana CDBG Program. Payment terms will be negotiated with the selected offeror. The fee for engineering services will be paid with CDBG funds.

The services to be provided will include:

- ❑ designing system improvements and construction engineering;
- ❑ preparing the construction bid package in conformance with applicable CDBG requirements and supervising the bid advertising, tabulation, and award process, including preparing the advertisements for bid solicitation, conducting the bid opening, and issuing the notice to proceed;
- ❑ conducting the pre-construction conference;
- ❑ field staking, on-site supervising of construction work, and preparing inspection reports;
- ❑ reviewing and approving all contractor requests for payment and submitting approved requests to the governing body;

- ❑ providing reproducible plan drawings to the Town (City or County) upon project completion;
- ❑ conducting final inspection and testing;
- ❑ submitting certified "as-built" drawings to the ~~Montana Water Quality Bureau~~appropriate federal or state agency; and
- ❑ preparing an operation and maintenance manual.

Responses should include:

1. the firm's legal name, address, and telephone number;
2. the principal(s) of the firm and their experience and qualifications;
3. the experience and qualifications of the staff to be assigned to project;
4. a description of the firm's prior experience, including any similar projects (in particular those funded by CDBG), size of community, location, total construction cost, and name of a local official knowledgeable regarding the firm's performance;
5. a description of the firm's current work activities and how these would be coordinated with the project, as well as the firm's anticipated availability during the term of the project; and
6. the proposed work plan and schedule for activities to be performed.

Note: *The evaluation factors listed below are examples.*

Local officials should include those factors which they believe are appropriate to the work tasks to be involved, with relative weightings for each according to their priority, and must comply with Section 18-8-201 to 212, MCA (and especially 18-8-204) concerning the minimum criteria that must be used in evaluating engineering firms responding to a Request for Qualification, http://data.opi.mt.gov/bills/mca/18/8/18-8-204.htm .

Respondents will be evaluated according to the following factors:

1. the qualifications of the professional personnel to be assigned to the project ___%
2. the consultant's capability to meet time and project budget requirements ___%
3. location ___%
4. present and projected workloads ___%
5. related experience on similar projects ___%
6. recent and current work for the entity issuing the RFP ___%

The selection of finalists to be interviewed will be based on an evaluation of the written responses. The award will be made to the most qualified offeror whose proposal is deemed most advantageous to the (*Town, City, or County*), all factors considered. Unsuccessful offerors will be notified as soon as possible.

Questions and responses should be directed to (*Mayor/Commissioner*), (*address)*, Montana, *(zipcode)*. All responses must be postmarked no later than (*date*). Please state "CDBG Engineering Services Proposal" on the outside of the response package.

Respondents may review the CDBG application which includes a description of the proposed project including activities, budget, schedule, and other pertinent information by visiting the *(Town, City or County)* offices during regular office hours. A copy of the application is also available for review at the offices of the Community Development Division, Montana Department of Commerce, 301 S. Park Avenue, P.O. Box 200523, Helena MT 59620-0523.

This solicitation is being offered in accordance with federal and state statutes governing procurement of professional services. Accordingly, the *(Town or City Council or County Commission*) reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.

EXHIBIT 3-C

SAMPLE FORMAT FOR ADVERTISING THE AVAILABILITY OF A REQUEST FOR PROPOSALS (RFP) OR REQUEST FOR QUALIFICATIONS (RFQ)

The _____*(grantee name)*_____ has been awarded a federal Community Development Block Grant (CDBG) in the amount of $_____ by the Montana Department of Commerce (DOC) for ____*(description of project)*____.

Contingent upon this award, the *(Town or City Council or County Board of Commissioners)* is requesting proposals (statement of qualifications)s for engineering services [and/or *architectural services, as applicable*] to assist the governing body in designing and in supervising the construction of this project [and/or, *as applicable, proposals for management services to assist the* _____*(grantee name)* *in the administration of this project*] in compliance with all applicable requirements under the Montana CDBG Program.

Copies of the detailed request for qualifications (RFQ) [*or request for proposals/RFQ, as applicable*], including a description of the services to be provided by respondents, the minimum content of responses, and the factors to be used to evaluate the responses, can be obtained by contacting ___*(name, address, and telephone)*___.

All responses to the detailed RFQ [*or RFP, as applicable*] must be submitted by ___*(date)*___ to (*Mayor/Commissioner*), (*address)* _____ , Montana ___*(zipcode)*___.

EXHIBIT 3-D

SAMPLE FORMAT FOR A PROFESSIONAL SERVICES CONTRACT (Engineering, Architectural, or Grant Administration Services)

NOTE: This *sample contract format* includes all required CDBG contract clauses and supplemental conditions for e*ngineering, architectural, or grant administration services* contracts and is meant to be used as a stand-alone contract. This sample will need to be adjusted to the type of contract (e.g., e*ngineering, architectural, or grant administration services*) that is being developed.

This Contract is entered into this _____ day of _____, 20_____, by and between the [CITY/TOWN/COUNTY], Montana, herein referred to as the ["CITY/TOWN/COUNTY"] and [NAME OF CONTRACTOR], whose address is _____, herein referred to as the "Contractor," Witnesseth:

WHEREAS, the Montana Department of Commerce, herein referred to as "the Department," has awarded the [CITY/TOWN/COUNTY] grant funds under the Montana Community Development Block Grant (CDBG) Program for purposes of [DESCRIPTION OF PROJECT]; and

WHEREAS, the [CITY/TOWN/COUNTY] desires to engage the Contractor to render certain services related to the administration of the above described CDBG project; and

WHEREAS, the [CITY/TOWN/COUNTY] has complied with state and federal procurement requirements regarding the selection of contractors; and

WHEREAS, the [CITY/TOWN/COUNTY] desires to enter into an agreement with the Contractor as hereinafter provided to assure the effective management of the project;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. LIAISONS.

   For the [CITY/TOWN/COUNTY]:
   (Name, Title, Mailing Address, Business Location, Phone Number)

   For the [CONTRACTOR]:
   (Name, Title, Mailing Address, Business Location, Phone Number)

2. EMPLOYMENT OF CONTRACTOR. The [CITY/TOWN/COUNTY] agrees to engage the Contractor, and the Contractor agrees to provide the following services in order to provide for the administration and management of the CDBG project for the [CITY/TOWN/COUNTY] as approved by the Department.

3. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any,

are employees of the [CITY/TOWN/COUNTY] for purposes of tax, retirement system, or social security (FICA) withholding.

4. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING. The Contractor may not assign, transfer, or subcontract its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the [CITY/TOWN/COUNTY]. Any subcontractor or assignee will be bound by the terms and conditions of this Contract.

5. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract shall take effect upon execution by the parties and will terminate upon completion of the SCOPE OF SERVICES hereunder as determined by the [CITY/TOWN/COUNTY], unless terminated earlier in accordance with the terms of this Contract. The activities to be performed by the Contractor will be completed according to the schedule attached hereto as Attachment ____ and specifically incorporated herein by this reference.

6. SCOPE OF SERVICES. The Contractor 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 Contractor, including the timetable for completion of key tasks. Consult with your CDBG liaison as to the specific services that may be appropriate for each grant category.]

   It is understood and agreed by the parties that the services of the Architect and/or Engineer do not include any of the following: the disbursement or accounting of funds distributed by the [CITY'S/TOWN'S/COUNTY'S] financial officer, legal advice, fiscal audits, or assistance with activities not related to the CDBG project.

7. COMPENSATION. 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 architect, engineer, or grant administrator 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 Contractor a sum not to exceed $_____ in the manner set forth in the attached Attachment ____, attached hereto and specifically incorporated herein by this reference. Each specific service the Contractor will provide under this Contract, and the maximum amount that the [CITY/TOWN/COUNTY] will pay the Contractor for each of these services, is set forth in the attached Attachment ____.

   The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Attachment ____. The Contractor 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.

8. 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.

9. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the [CITY/TOWN/COUNTY] of CDBG funds from the Department and that, in the event that said funds are not provided, the [CITY/TOWN/COUNTY] incurs no responsibilities or liabilities under this Contract.

10. TERMINATION OF CONTRACT. This Contract may only be terminated in whole or in part as follows:

(a) Termination due to loss of funding. The [CITY/TOWN/COUNTY] may, at its sole discretion, terminate or reduce the scope of this Contract if available CDBG funding is eliminated or reduced for any reason. If a termination or modification is required, the [CITY/TOWN/COUNTY] will, to the extent permitted by available CDBG funds, compensate the Contractor for eligible work elements the Contractor has completed and for approved, eligible, reasonable, and necessary expenses incurred by the Contractor as of the revised termination date. The [CITY/TOWN/COUNTY] will give the Contractor 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 Contractor with a modified Project budget.

(b) Termination for cause.

(i) If the [CITY/TOWN/COUNTY] determines that the Contractor has failed to comply with the terms and conditions of the Contract, the [CITY/TOWN/COUNTY] may terminate this Contract in whole or in part at any time. The Contractor will thereafter be entitled to receive payment for those services reasonably performed to the date of termination less the amount of reasonable damages suffered by the [CITY/TOWN/COUNTY] by reason of the Contractor's failure to comply with this Contract.

Any costs or expenses incurred by the Contractor from obligations arising during a suspension or after termination of this Contract are not allowable unless the [CITY/TOWN/COUNTY] expressly authorizes them in the notice of suspension or termination or subsequently in writing thereafter. Other necessary and not reasonably avoidable Contractor costs incurred during suspension or after termination are allowable if:

1) They result from obligations properly incurred by the Contractor before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, non-cancellable; and

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

(ii) Notwithstanding the above, the Contractor is not relieved of liability to the [CITY/TOWN/COUNTY] for damages sustained by the [CITY/TOWN/COUNTY] by virtue of any breach of this Contract by the Contractor, and the [CITY/TOWN/COUNTY] may withhold nay payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the [CITY/TOWN/COUNTY] from the Contractor is determined.

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

12. DOCUMENTS INCORPORATED BY REFERENCE. The [CITY/TOWN/COUNTY] application to the Department for CDBG funding, dated_____, 20__, including any written modifications resulting from the review of the application by the Department, and all applicable federal, state, and local laws, rules, and regulations, are incorporated into this Contract by this reference and are binding upon the Contractor.

13. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are the property of the [CITY/TOWN/COUNTY], and the Department , which both have 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. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. 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 the [CITY/TOWN/COUNTY], and the Department.

To the extent the CDBG funds dispersed 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.

14. ACCESS TO AND RETENTION OF RECORDS. The Contractor agrees to provide the [CITY/TOWN/COUNTY], 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. The Contractor 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 the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Contractor's offices in

_____, Montana.

15. REPORTS AND INFORMATION. The Contractor 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]

16. PROJECT MONITORING. The [CITY/TOWN/COUNTY], the Department, or any of their authorized agents may monitor and inspect all phases and aspects of the Contractor's performance to determine compliance with the SCOPE OF ACTIVITIES, and other technical and administrative requirements of this Contract, including the adequacy of the Contractor's records and accounts. The [CITY/TOWN/COUNTY] will advise the Contractor of any specific areas of concern and provide the Contractor opportunity to propose corrective actions acceptable to the [CITY/TOWN/COUNTY].

17. INDEMNIFICATION. The Contractor agrees to protect, defend, and save the [CITY/TOWN/COUNTY] and the State, their 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 Contractor'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 Contractor and/or its agents, employees, representatives, assigns, and subcontractors.

18. INSURANCE.

A. General Requirements. The Contractor shall maintain for the duration of this Agreement, at its 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 the Contractor, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

B. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the [CITY/TOWN/COUNTY], the Department, the State of Montana, and their elected or appointed officers, officials, employees, or volunteers. The [CITY's/TOWN's/COUNTY's] and the State's insurance coverage is excess to the Contractor's insurance coverage and shall not contribute with it.

C. General Liability Insurance. The Contractor shall purchase and maintain Commercial General Liability (Occurrence coverage), to include bodily injury, personal injury, and property damage, with combined single limits of $1,000,000 per occurrence and $2,000,000 per aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents,

employees, representatives, assigns, or subcontractors. The [CITY/TOWN/COUNTY], the State, the Department, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured's for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

D. Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of _____ per occurrence and _____ aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

E. General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana with a Best's rating of at least A-. All certificates and endorsements are to be received by the [CITY/TOWN/COUNTY] prior to beginning any use, occupancy, operation, or management of the subject property under this Contract. The Contractor shall notify the [CITY/TOWN/COUNTY] immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The [CITY/TOWN/COUNTY] reserves the right to request complete copies of the Contractor's insurance policies at any time, including endorsements.

19. CIVIL RIGHTS ACT OF 1964. The Contractor will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VII, 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.

20. COMPLIANCE WITH NONDISCRIMINATION LAW. The Grantee must, in performance of work under the Contract, fully comply with all applicable federal, state, or local nondiscrimination 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 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.

21. COMPLIANCE WITH WORKERS' COMPENSATION ACT. Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the [CITY/TOWN/COUNTY] under this Contract. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the [CITY/TOWN/COUNTY] or the State of Montana. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and any renewal documents must be sent to the [CITY/TOWN/COUNTY].

22. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Contractor 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.

23. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968. The Contractor will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to 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 the award of contracts and purchase of services and supplies.

24. MINORITY BUSINESS ENTERPRISE. Consistent with the provisions of Executive Order 11246, the Contractor will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor 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 recipient upon request.

25. JURISDICTION AND VENUE. This Contract is governed by the laws of Montana. The parties agree that any litigation concerning the 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.

This Contract will be construed under and governed by the laws of the State of Montana.

26. LEGAL FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

27. ELIGIBILITY. The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension". (24 CFR 24.505)

28. DEBARMENT. The Contractor 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 the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the [CITY/TOWN/COUNTY].

    The Contractor 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."

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.

30. SEPARABILITY. A declaration by any court, or any other binding legal source, 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.

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

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

33. 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.

34. 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.

35. INTEGRATION. The 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 WHEREOF, the parties hereto have executed this Contract on the _____ day of _____.

[CONTRACTOR]:

_____

BY:_____

TITLE:_____

DATE:_____

[CITY/TOWN/COUNTY OF]:

_____

BY:_____

TITLE:_____

DATE:_____

EXHIBIT 3-E

CDBG *SUPPLEMENTAL* CONDITIONS TO STANDARD CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND GRANT ADMINISTRATION SERVICES

Note: This document should be used as a *supplement to* a firm's existing contract format, *i.e., in conjunction with* a firm's existing contract format.

These Supplemental Conditions must be attached to the firm's existing contract format, and specifically incorporated by reference therein. The firm's contract must also contain the following language: "In the event of a conflict between any term and provision of this Contract or any attachments hereto and the CDBG Supplemental Conditions, the terms and provisions of the CDBG Supplemental Conditions shall prevail."

1. LIAISONS.

For the [CITY/TOWN/COUNTY]:
(Name, Title, Mailing Address, Business Location, Phone Number)

For the Grantee:
(Name, Title, Mailing Address, Business Location, Phone Number)

2. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any, are employees of the [CITY/TOWN/COUNTY] for purposes of tax, retirement system, or social security (FICA) withholding.

3. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract shall take effect upon execution by the parties and will terminate upon completion of the SCOPE OF SERVICES hereunder as determined by the [CITY/TOWN/COUNTY], unless terminated earlier in accordance with the terms of this Contract. The activities to be performed by the Contractor will be completed according to the schedule attached hereto as Attachment _____ and specifically incorporated herein by this reference.

4. SCOPE OF SERVICES. The Contractor 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 Contractor, including the timetable for completion of key tasks. Consult with your CDBG liaison as to the specific services that may be appropriate for each grant category.]

It is understood and agreed by the parties that the services of the Contractor do not include any of the following: the disbursement or accounting of funds distributed by the [CITY'S/TOWN'S/COUNTY'S] financial officer, legal advice, fiscal audits, or assistance with activities not related to the CDBG project.

5. COMPENSATION. 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 architect, engineer, or grant administrator 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 Contractor a sum not to exceed $_____ in the manner set forth in the attached Attachment ____, attached hereto and specifically incorporated herein by this reference. Each specific service the Contractor will provide under this Contract, and the maximum amount that the [CITY/TOWN/COUNTY] will pay the Contractor for each of these services, is set forth in the attached Attachment ____.

   The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Attachment ____. The Contractor 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.

6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING. The Contractor may not assign, transfer, or subcontract its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the [CITY/TOWN/COUNTY]. Any subcontractor or assignee will be bound by the terms and conditions of this Contract.

7. 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.

8. PRE-CONSTRUCTION CONFERENCE. Before the start of construction, a conference will be held for the purpose of familiarizing the successful bidder with the federal and State requirements that apply to projects funded in whole or in part by a Community Development Block Grant (CDBG). The conference will also include a discussion of project supervision, coordination with city or county officials, on-site inspections,

progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety, and other issues pertinent to the project. The Contractor may be responsible for conducting this conference.

9. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the [CITY/TOWN/COUNTY] of CDBG funds from the Department and that, in the event that said funds are not provided, the [CITY/TOWN/COUNTY] incurs no responsibilities or liabilities under this Contract.

10. TERMINATION OF CONTRACT. This Contract may only be terminated in whole or in part as follows:

(a) Termination due to loss of funding. The [CITY/TOWN/COUNTY] may, at its sole discretion, terminate or reduce the scope of this Contract if available CDBG funding is eliminated or reduced for any reason. If a termination or modification is required, the [CITY/TOWN/COUNTY] will, to the extent permitted by available CDBG funds, compensate the Contractor for eligible work elements the Contractor has completed and for approved, eligible, reasonable, and necessary expenses incurred by the Contractor as of the revised termination date. The [CITY/TOWN/COUNTY] will give the Contractor 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 Contractor with a modified Project budget.

(b) Termination for cause.

(i) If the [CITY/TOWN/COUNTY] determines that the Contractor has failed to comply with the terms and conditions of the Contract, the [CITY/TOWN/COUNTY] may terminate this Contract in whole or in part at any time. The Contractor will thereafter be entitled to receive payment for those services reasonably performed to the date of termination less the amount of reasonable damages suffered by the [CITY/TOWN/COUNTY] by reason of the Contractor's failure to comply with this Contract.

Any costs or expenses incurred by the Contractor from obligations arising during a suspension or after termination of this Contract are not allowable unless the [CITY/TOWN/COUNTY] expressly authorizes them in the notice of suspension or termination or subsequently in writing thereafter. Other necessary and not reasonably avoidable Contractor costs incurred during suspension or after termination are allowable if:

1) They result from obligations properly incurred by the Contractor before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, non-cancellable; and

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

(ii) Notwithstanding the above, the Contractor is not relieved of liability to the [CITY/TOWN/COUNTY] for damages sustained by the [CITY/TOWN/COUNTY] by virtue of any breach of this Contract by the Contractor, and the [CITY/TOWN/COUNTY] may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the [CITY/TOWN/COUNTY] from the Contractor is determined.

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

12. DOCUMENTS INCORPORATED BY REFERENCE. The [CITY/TOWN/COUNTY] application to the Department for CDBG funding, dated_____, 20__, including any written modifications resulting from the review of the application by the Department, and all applicable federal, state, and local laws, rules, and regulations, are incorporated into this Contract by this reference and are binding upon the Contractor.

13. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are the property of the [CITY/TOWN/COUNTY], and the Department , which both have 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. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. 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 the [CITY/TOWN/COUNTY], and the Department.

To the extent the CDBG funds dispersed 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.

14. ACCESS TO AND RETENTION OF RECORDS. The Contractor agrees to provide the [CITY/TOWN/COUNTY], 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. The Contractor 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 the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Contractor's offices in _____, Montana.

15. PROJECT MONITORING. The [CITY/TOWN/COUNTY], the Department, or any of their authorized agents may monitor and inspect all phases and aspects of the Contractor's performance to determine compliance with the SCOPE OF ACTIVITIES, and other technical and administrative requirements of this Contract, including the adequacy of the Contractor's records and accounts. The [CITY/TOWN/COUNTY] will advise the Contractor of any specific areas of concern and provide the Contractor opportunity to propose corrective actions acceptable to the [CITY/TOWN/COUNTY].

16. JURISDICTION AND VENUE. This Contract is governed by the laws of Montana. The parties agree that any litigation concerning the 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.

This Contract will be construed under and governed by the laws of the State of Montana.

17. INDEMNIFICATION. The Contractor agrees to protect, defend, and save the and the State, their 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 Contractor'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 Contractor and/or its agents, employees, representatives, assigns, and subcontractors.

18. INSURANCE.

A. General Requirements. The Contractor shall maintain for the duration of this Agreement, at its 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 the Contractor, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

B. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the [CITY/TOWN/COUNTY], the Department, the State of Montana, and their elected or appointed officers, officials, employees, or volunteers. The [CITY's/TOWN's/COUNTY's] and the State's insurance coverage is excess to the Contractor's insurance coverage and shall not contribute with it.

C. General Liability Insurance. The Contractor shall purchase and maintain Commercial General Liability (Occurrence coverage), to include bodily injury, personal injury, and property damage, with combined single limits of $1,000,000 per occurrence and $2,000,000 per aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, employees, representatives, assigns, or subcontractors. The [CITY/TOWN/COUNTY], the State, the Department, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured's for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

D. Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

E. Construction Insurance [applicable only if DOING CONSTRUCTION WORK is the direct responsibility of the contractor] . At its sole cost and expense, Contractor shall insure all property construction on the premises throughout the term of the Agreement against the following hazards:

(1) Loss of damage by fire and such other risks (not including earthquake damage) in an amount sufficient to permit such insurance to be written at

all times on a replacement cost basis. This may be insured against by attachment of standard form extended coverage endorsement to fire insurance policies.

(2) Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises.

(3) Loss or damage by explosion of steam boilers, pressure vessels, and oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings on the premises.

F. General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana with a Best's rating of at least A-. All certificates and endorsements are to be received by the [CITY/TOWN/COUNTY] prior to beginning any use, occupancy, operation, or management of the subject property under this Contract. The Contractor shall notify the [CITY/TOWN/COUNTY] immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The [CITY/TOWN/COUNTY] reserves the right to request complete copies of the Contractor's insurance policies at any time, including endorsements.

19. COMPLIANCE WITH NONDISCRIMINATION LAW. The Grantee must, in performance of work under the Contract, fully comply with all applicable federal, state, or local nondiscrimination 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 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.

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

21. COMPLIANCE WITH WORKERS' COMPENSATION ACT. Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while

performing work for the [CITY/TOWN/COUNTY] under this Contract. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the [CITY/TOWN/COUNTY] or the State of Montana. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and any renewal documents must be sent to the [CITY/TOWN/COUNTY].

22. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Contractor 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.

23. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968. The Contractor will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to 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 the award of contracts and purchase of services and supplies.

24. MINORITY BUSINESS ENTERPRISE. Consistent with the provisions of Executive Order 11246, the Contractor will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor 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 recipient upon request.

25. LEGAL FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

26. ELIGIBILITY. The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for

participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension". (24 CFR 24.505)

27. DEBARMENT. The Contractor 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 the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the [CITY/TOWN/COUNTY].

    The Contractor 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."

28. 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.

29. SEPARABILITY. A declaration by any court, or any other binding legal source, 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.

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

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

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 this Contract.

33. 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.

34. INTEGRATION. The 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 WHEREOF, the parties hereto have executed this Contract on the _____ day of _____.

CONTRACTOR:	CITY/TOWN/COUNTY OF:
_____	_____
BY:_____	BY: _____
TITLE:_____	TITLE:_____
DATE:_____	DATE:_____

EXHIBIT 3-F

CHECKLIST OF REQUIRED CONTRACT CLAUSES FOR ENGINEERING, ARCHITECTURAL, AND GRANT ADMINISTRATION SERVICES CONTRACTS

This checklist can be used as a guide by local governments for professional services or consultant contract review. An asterisk **(*)** indicates clauses which are required for all professional services contracts. The use of the CDBG contract with the grantee should be used as the primary document for required contract clauses.

____ 1. EMPLOYMENT OF CONTRACTOR

____ 2. **(*)** INDEPENDENT CONTRACTOR

____ 3. LIAISON

____ 4. **(*)** EFFECTIVE DATE AND TIME OF PERFORMANCE

____ 5. **(*)** SCOPE OF SERVICES

____ 6. **(*)** COMPENSATION (Check contract pricing for engineering contracts. Review the basis of payment for reasonable performance measures)

____ 7. **(*)** CONFLICT OF INTEREST

____ 8. MODIFICATION AND ASSIGNABILITY OF CONTRACT

____ 9. CONDITIONAL AGREEMENT

____ 10. **(*)** TERMINATION OF CONTRACT

____ 11. **(*)** DOCUMENTS INCORPORATED BY REFERENCE (N/A for engineering services contracts)

____ 12. **(*)** CIVIL RIGHTS ACT OF 1964

____ 13. **(*)** SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF ACT 1974

____ 14. **(*)** SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

____ 15. **(*)** MINORITY BUSINESS ENTERPRISE

____ 16. **(*)** NONDISCRIMINATION

____ 17. **(*)** OWNERSHIP AND PUBLICATION OF MATERIALS

____ 18. **(*)** REPORTS AND INFORMATION

____ 19. **(*)** ACCESS TO RECORDS

____ 20. (*) PLACE OF PERFORMANCE, CONSTRUCTION AND VENUE

____ 21. (*) INSURANCE and INDEMNIFICATION

____ 22. LEGAL FEES

____ 23. **(*)** ELIGIBILITY (Plus CDBG must do a debarment check of the contractor and the contractor's principal parties)

EXHIBIT 3-G
Procurement Check List

PROCUREMENT CHECKLIST [ ] **Engineering Services** [ ] **Architectural Services** [ ] **Grant Management Services** [ ] **Other : _____**	
Procurement Requirements	
Date:	
	a. scope of RFP/RFQ or project work description clearly delineated?
	b. appropriate advertisement (or phone solicitation, as applicable) was conducted and documented?
	c. objective scoring criteria and process used?
	d. record of selection process?
	e. references checked?
	f. fixed price contract with delineation of hourly pay rates and estimated hours?
	g. CDBG supplemental conditions included in the contract?
	h. draft contract reviewed and approved by CDBG liaison?
	i. contractor eligibility/debarment check completed by CDBG (prior to notification of award)?
	j. copy of signed contract and notification of award submitted to CDBG, along with documentation concerning items b - f?
	k. other conditions, as applicable:
NOTES:	

Exhibit 3-H

EXAMPLE OF A CONSULTANT'S INVOICE

DELANEY WATER SYSTEM PROJECT

Aim-To-Please Staff Project Hours
October, 20xx

Staff	Hours	Activity	Date Performed
Winthrop	.5	Update with engineer on tank site (50 travel miles)	10/3/xx
Winthrop	2.0	Prepare drawdown #3 and progress report	10/4/xx
Simpson	1.0	Prepare planning maps for the District	10/11/xx
Winthrop	1.0	Review acquisition with engineers	10/12/xx
Winthrop	2.0	Prepare drawdown #4 and progress report	10/12/xx
Simpson	3.0	Acquisition process with reservoir, meet with reservoir site owners	10/15/xx

Total Hours Winthrop 7.5
Simpson 4.0

Winthrop	7.5 hours @ $24/hour	$180.00
Simpson	4.0 hours @ $20/hour	$ 80.00
Travel to Delaney tank site (50 mi. @ $.355/mi.)		$ 17.75
	Invoice Total:	$277.75

See the attached additional documentation substantiating the charges.

EXHIBIT 3-I

COMPENSATION

Note: Whenever possible, the local government is required to assure that the basis for compensating a contractor or consultant is tied to measurable objectives such as the completion of key tasks in the scope of services or implementation schedule. The least desirable approach is compensation strictly on the basis of time periods since this provides the local government less control over contractor performance.

The example below for a housing rehabilitation project, provides for payment on the basis of the completion of major project management steps and upon the basis of the number of homes under contract and/or completed.

Compensation for services will be provided in installments, based on actual work performed. Payment will be based upon the completion of key components of the adopted project implementation schedule (and on the basis of a set hourly rate). Contractor requests for payment may be submitted monthly and must be accompanied by itemized invoices describing services furnished, number of hours worked to accomplish each item, amount being billed for each item, a description of any other eligible reimbursable expenses incurred during the billing period, and the total amount being billed, and a written narrative report which adequately describes and documents the work performed during that period relative to the adopted implementation schedule for the project. Total payment for the services rendered under this Contract will not exceed $_____.

Compensation for project administration services will be provided in installments, based on actual work performed. Payment will be based upon the completion of key components of the adopted project implementation schedule and upon the basis of the number of homes under contract for rehabilitation and demolition and the number completed.

Scope of Services/Work Elements	Maximum Compensation to the Contractor:
a. Commence Start-Up Activities	$_____
b. Completion of Environmental Review	$_____
c. Preparation of Draft Housing Rehabilitation Guidelines	$_____
d. Assure Labor Standards Compliance	$_____
e. Approval of Project Closeout by MDOC	$_____

Payment to the Contractor shall be on the basis of $_____ per unit for rehabilitation contracts and $_____ for demolition contracts with a two-thirds payment authorized at the time a rehabilitation or demolition contract is finalized. For housing rehabilitation contracts, the one-third balance will be provided to the Contractor when the mortgage, escrow agreement, or lien is filed for the rehabilitated property. Final payments for demolition work will be due upon the completion and final certification of contract performance.

CHAPTER 4 -- FINANCIAL MANAGEMENT

I. OVERVIEW 4-2
II. APPLICABLE FEDERAL AND STATE REQUIREMENTS 4-2
A. FEDERAL REQUIREMENTS 4-2
B. STATE REQUIREMENTS 4-3
III. PROGRAM REQUIREMENTS 4-3
A. PROJECT BUDGET 4-3
B. PROJECT ADMINISTRATION COSTS 4-4
C. LOCAL DEPOSITORY ACCOUNT 4-4
D. PROJECT DRAWDOWNS 4-4
E. REPORTING REQUIREMENTS 4-7
F. TWO PERCENT RETAINAGE 4-7
G. INTERIM FINANCING 4-8
H. PROPERTY MANAGEMENT AND DISPOSITION 4-8
I. RETENTION – DOCUMENTS/RECORDS/REPORTS 4-8
IV. PROGRAM INCOME AND REVOLVING LOANS 4-9

EXHIBITS 4-10

CHAPTER 4

FINANCIAL MANAGEMENT

I. OVERVIEW

This chapter provides guidance on the federal and state requirements that govern the financial management of all CDBG funds, so that each local government grantee can maintain an adequate financial system. The financial system maintained must be flexible enough to accommodate applicable laws and regulations and conform to generally accepted accounting principles as well.

The Montana Department of Commerce and the Department of Administration's Local Government Assistance Bureau area available to provide assistance to local governments concerning these accounting requirements and all related financial management practices that you will need to use in managing and accounting for CDBG grant funds that you have received.

II. APPLICABLE FEDERAL AND STATE REQUIREMENTS

A. FEDERAL REQUIREMENTS

The key federal requirements that the grantee must comply with are embodied in the following Office of Management and Budget (OMB) circulars and Federal Housing and Urban Development (HUD) regulations.

1. **2 CFR 200, Cost Principles for State and Local Governments**

   This circular establishes the principles for classifying administration costs as direct or indirect and for determining which costs are allowable and unallowable.

2. **HUD Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments**

   These HUD administrative requirements are the basis for a number of financial management requirements on grantees. They are divided into four major subparts and include:

   - Subpart A - General
   - Subpart B - Pre-award Requirements
   - Subpart C - Post-award Requirements:
     Financial Administration
     - Changes, Property and Sub-awards
     - Reports, Records, Retention and Enforcement
     - Subpart D - After-the-Grant Requirements

3. **HUD (Part II) CDBG State Final Rule**

   This rule includes HUD's regulations governing the state administration of CDBG funds.

4. **HUD (Part III) CDBG Final Rule Regulations - Eligible and Ineligible Activities**

These HUD regulations deal specifically with eligibility issues and are, therefore, the controlling regulations in this regard. Subpart C includes the following sections:

- 570.201 Basic eligible activities
- 570.202 Eligible rehabilitation and preservation activities
- 570.203 Special economic development activities
- 570.204 Special activities by certain subrecipients
- 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities
- 570.206 Program administration costs
- 570.207 Ineligible activities

B. STATE REQUIREMENTS

1. Budgetary, Accounting and Reporting Systems (BARS) for Cities, Towns and Counties

The BARS system fulfills all HUD project accounting and reporting requirements (Section 2-7-504).

2. Budgetary Authority

Under Montana law, local governments are required to appropriate, by resolution, all CDBG funds received, regardless of the time the funds are received. The resolution should state the source of the funds, the program in which they will be expended and the effective date of the appropriation (Section 7-6-4006).

3. Surety Bonds

Montana law requires surety bonds for local government officers and employees who are involved in the administration of public funds. The amount of a bond should be based on the amount of money handled and the opportunity for misuse of funds (Sections 2-9-701, 2-9-702 and 2-9-802).

III. PROGRAM REQUIREMENTS

A. PROJECT BUDGET

The budget for the CDBG project is a part of the project Management Plan and of the CDBG contract. Once the Management Plan is approved and the contract is signed by the Grantee and by MDOC, specific requirements are placed on the grantee.

1. **The grantee, in accordance with Section 7-6-4006, must appropriate, by resolution, the CDBG money received from the MDOC.** The resolution must state the source of the money, the program in which money will be expended, and the effective date of the resolution. **(See exhibits).**

2. **The grantee must expend the grant money in accordance with the provisions of the CDBG project budget.** However, the budget may be amended so long as it is not increased or does not violate the conditions under which the grant was awarded. If the amount of the

amendment will not exceed $5,000, the grantee need not request MDOC approval. **If the amount will exceed $5,000, the grantee must request written approval from MDOC.**

The preparation, content and approval of the project budget is dealt with in Chapter I, Project Start-Up. Please consult Chapter 1 for related information.

B. PROJECT ADMINISTRATION COSTS

1. **To avoid early depletion of administrative expenses for a housing and public facilities project, draw requests for administrative costs must be reasonable and appropriate.** The grant recipient's draw request must have appropriate documentation, reasonable depletion in comparison to the activity costs, and support the activities outlined in Section 5, Scope of Work, in the CDBG contract.

2. Please see **exhibits** for a detailed description of allowable and unallowable administration costs for CDBG projects.

C. LOCAL DEPOSITORY ACCOUNT

The grantee is required to establish and maintain a depository account in a local financial institution. The account will be used exclusively for the receipt and disbursement of CDBG funds.

There are, however, certain conditions the grantee must meet in the management of the account, including:

1. The grantee must follow the appropriate HUD accounting and financial management procedures required by 2 CFR 200.

2. **The account must be non-interest bearing. If, however, any interest is earned, it must be returned to MDOC.**

3. **The time elapse between grantee drawdown and disbursement must be minimized.**

    a. Treasury Circular 1075 requires that state disbursements to a recipient organization must be limited to the minimum amounts needed and must be timed to be in accord with actual, immediate cost requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances must be as close as administratively feasible to the actual disbursements by the recipient organization for direct program cost and the proportionate share of any allowable indirect costs.

    b. **HUD has interpreted this provision to mean that no more than $5,000 may be retained in a grantee's federal depository account for a period longer than three business days**.

D. PROJECT DRAWDOWNS

All projects are subject to State and Federal environmental review requirements. **Requests for "drawdowns" -- requests for transfer of CDBG grant funds to your account, by submitting a Request For Funds -- cannot be made until a "Request for Release of Funds" (part of CDBG Environmental Review process) has been submitted and approved by MDOC.** See Chapter 2,

Environmental Review , for more information about how this official "release of funds" is accomplished and how and why it is related to your completion of the CDBG environmental review requirements.

CDBG "Program Income" is defined as "income directly generated from the use of CDBG funds used in a previous CDBG project." If a grantee has generated and retained any "CDBG Program Income" from a past CDBG project (see Section IV,. Program Income and Revolving Loans, of this chapter) -- all such Program Income must be expended before drawing down funds from a current grant award.

To establish the mechanisms for requesting CDBG funds and for receiving them, the grantee must complete the following forms (see exhibits):

1. Signature Certification Form;
2. Designation of Depository Card;
3. Designation of Depository for Direct Deposit, if opted for.

Grantee drawdowns include preparation and submission of:

- **The Request For Funds**

- **Uniform Status of Funds Spreadsheet**

- **The Uniform Invoice Tracking Spreadsheet**. Completion instructions are included for these reports –- see exhibits at the end of this chapter. **Drawdown and tracking spreadsheet forms (along with the entirety of this manual) are available on CD or diskette at your request.** The CDBG recipient is required to use the Invoice Tracking Spreadsheet to record all invoices, which will make the spreadsheet reconcilable to the Status Of Funds Spreadsheet and other accounting records.

- **Copies of invoices, purchase orders, lease agreements, acquisition agreements, etc., are required.** All expenditures that have been paid in part or totally from CDBG funds, regardless of the amount, must be documented with copies of eligible costs incurred, and itemized in the Project Progress Report.

- **Contractors providing professional services for the Grantee (such as engineering, architectural, project administration) must submit itemized invoices to the Grantee describing: (a)** services furnished, **(b)** total hours worked to accomplish each item, **(c)** amount being billed for each item, **(d)** a description of any other eligible reimbursable expenses incurred during the billing period, and **(e)** total amount being billed. In addition, **(f)** a narrative description in sufficient detail must be submitted to the Grantee to justify the amount claimed on invoice. Documentation of "a" through "f" must accompany a Grantee's drawdown request related to such contracted professional services.

- **If your project's CDBG liaison has any questions concerning the propriety or amount of an expenditure, copies of more detailed supporting documentation may be required before a drawdown request can be approved.**

- **Copies of timesheets or other summary payroll information for work performed by city or county employees.** Summary information must include at a minimum the name, title, time period, activities performed, and total amount.

- **During periods of construction, all draws must be accompanied by the Record of Employee Interviews and the Certification of Labor Compliance (see exhibits).**

    - See the Labor Standards Chapter for a detailed explanation of **what information and why this information is crucial for demonstrating that federal and state labor standards and protections are being met.**

    - **CDBG also requires that copies of the reviewed weekly payrolls (initialed, annotated as necessary and dated) be submitted with drawdown requests.** (See the Chapters on Labor Standards and Construction Management).

- **Each drawdown request must also be accompanied by a Project Progress Report (see exhibits).** The Progress Report should provide the CDBG Program Specialist with information on the expected use of the funds requested, the status of the project, completed milestones and project progress as it relates to the current implementation schedule. If key dates identified in the current implementation schedule should change, a revised implementation schedule would need to be forwarded to CDBG.

- **The Request For Funds form (4-C), Uniform Status of Funds Spreadsheet** (**4-D**), **Uniform Invoice Tracking Spreadsheet** (**4-E**), **necessary documentation, and accompanying Progress Report should be sent to your CDD Program Liaison by mail or email or fax at 406-841-2771.** If the draw is faxed, original copies should be mailed as soon as possible.

► **Minimum amounts for requests for funding:** Processing a drawdown request for funds involves staff from several state agencies. In order to reduce the expense for processing requests for funds and to provide the most efficient service to grant recipients, we ask that grant recipients avoid submitting requests for funds that total less than $1,200, to the extent possible.

► **Proportional administrative draw requests:** When processing a drawdown request for administrative funds, it is necessary for CDBG and grantees to consider the amount of funds spent for both administrative and activity costs. **To avoid early depletion of administrative dollars, the drawdown amount of administrative expenses must be in reasonable proportion to the activity costs.**

Upon receipt by CDBG, **the Request For Funds form (4-C), Uniform Status of Funds Spreadsheet (4-D), Uniform Invoice Tracking Spreadsheet (4-E), Progress Report** (and all accompanying documentation in support of the request) will be reviewed by CDBG staff.

1. The CDBG staff review the Request for Funds form and all the required material submitted and will check:

    a. The contract number, addresses and bank account number for accuracy.
    b. The reasonableness of the amount requested. Expenditures must be appropriate, based upon the description offered for both administration and project activity costs. The amount requested must be consistent with the approved contract budget and the project progress report.
    c. The eligibility of all costs and their consistency with the contract scope of services.
    d. The financial numbers for accuracy.
    e. The expended to date balances for consistency with the preceding request for payment.

f. The percentage of the administration and activity budgets expended, the total amount drawn to date against the amount budgeted and the amount of CDBG funds on hand; and

g. The correctness of signatures against the authorized signature form.

2. If the information is satisfactory, the CDBG staff signs the Request for Funds form and forwards it to the MDOC Management Services Division. The Management Services staff collects the Request for Funds submitted and usually prepare claims for payments twice per week. If the claims process correctly, warrants are prepared and mailed the following business day.

3. If the information is unsatisfactory, the grantee will be notified as to why by the CDBG liaison.

4. Once the request for payment is approved, the grantee has the option of getting the funds by return mail or direct deposit. The drawdown request should stipulate the preferred option.

   The turn-around time for receipt of funds by the CDBG recipient is expected to be 7 to 10 business days. Overall, the grantee should expect at least 30 days from the date the contractor submits an invoice to the grantee until receipt of funds from the CDBG program.

5. To expedite routine drawdowns, the grantee should consider using a "master form" to prepare the Request For Funds Report. The "master" is headed up with only that information that is fixed or must appear on every drawdown. Then, it's just a matter of making a copy of the "master" each time and entering the information that is relative to the current drawdown. Unchanged information is not repeated for each drawdown. A new "master" would only have to be prepared in the case of budget amendments or changes in line item amounts.

E. REPORTING REQUIREMENTS

The CDBG Housing and Public Facility grant recipient is required to submit a Quarterly Update Report (see exhibits) each calendar year quarter (March, June, September and December). This Quarterly Update Report must describe the status of the project with respect to each implementation objective, as applicable, including the percentage of the project which has been completed, costs incurred, funds remaining and anticipated completion date. The report must also describe any significant issues or problems encountered and any necessary modifications of the project scope or implementation schedule that are being requested**.**

The Quarterly Update Report must be submitted no later than fifteen (15) days prior to the close of each quarter. (Refer to the exhibitsfor the Quarterly Update Report).

When the CDBG recipient is submitting a draw request a **Project Progress Report** will need to be submitted with each drawdown request The Project Progress Report should include the amount requested and an explanation of the expenses, as explained above. (Please see Project Progress Report exhibit for more instructions).

F. TWO PERCENT RETAINAGE

The Department will retain two percent (2%) of the total authorized grant amount until:

- the project has been completed (a Certificate of Substantial Completion has been issued), and
- a conditional closeout report has been submitted by the CDBG recipient and approved by the Department.

This 2% retainage amount will be withheld from a drawdown request at the end of the project (not from each request for funds). Once a conditional closeout report has been submitted and approved by the Department, the two percent retainage will be released to the CDBG recipient. (For more information on the release of the retained funds at the time of project closeout, refer to the, Project Closeout Chapter)

G. INTERIM FINANCING

The environmental review process or unforeseen circumstances could, occasionally, delay the grantee's receipt of CDBG funds. In either event, the grantee may need or want to secure other interim financing. **Please consult MDOC for approval prior to incurring any financing costs.**

The local government grantee has the following interim financing options:

1. Under Attorney General opinion number 14, volume 38, it may borrow money directly from a financial institution;
2. Under Section 7-7-109, it may sell notes in anticipation of receiving a grant or loan from federal or state sources;
3. Counties and municipalities may make interfund loans in lieu of registering warrants under Generally Accepted Accounting Principles.
4. Under Sections 7-13-2221 (county water and sewer districts) and 7-13-236 (solid waste districts), they may borrow money, in addition to the issuance of bonds, for construction purposes and the purchase of equipment.

H. PROPERTY MANAGEMENT AND DISPOSITION

Please see **the exhibits** – Federal Regulations for Real Property.

I. RETENTION – DOCUMENTS / RECORDS / REPORTS

Under HUD regulations, the documents, records and reports described below must be retained for four (4) years after project closeout. However, in the event of litigation, claim, negotiation audit or other action, such documents, records and reports must be retained until completion of the action or regular time period, whichever is later.

1. Documents:
   - Receipt
   - Purchase order
   - Expenditure review
   - Invoice/statement
   - Claim
   - Check
   - Warrant

2. Records:
   - Accounting
   - Budgetary
   - Payroll
   - Time

- Bank statement

3. Reports:
   - Financial statement/monthly and annual
   - Budgetary/monthly and annual
   - Payroll
   - Request For Payment And Status Report
   - Progress Report
   - Payment Certification

4. Other:
   - Budgetary Resolution
   - Signature Certification
   - Designation of Depository

These documents, records and reports are subject to applicable federal, state, and local laws relating to public access, privacy and confidentiality.

IV. CDBG PROGRAM INCOME AND REVOLVING LOANS

Because of HUD's emphasis on its policies dealing with program income and the related amendments to the Housing and Community Development Act, MDOC established guidelines for local government grantees that retain and use program income in the ***CDBG Program Income and Revolving Loan Fund Manual*** (Montana Department of Commerce, January 1996).

These guidelines also address the other side of the CDBG Program Income equation -- the area of revolving loans. The guidelines focus on state oversight and local government management of and accountability for program income and revolving loans. (Please see the exhibit for Program Income.)

CHAPTER 4

EXHIBITS

4-A **Budgetary Authority Resolution**

4-B **Allowable and Unallowable CDBG Administration Costs**

4-C **Request for Funds Form Instructions and Form**

4-D **Directions for Using the Uniform Status of Funds Spreadsheet and Spreadsheets**

4-E **Directions for Using the Uniform Invoice Tracking Spreadsheet and Spreadsheets**

4-F **Project Progress Reports**

4-G **Federal Regulations for Real Property**

4-H **Program Income**

4-I **Expenditure Review**

4-J **Program Income - Title I Certification**

4-K **Quarterly Update Report**

EXHIBIT 4-A

BUDGETARY AUTHORITY RESOLUTION

RESOLUTION NO. ___

WHEREAS, on _____, 20____, the *(City, Town, County of _____)* received CDBG funds in the amount of $ _____, for which no provision was made in fiscal 19___ *(City, Town or County)* budget; and

WHEREAS, *(cities, towns or counties)* may appropriate federal or state money received during the fiscal year by formal resolution,

NOW, THEREFORE, BE IT RESOLVED that the *(City Council or Town Council or Board of County Commissioners)* hereby appropriates the sum of $ _____ and directs the *(City Clerk, Town Clerk or County Clerk and Recorder)* to allocate said amount to the following program activities:

EXPENDITURE CODE *(LIST)*	ADMINISTRATION COSTS *$*	ACTIVITY COSTS *$*
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTALS	**$_____**	**$_____**

BE IT FURTHER RESOLVED that the above appropriation shall become effective on _____, 20____.

CITY OR TOWN OF _____, MONTANA

By _____
Mayor

Attest _____

Attest _____

(OR) BOARD OF THE COUNTY COMMISSIONERS
_____ County, Montana

By _____
Chair

By _____
Member

By _____
Member

EXHIBIT 4-B

ALLOWABLE AND UNALLOWABLE CDBG ADMINISTRATION COSTS

A. **Allowable Administration Costs.** A**llowable administration costs are those costs that are related to the planning and execution of CDBG eligible activities (HUD 24 CFR, Part 570.206)**

(1) **Classification of Administration Costs.** Project administration costs are classified and must be accounted for on either a direct or indirect basis. **Direct Costs** are those costs that can be identified specifically with a particular cost objective. **Indirect Costs** are those costs incurred for a common or joint purpose, benefiting more than one cost objective and not readily assignable to the cost objectives specifically benefited. **The grantee can expect to account for their administration costs on the direct cost method, simply because the paper work involved in the indirect cost method may be too complex and time consuming to justify its use. If a grantee prefers to use the indirect cost method, they may do so, provided they have an approved cost allocation plan.** A copy of the cost allocation plan should be filed with MDOC. **If the grantee chooses to use the indirect cost method and does not have an approved cost allocation plan, they should request the appropriate how-to information from MDOC.**

(2) **Computer Software**

Computer software necessary to utilize the various CDBG forms and spreadsheets is an eligible administrative cost. In addition, CDBG will also a**llow appropriate computer hardware as an eligible administrative cost if it is required to run the software; however, DOC will only reimburse the CDBG recipient on a 50/50 cost share basis.**

B. **Unallowable Administration Costs.** The general rule is that any activity that is not authorized under HUD CFR 24, Part 570.206, is ineligible to be assisted with CDBG funds and is, therefore, an unallowable administration cost. **The following activities may not be assisted with CDBG funds (HUD 24 CFR, Part 570.207):**

(1) **Buildings or portions thereof used for the general conduct of government as defined in 570.3(d) cannot be assisted with CDBG funds. This does not include, however, the removal of architectural barriers under 570.201(k) involving any such building.** Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided such acquisition meets a national objective described in 570.208.

(2) **General Government Expenses.** Except as otherwise specifically authorized, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance.

(3) **Political Activities.** CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(4) The following activities may not be assisted with CDBG funds unless authorized under provision of 570.203 or as otherwise specifically noted, or when carried out by a subrecipient under the provisions of 570.204:

(a) **Purchase of Equipment.** The purchase of equipment with CDBG funds is generally ineligible.

- **Construction Equipment.** The purchase of construction equipment is ineligible. However, compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A-21, A-87 or A-122, as applicable, for an otherwise eligible activity is an eligible use of CDBG funds. The purchase of construction equipment, however, for use as part of a solid waste disposal facility is eligible under 570.201(c).

- **Fire Protection Equipment.** Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under 570.201(c).

(b) **Furnishings and Personal Property.** The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A-87 or A-122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service pursuant to 570.201(e).

(c) Operating and Maintenance Expenses. The general rule is that any expense associated with repairing, operating, or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable cost of operating and

maintaining a facility used in providing a public service would be eligible under 570.210(e), even if no other costs of providing such a service are assisted with such funds. **Examples of ineligible operating, repair and maintenance expenses for which CDBG funds may not be used are:**

- Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities;

- Maintenance and repair activities including filling pot holes in streets, repairing cracks in sidewalks, mowing recreational areas, and replacing expended street light bulbs; and

- Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public work and facilities.

(d) **New Housing Construction.** Activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in 570.206(g), are not considered as activities to subsidize or assist new residential construction. **CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:**

- **As provided under the last resort housing provisions set forth in 24 CFR Part 42;**

- **As authorized under 570.201(m); or**

- **When carried out by a subrecipient pursuant to 570.204(a);**

(e) **Income Payments.** The general rule is that CDBG funds shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include: payments for income maintenance and housing allowances.

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG)

REQUEST FOR FUNDS FORM

SECTION I - CDBG RECIPIENT INFORMATION		
CDBG CONTRACT NUMBER:	**DRAWDOWN NUMBER**	**TOTAL AMOUNT REQUESTED** **$0.00**
Name and Address of Grant Recipient	**Make Deposit Payable To:**	

	A **Amount Budgeted**	**B** **Amount Expended Prior To This Draw**	**C** **Amount Requested**	**D** **Balance Remaining After This Draw**
1. TOTAL ADMINISTRATION BUDGET	**$0.00**	**$0.00**	**$0.00**	**$0.00**
2. Percent	% of Total Grant #DIV/0!	% of Column A #DIV/0!		
3. TOTAL ACTIVITY BUDGET	**$0.00**	**$0.00**	**$0.00**	**$0.00**
4. Percent	% of Total Grant #DIV/0!	% of Column A #DIV/0!		
5. TOTAL CDBG GRANT BUDGET	**$0.00**	**$0.00**	**$0.00**	**$0.00**

6. Cash on Hand		$	
7. Amount of Requests Submitted and Not Received		$	
8. Total Previously Drawn from State		$	
PROGRAM INCOME SUMMARY			
9. Amount Received to Date	$0.00		
10. Amount Expended to Date	$0.00		
11. Program Income Balance	$0.00		
REMARKS:		**Amount from line 11.**	$0.00
		Total Amount Requested: (5C - 11A)	**$0.00**
	FOR DOC USE ONLY!	**Less 2% Retainage On Final Drawdown**	**$**
		Adjusted Amount Requested	**$**

SECTION III - LOCAL APPROVAL		
DATE:	SIGNATURE	TITLE
DATE:	COUNTERSIGNATURE	TITLE

SECTION IV - DOC APPROVAL	
EXPENDITURES ARE REASONABLE, APPROPRIATE _____	APPROVED BY:
FINANCIAL NUMBERS & SIGNATURES CORRECT _____	
CONSISTENT WITH PRECEDING DRAW & SABHRS _____	TITLE:
ADMINISTRATION DOES NOT EXCEED 10% _____	
BUDGET AMENDMENT APPROVED _____	DATE:

Computer will Calculate

EXHIBIT 4-C
INSTRUCTIONS FOR "REQUEST FOR FUNDS FORM"

Each request for payment (4-C) must also be accompanied by: (1) **Uniform Status of Funds Spreadsheet (Exhibit 4-D);** (2) **Uniform Invoice Tracking Spreadsheet (Exhibit 4-E);** (3) **CDBG Project Progress Report (Exhibit 4-F);** (4, as applicable**) Certification of Labor Compliance (Exhibit 6-P);** and (5, when requested by CDBG, as described in Chapter 6, Labor Standards), **Documentation of compliance with requirements concerning weekly payroll reviews .**

In order to complete a request for funds, please completely fill out **Sections I, II and III** of the "Request for Funds Form" (Exhibit 4-C).

Section I – CDBG Recipient Information:

1. **MDOC/ CDBG CONTRACT NUMBER.** Enter the MDOC/CDBG contract number of the CDBG grant.

2. **DRAWDOWN NUMBER.** Number the draws consecutively beginning with "1" for the initial request. (Enter the appropriate number **and** the word "FINAL" for the final draw request.)

3. **TOTAL AMOUNT REQUESTED.** Enter the total amount requested. Must be the same as Line 5 of Column D of Section II.

4. **NAME AND ADDRESS OF CDBG RECIPIENT.** Enter the CDBG recipient's mailing address exactly as shown on the Designation of Depository Form.

5. **MAKE DEPOSIT PAYABLE TO:** Enter the CDBG recipient's name, the account number where indicated, and the name and address of the bank as shown on the Designation of Depository Form.

Section II - Financial Information: Lines 1 through 5 must be completed. (Lines 1 through 5 relate to CDBG funds only.)

1. **COLUMN A.** Enter the amount budgeted for lines 1 and 3 (as shown on your MDOC-approved project budget and on the attached Uniform Status of Funds Spreadsheet, Exhibit 4-D).

2. **COLUMN B.** Enter the amount expended prior to this draw for lines 1 and 3 (as shown on your MDOC approved project budget and attached Uniform Status of Funds Spreadsheet).

3. **COLUMN C.** Enter the amount requested for this draw for lines 1 and 3 (as shown on your MDOC approved project budget and attached Uniform Status of Funds Spreadsheet).

4. **COLUMN D.** Enter the amount remaining after this draw for lines 1 and 3 (as shown on your MDOC- approved project budget and attached Uniform Status of Funds Spreadsheet).

5. **PERCENT.** Enter the calculated percentages as indicated for lines 2 and 4 as appropriate for the approved budget and subsequent expenditures.

6. **CASH ON HAND.** Enter the amount of cash on hand from previous CDBG draw.

7. **AMOUNT OF REQUESTS SUBMITTED AND NOT RECEIVED.** Enter the amount of CDBG funds requested and not yet received.

8. **TOTAL PREVIOUSLY DRAWN FROM STATE.** For public facilities projects or housing projects without program income, enter the total of line 5, column B. For housing projects with program income, see 9.e. below.

9. **PROGRAM INCOME SUMMARY.** Enter the amount of Program Income received to date, and the amount of expenditures to date, each time this form is submitted. Generally only housing rehabilitation or economic development projects need be concerned with this summary. NOTE: Program Income is defined as income (such as loan repayment received) that is generated as a result of project activities. CDBG grant funds received from MDOC is not part of "Program Income." See *CDBG Program Income Manual for Revolving Loan Funds* for additional explanations.

   a. Program income must be expended before CDBG grant monies.
   b. Program income is not deducted from the individual line items (Lines 1-5).
   c. Program income is deducted from Line 5, Column C, Amount Requested.
   d. Line 5, Column D, will be the grant balance less requested amounts (cumulative total of line 5, Column C).
   e. Line 8, Column B, will be the grant balance less requested amounts less program income (i.e., the actual money received by the grantee from the CDBG program).
   f. All program income expenditures must be submitted to MDOC for approval using the draw form.
   g. When the balance on Line 5, Column D is equal to "0", the grantee will have the option of:
      (1) Requesting approval of budget modification in the amount of Line 10; and then
      (2) Submitting a draw request for no more than the amount of Line 10; or
      (3) Closing out the project, allowing the MDOC to recapture the amount of Line 10.
      Note: At the end of the project, the amount on Line 10 should be equal to the amount on Line 5, Column A less the amount on Line 8, Column B.

10. **CDBG TOTALS.** Total columns A through D on line 5 (as shown on your MDOC approved project budget and attached Uniform Status of Funds Spreadsheet).

11. **FOR MDOC USE ONLY.** Leave blank. This box is only for MDOC's use, in order to subtract the 2% retainage on the final drawdown.

12. **REMARKS.** Use this space to clarify information.

Section III - Local Approval: Two original authorized signatures from the CDBG recipient are required, along with the date signed and titles of the officials. These signatures must be exactly as shown on the Signature Certification Form. **Photocopied signatures are not acceptable.**

Section IV - MDOC Approval: Leave blank. This section is for MDOC comment and approval only.

Create an initial copy of the form to use as a "master" form to avoid unnecessary duplication for subsequent drawdown requests. Type the information for MDOC/CDBG Contract Number, Name and Address of CDBG Recipient, "Make Deposit Payable To", and Column A of Section II on this master form. For each subsequent drawdown request, enter the remaining information on a **copy** of this "master" form. **Submit the signed original of the drawdown request, retaining a copy for your files.**

EXHIBIT 4-D

DIRECTIONS FOR USING THE UNIFORM STATUS OF FUNDS SPREADSHEET

The purpose of the Uniform Status of Funds Spreadsheet is to provide a uniform method for local governments to track project expenditures on infrastructure and housing projects which use multiple federal, state, local, and private funding sources. All required calculations have been formatted into the spreadsheet (formatted in Excel).

NOTE: Only the non-shaded cells require information to be input (if accessing through Excel these cells will appear in yellow). All other cells will automatically calculate.

- Enter the name of the local government. The date will automatically fill in.
- Indicate funding sources for the project in the cell titled "Funding Source" including local funds.

This spread sheet separates administrative costs and activity costs and then totals them together for total project costs. Under each administrative cost and activity cost, for **all funding sources used in the project** you must:

- Indicate the amount Budgeted (the amount budgeted with the particular funding source for this line item);
- Indicate the amount Previously Expended (the amount already spent through the particular funding source);
- Indicate the Amount of the Draw (the amount submitted via the current drawdown to the particular funding source)

Note: To enter an amount, you only need to enter the number. You do not need to enter a "$" or commas. You do need to enter a period to indicate an amount less than one dollar.

All totals for both columns and rows will be automatically calculated, including:

Balance Remaining
Total Budget: Budgeted
Expended
Balance
Total Administrative Costs
Total Activity Costs
Total Project Costs

The spreadsheet has been formatted with a column width of 9.43" for columns which have numbers displayed. Depending on the amounts involved in your project you made need to widen columns so that your amounts will fit. Note that this may cause your spreadsheet to expand beyond a single page, and resulting in your spreadsheet being printed on two pages.

Grantees may change categories on the spreadsheet to suit their needs. For example, CDBG draw forms have different line item categories under administration budget and activity costs. These categories can be changed to reflect the need of each project and grantees are not restricted to using the line items on the sample spreadsheet.

UNIFORM STATUS OF FUNDS SPREADSHEET FOR:												DATE:	11/15/2018		
	Funding Source:				Funding Source:				Funding Source:				Total Budget		
ADMINISTRATIVE/ FINANCIAL COSTS:	Budgeted	Previously Expended	Amount of Draw	Balance Remaining	Budgeted	Previously Expended	Amount of Draw	Balance Remaining	Budgeted	Previously Expended	Amount of Draw	Balance Remaining	Budgeted	Expended	Balance
Personnel Costs				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Office Costs				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Professional Services				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Legal Costs				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Audit Fees				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Travel & Training				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Loan Fees				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Loan Reserves				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Interim Interest				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Bond Cost				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Total Administrative Costs	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
ACTIVITY COSTS:															
Land Acquisition				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Preliminary Engineering				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Final Engineering Design				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Construction Engineering				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Construction				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Contingency				$0.00				$0.00				$0.00	$0.00	$0.00	$0.00
Total Activity Costs	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
TOTAL PROJECT COSTS	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00

Copy and submit to the applicable funding agency with each drawdown request.

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UNIFORM STATUS OF FUNDS SPREADSHEET FOR: "Anywhere Water and Sewer District" **(EXAMPLE OF A COMPLETED SPREADSHEET)** 11/15/2018

	Funding Source: TSEP				Funding Source: RD Grant				Funding Source: RD Loan			Total Budget		
ADMINISTRATIVE/ FINANCIAL COSTS:	Budgeted	Previously Expended	Amount of Draw	Balance Remaining	Budgeted	Previously Expended	Amount of Draw	Balance Remaining	Budgeted	Previously Expended	Amount of Draw	Budgeted	Expended	Balance
Personnel Costs	$500.00	$0.00	$0.00	$500.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$500.00	$0.00	$500.00
Office Costs	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Professional Services	$20,000.00	$7,000.00	$3,000.00	$10,000.00	$0.00	$0.00	$0.00	$0.00	$10,000.00	$0.00	$4,000.00	$30,000.00	$14,000.00	$16,000.00
Legal Costs	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Audit Fees	$500.00	$0.00	$0.00	$500.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$500.00	$0.00	$500.00
Travel & Training	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$40,000.00	$0.00	$0.00	$40,000.00	$0.00	$40,000.00
Loan Fees	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$230,000.00	$0.00	$0.00	$230,000.00	$0.00	$230,000.00
Loan Reserves	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Interim Interest	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Bond Cost	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00
Total Administrative Costs	$21,000.00	$7,000.00	$3,000.00	$11,000.00	$0.00	$0.00	$0.00	$0.00	$280,000.00	$0.00	$4,000.00	$301,000.00	$14,000.00	$287,000.00
ACTIVITY COSTS:														
Land Acquisition	$22,000.00	$15,000.00	$0.00	$7,000.00	$0.00	$0.00	$0.00	$0.00	$10,000.00	$0.00	$0.00	$32,000.00	$15,000.00	$17,000.00
Preliminary Engineering	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Final Engineering Design	$20,000.00	$10,000.00	$5,000.00	$5,000.00	$0.00	$0.00	$0.00	$0.00	$20,000.00	$5,000.00	$7,000.00	$40,000.00	$27,000.00	$13,000.00
Construction Engineering	$15,500.00	$0.00	$0.00	$15,500.00	$50,000.00	$0.00	$0.00	$50,000.00	$200,000.00	$0.00	$0.00	$265,500.00	$0.00	$265,500.00
Construction	$383,500.00	$0.00	$0.00	$383,500.00	$600,000.00	$0.00	$0.00	$600,000.00	$1,700,000.00	$0.00	$0.00	$2,683,500.00	$0.00	$2,683,500.00
				$0.00				$0.00				$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00
				$0.00				$0.00				$0.00	$0.00	$0.00
Contingency	$38,000.00			$38,000.00	$60,000.00			$60,000.00	$170,000.00			$268,000.00	$0.00	$268,000.00
Total Activity Costs	$479,000.00	$25,000.00	$5,000.00	$449,000.00	$710,000.00	$0.00	$0.00	$710,000.00	$2,100,000.00	$5,000.00	$7,000.00	$3,289,000.00	$42,000.00	$3,247,000.00
TOTAL PROJECT COSTS	$500,000.00	$32,000.00	$8,000.00	$460,000.00	$710,000.00	$0.00	$0.00	$710,000.00	$2,380,000.00	$5,000.00	$11,000.00	$3,590,000.00	$56,000.00	$3,534,000.00

Copy and submit to the applicable funding agency with each drawdown request.

EXHIBIT 4-E

DIRECTIONS FOR USING THE UNIFORM INVOICE TRACKING SPREADSHEET

The purpose of the Uniform Invoice Tracking Spreadsheet is to provide a uniform method for local governments to track individual invoices on infrastructure or housing projects that use multiple federal, state, local, and private funding sources.

Note: The non-shaded areas are the only areas that will be completed by the grantee. All other cells will automatically calculate.

Enter the name of the local government. The date will automatically fill in.

Vendor's Name:
Place the name of the vendor (payee) in this space.

Invoice or Pay Estimate Number:
This is a number assigned by the vendor to the invoice or pay estimate that has been submitted to the local government for payment.

Invoice Date or Time Period Covered:
Put the date of the invoice in this space. If the time period to which the invoice pertains is more appropriate, place this information in this space.

Total Amount of Invoice:
This amount should be the "total" of the invoice. For instance, if the invoice is for $500 and CDBG is paying $200 and TSEP is paying $300 – then $500 should still be placed in this space.

Note: To enter an amount, you only need to enter the number. You do not need to enter a "$" or commas. You do need to enter a period to indicate an amount less than one dollar.

Warrant Number:
The number on the warrant issued by the local government for payment of the invoice.

Date Paid:
The date on the warrant.

Funding Source, Amount Expended, and Drawdown Number:
Source -- indicate the funding sources paying for each invoice – RD/USDA, SRF, TSEP, CDBG, HOME, Local, etc.

Amount -- the amount expended by each funding source (indicated above) to pay for an invoice.

Number -- indicate the number of the draw that was submitted to the particular funding source for payment of the indicated amount. For instance, the Contractor X invoice dated

11/08/98 was paid from CDBG funds obtained through the CDBG draw number one, RD funds obtained through RD draw number one, and TSEP funds obtained through TSEP draw number three.

Total Amount Paid This Invoice:

This figure will automatically be calculated. The figure should equal the amount in "Total Amount of Invoice" and should also equal the sum of the "Amounts" under the heading "Funding Source, Amount Expended, Drawdown Number."

UNIFORM INVOICE TRACKING SPREADSHEET FOR:						DATE:	12/14/1998										
Vendor's Name	Invoice or Pay Estimate Number	Invoice Date or Time Period Covered	Total Amount of Invoice	Warrant Number	Date Paid	Funding Source, Amount Expended, Drawdown Number Funding Source: #		Funding Source: #		Funding Source: #		Funding Source: #		Funding Source: #		Total Amount Paid This Invoice
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
		TOTALS	$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
Copy and submit to the applicable funding agency with each drawdown request.																
				Montana Department of Commerce						CDBG / NSP Grant Administration Manual						
													2018			
				4-E.3												

UNIFORM INVOICE TRACKING SPREADSHEET FOR:	Anywhere Water and Sewer District				DATE:	11/15/2018										
Vendor's Name	Invoice or Pay Estimate Number	Invoice Date or Time Period Covered	Total Amount of Invoice	Warrant Number	Date Paid	Funding Source, Amount Expended, Drawdown Number										Total Amount Paid This Invoice
						Funding Source: CDBG	#	Funding Source: RD	#	Funding Source: SRF	#	Funding Source: TSEP	#	Funding Source: RRGL	#	
Engineering Inc.	1000	11/02/07	$400.00	4301	11/15/07	$0.00		$0.00		$0.00		$400.00	1	$0.00		$400.00
Engineering Inc.	1001	11/07/07	$700.00	4350	11/16/07	$0.00		$0.00		$0.00		$400.00	2	$300.00	1	$700.00
Contractor X	4005	11/08/07	$1,500.00	4400	11/16/07	$500.00	1	$500.00	1	$0.00		$500.00	3	$0.00		$1,500.00
City/Personnel	2	12/10/07	$100.00	4500	12/15/07	$100.00	2	$0.00		$0.00		$0.00		$0.00		$100.00
Management Services	10	12/11/07	$400.00	4510	12/15/07	$0.00		$200.00	2	$0.00		$200.00	4	$0.00		$400.00
Contractor X	4006	12/31/07	$1,000.00	4600	01/15/08	$200.00	3	$200.00	3	$300.00	1	$200.00	5	$100.00	2	$1,000.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
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			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
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			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
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			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
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			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
			$0.00			$0.00		$0.00		$0.00		$0.00		$0.00		$0.00
		TOTALS	$4,100.00			$800.00		$900.00		$300.00		$1,700.00		$400.00		$4,100.00
Copy and submit to the applicable funding agency with each drawdown request.																
I:\cdbg\projmgt\new\inv.exmpl																
		Montana Department of Commerce				CDBG / NSP Grant Administration Manual										
														2018		
								4-E.4								

EXHIBIT 4-F
PROJECT PROGRESS REPORT

[… Should be included with each Request for Funds, Exhibit 4-C …]

NAME OF COMMUNITY: _____
GRANT CONTRACT NUMBER: #MT-CDBG-_____-_____
DRAWDOWN NUMBER: _____
TOTAL REQUESTED: _____
DATE: _____

ADMINISTRATION: **Amount Requested** $_____

Description of the use of the administration funds requested:
_____
_____

Description of current and planned administrative activities, highlighting any issues or concerns relevant to project ad ministration:
_____
_____

Include above the amount and a brief description of the use of funds requested for each administrative line item, as shown on the Request for Funds form submitted. The progress report should provide documentation of any major expenditure under this "administration" budget category.

The Administration portion of the Progress Report should also describe your current and planned administrative activities, highlighting any issues or concerns relevant to project administration. For example: If you anticipate the need for changes in the line item amounts shown in the activity budget these should be discussed well in advance, since budget adjustments require prior approval and if greater than 10% per line item, formal contract amendment.

ACTIVITY: **Amount Requested $_____**

Description of the use of the activity funds requested:
_____
_____

Description of current and planned project activities, highlighting any issues or concerns relevant to project activities:
_____
_____

Include above the amount and brief description of the use of funds requested for each activity line item, as shown on the Request for Funds form submitted. This portion of the Progress Report should provide documentation of any major expenditure under this "activity" budget category. For example, for a public facilities project, attach a copy of the contractor's request for partial payment as reviewed and approved by the project engineer. For economic development projects involving loan agreements, provide documentation from the assisted entity for major expenditures such as: construction, equipment purchase and installation and working capital expenses.

Any other information relevant to the implementation of project activities should also be included in this section of the progress report, including a description of the cumulative progress and accomplishments achieved since project start-up and since the last progress report submitted. Use quantitative terms whenever possible. Any other information that appears pertinent should be included, especially if it may affect the level of accomplishment called for in the grant contract. For example, if you anticipate any problems or delays that could affect the project implementation schedule or budget, these should be fully described. Anticipated changes in the contract budget, implementation schedule, or scope of services should be discussed in detail, well in advance of the needed change.

Note: When grantees submit a drawdown to CDBG for grant funds, CDBG requests that grantees report completed milestones and project progress as it relates to the current Project Implementation Schedule. When key dates identified in the current implementation schedule change, a revised implementation schedule needs to be reviewed for approval by CDBG. Upon approval, CDBG will issue a letter to the grantee confirming that the revised implementation schedule has been reviewed and approved.

Note on required Labor standards monitoring and documentation. As part of the documentation you submit to CDBG with all your requests for drawdown of Activity budget funds, during the construction period, include:

(1) copies of the required labor compliance interviews of contractors' employees; and

(2) certification (on Exhibit 6-P) of your completion of weekly reviews of weekly payroll.

Maintain in your local project files documentation that you have assured that all during the project that the proper federal Davis-Bacon wages (and hourly zone rates, if applicable) are being paid. See Chapter 6 (pages 6-13 and 6-14) and Exhibits 6-K and 6-P.

SAMPLE PUBLIC FACILITY PROJECT PROGRESS REPORT

NAME OF COMMUNITY: Town of Sunrise
GRANT CONTRACT NUMBER: #MT-CDBG-PFXX-XX
DRAWDOWN NUMBER: 3
TOTAL REQUESTED: $73,500
DATE: 8/23/08

ADMINISTRATION: **Amount Requested:** $2,500

Description of the use of the administration funds requested:
The funds requested for administrative costs in this drawdown are for the following tasks:

1. Legal services for preparation and local review of contract with construction contractor. 10 hours at $45.00/hour = $450.
2 Reimbursement for time spent by the CDBG Project Manager conducting Davis-Bacon employee interviews and on-site meetings with the engineer and contractor to discuss and monitor project construction. 70 hours at $25.00/hour = $1,750.
3. Travel expenses for CDBG Project Manager - $250.
4. Misc. office expenses and supplies - $50

Description of current and planned administrative activities, highlighting any issues or concerns relevant to project ad ministration:
Contractor employee interviews will continue. Weekly review of payrolls will continue. Assistance with completion of project closeout report is requested. Local staff will review the CDBG Project Monitoring Guide in preparation for the on-site monitoring visit (scheduled for the final week of October, 2008). Working with project engineer and construction contractor to assure we meet final inspection deadline (January 15, 2009).

ACTIVITY: Amount Requested: $71,000

Description of the use of the activity funds requested:
The breakdown of activity costs is as follows:
1. Payment of $50,000 to XYZ Construction Company for work on the water lines (see attached documentation). An additional $2,000 will be paid with cash on hand from the last drawdown. Since the last drawdown, an additional 1,000 linear feet of water line has been installed, inspected and covered for a total of 1,500 feet to date. Another 500 feet will be installed in the next month;
2. Reimbursement for engineering services and inspections to Gasket Engineering Inc. – 75 hours at $80.00/hour = $6,000;
3. For payment of 1% Montana contractors tax - $520;
4. Service connections - $14,080. Eighty new service connections have been completed since the last draw for a total to date of 100. The remaining 15 connections will be completed after the next 500 feet of water line is installed

Description of current and planned project activities, highlighting any issues or concerns relevant to project activities:

1. **Acquisition of the land for the water tank will be completed this month** -- that is a little behind schedule. Construction of the tank will begin as soon as possible next month;
2. **None of the 12 fire hydrants have been installed to date**. Installation will begin next month.
3. **Labor standards monitoring and documentation (for this period) is included as part of the drawdown request packet, as required.** Included: (1) copies of recent (June-July-August, 2008) labor compliance interviews of a representative sample of employees and trades for all contractors and subcontractors; and (2) certification (on Exhibit 6-P) of our completion of weekly reviews of weekly payroll.
4. **We need CDBG's assistance**: There is a new employee for one of the prime contractor's subcontractors (Superb Water Fixers, Inc) and the work being done does not seem to correspond to anything we can find on the Davis-Bacon wage rate determinations packet for this project. Help!

EXHIBIT 4-G

FEDERAL REGULATIONS FOR REAL PROPERTY

1. The standards described in 24 CFR, Part 570.505, Subpart J, apply to real property within the grantee's control that was acquired or improved using CDBG funds in excess of $25,000. These standards apply from the date CDBG funds are first spent for the property until five years after closeout of the grant.

   A grantee may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the grantee provides the affected citizens with reasonable notice and opportunity to comment on any proposed change, and:

   (a) The new use of such property qualifies as principally benefiting low and moderate income persons and is not a building for the general conduct of government, or

   (b) If (a) does not apply, the recipient may retain or dispose of the property, provided:

   - It determines, after consultation with the affected citizens, that it is appropriate to change the use of the property to a use which does not qualify as principally benefiting low and moderate income persons, and
   - If MDOC decides to recover the funds, MDOC must be reimbursed for the amount of the current fair market value of the property, and
   - If any portion of the reimbursement is attributable to the expenditure of non-CDBG funds, that portion will be deducted from the total reimbursement.

   Following reimbursement, the property no longer will be subject to any CDBG requirements.

2. The proceeds received from the sale of real property, acquired or improved with CDBG funds, in the amounts in excess of $25,000 is subject to 24 CFR, Part 85.31. It provides that the amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from the sale may be offset against the original cost of the property. When a grantee or sub-grantee is directed to sell property, sale procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

3. Disposition of equipment is subject to 24 CFR, Part 85,32. It requires that when original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal Agency, disposition of the equipment will be made as follows:

   - Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

   - Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from the sale of the awarding agency's share of the equipment.

In cases where a grantee or sub-grantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or sub-grantee to take excess and disposition actions.

After closeout, the grantee must retain records relating to the disposition of real property, equipment and supplies for at least three years from the date of disposition.

EXHIBIT 4-H

PROGRAM INCOME

Program income means gross income that is received by either a recipient or sub-recipient and has been directly generated from the use of CDBG funds. When program income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used.

Note: This exhibit applies to both the CDBG Housing Program and the CDBG Economic Development Program. Please refer to Chapter 8 for additional requirements related to CDBG economic development activities.

A. EXAMPLES OF PROGRAM INCOME

1. Program income examples include, but are not limited to, the following:

    - Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
    - Proceeds from the disposition of equipment purchased with CDBG funds;
    - Gross income from the use of rental of real or personal property acquired by the grantee with CDBG funds, less costs incidental to generation of the income;
    - Gross income from the use or rental of real property, owned by the grantee that was constructed or improved with CDBG funds, less costs incidental to generation of the income;
    - Payments of principal and interest on loans made using CDBG funds;
    - Proceeds from the sale of loans made with CDBG funds;
    - Proceeds from sale of obligations secured by loans made with CDBG funds;
    - Interest earned on funds held in a revolving fund account;
    - Interest earned on program income pending its disposition; and
    - Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of public improvement.

2. Program income does **not** include, but is not limited to, the following:

- Interest earned on grant advances from the U.S. Treasury. Any interest earned on grant advances is required to be returned to the U.S. Treasury;

- Proceeds from fund-raising activities carried out by sub-recipients that are receiving CDBG assistance to implement eligible activities;

- Funds collected through special assessments that have been made to recover the non-CDBG portion of a public improvement;

- Proceeds from the disposition by the grantee of real property that has been acquired or improved with CDBG funds when the disposition occurs after grant close-out for entitlement grantees;

- Proceeds from the disposition of real property that has been acquired or improved with CDBG funds, where the disposition occurs within a five-year period after expiration of the agreement between the grantee and sub-recipient.

- Proceeds from CDBG economic development loans that are used for economic development activities through a community development organization are not considered program income.

B. PROGRAM INCOME PLAN

MDOC will allow local government grantees to retain program income after project closeout. To do so, a grantee must submit a plan for the proposed use of the program income. (Preferably, a local government would do so within its project application or management plan.) The decision to permit a local government grantee to retain program income will be based upon the grantee's final plan for use and administration of such program income.

C. PROGRAM INCOME CONTRACTUAL REQUIREMENTS

If MDOC determines that program income is to be retained by a grantee, the program income plan will specify the activities that will be undertaken with the program income and that all provisions of the program income plan shall apply to the specified activities. Accordingly, the contract will contain the following provisions that will be modified during contract negotiations to fit the specific program income situations that exist.

The grantee will be permitted to retain program income generated by the activities described in the contract under Section 5, Scope of Activities. Program income

received before the project is closed out by MDOC must be expended on project activities before additional CDBG funds are requested by the grantee. MDOC will deduct the amount of program income on hand as shown on the drawdown form from the amount requested by the grantee. The receipt and expenditure of program income shall be treated as additional CDBG funds, subject to all applicable requirements governing the use of CDBG funds. The receipt and expenditure of program income shall be recorded as part of the financial transactions of the grant program. At the time of closeout, MDOC will specify the conditions and requirements that will apply to program income received after closeout by the grantee.

The CDBG Program Officer preparing the contract will insert specific program income requirements that relate directly to the project, based on the application, other open or closed CDBG projects, current MDOC policy for program income, the existence and purpose of revolving loan funds, and the source of program income that is expected to be generated from project activities.

D. USES OF PROGRAM INCOME

1. After Project Closeout -- For the years of 1992 and prior:

   - If the grantee does not have an on-going grant that was received directly from MDOC at the time of closeout, the MDOC encourages the use of program income for CDBG eligible activities that assist a minimum of 51% low and moderate-income persons.

   - Program income should be expended on activities as specified in the local government's program income plan and/or closeout agreement.

2. Before Project Closeout -- For the years of 1993 and later (*this applies only to program income managed by local governments:*

   - Program income received by a grantee before closeout must be used in accordance with the provisions of Title I. As such, all the regulations and requirements that applied during the term of the project will apply to the program income received before closeout. For the most part, this means that program income must be used for eligible CDBG activities, and that a minimum of 51% of the funds must be used for activities that are clearly designated to meet identified needs of persons of low and moderate income.

3. After Project Closeout -- For the years of 1993 and Later *(this applies only to program income managed by local governments:*

   MDOC has developed the following proposed policy for expenditure of program income after close-out which will meet the federal national objective

of benefiting low and moderate income persons (LMI) and allow local governments some flexibility with their program income:

- As program income is received, the following applies: For CDBG housing and public facilities activities: a maximum of 15% would be allocated to an administration fund and a minimum of 85% allocated to an activity fund for each state fiscal year;

  For CDBG economic development activities: a maximum of 18% would be allocated to an administration fund and a minimum of 82% allocated to an activity fund for each state fiscal year.

- Under the activity fund, 70% of the expenditures of that fund in any year would have to principally benefit LMI (51%) persons, be a CDBG eligible activity, and meet federal Title I regulations. The "70%" derives from the federal statutory requirement that requires states to demonstrate to HUD that at least 70% of CDBG funds expended are used to assist LMI persons or households.

- The remaining 30% of the activity fund could be used for any CDBG eligible activity as long as it meets Title I requirements. Grant recipients would still need to submit a program income report for any program income generated. ►This strategy assures that program income is being spent on CDBG eligible activities that principally benefit 51% low and moderate-income persons, the original intent of the program, but allows some flexibility to carry out eligible CDBG activities in those communities that are not 51% LMI community-wide.

  All program income received by a grantee after closeout must continue to be used in accordance with the provisions of Title I (Davis Bacon wage rates, environmental review, etc.). As such, all regulations and requirements that applied during the term of the project will apply to the program income received after closeout.

  <u>Exception: Federal Title I requirements do not apply to funds which are less than $25,000 received and retained in a single year by a grantee.</u> A grantee may use this amount for any eligible CDBG activity that benefits at least 51% low and moderate-income persons. The first annual period for which it may be applied begins with fiscal year 1994, beginning July 1, 1993.

4. For CDBG economic development payments made to a qualified non-profit:

   Payments made to a community development organization that uses the funds for continued economic development activities do not have to

meet any Federal requirements. However, the local government can still establish requirements for re-use of the funds, and require some CDBG requirements to be followed through grant agreements between the local government and the community development organization. A revolving loan fund plan must be executed that is agreeable to the local government. The local government must also execute a sub-recipient agreement with the community development organization for management of the revolving loan fund.

The Department encourages community development organizations to continue to use loan proceeds for CDBG eligible activities that benefit 51% low and moderate-income persons, and to follow activities specified in the revolving loan fund plan.

E. USE OF PROGRAM INCOME IN LIEU OF GRANT DRAWDOWNS

If at the time of closeout the grantee has another on-going CDBG grant from MDOC, the funds received after closeout will be treated as program income of the on-going grant program, unless MDOC specifies otherwise in the grant agreement or there is a Revolving Loan Fund set-up. MDOC may specify in the grant agreement or in a future grant agreement that program income from an earlier CDBG project will be used for a CDBG project awarded at a later date.

The receipt and expenditure of program income shall be recorded as part of the financial transactions of the grant program in the grantee's financial records. Program income received before grant closeout may be retained by the grantee, with MDOC approval, if the income is treated as additional CDBG funds. If the grantee chooses to retain program income, hat income shall affect withdraws of grant funds from the U.S. Treasury as follows:

- Program income in the form of repayments to, or interest earned on, a revolving fund, as defined above, shall be substantially disbursed from the fund before additional cash withdraws are made from the U.S. Treasury for the same activity.

- Substantially all other program income shall be disbursed for eligible activities before additional cash withdraws are made from the U.S. Treasury.

This requirement could lower the total amount of CDBG funds received from MDOC that are actually expended (as opposed to requested and budgeted) for the project. MDOC will decide whether to allow the remaining CDBG funds to be used for further project activities, such as additional housing rehabilitation or to reallocate the remaining funds to other CDBG projects.

F. USING PROGRAM INCOME FOR FOR-PROFIT ENTITIES

A grantee proposing to use CDBG program income, regardless of source, for economic development activities must determine that assistance to for-profit entities is appropriate, as defined in the current Montana CDBG Application Guidelines and HUD policy.

The grantee will have to retain records to document compliance with this requirement, including the financial analysis conducted to determine whether the financial assistance to the for-profit was "necessary and appropriate."

G. REVOLVING LOAN FUND(S)

1. Definition and Purpose

   HUD defines a revolving fund as a separate fund with a set of accounts independent of other program accounts, established for the purpose of carrying out a specific activity that, in turn, generates payments to the fund for use in carrying out such an activity. An example is a revolving fund set up for financing housing rehabilitation loans. Loan repayments are paid into the fund and used to finance other rehabilitation loans or loans to businesses.

2. Establishment

   Typically, a revolving fund will be established at the time the specific activity begins to generate program income, e.g., principal and interest received by the grantee from payments on rehabilitation loans or business loans.

3. Optional Fund Requirements

   The grantee may maintain a separate revolving fund for housing activities and a separate revolving fund for economic development activities. Or, the grantee may opt to utilize a single revolving fund for both activities.

4. Mandatory Fund Requirements

   Due to Title I changes, the grantee will be required to maintain a separate fund for revolving activities covered under 1992 and prior contracts, and a separate fund for revolving activities covered under 1993 and future contracts, or combine the two and follow the post-1992 requirements.

5. Rules Applying To A Revolving Fund

   Revolving fund activities are subject to the same rules as other CDBG grant activities. They must be eligible activities that meet a national objective and must be carried out in compliance with all applicable program requirements.

H. REVOLVING LOANS

1. Loan Management

The making of real estate and business loans by the grantee parallels in importance the function of a financial institution, such as bank or savings and loan association. Consequently, proper management of these loans is paramount to the success of the CDBG Program.

The guidelines that follow, while not all inclusive, should help the grantee in the management of real estate and business loan activities.

a. Applicable loan committees should be established to provide citizen involvement and guidance;

b. All amortized loans made should be supported by amortization schedules and they should be kept current. The loan amortization schedule(s) will serve as the subsidiary loan receivable records;

c. All loan repayments of principal and interest should be collected directly by the grantee (unless a sub-recipient agreement has been executed between the grantee (local government) and a non-profit community development organization to manage the funds through a revolving loan fund plan;

d. The person who receives the loan repayments should not be the same person who keeps the records;

e. All loans made and resulting transactions should become a part of the general accounting records;

f. A system should be established to monitor all loans outstanding;

g. A formal policy for dealing with delinquent loans should be established and enforced;

h. Delinquent loan reports should be issued periodically and used for follow-up;

I. All loans should be secured by trust indentures;

j. All borrowers should protect the grantee against insurable risks (where applicable) and the policies underwritten should be on file with the grantee;

k. Any grants made that provide a contingency for repayment should be appropriately accounted for and secured by the filing of liens.

2. Accounting And Reporting Treatment for Revolving Loans

Authoritative literature on accounting for loans, often referred to as revolving loans, is skimpy at best. The December, 1989 GAAFR Review, published by the Government Finance Officers Association, discusses the pros and cons of several possible treatments - each having some theoretical defect. However, the most favored, and recommended, treatment is to report the loan receivable on the balance sheet with a corresponding amount of deferred revenue.

I. RECORDKEEPING REQUIREMENTS

Communities planning to utilize program income must maintain, at a minimum, the following records:

- Sources of program income, including interest earned;
- A schedule of anticipated program income receipts;
- Designated persons(s) or entity(ies) responsible for tracking loan payments and servicing the loan(s);
- Policies and procedures for determining how the program income funds will be expended and for what activities;
- Names of the person(s) or board(s) responsible for implementing the program income plan and for ensuring compliance with applicable requirements;
- Dates and amounts of program income deposits and disbursements; and
- The activities funded with program income.

These records must be available for review. The grantee must retain such records for at least three years from the end of the fiscal year in which the last receipt of program income occurs.

J. MDOC OVERSIGHT AND MONITORING OF PROGRAM INCOME

Because MDOC has ultimate responsibility for the program income retained and used at the local level, it must ensure that such program income is used in a manner

consistent with CDBG requirements. To do so, MDOC has instituted a reporting process that will require an Annual Program Income Report from each grantee.

For the reporting convenience of the grantee, MDOC has designed two versions of the Annual Program Income Report, Version A and Version B.

1. Version A (See **Exhibit 4-H.1**)

   The grantee should utilize Version A when it opts to combine the reporting of housing or public facility program income activity. However, such program income activity must be reported separately for the contract years of 1992 and prior and for the contract years of 1993 and later.

   The compliance certification on this report must be signed by the appropriate local official. In so doing, the grantee certifies that it has adhered to all Title I compliance requirements as required.

2. Version B (See **Exhibit 8-I**)

   The grantee should utilize Version B when reporting CDBG economic development activities for primary and secondary loans.

3. Reporting Period And Filing Deadline

   For CDBG housing or public facility activities: The Program Income Report(s) will cover the fiscal year of July 1, through June 30. The reports must be filed with MDOC no later than August 15 of each year.

   For CDBG economic development activities: The Revolving Loan Fund Report will cover the calendar year January 1, through December 31. The reports must be filed with MDOC no later than January 31 of each year. Reporting forms will be sent to revolving loan fund managers each December.

Version A

City/Town/County of

Annual Program Income Report
Receipts, Disbursements and Changes in Fund Balance(s) - All Funds for CDBG Housing or Public Facility Activities

For the Fiscal year Ended June 30, 20__

	1992 And Prior	1993 And Later	Totals
Receipts:			
Interest	$ 15,000	$ 5,000	$ 20,000
Principal	10,000	5,000	15,000
Total Annual Receipts	$ 25,000	$ 10,000	$ 35,000
Disbursements:			
Loans	$ 10,000	$	$ 10,000
Grants	5,000		5,000
Total Annual Disbursements	$ 15,000	$	$ 15,000
Transfers Out:			
Drawdowns	$ 5,000	$	$ 5,000
General Government		5,000	5,000
Total Annual Transfers	$ 5,000	$ 5,000	$ 10,000
Total Disbursements & Transfers	$ 20,000	$ 5,000	$ 25,000
Excess Receipts over Disb. & Trans.	$ 5,000	$ 5,000	$ 10,000
or			
Excess Disb. & Trans. over Receipts	( )	( )	( )
Fund Balance(s) Beginning	35,000		35,000
Fund Balance(s) Ending	$ 40,000	$ 5,000	$ 45,000

PROGRAM INCOME - TITLE I CERTIFICATION

Amendments to Title I of the Housing and Community Development Act require that local governments continue to spend all program income for eligible Community Development Block Grant (CDBG) activities according to all Title I requirements, even after close out of the CDBG project. The following certification is to be executed by the chief local government official to certify in its annual program income report to the Department of Commerce that these requirements have been met.

Certification

I hereby certify that all program income expenditures generated by Community Development Block Grant (CDBG) activities for the local government of _____, were expended for eligible CDBG activities, according to requirements of Title I of the Housing and Community Development Act of 1974, as required by amendments to the Act dated October, 1992.

_____
Chief Local Government Official

_____
Date

EXHIBIT 4-I

EXPENDITURE REVIEW

Several communities have developed forms that provide for routine review and approval of proposed CDBG expenditures by the Project Manager, before they are submitted to the local Financial Officer for processing. The "paper trail" resulting from the use of such forms also documents a proper separation of duties and adequate internal control.

Two sample formats follow. The first format would be used for routine local expenditures and attached to each invoice or request for payment submitted for local review:

CDBG PROGRAM EXPENDITURE REVIEW

Name of Vendor/Contractor Purpose of Expenditure/Activity	Date of Invoice or Billing	Amount

1. Expenditure is an eligible use of CDBG funds according to the project budget?
   Yes _____ No_____

2. Expenditure should be assigned to the _____ budget line item.

3. Sufficient funds are available for payment? Yes _____ No _____

The proposed expenditure meets the requirements of the CDBG Program and is authorized for payment.

_____ Project Manager

_____ Date

Another format, shown below, could be used for housing rehabilitation activities or demolition activities. The form would be prepared by the local Project Manager, after the contractor has completed work on the demolition or rehabilitation project.

CDBG PROGRAM EXPENDITURE REVIEW

Name of Owner: _____

Address: _____

Application Number: _____

CDBG PROGRAM PROJECT COMPLETION CERTIFICATION

I certify that the demolition/rehabilitation work on the above listed property has been completed in accordance with the work write-up and contract.

Contractor Signature: _____

Date: _____

PAYMENT APPROVAL

The demolition/rehabilitation work on the above listed property has been inspected and determined to have been completed in accordance with the work write-up and contract.

A payment of $ _____ is authorized.

Project Manager Signature: _____

Date: _____

EXHIBIT 4-J

PROGRAM INCOME - TITLE I CERTIFICATION

Amendments to Title I of the Housing and Community Development Act require that local governments continue to spend all program income for eligible Community Development Block Grant (CDBG) activities according to all Title I requirements, even after close out of the CDBG project. The following certification is to be executed by the chief local government official to certify in its annual program income report to the Department of Commerce that these requirements have been met.

Certification

I hereby certify that all program income expenditures generated by Community Development Block Grant (CDBG) activities for the local government of _____, were expended for eligible CDBG activities, according to requirements of Title I of the Housing and Community Development Act of 1974, as required by amendments to the Act dated October, 1992.

_____
Chief Local Government Official

_____
Date

EXHIBIT 4-K

QUARTERLY UPDATE REPORT
Montana CDBG Program – Housing and Public Facilities

NAME OF GRANTEE: _____ _____

DATE OF ANNOUNCEMENT OF GRANT AWARD: _____

DATE OF FIRM COMMITMENT OF ALL OTHER NON-CDBG FUNDING: _____

GRANT CONTRACT NUMBER: #MT-CDBG-_____-_____

QUARTER: MARCH JUNE SEPTEMBER DECEMBER
(Please circle one.)

PERCENT COMPLETED: _____

DATE REPORT COMPLETED: _____

SCOPE OF WORK:
Include comments on each of the specific items in the project's Scope of Work -- as found in the Section 6 (Scope of Activities) of the CDBG contract for your project.

Milestones Completed: _____
_____
_____

Issues / Problems Encountered: _____
_____
_____

IMPLEMENTATION SCHEDULE:
Include comments on the relevant items in the Quarterly Implementation Schedule – as found in Attachment A of the CDBG contract for your project.

Milestones Completed: _____
_____
_____

Timeliness Compliance: _____
_____
_____

START-UP CONDITIONS

Chapter 1

Include comments on the items in the Project Start-up Checklist in Exhibit 1-G, CDBG Grant Administration Manual and on the items in Section 18 (Special Project Start-Up Conditions) of the CDBG contract for your project.

Milestones Completed: _____

_____

_____

Issues / Problems Encountered: _____

_____

_____

ENVIRONMENTAL REVIEW

Chapter 2

Include comments on the items in the Environmental Review Checklist in Exhibit 2-B, CDBG Grant Administration Manual and in Section 17(a)(i) of the CDBG contract for your project.

Milestones Completed: _____

_____

_____

Issues / Problems Encountered: _____

_____

_____

PROCUREMENT STANDARDS

Chapter 3

Include comments on the items in the Procurement Checklist in Exhibit 3-I of the CDBG Grant Administration Manual and on relevant procurement issues from Chapter 9 (bid solicitation).

Milestones Completed: _____

_____

_____

Issues / Problems Encountered: _____

_____

_____

FINANCIAL MANAGEMENT

Chapter 4

Include comments on relevant items from Chapter 4 (especially Section III, Program Requirements, page 4-4 and following) and on items from Section D ("Financial Management") of Exhibit 12-A, CDBG Project Monitoring Guide.

Milestones Completed: _____

_____

_____

Issues / Problems Encountered: _____

CIVIL RIGHTS

Chapter 5

Include comments on the items in the Civil Right Checklist (Exhibit 5-U) of the CDBG Grant Administration Manual) and also on relevant items in Section E ("Civil Rights Compliance") of Exhibit 12-A, CDBG Project Monitoring Guide.

Milestones Completed: _____

Issues / Problems Encountered: _____

LABOR STANDARDS

Chapter 6

Include comments on relevant labor standards items in Chapter 6 (especially Grantee Labor Standards Responsibilities -- page 6-9 and following) -- and on items in Section F ("Labor Standards Compliance") of Exhibit 12-A, CDBG Project Monitoring Guide.

Milestones Completed: _____

Issues / Problems Encountered: _____

ACQUISITION & RELOCATION

Chapter 7.

Include comments on relevant acquisition and relocation items in Chapter 7, if applicable.

Milestones Completed: _____

Issues / Problems Encountered: _____

CONSTRUCTION MANAGEMENT

Chapter 9

Include comments on relevant items in Chapter 9 (especially Section Iii, page 9-9 and following) and on items in Section F ("Construction Management") of Exhibit 12-A, CDBG Project Monitoring Guide.

Milestones Completed: _____

_____

_____

Issues / Problems Encountered: _____

_____

_____

HOUSING

Chapter 10

Include comments on relevant items in Chapter 10, if applicable. Also include comments on any relevant items in Section J ("Housing Rehabilitation File Review") of Exhibit 12-A, CDBG Project Monitoring Guide, if applicable.

Milestones Completed: _____

_____

_____

Issues / Problems Encountered: _____

_____

_____

CLOSEOUT

Chapter 13

Include comments on relevant items in Chapter 13 and in Section L ("Project Closeout and Audit Review") of Exhibit 12-A, CDBG Project Monitoring Guide.

Status of Closeout Forms: _____

_____

_____

Issues / Problems Encountered: _____

_____

_____

CHAPTER 5 -- CIVIL RIGHTS

I. OVERVIEW 5-2
II. APPLICABLE REQUIREMENTS 5-5
A. FEDERAL CIVIL RIGHTS REQUIREMENTS 5-5
1. The Federal Hatch Act 5-5
2. Title VII of the Civil Rights Act of 1964 5-6
3. Cranston-Gonzalez National Affordable Housing Act of 1990 5-6
4. Section 504 of the Rehabilitation Act of 1973 5-6
5. Americans with Disabilities Act (ADA) of 1990 5-8
6. Architectural Barriers Act of 1968 5-8
7. Fire Administration Authorization Act of 1992 5-8
8. The Age Discrimination Act of 1975 5-8
9. Equal Employment Opportunities under HUD Assisted Contracts 5-9
10. Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 5-9
11. Fair Housing Act 5-9
12. Section 3 of the Housing and Urban Development Act of 1968 5-10
13. Women's Business Enterprises and Minority Business Enterprises 5-11
14. 24 CFR, Part 85 - HUD Administrative Requirements for Grants - Basic Federal Regulations - Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments 5-12
15. EEOC Compliance Manual, National Origin Discrimination 5-12
B. STATE CIVIL RIGHTS REQUIREMENTS 5-12
III. GRANTEE CIVIL RIGHTS RESPONSIBILITIES 5-14
1. PROGRAM BENEFITS 5-14
2. GRANTEE HIRING AND EMPLOYMENT PRACTICES 5-15
3. CONTRACTOR AFFIRMATIVE ACTION 5-17
4. FAIR HOUSING 5-20
5. ACTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING 5-21
6. DISABLED ACCESSIBILITY REQUIREMENTS 5-23
1. Accessible Communications 5-25
2. Access to Employment 5-28
3. Access to Program Benefits 5-29
4. Physical Accessibility to Programs 5-30
5. Data and Documentation 5-32
IV. RECORD KEEPING REQUIREMENTS FOR CIVIL RIGHTS 5-33
A. Local Project Civil Rights File 5-33
B. Data Collection Requirements for Ethnicity and Race 5-34
EXHIBITS 5-36

CHAPTER 5

CIVIL RIGHTS

I. OVERVIEW

The federal and state civil rights requirements associated with CDBG grants are designed to ensure equal opportunity and access to all benefits derived from the Montana CDBG Program. Pleas read this entire chapter thoroughly -- all applicable instructions need to be followed to ensure civil rights compliance.

Please review the civil rights laws and regulations and their summaries in this chapter. A checklist of Civil Rights Responsibilities is found in **the exhibits**.

At Project Start-Up: There are several civil rights responsibilities of Grantees that must be completed during project start-up activities. These civil rights activities need to be completed prior to CDBG approval of any project drawdown requests. Included in start-up activities are **required civil rights compliance resolutions that must be passed by the local government.** Local government resolutions required during project start-up are resolutions for:

(1) fair housing,
(2) equal employment opportunity,
(3) Hatch Act political activities restrictions, and
(4) ADA and Section 504 disabled accessibility and complaint resolution.

A. Essential civil rights activities to be completed *at project start-up* include the following:

1. **Complete the following actions to support Fair Housing (see exhibits):**

   a. **Adopt a Fair Housing Resolution** (sample *Fair Housing Resolution*).

   b. **Post fair housing notices and posters** (sample *Fair Housing Poster*).

   c. **Publicize affirmative fair housing rights and responsibilities.**

   d. **Distribute fair housing brochures**. See *Fair Housing Handout and Complaint Pamphlet*, and other brochures available from MDOC/CDBG) explaining fair housing rights, practices and statutory requirements. **See the exhibits for**a sample housing program notice.

2. **Complete the following actions to meet CDBG's requirements concerning the *Americans with Disabilities Act of 1990* (ADA)** and **Section 504 of the *Rehabilitation Act of 1973.***

   a. **Adopt complaint resolution procedures concerning ADA and Section 504** to ensure compliance with Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990* (ADA). These procedures must allow for prompt and equitable resolution of charges alleging non-compliance with ADA. (See **exhibits** for sample *Section 504 and ADA Complaint Resolution Procedures*).

b. **Conduct an ADA Self-Evaluation Inventory (Analysis of Impediments) of local public facilities and buildings** to determine the extent of local compliance with ADA requirements. Inventory checklists are available from CDBG.

c. **Prepare an ADA Transition Plan for Disabled Accessibility to Public Facilities** (based on the ADA Self-Evaluation Inventory). See pages 5-22 and following for more details about ADA self-evaluation and ADA transition plan requirements. Review the example given in the exhibits, *Sample ADA Self-Evaluation Inventory and Transition Plan* and see **the exhibits** for state and national contacts for ADA Information and Assistance.

Possible exception: If doing this ADA work in a, b and c (inventory, analysis, transition plan and passage of civil rights resolutions) *at project start-up* would cause a major hardship for your project given existing local resources during the project's start-up phase, please contact your project's CDBG liaison to discuss and agree upon an alternative timetable and plan for meeting these requirements as soon as feasible in your project schedule.

3. **Adopt a Hatch Act Resolution** (**see exhibits**, sample *Hatch Act Resolution*), and:

   - inform local government officials and CDBG grantee employees of the provisions of the Hatch Act; and

   - designate a local government representative to disseminate the information and brochure regarding Hatch Act responsibilities.

4. **Adopt an Equal Employment Opportunity (EEO) Policy Resolution** (**see exhibits**, sample *Equal Employment Opportunity Policy).* **This is required because nondiscrimination also applies to employment practices.** CDBG grantees may not deny employment on the basis of race, color, national origin, age, sex, or handicap.

   - Review existing local employment policies and include the EEO policy in your local government policy manual/handbook.

   - Inform local government officials and employees, the public, and those applying for employment with the local government of the provisions of your EEO policy.

   - Designate a person to disseminate the information and oversee EEO responsibilities and compliance. See **page 5-8** and following below for more about **equal employment opportunity compliance,** which can be pursued in a number of ways, such as:

     - Job opening advertisements must include the following phrase:

       "*(Grantee or Contractor Name) is an Equal Opportunity Employer. Minorities and women are encouraged to apply*."

     - Notify nearby minority organizations of job openings.

     - Maintain employment records related to equal employment opportunity.

5. **Publish (sample *Section 3 Public Notice: Economic Opportunities for Low-Income and Moderate Persons*) or its equivalent** in order to inform the community of employment and

business opportunities and to demonstrate compliance with Section 3 requirements. Section 3 activities can be reported on forms found in the exhibits.

The Section 3 notice should be published each time a major procurement action is undertaken on a project. For most projects this would mean publishing the first Section 3 notice at the time of issuing a Request for Proposals (RFP) or Request for Qualifications (RFQ) to hire a project engineer or architect. The second Section 3 notice should be published at the time the project goes to construction bid.

6. **Place the required appropriate contract language regarding civil rights in bid documents and in all contracts.** See the Procurement Chapter and exhibits

---

B. Civil rights action to be taken *during the course of your project* after start-up is completed:

- **Take action during the entire course of your project to ensure that no one is discriminated against in receiving services and benefits from the CDBG project**. Generally, minority persons should benefit at least in proportion to their percentage of the community's or project area's overall population.

- **Gather and record the information that shows how your project meets requirements that are applicable to those CDBG projects with direct benefits to individuals:** Keep records of **direct beneficiaries** by using (*Individual Direct Benefit Recording Form to be Completed by Head of Household)* and *Direct Benefit Summary Data.* These are needed for Project Closeout (see exhibits).

- **Complete** *the Contract Reporting Form***at the time that each contract and subcontract exceeding $10,000 is awarded,** including contractors and subcontractors that are not minority owned**.**

- **Be diligent and consistent in implementing the project's civil rights responsibilities and be ready to explain to local citizens the purpose and importance of the civil rights laws and requirements in the CDBG program.**

- The federal and state civil rights requirements associated with CDBG grants are designed to ensure equal opportunity and access to all benefits derived from the Montana CDBG Program. **The purpose of the laws is to protect people from discrimination on the basis of:**

- **Age**
- **Color**
- **Creed (fundamental beliefs)**
- **Marital Status**
- **National Origin**
- **Physical or Mental Handicap**
- **Gender**
- **Race**
- **Religion**
- **Political Ideas**
- **Family Status (Families With Children)**

Population groups specifically protected by the provisions of these laws include:

- **Minorities** (for example: Blacks, Hispanics, Native Americans, Alaskan Natives, Asians, and Pacific Islanders);

- **Women**;
- **Groups distinguished by age** (for example: elderly); and
- **Physically or mentally disabled persons.**

For purposes of the CDBG Program, **the groups listed above (commonly referred to as *protected groups*) are specifically protected from discrimination in the following areas:**

- **Housing:** Generally, this includes the sale or rental of housing, and the financing, advertising or provision of brokerage services. There are other specific acts of discrimination that are equally illegal. Nondiscrimination requirements in this area are referred to as *fair housing*;

- **Employment:** This applies to government employment, employment by government contractors or subcontractors, and employment under all construction contracts funded in whole or in part with federal money. These provisions are referred to as *equal employment opportunity*; and

- **Participation in or Benefits Derived from CDBG Funded Activities:** This means that no one who is eligible may be excluded from participating in any CDBG-funded activity, nor may they be denied any benefits resulting from activities funded in whole or in part with CDBG money.

II . APPLICABLE REQUIREMENTS

Several federal and state statutes, portions of the CDBG regulations, and three Presidential Executive Orders contain *civil rights* and *affirmative action* provisions that apply to all programs funded with federal monies. Civil rights compliance and monitoring responsibilities are outlined in the following summary of federal and state laws, Executive Orders and CDBG program regulations.

A. FEDERAL CIVIL RIGHTS REQUIREMENTS

1. ***The Federal Hatch Act*** (5 USC 1501, et seq) **restricts the political activities of certain public employees who may be connected with federally funded programs.** In passing the Hatch Act in 1939, Congress declared that the partisan political activities of federal employees, employees of the District of Columbia government, and certain employees of state and local governments must be limited in order for public institutions to function fairly and effectively. https://osc.gov/pages/hatchact.aspx
   The Hatch Act means that employees in agencies who receive federal financial assistance may not use official authority to influence or interfere with the outcomes of elections or nominations, or to directly or indirectly coerce contributions from subordinates to support a political party or candidate.

   To comply with the Hatch Act, CDBG grantees are required to:

   - Inform all employees of the provisions of the Hatch Act, and
   - Adopt a policy of compliance with Hatch Act regulations.

- **See exhibits for a** sample *Hatch Act Resolution*, has been provided for use by CDBG grantees to document their efforts to comply with Hatch Act requirements.

To assist with Hatch Act compliance, each grantee can find additional information and resources at: https://osc.gov/pages/hatchact.aspx
Established by the Civil Service Reform Act of 1978, the MSPB Board serves as guardian of the Federal Government's merit-based system of employment, principally by hearing and deciding appeals from Federal employees of removals and other major personnel actions. The Board also hears and decides other types of civil service cases, reviews regulations of the Office of Personnel Management, and conducts studies of the merit systems. Additional information may be obtained from the MSPB's web site, www.mspb.gov

2. ***Title VII of the Civil Rights Act of 1964***. Title VII provides that no person in the United States shall on the ground of race, color or national origin, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. https://www.eeoc.gov/laws/statutes/titlevii.cfm

   Action required: CDBG grantees must adopt and also enforce a nondiscrimination policy designed to ensure that all project activities funded in whole or in part with CDBG funds are conducted in a manner that will not cause discrimination. This means the program must be administered in a nondiscriminatory manner to provide benefits on an equal, non-segregated basis.

   Action required: Nondiscrimination also applies to employment practices. CDBG grantees may not deny employment on the basis of race, color, national origin, age, sex, or handicap. **Furthermore, affirmative action and equal employment opportunity policies are fundamental aspects of the CDBG program.** (See **exhibits** for an example of an *Equal Employment Opportunity Policy*).

3. ***The Cranston-Gonzalez National Affordable Housing Act of 1990*, Title II, Section 282** [42 USC 12832]. The nondiscrimination clause of the *National Affordable Housing Act* of 1990, https://www.hudexchange.info/resource/2647/title-ii-of-the-cranston-gonzalez-national-affordable-housing-act/, states that:

   > No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified disabled individual as provided in section 794 of title 29 (Labor) shall also apply to any such program or activity.

4. ***Section 504 of the Rehabilitation Act of 1973,*** as amended (29 USC 794). Section 504 is explicitly incorporated into Title II, Subtitle F, **§282** of the ***National Affordable Housing Act*** of 1990, https://www.dol.gov/oasam/regs/statutes/sec504.htm . Section 504 states that:

> No otherwise qualified disabled individual in the United States, as defined in section (7) shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Although similar in wording to Title VII and other laws, **§504 of the *Rehabilitation Act*** differs conceptually from **Title VII of the *Civil Rights Act*** and **§282 of the *National Affordable Housing Act*.**

- **The premise of Title VII and §282** is that there are no inherent differences or inequalities between the general public and the persons protected by these provisions; therefore, there should be no differential treatment in the administration of federal programs.

- **The premise of §504** is that **affirmative steps must be taken to ensure that persons who are inherently unequal** (disabled persons) **are not discriminated against as a result of administrative procedures or CDBG project activities.** Disabled persons may need different treatment in order to be afforded equal access to federally assisted programs and activities; thus identical treatment may, in fact, constitute discrimination.

Section 504 provisions are explicitly incorporated into federal Housing and Urban Development (HUD)'s fair housing and related laws found here: https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law Learn more about the many federal laws that help promote equal housing opportunity for individuals with disabilities here: https://www.hud.gov/program_offices/fair_housing_equal_opp/disability_main **disableddisabledDisabled*disabled*disabledDisabled*disabled*disabledTo comply with Section 504's protection of the rights of disabled persons, CDBG grantees are required to:**

- provide qualified disabled persons with benefits and services that are as effective as those provided to non-disabled individuals;

- avoid aiding or perpetuating discrimination against qualified disabled persons;

- afford qualified disabled persons with the opportunity to participate as members of planning or advisory bodies; and

- utilize criteria or methods of administration that do not subject qualified disabled persons to discrimination.

5. ***The Americans with Disabilities Act (ADA) of 1990***. The Americans with Disabilities Act (ADA) of 1990 **guarantees equal opportunity in employment, public accommodations, transportation, state and local government services, and telecommunications, for individuals with disabilities.** The ADA became law on July 26, 1990, and became fully effective on January 26, 1992. https://www.ada.gov/pubs/ada.htm

   The ADA borrows much of its substantive framework and language from Section 504 of the *Rehabilitation Act* of 1973. Therefore, if a CDBG grantee works toward compliance, or is in compliance with Section 504, it will also generally be in compliance with ADA, and vice versa.

For ADA information/technical assistance:

https://www.ada.gov/taprog.htm

6. ***Architectural Barriers Act of 1968*** (42 USC 4151-4157). HUD regulations, prescribe standards for the design, construction, and alteration of *publicly owned* residential structures to ensure that physically disabled persons will have ready access to, and use of, such structures. *Uniform Federal Accessibility Standards* can be found here: https://www.hudexchange.info/resource/802/uniform-federal-accessibility-standards/

7. ***Fire Administration Authorization Act of 1992*** [as implemented under Uniform Federal Accessibility Standards (UFAS) and UFAS 4.28, Alarms]. These regulations state the conditions under which fire alarm systems must be equipped with visual and/or sensory alarm systems (or appropriate wiring for later installation of same), as a reasonable accommodation to persons with disabilities.
   https://www.hudexchange.info/resource/2635/notice-cpd-94-05-implementation-fire-administration-authorization-act/

8. ***The Age Discrimination Act of 1975*** (42 U.S.C. 6101 et seq.) is explicitly incorporated into Title II, Subtitle F, §282 of the *National Affordable Housing Act* of 1990.

   CDBG grantees are responsible for ensuring that no individuals will be discriminated against on the basis of age. The *Age Discrimination Act* states that:

   > No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.
   > https://www.dol.gov/general/topic/discrimination/agedisc

9. ***Equal Employment Opportunities under HUD Assisted Contracts -- Executive Order 11246, as amended by Executive Order 11375***.

   Nondiscrimination in employment is required for all federally assisted contracts. Grantees are required to institute affirmative actions to ensure equality of opportunity in all aspects of employment and implement assurances that the regulations are adhered to.

   Consistent with rules and regulations promulgated by the U.S. Department of Labor, HUD has prescribed standards and procedures for compliance with Executive Order 11246. Executive Order 11246 is available on-line at:
   https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm
   Under the terms of Executive Order 11246, **CDBG grantees are required to:**

   - include the *equal opportunity clause* in all non-exempt federally-assisted contracts for more than $10,000, as set forth in §202 of Executive Order 11246; and

   - ensure that all federally-assisted construction contractors and subcontractors on a CDBG-assisted construction project take affirmative actions to ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.

The U.S. Equal Employment Opportunity Commission has resources that can be found here: https://www.eeoc.gov/eeoc/publications/index.cfm

10. ***Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)* -- as amended by the Fair Housing Amendments Act of 1988**, provides for **fair housing** throughout the United States. https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law#statutes
    - **See** https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law **Fair Housing Laws and Presidential Executive Orders.**
    - **As of March 12, 1989, Title VIII provisions also include, as a protected group (for purposes of furthering fair housing), *families with children*.**
    - **Title VIII requires that affirmative actions be taken by CDBG grantees to further fair housing opportunities within their jurisdictions.**
    - CDBG grantees must comply with Title VIII of the Civil Rights Act of 1968, as amended, **by administering all programs and activities related to housing and community development in a manner that affirmatively furthers fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services.**

11. ***Fair Housing Act, Executive Order 11063* -- as amended by Executive Order 12259 (*Equal Opportunity in Housing*).** https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law#statutes

    The Fair Housing Act requires HUD (and therefore CDBG grantees) **to take all actions necessary and appropriate to prevent discrimination in housing and related facilities that are funded in whole or in part with federal financial assistance. Federally funded activities that fall under these provisions include**:

    - mortgage insurance
    - guaranty programs, and
    - grants used to acquire, clear, relocate or otherwise prepare a housing site.

    The Act's provisions are also binding on housing-related practices of lending institutions, insofar as such practices relate to loans ensured and guaranteed by the federal government.

    Each CDBG grantee must affirmatively further fair housing. Title VIII of the *Civil Rights Act* and Executive Orders 11063 and 12259 require the CDBG grantee to:

    - promote maximum choice within the community's total housing supply;
    - lessen racial, ethnic, and economic concentrations; and
    - facilitate desegregation and racially inclusive patterns in the occupancy and use of public facilities.

12. ***Section 3 of the Housing and Urban Development Act of 1968,* as amended**. https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3

Section 3 requires that to the greatest extent feasible:

- **opportunities for training and employment must be given to lower-income residents of CDBG-assisted projects; and**

- **that contracts for work in connection with such projects should be awarded to business concerns located in, or owned in substantial part by "project area" residents.** (See the Project Closeout Chapter, for additional information about required Section 3 reporting by CDBG grantees at the time of project closeout.)

In applying Section 3 regulations to CDBG projects, the project area is determined as follows:

- For municipalities, the project area is the county in which the municipality is located. First consideration should be given to persons living in or businesses located in or closest to the project activities;

- For counties, in most cases, the entire county will be considered the Section 3 project area;

- For Community Housing Development Organizations (CHDOs), the grantee should check with their assigned CDBG Program Specialist to determine the appropriate project area for their CDBG program activities.

13. ***Women's Business Enterprises and Minority Business Enterprises – Executive Orders 11625, 12138 and 12432***. https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm *Resouces can be found here:* https://www.hudexchange.info/resource/248/guidance-on-minority-business-enterprise-and-womens-business-enterprise-outreach/ These regulations establish **the development of Women's and Minority Business Enterprises (DBEs) as a national priority**.

A list of Montana Disadvantaged Business Enterprises created by the Montana Department of Transportation (MDT) Disadvantaged Business Enterprise Program may be found by calling MDT at (406) 444-6337 or downloaded from their web site: https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml.

The HUD regulations establish procurement standards to be followed in federal assistance programs.

- Among the provisions is **the requirement that grantees and any sub-grantees take all necessary affirmative steps to ensure that DBEs in labor surplus areas are used when possible in the procurement of goods and services for CDBG funded activities.**

In order to accomplish this DBE-related objective, CDBG grantees must take the following affirmative steps:

- place qualified small and minority businesses and women's business enterprises on bid solicitation lists;

- ensure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources of goods or services;

- divide total requirements -- when economically feasible and consistent with state law -- into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

- establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises whenever possible;

- use the services and assistance of the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and

- require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in the above paragraphs.

Outreach to qualified DBE and WBE firms should be undertaken each time a procurement action is undertaken. For most projects this would mean copying DBE and WBE firms at the time of issuing a Request for Proposals (RFP) or Request for Qualifications (RFQ) to hire a project engineer or architect. Another outreach effort should be conducted when the project goes to construction bid.

14. ***EEOC Compliance Manual Section on Prohibition of National Origin Discrimination*.**

National origin discrimination means treating someone less favorably because he or she comes from a particular place, because of his or her ethnicity or accent, or because it is believed that he or she has a particular ethnic background.

National origin discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular nationality. Whether an employee or job applicant's ancestry is Mexican, Ukrainian, Filipino, Arab, American Indian, or any other nationality, he or she is entitled to the same employment opportunities as anyone else.

The U.S. Equal Employment Opportunity Commission (EEOC, http://www.eeoc.gov/) on 12/2/02 issued guidance/questions/answers regarding the prohibition against national origin discrimination that is included in Title VII of the Civil Rights Act of 1964. **Examples of national origin bias violations covered under Title VII include:**

- **Employment Decisions**: Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.
- **Harrassment:** Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.
- **Language:** *Accent discrimination*: An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance.

English fluency: A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed. *English-only rules*: English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote the safe or efficient operation of the employer's business.

B. STATE CIVIL RIGHTS REQUIREMENTS

Montana Human Rights Statutes -- Title 49.
https://leg.mt.gov/bills/mca/title_0490/chapters_index.html
Portions of Title 49, *Montana's Human Rights statutes*, apply to CDBG grantee's program activities, and are summarized below.

State Civil Rights Requirements:

- In **employment:**
  - §49-2-303 MCA adds ***marital status*** to the list of protected categories (that is, grantees and their contractors and subcontractors must not discriminate against married or single persons in their employment practices); and §49-2-303 MCA adds ***persons with physical and mental handicaps*** to the protected categories. In addition, the *Montana Maternity Act*, part of the *Human Rights* statutes in §§49-2-310 and 49-2-311 MCA, prohibits certain employment actions related to pregnant persons in the areas of employment, maternity leave, employee benefits, and employment termination.

- In **housing:** §49-2-305 MCA lists protected categories that correspond to the federal list of protected categories. As with the employment statutes, protected categories include persons with physical or mental handicaps. Discrimination in housing based on marital status is also prohibited.

- **Human rights requirements that apply to CDBG program services or benefits:** In addition, to **Chapter 2 of Title 49, MCA (*Illegal Discrimination*)**, **Chapter 3 of Title 49, MCA (*Governmental Code of Fair Practices*)** establishes **human rights requirements that apply to CDBG program services or benefits.**

  - In particular, these regulations address hiring and employment policies and practices. Montana state law lists race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, and national origin as protected groups.

- **Chapter 4 of Title 49, MCA (*Rights of Persons with Disabilities*)** establishes requirements and policies regarding *disabled persons*, and defines the rights of disabled persons under state law, especially the right to nondiscrimination in employment and housing.

- **Montana's administrative rules implementing Title 49, MCA, contain minimum record-keeping requirements related to employment.** Administrative Rule 24.9.805 (Employment Records) requires that each employer subject to the U.S. EEOC/Equal Employment Opportunity Commission (i.e., those with 15 or more employees) maintain records on the gender, age, and race of employees.
  http://www.mtrules.org/gateway/ruleno.asp?RN=24%2E9%2E805

- Those employers not subject to EEOC guidelines (those with less than 15 employees) are also urged to maintain records on race and gender.
- In any case, CDBG regulations require that grantees maintain beneficiary data. (See Section III, GRANTEE RESPONSIBILITIES).
- Any records employers are required to maintain must be kept on file for three years after program close-out, or through the period of affordability, whichever is greater.
- All employment records should be kept at least 6 months, including applications for employment. Keep these records in the CDBG Civil Rights File.

III. GRANTEE RESPONSIBILITIES CONCERNING CIVIL RIGHTS EFFORTS

Any actions taken by persons connected with CDBG program activities or by the grantee to carry out equal opportunity and fair-housing requirements should be documented in your CDBG Civil Rights Program files.

There are **six general areas, as listed below, for which efforts must be documented** during implementation of your CDBG program in order **to demonstrate a good faith effort to comply with federal civil rights requirements.**

- **Keep records in your CDBG *Civil Rights File* concerning the following six areas of civil rights responsibility:**

1. **PROGRAM BENEFITS:** efforts to ensure minority participation in the program;

2. **GRANTEE HIRING AND EMPLOYMENT PRACTICES:** the community's affirmative action plan and activities initiated to extend employment opportunities to minorities and women;

3. **CONTRACTOR AFFIRMATIVE ACTION:** actions by contractors and subcontractors to employ minorities and women.

4. **FAIR HOUSING**

5. **ACTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING:** compliance with the federal mandate to administer all programs so as to affirmatively further housing availability, and to prevent discrimination in federally-assisted housing; and

6. **DISABLED ACCESSIBILITY REQUIREMENTS:** actions taken to ensure access by persons with physical and mental disabilities to federally assisted programs and activities.

1. PROGRAM BENEFITS -- Civil Rights Responsibilities of CDBG Grantees

- **Title VII of the Civil Rights Act of 1964** prohibits discrimination in any federally assisted program on the basis of race, color or national origin.

- **Section 109 (of Title I of the Housing and Community Development Act of 1974,** https://www.hud.gov/program_offices/fair_housing_equal_opp/FHLaws/109) prohibits

discrimination and denial of program benefits on the basis of sex, age, or handicap. Portions of the CDBG regulations relating to equal opportunity require grantees to document administrative methods designed to ensure nondiscrimination in project activities, in site selection criteria designed to benefit minorities, and any actions taken to overcome the effects of past discrimination.

- **Section 3 of the *Housing and Urban Development Act* of 1968** provides that, to the greatest extent feasible, opportunities for training and employment should be given to low and very low-income residents and businesses in the CDBG-assisted area.
    - **Demonstrating compliance with the Section 3 requirements and providing documentation of that compliance is *required* of all CDBG grantees. Documentation of Section 3 compliance efforts need to be included in the CDBG project's Civil Rights File.**

    - See **CDBG exhibits** (Section 3 Summary Report: Economic Opportunities for Low- and Very Low-Income Persons). For official HUD information, see HUD's Section 3 website: https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3

    - **One of the easiest ways to demonstrate Section 3 efforts is to publish a notice in the area newspaper when issuing a Request for Proposal (RFP) or Request for Qualifications (RFQ) to hire a project engineer or architect and at the stage of advertising for construction bids.**

        - **See exhibits**, *Sample Section 3 Public Notice*, contains a sample form the grantee can use to inform the community of prospective employment and business opportunities. This notice should be published when major procurement actions are undertaken to ensure that the community has a reasonable opportunity to hear about the potential benefits of the CDBG project.

    - **Language in CDBG *exhibits* pertaining to Section 3's civil rights requirements must be included in all requests for bids and for proposals, in all bid documents, and in all contracts.**

        - Place the advertisements in publications having a circulation among minority groups in the area of the project to ensure that potential contractors are aware that whenever possible they should be hiring and buying locally, thus extending CDBG benefits into the grantee's community.

        - The notation, *An Equal Opportunity Employer,* should be included on your letterhead when it is used for CDBG project-related correspondence.

    - **Grantees are required to keep a running tabulation of the race and gender of households in any direct benefit program** (such as families assisted through housing rehabilitation or jobs provided to individuals through an economic development project).

- See *Individual Direct Benefit Recording Form to be Completed by Head of Household andDirect Benefit Summary Data* form (exhibits).

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2. GRANTEE HIRING AND EMPLOYMENT PRACTICES -- Civil Rights Responsibilities of CDBG Grantees

A. Grantees must maintain equal employment opportunity in hiring. Under the CDBG program, this falls under the requirements of **Title VII of the *Civil Rights Act,*** which requires that grantees assure that there will be no discrimination in the benefits to be derived from the CDBG program including employment opportunities.

Title VII-related hiring actions that need to be undertaken by grantees (and documented in the project's Civil Rights file) to promote equal employment opportunity include keeping data concerning the grantee's affirmative actions for equal employment opportunity, including recruitment advertising, hiring, promotions, layoffs or terminations, pay and recruitment for training. **In order to meet these Title VI obligations, several steps can be taken by the grantee to increase employment opportunities for protected groups when hiring for the CDBG program:**

- Efforts should include advertisements in minority newspapers such as newspapers published on the reservations. (See **exhibits** for a listing of *Tribal Newspapers and Newspapers Published Adjacent to Montana's Indian Reservations*).

- Any employment advertisements published could include the following statement:

  The (… Name of Grantee …) is an Equal Opportunity Employer.

- Other affirmative actions include notifying minority organizations located in the area of potential CDBG-related job openings and **making the agency's equal employment policies clearly known to everyone involved in hiring, promotion, and salary decisions.** (See **exhibits** for a sample *Equal Employment Opportunity Policy.*) The grantee's personnel policies and procedures should be reviewed periodically to ensure compliance with these requirements.

- Employment recruitment records should include a summary of the number of applicants for each position relating to the CDBG Program, and the number of applicants who are minorities, women and disabled persons. (See **exhibits**, *Applicant Summary Sheet*.)

- There should also be documentation by race, gender and handicap of the number of persons interviewed and the reasons for the hiring decisions. (See exhibits, *Interview and Hiring Form.*)

B. Grantees must maintain data and documentation regarding grantee hiring and employment practices. The CDBG grantee must maintain records documenting the following information regarding grantee employment practices:

- personnel policies;

- interview and hiring records;
- employee records (training, promotion, salary levels);
- data on overall employment of women and minorities (see exhibits, *Grantee Employment Summary*); and
- employment data that indicates staff composition by race, sex, handicap status and national origin.

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3. CONTRACTOR AFFIRMATIVE ACTION -- Civil Rights Responsibilities of CDBG Grantees

Executive Order 11246, https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm **:**

- **provides that no person shall be discriminated against in any phase of employment under federally assisted construction contracts*;* and**
- **requires that contractors take affirmative steps to ensure fair treatment in employment upgrading, transfer, recruitment, layoffs, rate of pay and selection for training.**

A. Contracting with Disadvantaged Business Enterprises (DBEs) should be encouraged.

In addition to Executive Order 11246, requirements concerning women-owned and minority-owned business fall within the Contractor Affirmative Action requirements. **Disadvantaged Business Enterprises (DBEs), is a term used to collectively refer to both women-owned business enterprises, and minority-owned business enterprises.**

- **Grantees should encourage the prime contractors on their projects to utilize DBE firms to the maximum extent possible.**
- The exhibits provide a sample letter of work notification to a DBE firm. The important thing is that DBE firms have the opportunity to bid, and are be encouraged to do so.

Examples of such affirmative actions to encourage contracting with DBEs include:

- Utilizing the local media, electronic and print, to market and promote contract and business opportunities for DBEs, including placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Developing procurement procedures that facilitate opportunities for DBEs to participate as vendors and suppliers of goods and services; including assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- Developing informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for DBEs;

- Sponsoring business opportunity-related meetings, conferences, seminars, etc., with minority and women business organizations;
- When economically feasible, (and where consistent with Montana law), dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business and women's business enterprises;
- Establishing delivery schedules that encourage participation by small and minority business and women's business enterprises;
- Utilizing the services and assistance of the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.
- Requiring the prime contractor to take the affirmative steps outlined in the points above if subcontracts are to be let.
- Maintaining centralized records with statistical data on the utilization and participation of DBEs as contractors/subcontractors in all CDBG-assisted program-contracting activities in the CDBG project Civil Rights file.

Minimum HUD standards require the MDOC/CDBG Program to establish and oversee a minority and women business outreach program that is designed to be:

- a good faith, comprehensive and continuing endeavor;
- supported by a statement of public policy and commitment published in the electronic and print media of widest local circulation;
- supported by an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- designed to utilize all available and appropriate public and private sector local resources.

Certification of DBEs: The Civil Rights Bureau of the Montana Department of Transportation (MDOT) conducts investigations of minority and women-owned businesses to determine if they can be certified as DBEs.

- Firms meeting the six eligibility standards may be eligible to participate in the State's DBE program.
- Firms located outside of Montana may also apply for certification within Montana if they are already certified in their CDBG State.
- DBEs must apply for re-certification annually.

DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

All certified firms are listed in a DBE Directory that is updated periodically. This directory lists names, addresses and phone numbers of all DBEs certified in the State of Montana for transportation-related and some non-transportation-related goods and services.

When inviting project bid proposals, CDBG grantees should consult this directory and mail an announcement of all bid solicitations and Requests for Proposals to DBE firms within their region. The list can also be given to homeowners, if the owners select their own contractors.

Please contact:

Montana Department of Transportation
Civil Rights Bureau - DBE Program
2701 Prospect Avenue
P.O. Box 201001
Helena MT 59620-1001

Phone: 800-883-5811 or 406.444-6337
TTY: 800-335-7592 | Fax: 406-444-7685

A current directory of Montana DBEs may also be accessed via the Internet at:

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

Contract Reporting Form, is used to document DBE Contract Awards for activities of $10,000 or more (see exhibits).

- **The form should be completed at the time of bid award and updated if additional contractors or subcontractors perform work on the project involving activities of $10,000 or more.**
- These forms should be kept in the CDBG Civil Rights File and are to be included as part of the final program closeout report.

Section 3 requirements vs. DBE requirements: In some communities, particularly smaller, rural ones, Section 3 commitments to use local businesses may seem to conflict with commitments to use minority and women-owned firms because no minority or women-owned firms exist within the community**. However, if the community makes reasonable efforts to solicit bids from appropriate local firms and also from DBE firms beyond the limits of their county (and documents these efforts), it is meeting both objectives and it may then select the lowest and best bidder.**

B. Grantees must maintain data and documentation concerning contracting with Disadvantaged Business Enterprises (DBEs).

Responsibilities of CDBG grantees include:

- Maintaining copies of notices of bid solicitations and Requests for Proposals (RFPs) and Reguests for Qualifications (RFQs) in the CDBG Program Management File. See the Procurement Chapter for more explanation of RFPs and RFQs.

- Keeping copies of (RFPs) and Requests for Qualifications (RFQs) and bid packages for individual projects in the appropriate CDBG Project File.

- Retaining data on the dollar amount of contract awards to DBE firms in the CDBG Civil Rights File.

- Including equal opportunity clauses in all bid specifications and contracts.

- Providing EEO notices for contractors to post in the workplace (see **exhibits**, sample *Equal Employment Opportunity Poster*). Keep copies in your CDBG Civil Rights Program file.

- Including DBE firms in bid solicitation and RFP and RFQ lists. Keep documentation in the CDBG Civil Rights File).

- To the extent feasible, making employment and business opportunities available to project area residents. Keep documentation in the CDBG Civil Rights File.

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4. FAIR HOUSING -- Civil Rights Responsibilities of CDBG Grantees

- **Federal law obligates all grantees, regardless of project type or size, to take steps to "affirmatively further fair housing." Fair housing** means that no person shall be subjected to discrimination (because of race, color, religion, sex, handicap, familial status, or national origin) in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.
- **See** https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law**-- Fair Housing Laws and Related Laws**

Fair housing laws, provisions and regulations apply to the community as a whole -- not just to CDBG-supported housing projects -- and they are an essential part of the community's CDBG responsibilities.

Specifically, under fair housing laws it is unlawful to:

- refuse to sell or rent a dwelling, or to negotiate for the sale or rental of a dwelling;

- discriminate in the terms, conditions or privileges involved in a sale or rental;

- engage in any conduct relating to the provision of housing that otherwise makes unavailable or denies dwellings;

- make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement (or make any oral statement) that indicates any illegal preference or limitation;

- select media or locations for advertising that deny particular population segments access to information about housing opportunities;

- impose different sales prices or rental charges upon a dwelling;

- use different qualification criteria or sale or rental standards or procedures (such as income standards, credit analyses, etc.);

- represent to any person that a dwelling is not available for sale or rental when such dwelling is in fact available;

- discourage any person from inspecting, purchasing or renting a dwelling (by exaggerating drawbacks, failing to inform them of desirable features, limiting information regarding suitably priced dwellings available for sale or rental, or communicating that he or she would not be comfortable or compatible with existing residents);

- engage in blockbusting practices (inducing property owners to sell hastily or at a loss, by appeals to fears of depressed property values or other undesirable neighborhood consequences because of threatened minority encroachment, with the intention to resell at inflated prices);

- deny access to or membership or participation in any multiple-listing service, real estate brokers' association, or other service organization or facility;

- limiting the use of privileges, services or facilities associated with a dwelling;

- assign any person to a particular section of a community or to a particular floor of a building;

- refuse to provide municipal services or property or hazard insurance for dwellings or to provide such services or insurance differently;

- discriminate in the making of loans or the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings;

- fail to make repairs or delaying maintenance or repair of sale or rental dwellings; or

- evict tenants because of race, color, religion, sex, handicap, familial status, or national origin.

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5. ACTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING -- Civil Rights Responsibilities of CDBG Grantees

CDBG grantees are required to affirmatively further fair housing in their community in soliciting renters, determining eligibility, and in the conduct of all transactions.

Each grantee must affirmatively further fair housing. The sample list of actions below is suggestive of the types of fair housing activities that may be undertaken by communities.

- ***Passing a fair housing resolution*** is an action CDBG grantees can take to demonstrate a "good faith effort" to comply with the fair housing requirement.

    - **As part of project start-up activities, grantee communities must adopt and publicize a fair housing resolution** similar to that contained in the exhibits, sample Fair Housing Resolution (keep a copy in your CDBG Civil Rights File).

    - The fair housing resolution adopted by a CDBG grantee must also be publicized and promoted within the community.

- ***Review project activities*** to ensure that they serve low and very low-income minority residents as well as non-minorities.

- ***Develop a public information network concerning fair housing*** using local newspapers, radio stations, bulletin boards, churches, and property tax mailings to ensure that all segments of the community are aware of fair housing requirements, especially Realtors, landlords, financial institutions, and minority households.

- ***Develop a local fair housing program*** to make housing opportunities known to minorities, to monitor compliance, and to refer discrimination complaints to the proper authorities. (More suggestions for developing a local fair housing program are given below.)

- ***Conduct a meeting with financial institutions*** that serve the community to discuss the importance of providing financial assistance for housing in all geographic areas and to all residents in the community.
- **Survey special housing needs of minorities and women** to determine possible effects of discrimination.

- **Use the "Equal Housing Opportunity" slogan and logo** on grantee letterhead; and

- ***Display Fair Housing Posters*** (see **exhibits**) and ***distribute a Fair Housing Handout and Complaint Pamphlet*** (see sample in the exhibits) to explain fair housing rights, practices and statutory requirements.

- **Additional HUD guidance concerning fair housing requirements can be found in: <u>Performance Review Standards for Fair Housing Requirements in the CDBG Program</u> – on-line at**

https://www.hud.gov/program_offices/comm_planning/communitydevelopment/rulesandregs/memoranda/choice92

Developing a local fair housing program: The first step in developing a local fair housing program is to look closely at the community to identify areas of particular concern. In order to analyze whether a fair housing problem might exist within their community, grantees should ask themselves the following questions:

- Do all or most of the minorities in your community live in one neighborhood?

- Does it appear that Realtors are hesitant to show minorities rental or ownership units in certain areas of town or in certain apartment buildings or subdivisions?

- Is there evidence that local banks and savings and loans consistently fail to provide mortgage money or CDBG improvement loans in certain areas of town?

- Do landlords rent to single parent households with children?

- Does the community actively assist people who believe they have encountered housing discrimination?

- Housing rights and fair housing resources can be found at the Montana Department of Commerce's Housing Resources website: http://housing.mt.gov/FairHousing

- Among the resources listed at the website above is **Montana Fair Housing**, a private, non-profit organization dedicated to the reduction and eradication of housing discrimination in the state -- http://www.montanafairhousing.org/

Data and Documentation. The CDBG grantee must document the steps it has taken to promote fair housing. Keep these records in the CDBG Civil Rights File.

When developing a fair housing/affirmative marketing program, it is very important that the grantee **document all of the actions taken -- as well as the results of those actions**. If these efforts are not documented, MDOC will be unable to demonstrate to HUD that grantees are meeting their fair housing obligations.

MDOC/CDBG and grantees with housing projects will assess affirmative marketing efforts of owners by comparing predetermined occupancy goals (based on the area from which potential tenants will come) to actual occupancy data the owner is required to maintain. Outreach efforts on the part of the owner will also be evaluated by reviewing marketing efforts.

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6. DISABLED ACCESSIBILITY REQUIREMENTS -- Civil Rights Responsibilities of CDBG Grantees

Three major federal laws specify disabled accessibility requirements for federally funded programs and activities. These are:

1) Section 504 of the *Rehabilitation Act of 1973*,

2) the *Americans with Disabilities Act (ADA) of 1990*, and

3) the *Fair Housing Amendments Act of 1988*.

The implications of Section 504 of the *Rehabilitation Act* are that grantees receiving CDBG funds must ensure handicap accessibility to programs, services and benefits. Grantees must ensure that CDBG programs and activities are accessible, both structurally and administratively, to disabled and disabled persons. Grantees who apply on behalf of sub-grantees or non-profits must also ensure that the sub-grantee's programs and activities are accessible, both structurally and administratively.

The purpose of the ADA is to extend to disabled persons the civil rights that are now available to groups protected under the *Civil Rights Act* (i.e., race, color, sex, national origin, and religion**). Integration of individuals with disabilities into the mainstream of society is the fundamental purpose of the ADA**.

Under the ADA, **an individual is considered disabled if they:**

> *have a physical or mental impairment that substantially limits one or more major life activities such as hearing, seeing, speaking, walking or learning*. The term also applies to someone with a record of impairment, such as a history of cancer or alcoholism (but it does not apply

to current drug or alcohol abusers). It also includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, and skin and endocrine; as well as any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

This definition **"of disabled individual" includes** persons who do not perceive themselves as disabled or disabled, but who **are perceived by others as having a disability** (examples: a person disfigured in an accident, someone with AIDS, or someone living with or associated with a person who has AIDS).

To meet the ADA requirements, grantees must (as part of start-up activities):

- **Conduct A Self-evaluation:** Grantees must conduct a self-evaluation (an informal accessibility survey) to determine whether their facilities and programs are in compliance with ADA requirements.

- In determining whether facilities meet federal accessibility requirements, grantees should refer to the *Uniform Federal Accessibility Standards* (UFAS).
    - Advocacy groups for disabled and disabled persons should be encouraged to participate in this process of self-evaluation, and documentation of this process must be maintained. The self-evaluation plan will be reviewed during the MDOC/CDBG on-site monitoring visit.

- **Develop An ADA Transition Plan:** Following the self-evaluation described above, the grantee must develop a transition plan to outline the steps the grantee intends to take to correct any deficiencies.

    - The grantee must also set a specific date in its transition plan by which the facilities and programs will be brought into full compliance.

    - If the grantee's facilities are not immediately accessible, it simply means that the grantee must find some means of making CDBG program activities and services accessible to persons with disabilities.

- **Appoint A Local ADA Compliance Coordinator:** The grantee should appoint a coordinator to ensure ADA compliance within the agency.

- In addition, **the CDBG grantee must adopt and post a Complaint Resolution Procedure that allows for prompt and equitable resolution of charges alleging non-compliance with ADA**.

    - The complaint procedure must allow current employees, applicants or members of the public who believe they have been discriminated against on the basis of a disability to report the incident. (See **exhibits** for a sample *Complaint Resolution Procedures* that could be used to meet Section 504 and ADA requirements). Notice of these procedures must be posted in all work areas and must be visible to the public.

Montana CDBG has not adopted specific required forms for use by CDBG grantees in completing their self-evaluations, transition plans, and complaint resolution procedures. However, a number of organizations have prepared publications that can assist in this process. The following is a partial listing of such resources:

- ***Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, Transportation Facilities, and Transportation Vehicles***, United States Access Board, . http://www.access-board.gov/
- ***Americans with Disabilities Act Accessibility Guidelines Checklist for Buildings and Facilities***, United States Access Board. http://www.access-board.gov/ada-aba/
- ***ADA National Network*** https://adata.org/project/ada-title-ii-action-guide-state-and-local-governments
- Note: For more National and State contacts for ADA Information and Assistance, see **exhibits.**

HUD does **not** require grantees to take actions that would (a) result in a fundamental alteration of facilities or programs or (b) that would impose an undue financial or administrative burden on the grantee.

However, if the public **cannot get to (or some group is not likely to get to)** the grantee's CDBG program, **reasonable accommodations must be made so that the program can be brought to persons with disabilities**.

HUD recommends that administrative changes be considered before costly structural changes.

CDBG grantees and their contractors may not discriminate against qualified individuals with disabilities. This means that all government facilities, residential structures, programs, services, and communications must be accessible to all persons.

CDBG grantees are responsible for providing access to disabled / disabled persons in four basic areas (plus a fifth, data and documentation):

1. **Accessible Communications**
2. **Access to Employment**
3. **Access to Program Benefits**
4. **Physical Accessibility to Programs**; and
5. **Data and Documentation.**

1. Accessible Communications for disdisabled persons. In order to ensure accessibility of program services and activities to persons with disabilities, grantees must be aware of the possibility that individuals may need to use alternative forms of communication.

- **When marketing its programs and services, the grantee should take the following steps:**

  a. **All publications must include a statement similar to the following:**

  This document will be provided in an alternative, accessible format upon request.

- This may mean that someone in the grantee's organization will have to read the document to an individual, provide them with an audiotape of the document, or use a copier or computer to magnify the image. In addition, some individuals may need assistance with filling out necessary forms and applications.

b. **When setting up public meetings, be cognizant of the fact that the meeting room must be handicap accessible -- i.e., persons in wheelchairs must be able to maneuver through the building and into the meeting room. In addition, some individuals may have a total or partial visual or hearing impairment.** Each of these situations may require some different type of accommodation.

- Some examples of accommodations that can be made to assist the hearing impaired during a group meeting include assisted listening devices such as induction loops wired into a room, FM systems, and infrared systems. For a deaf person, it may be necessary to provide a qualified interpreter. An alternative would be to use closed captioning on a real time reader board.

When advertising public meetings or program services and activities, the grantee must include a written statement similar to the following:

The (… Name of the CDBG grantee…) makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in any CDBG Program service or activity. Persons needing an accommodation must notify (...who …) no later than (…date…) to allow adequate time to make needed arrangements.

You may call (… telephone number …) or write to (… address…) to make your request known. Telecommunications Device for the Deaf: TDD # (406) ____-_____. Montana Relay System for the Deaf: Dial 711 or 1-800-253-4091 to use Montana Relay.

c. **Use Disability Access Symbols to alert people with disabilities concerning access accommodations and information**.

- Place the symbols on all advertising, publicity, websites, publications, signs, etc. CDBG grantees can access the symbols via the Internet.

- The twelve disability access symbols that can be found at that website may be used to promote and publicize accessibility of places, programs and other activities for people with various disabilities, and the website gives suggestions for how you can use the symbols effectively and sensitively.

d. **For purposes of communications requirements of the ADA and Section 504, grantees have access to the Montana Relay Service and MDOC's Telecommunications Device for the Deaf (TDD).**

- **A Text Telephone (TTY/TDD) is an electronic device that enables people who are deaf, hard of hearing, or speech impaired to use the telephone by typing messages back and forth and reading responses on the display.** A TTY is required for both parties to communicate directly, or the hearing party may call

via the Montana Relay Service. Telebraille or Large Visual Displays are available for people who are blind or have low vision.

- **FYI: A deaf person, or a person wishing to communicate with a deaf person, can call a toll-free number to access any city in the United States.** An operator types in the conversation to the hearing-impaired person, who reads the message via a *Telecommunication Device for the Deaf (TDD).* The operator then reads the return message to the hearing person.

- **Grantees are not required to secure their own TDDs. Montana has in place a very sophisticated telephone relay system for the deaf, *Montana Relay.*** Montana Relay makes communication by telephone simple, dependable and convenient for people who have difficulty using a standard phone. A public service offered through the state of Montana, Montana Relay enables standard telephone users to communicate with people who are deaf, hard of hearing, Deaf/Blind or speech disabled and use a TTY (text telephone) or another assistive telephone device. Dial 7-1-1 or 1-800-253-4091 to use Montana Relay.

Montana Relay
https://dphhs.mt.gov/detd/mtap/mtapmtrelay

Montana Relay calls are easy to make and receive. Montana Relay is operated by the Montana Telecommunications Access Program attached to the Montana Department of Public Health and Human Services.

The Montana Department of Commerce also has a TDD at the main building (301 S. Park Avenue, Helena) that can be accessed at (406) 841-2702. Grantees may publish this MDOC phone number on publications and advertisements about their CDBG program activities.

The following organizations can be consulted for more detailed information about devices available to assist the disabled:

The University of Montana Rural Institute: A Center for Excellence in Developmental Disabilities 1-800-732-0323 (Voice/TTY Toll-Free) (406)-243-5467 Voice/TTY http://ruralinstitute.umt.edu/	***Montana Independent Living Project*** (406) 442-5755 or 1-800-735-6457 http://www.milp.us/
Summit Independent Living Project (406) 728-1630 or 1-800-398-9002 http://www.summitilc.org/	***ADA Regional Assistance Center-Rocky Mountain ADA Center*** 1-800-949-4232 https://www.rockymountainada.org/
Montana Independent Living Centers https://dphhs.mt.gov/detd/independentliving/centerlocations.aspx	***Living Independently for Today & Tomorrow (LIFTT)*** (406)294-5181 or 1-888-502-9700 http://www.liftt.org/ Also see **the exhibits** for state and national contacts for ADA Information and Assistance.

2. <u>Access to Employment for Disabled Persons</u>.

- **Title I of the ADA prohibits discrimination by an employer against a qualified person with a disability.**

a. **Employers are required to** *make reasonable accommodation to known physical or mental limitations of an otherwise qualified individual***, unless to do so would impose an undue hardship on the employer.**

  - Cost alone does not necessarily constitute undue hardship. A person with a disability is otherwise qualified if they can satisfy the requisite skill, experience and education requirements for the position, and *can perform the essential functions of the job with or without reasonable accommodations*. Your assigned CDBG Program Specialist can provide assistance concerning specific types of reasonable accommodations.

b. **Essential functions are defined as those that are fundamental to the job, excluding any marginal functions of the position.** Where possible, the employer is required to make such accommodations as providing physical hardware or equipment to allow the disabled person to complete job duties (remembering that there is often more than one way to do a job), or reassigning job tasks among workers.

  - If grantees have questions regarding what constitutes an *essential job function* or an *undue hardship* on the employer, they should contact their assigned CDBG Program Specialist.

c. **When recruiting, the CDBG grantee and their contractors and subcontractors must include the following written statement:**

The (... grantee/contractor name...) makes reasonable accommodations for any known disability that may interfere with an applicant's ability to compete in the recruitment and selection process or an employee's ability to perform the essential duties of the job. In order for the grantee/contractor) to make such accommodations, the applicant must make known any needed accommodation.

You may call (… telephone number …) or write to (… address…) to make your request known. Telecommunications Device for the Deaf: TDD # (406) ____-_____. Dial 711 or 1-800-253-4091 to use the Montana Relay System for the Deaf:.

- CDBG grantees should use a local TDD number if possible. If no TDD is available locally, the grantee may use the above MDOC TDD number for this purpose.

- If grantees do intend to utilize the MDOC TDD number, they should make sure that the assigned CDBG Program Specialist is informed regarding the details of such announcements, and that MDOC/CDBG receives copies of those announcements so that staff can competently answer questions received on the TDD about the grantee's activities.

● **You cannot ask an applicant if they have a disability or ask any questions about their specific disability (including the extent, nature or severity of the disability) prior to extending a conditional offer of employment.**

● **You may ask job-related questions such as,** *Can you perform the essential functions of the job either with or without a reasonable accommodation?* **In general, questions asked of applicants should be consistent with business necessity and they should be job-related, with the same questions asked of all applicants** (e.g., conduct the same structured oral interview with the same questions for all applicants).

3. Access to Program Benefits for Disabled Persons. Title II of the ADA specifies that **qualified individuals with disabilities are not to be excluded from participation in, or to be denied the benefits of, any services, programs, or activities funded in whole or in part with federal funds.**

a. **A qualified individual with a disability** is defined as: **one who meets the essential eligibility requirements for receipt of services or for participation in programs or activities, *with or without* a reasonable modification to rules, policies or practices; the removal of architectural, communication or transportation barriers; or the provision of auxiliary aids and services.**

b. **The basic requirement of ADA for CDBG grantees is that all services, programs and activities be accessible to everyone, including people with disabilities, regardless of the accessibility of the grantee's facilities.**

c. **Grantees are also required to take affirmative steps to ensure that qualified persons with disabilities are informed of the availability of program services and activities; and that the grantee's activities or services are readily accessible to, and usable by, individuals with disabilities.**

- Administrative changes might include scheduling activities for the disabled at disabled accessible locations, assigning auxiliary aides to assist disabled clients, providing CDBG visits or on-call transportation services, and publicizing the availability of audio equipment and telecommunications devices for deaf persons (TDDs).

d. **CDBG grantees may not provide services or benefits to disabled persons through programs that are separate or different -- unless the separate programs are necessary to ensure that the benefits or services are equally effective.**

- **Even when separate programs are permitted, an individual with a disability must still have the right to choose to participate in the regular program, and the grantee may not require an individual with a disability to accept a special accommodation or benefit if the person chooses not to accept it.**

4. **Physical Accessibility for Disabled Persons to Programs**.

a. The grantee should identify the primary access point to their office building, and ensure that parking spaces are designated for people with disabilities displaying special permits on their vehicles.

b. In addition, the grantee needs to ensure that the accessible entrance to the building is kept accessible (i.e., free of snow and other blockage, with unauthorized persons not allowed to park in the handicap designated areas).

- **The Disability Services Division of the Department of Public Health and Human Services (DPHHS)** can provide information regarding specific types of reasonable accommodation:
  - **DPHHS Disability Services Division**
    111 Sanders Suite 307, PO Box 4210
    Helena, MT 59604-4210
    1-877-296-1197 (Toll free) / 406-444-2590 (voice/TDD)
  - **406-444-3632 (fax)**

- **DPHHS Vocational Rehabilitation offices** are located throughout the state, and their staff can assist with questions regarding reasonable accommodations. **DPHHS Vocational Rehabilitation Program: Same phone numbers as above** http://www.dphhs.mt.gov/dsd/mvr.shtml

c. **The regulations for meeting handicap accessibility requirements for housing facilities** are complex and cannot be described concisely in this chapter, so what is found in this chapter is the beginning of the information that you may need to assure disabled accessibility for housing facilities.

- The ADA generally does not cover private residential facilities. These facilities are addressed in the *Fair Housing Amendments Act*, which prohibits discrimination on the basis of disability in selling or renting housing.

  - However, provisions of the *Fire Administration Authorization Act of 1992*, which became effective October 26, 1992, require that **all housing units assisted with**

federal funds be equipped with a hard-wired or battery-operated smoke detector that includes appropriate wiring that makes it possible to install visual and/or sensory alarm systems if the need arises.

- This requirement applies to all new construction, reconstruction, and rehabilitation projects on any multifamily or single-family housing assisted with CDBG funds. Further, where alarms already exist in common areas, visual and sensory alarms should be provided also, as a reasonable accommodation to persons with disabilities.

d. **It is illegal to discriminate against a disabled person by providing:**

... any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others ... unless such action is necessary to provide qualified individuals with handicaps with housing, aids, benefits or services that are as effective as those provided to others.

e. **The following are highlights of other handicap-accessibility requirements that apply to all facilities designed, constructed or altered after July 11, 1988**:

I. **New Construction, Acquisition or Rehab of Single-Family Dwellings**. Single-family dwellings must be made handicap accessible upon request of the owner or prospective buyer. That cost may be included in the mortgage amount. If costs exceed the allowable mortgage limits, those costs may be passed on to the prospective CDBG buyer.

- All handicap accessible dwelling units must be distributed throughout the housing project and the sites made available in a range of sizes and amenities.
- Generally, historic properties must be made accessible unless doing so would substantially impair the significant historic features of the property or result in an undue financial or administrative burden.

II. **New Construction or Substantial Rehab of Multi-Family Dwelling Units**. In addition to ADA requirements, residential structures (other than privately owned residential structures) are subject to requirements of the *Architectural Barriers Act* of 1968.

- Standards for the design, construction and alteration of publicly owned residential structures to ensure that physically disabled persons have ready access to and the use of such structures can be met by following the *Uniform Federal Accessibility Standards*.

- In a multi-family housing project consisting of five or more HUD (CDBG)-assisted units there must be at least five percent of the HUD-assisted units (or a minimum of 1 unit) that are accessible to persons with mobility impairments and at least an additional two percent of the units (or a minimum of one unit) accessible to persons with hearing or vision impairments -- Braille and hard wiring installed. This is a requirement of the Uniform Federal Accessibility Standards under Section 504.

- Also, the Fair Housing accessibility requirements must be applied when a HUD-assisted multifamily project involves construction of four or more attached units.

- All covered multi-family dwellings must be designed and constructed in such a manner that:

  - the public and common use areas are readily accessible to and usable by disabled persons;
  - all doors are designed to allow passage by persons in wheelchairs;
  - there is an accessible route into and through the covered dwelling unit;
  - light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
  - bathroom walls are constructed to include reinforcements to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat (where such facilities are provided); and
  - kitchens and bathrooms are such that an individual in a wheelchair can maneuver about the space.

III. **Tenant-Based Rental Assistance**. Program administrators must provide notice of the availability of handicap accessible units, and include a current listing of available accessible units. In addition, they must encourage program participation by owners of accessible units.

5. Data and Documentation

- With respect to requirements of the *Architectural Barriers Act* grantees must be kept in each applicable CDBG Project File..

- In addition, MDOC/CDBG will include in their existing procedures for the review and approval of newly constructed or substantially rehabilitated multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with the above provisions of the Fair Housing Act.
- MDOC/CDBG has incorporated into the normal grant monitoring procedures (see the Project Monitoring Chapter and exhibits) a review of the grantee's ***Self-Evaluation Inventory*** and ***Transition Plan*** for compliance with Section 504 of the *Rehabilitation Act* and the *Americans with Disabilities Act*.

- The grantee must certify to MDOC/CDBG in writing that their CDBG program activities are being operated in compliance with Section 504, the ADA and the Fair Housing requirements.

- Each grantee must submit compliance reports to the responsible civil rights official. Documentation shall be kept to ascertain compliance.

- See Section IV below for additional details of record-keeping and documentation.

IV. RECORD-KEEPING REQUIREMENTS FOR CIVIL RIGHTS

A. <u>The Local Project's *Civil Rights* File should contain the following information and records</u>:

- Records demonstrating a *good faith effort* to comply with federal civil rights requirements.
- Records of program applicants and program beneficiaries, by race and gender.
    - **See B, below, for an explanation of HUD data collection requirements (as revised in 2002).**
- A running tabulation of the race and gender of households in any direct benefit program, such as families assisted through housing rehabilitation or jobs provided to individuals through an economic development project.
-
    - See **exhibits**, *Individual Direct Benefit Recording Form to be Completed by Head of Household*, and *Direct Benefit Summary Data*.
- Documentation/records of efforts to make CDBG program services and activities accessible to blind, deaf, and other physically and mentally disabled persons.
- Documentation regarding steps the grantee has taken to promote fair housing.
- Documentation/evidence of efforts to ensure minority participation in the program (e.g., documentation of administrative methods designed to ensure nondiscrimination in project activities and in site selection criteria designed to benefit minorities, as well as actions taken to overcome the effects of past discrimination).
- Documentation/evidence of compliance with handicap accessibility requirements in housing construction and rehabilitation activities (Fair Housing Act, Section 504 of the Rehabilitation Act; and the Americans with Disabilities Act).
- Records of actions undertaken to promote equal employment opportunity, including documented efforts of the grantee's affirmative actions in equal employment opportunity (e.g., recruitment advertising, hiring, promotions, layoffs or terminations, pay and recruitment for training).
    - A summary of the number of applicants for each position hired, and the number of applicants who are minorities, women and disabled persons (see **exhibits**, *Applicant Summary Sheet*).
    - Documentation by race, gender and handicap of the number of persons interviewed and the reasons for the hiring decisions (see **exhibits**, *Interview and Hiring Form*).
- Documentation of the following information regarding grantee employment practices:
    - personnel policies
    - interview and hiring records
    - employee records (training, promotion, salary levels)

- data on overall employment of women and minorities (**see exhibits**, *Grantee Employment Summary*)
- employment data that indicates staff composition by race, sex, handicap status and national origin;
- documented actions undertaken to promote equal opportunity in bidding and contracting for services and products from DBE firms; and
- Data recording the grantee's affirmative actions to encourage the participation of DBE firms.

B. Data Collection Requirements for Ethnicity and Race from HUD and the Office of Management and Budget (as Revised in 2002)

In 2002, the State of Montana and all the states received notification from HUD that revised grantee data collection and reporting requirements that been established for HUD (which includes CDBG, HOME and other HUD-funded projects) by the Office of Management and Budget. Under the still current (2202) policy for data collection, HUD projects must:

a) **offer respondents the option of selecting a self-description from HUD's new set of racial categories** (the list is given below);

b) **treat ethnicity as a category separate from race**; and

c) **use some new terminology that has been adopted for certain racial groups and ethnic groups –** HUD identified new race/ethnicity categories that need to be used. See #7 below.

The changes announced in 2002 mean that:

1) In CDBG p**rojects which have direct benefits to individuals and households, CDBG grantees must now ask clients to identify their ethnicity prior to asking them to identify their race.** See item 6 below.

2) For CDBG local project activities that require gathering ethnicity and race data from individuals or households (such as housing rehabilitation for individual families, payment of water-system/sewer system hook-up fees or assessment fee for LMI households), the use of the new race/ethnicity categories is required.

    - The *Individual Direct Benefit Recording Form to be Completed by Head of Household*, I which includes the revised ethnic and racial categories required by HUD – use it to collect data from individuals and households receiving direct assistance, if any, in your local CDBG project (see exhibits).

3) **New race and ethnicity categories: There are now ten racial categories** (see the list given below in #7) **and two ethnic categories** (also listed below) that must be used in gathering this data from individuals receiving direct benefit assistances.

4) The CDBG program created *project completion reports* (see the Project Closeout Chapter) that reflect the additional race and ethnicity categories.

5) HUD set April 1, 2004 as the deadline to transition to the new categories for CDBG

contracts/projects that were in progress at the time the change announcement was issued – such projects were instructed need to go back to the individuals and households and gather the ethnic and racial data that is needed.

6) **Grantees should use a two-question format, meaning that separate questions for race and ethnicity should be used.** Both questions must be answered. The **ethnicity question** should **precede** the **race question**.

7) See**, Individual Direct Benefit Recording Form to be Completed by Head of Household,** for a form that you can use to ask the ethnicity and race questions, using the new HUD list:

Ethnicity: (select only one)

i. Hispanic or Latino (HL)
ii. Not Hispanic or Latino (NHL)

Race: (select one or more)

1. White
2. Black or African American
3. Asian
4. American Indian or Alaskan Native
5. Native Hawaiian or Other Pacific Islander
6. American Indian or Alaskan Native *and* White
7. Asian *and* White
8. Black or African American *and* White
9. American Indian or Alaskan Native *and* Black or African American
10. Other Multi-racial (balance of individuals reporting more than one race)

Note: Self-reporting or self-identification by the individuals receiving the assistance (rather than observer identifications) is the preferred method for collecting race and ethnicity data. Self-identification for race and ethnicity means that responses are based on self-perception.

CHAPTER 5

EXHIBITS

5-A Sample Equal Employment Opportunity Policy

5-B Sample Section 3 Public Notice

5-C Required Contract Language for Section 3 Responsibilities

5-D **Individual Direct Benefit Recording Form to be Completed by Head of Household**

5-E **Direct Benefit Summary Data**

5-F **Tribal Newspapers and Newsletters and Newspapers Published Adjacent to Montana's Indian Reservations**

5-G **Applicant Summary Sheet**

5-H **Interview and Hiring Form**

5-I **Grantee Employment Summary**

5-J **Contract Reporting Form and Instructions (same as Exhibits 9-K and 13-E)**

5-K **Sample Letter of Work Notification to a DBE Firm**

5-L **Sample Equal Employment Opportunity Poster**

5-M **Sample Fair Housing Resolution**

5-N **Sample Fair Housing Poster**

5-O **Sample Fair Housing Handout and Complaint Pamphlet**

5-P **Sample Housing Program Notice**

5-Q **Sample Hatch Act Resolution**

5-R **Sample Section 504 and ADA Complaint Resolution Procedures and ADA Complaint Form**

5-S **Sample ADA Self-Evaluation Inventory and Transition Plan**

5-T **National and State Contacts for ADA Information and Assistance**

5-U **Civil Rights Responsibilities Checklist**

EXHIBIT 5-A

(SAMPLE) EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY

PURPOSE
To provide equal employment opportunity in direct employment with (*Name of CDBG grantee*).

POLICY
It is the policy of (*Name of Grantee*) to provide equal opportunity to all of its employees and applicants for employment and to assure that there shall be no discrimination against any person on the basis of race, color, religion, creed, national origin, sex, age, physical or mental handicap, marital status or political beliefs unless related to a bona fide occupational requirement.

To this end, (*Name of Grantee*) will take affirmative actions to equalize opportunity for employment at all levels of operation for those classes of people who have traditionally been denied equal opportunity -- minority group members, women, and the handicapped; and (*Name of Grantee*) recognizes an obligation to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the accommodation imposes an undue hardship.

All applicants for employment with (*Name of Grantee*) will be recruited from the reasonably available labor market and evaluated on each person's individual qualifications and abilities.

All (*Name of Grantee*) employees shall be afforded equal employment opportunity during their terms of employment, and are guaranteed protection against retaliation for exercising any legal or administrative procedures to secure rights to equal employment opportunity or testifying on behalf of someone else doing so.

Adoption of this document reaffirms (*Name of Grantee)'s* policy of nondiscrimination in employment, including but not limited to the following:

- recruitment
- selection
- placement
- testing
- training
- promotion
- transfer
- discipline
- demotion
- layoff and termination

All supervisory personnel are responsible for and shall be committed to achieving and promoting equal employment opportunity with (*Name of Grantee*) and for implementing this equal employment opportunity policy.

ASSIGNMENT OF RESPONSIBILITY
Primary responsibility for the development, implementation and maintenance of procedures in accordance with this equal employment opportunity policy is assigned to (*Name and title of appointee*), who will serve as the equal opportunity officer and will conduct periodic reviews of (*Name of Grantee)'s* personnel action to ensure that the policy of equal opportunity is being adhered to and will hold quarterly equal opportunity meetings with the (*Mayor/Chairperson and*

all supervisors) to apprise them of progress and of any developing problems for which remedial action would be appropriate.

The (*Governing Board*) hereby directs all employees of (*Name of Grantee*) engaged in any phase of employment, including but not limited to the following:

- recruitment
- selection
- placement
- testing
- training
- promotion
- transfer
- discipline
- demotion
- layoff and termination

to take appropriate steps to ensure that employment opportunities with (*Name of Grantee*) are offered on an equal basis to all without regard to race, color, sex, creed, religion, national origin, age, physical or mental handicap, marital status, or political beliefs unless such distinction is a bona fide occupational qualification.

IMPLEMENTATION

The (*Name of Grantee*) will implement this policy and Title VII of the Civil Rights Act of 1964, by means of the Equal Employment Program outlined below. This program is drawn to the specifications and standards established by Presidential Executive Orders 11246 and 11375, which are described in Part 60-2 of the *Code of Federal Regulations* (issued by the Office of Federal Contract Compliance, U.S. Department of Labor) and the *Montana Human Rights Act* (Title 49 MCA).

This policy shall be comprehensive in its range. (*Name of Grantee*) shall make good faith efforts to implement this policy. Procedures adopted will include, at a minimum:

- evaluate all current employment practices for evidence of discriminatory effect. Where such practices are found to be discriminatory in their effect, they shall be modified so as to excise any discriminatory effect;

- remedy any unwarranted instances of under-utilization of women, minorities, and other individuals who have traditionally been the victims of discrimination;

- develop training and upgrading procedures which will ensure full consideration for those classes of people who have traditionally been denied equal opportunity -- minority group members, women, and the handicapped -- in any future employment opportunities with (*Name of Grantee*);

- seek out those who have been denied equal opportunity as applicants whenever vacancies occur;

- disseminate the substance of this policy on a continual basis through written notice to all employees, recruitment sources and other interested persons and organizations;

- provide equal pay for equal work;

- apprise all contractors and subcontractors of their affirmative action responsibilities in all contracts awarded by this jurisdiction;

- ensure compliance with all applicable federal and state equal employment requirements;

- include the following clause in all vacancy announcements:

We are an Equal Opportunity Employer.

- provide assistance to members of protected groups in completing applications;

- provide assistance to individuals needing help in meeting training and educational qualifications for job vacancies whenever possible;

- apprise all employment referral agencies of the substance of this policy in order to facilitate referral of qualified minorities, women and handicapped individuals;

- post EEO posters in conspicuous places on (*Name of Grantee*) premises;

- instruct all supervisory personnel in the required procedures following an EEO complaint;

- inform all supervisory personnel of their duties and responsibilities with respect to equal employment opportunity; and

- inform all employees of (*Name of Grantee)'s* commitment to equal employment opportunity and of their rights and remedies under the law.

EFFECTIVE DATE
This policy shall take effect upon affirmative vote of the (*Governing Board*).

Signature _____

Title _____

Date _____

EXHIBIT 5-B

SAMPLE SECTION 3 PUBLIC NOTICE

- "SECTION 3": Economic Opportunities for Low and Moderate Income Persons. See Chapter 5, pages 5-10 and 5-14.
- Section 3 requires that to the greatest extent feasible:
    - opportunities for training and employment must be given to lower-income residents of CDBG-assisted projects; and
    - that contracts for work in connection with such projects should be awarded to business concerns located in, or owned in substantial part by "project area" residents. (See Chapters 13, Exhibit 13-H, for additional information about required Section 3 reporting by CDBG grantees at the time of project closeout.)
- Below is a sample notice form that CDBG grant recipients can use to inform the community of prospective employment and business opportunities.
- This notice should be published when the project is being advertised for bid to ensure that the community has a reasonable opportunity to hear about the potential benefits of the CDBG project.

SAMPLE SECTION 3 PUBLIC NOTICE

The *(Name of CDBG Grantee: City, Town or County of …)* has received notice of the award of Community Development Block Grant funds from the Montana Department of Commerce. *(Name of Grantee)* will soon commence implementation of a *(include brief description)* project.

CDBG regulations governing the grant require that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to local lower-income residents. Further, to the greatest extent feasible, business concerns located in or substantially owned by residents of the project area will be utilized.

For more information, please contact *(name)* at *(address)* or call *(phone number)*.

EXHIBIT 5-C

REQUIRED CONTRACT LANGUAGE FOR SECTION 3 RESPONSIBILITIES (SECTION 3: Economic Opportunities for Low- and Very Low-Income Persons)

Required Section 3 Language

Section 3 of the Housing and Urban Development Act of 1968. The contractor will ensure that to the greatest extent feasible opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to 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 the award of contracts and purchase of services and supplies.

In addition to publishing a notice of employment and business opportunities associated with the CDBG project (see exhibit 5-B):

- the language above pertaining to the civil rights requirements must be included in all requests for proposals, bid documents, and contracts; and
- the language above must be placed in publications having a circulation among minority groups in the area of the project.

"SECTION 3": Economic Opportunities for Low and Moderate Income Persons. See Chapter 5, pages 5-10 and 5-14: Section 3 of the Housing and Urban Development Act of 1968 requires that to the greatest extent feasible:

- opportunities for training and employment must be given to lower-income residents of CDBG-assisted projects; and
- that contracts for work in connection with such projects should be awarded to business concerns located in, or owned in substantial part by "project area" residents.

In applying Section 3 regulations to CDBG projects, the project area is determined as follows:

- For municipalities, the project area is the county in which the municipality is located. First consideration should be given to persons living in or businesses located in or closest to the project activities;
- For counties, in most cases, the entire county will be considered the Section 3 project area;

For Community Housing Development Organizations (CHDOs), the grantee should check with their assigned CDBG Program Specialist to determine the appropriate project area for their CDBG program activities.

CDBG EXHIBIT 5-D
INDIVIDUAL DIRECT BENEFIT RECORDING FORM
(To be Completed by Head of Household)

(*Name of CDBG Grantee*) is required by the federal regulations governing the Community Development Block Grant Program to request the following information in order for the Montana Department of Commerce to monitor this agency's compliance with federal equal opportunity and fair housing laws.

You are not required to furnish this information, but are encouraged to do so. Federal law provides that an agency may not discriminate on the basis of this information, nor on the basis of whether you choose to furnish the information. However, if you choose not to furnish it, this agency is required to note race, gender and/or handicap status on the basis of visual observation and/or surname.

If you do **not** wish to provide the requested information, please check the following box:

❑ **I do not wish to furnish this information.**

Please check the boxes below for all characteristics which apply to the *head of the household*.

Ethnicity: (select only one)

❑ Hispanic or Latino
❑ Not Hispanic or Latino

Race: (select one or more)
❑ White
❑ Black or African American
❑ Asian
❑ American Indian or Alaskan Native
❑ Native Hawaiian or Other Pacific Islander
❑ American Indian or Alaskan Native *and* White
❑ Asian *and* White
❑ Black or African American *and* White
❑ American Indian or Alaskan Native *and* Black or African American
❑ Other Multi-racial (balance of individuals reporting more than one race)

Other Needed Information: (select all that apply)
❑ Female
❑ Male
❑ Handicapped / Disabled
❑ Elderly (over age 62)

Name of Head of Household: _____

Address: _____ Date: _____

(If applicable, when the person declines to furnish the information):

On the basis of sight or surname, the above information has been noted by:

Name: _____ Initialed: _____

Title: _____ Date: _____

EXHIBIT 5-E

DIRECT BENEFIT SUMMARY

BENEFICIARY NAME AND ADDRESS	ETHNIC CATEGORY (*)	RACIAL CATEGORY (* *)	M	F	H	E	FHH	LOW OR MODERATE INCOME	# IN HOUSE-HOLD	HOUSEHOLD INCOME	AMOUNT OF ASSIST-ANCE	TYPE OF ASSIST-ANCE
TOTALS												

***(* *) RACIAL CATEGORY CODES*:** **1.** White **2.** Black or African American **3.** Asian **4.** American Indian or Alaskan Native **5.** Native Hawaiian or Other Pacific Islander **6.** American Indian or Alaskan Native *and* White **7.** Asian *and* White **8.** Black or African American *and* White **9.** American Indian or Alaskan Native *and* Black or African American **10.** Other Multi-racial (balance of individuals reporting more than one race)

***(*) ETHNIC CATEGORY CODES*:**
HL: Hispanic or Latino **NHL:** Not Hispanic or Latino

***OTHER CODES*:** **M** – Male **F** – Female
H – Handicapped **E** – Elderly (Over 62)
FHH - Female Head of Household

EXHIBIT 5-F

TRIBAL NEWSPAPERS AND NEWSLETTERS AND NEWSPAPERS PUBLISHED ON (OR ADJACENT TO) MONTANA'S INDIAN RESERVATIONS

- **Check** http://www.mdt.mt.gov/pubinvolve/tribal/news.shtml **for updates to the Tribal Newspapers and Newsletters and Reservation-Adjacent Newspapers list below**

- **See** http://mt.gov/work/state_newspapers.asp **for a list of all Montana Newspapers available on the Internet.**

Big Horn County News, 204 N. Center Avenue, Hardin MT 59034 (665-1008)
http://www.bighorncountynews.com/

Bigfork Eagle, 727 East Idaho, Kalispell MT 59901(837-5131)
http://www.flatheadnewsgroup.com/bigforkeagle/

Billings Gazette, PO Box 36300, Billings MT 59101-6300 (1-800-543-2505)
http://www.billingsgazette.net/

The Billings Outpost, 207 North Broadway, Billings MT 59105 (247-5020)
http://www.billingsnews.com/

Billings Times, 2919 Montana Avenue, Billings MT 59101 (245-4994)
http://www.mtnewspapers.com/articles/2009/06/24/members/billingstim.txt

The Carbon County News, PO Box 970, Red Lodge MT 59068
http://carboncountynews.com/

Char-Koosta News, PO Box 98, Pablo MT 59855 (275-2830)
http://charkoosta.com/

Chouteau Acantha, PO Box 320, Choteau MT 59422 (466-2403)
http://www.choteauacantha.com/

Crow Tribal News, PO Box 159, Crow Agency MT 59022 (638-3700)
http://www.crowtribe.com/ Official Website of the Crow Tribe - Apsáalooke Nation

Culbertson Searchlight, 11 Broadway, Culbertson MT 59218 (787-5821)
http://www.northeastmontananews.com/index.php?option=com_content&view=section&id=6&Itemid=105

Cut Bank Pioneer Press, PO Box 847, Cut Bank MT 59427 (873-2201)
http://www.goldentrianglenews.com/cut_bank_pioneer_press/

Daily Inter Lake, 727 East Idaho, Kalispell MT 59901 (758-4447)
http://www.dailyinterlake.com/

Flathead Beacon, 217 Main Street, Kalispell MT 59901 (257-9220)
http://www.flatheadbeacon.com/

Fort Belknap News, RR1 Box 66, Harlem MT 59526 (353-2205)
http://www.ftbelknap-nsn.gov/fbNews.php

Fort Peck Journal, PO Box 351, Poplar, MT 59255, (768-5366)
http://fpj.sarteck.com/forum.php?action=view_forum&fid=7

Glacier Reporter, PO Box 349, Browning, MT 59417, Browning MT 59417 (338-2090)
http://www.goldentrianglenews.com/glacier_reporter/

Glasgow Courier, 341 Third Avenue South, Glasgow MT 59230 (228-9301)
http://www.glasgowcourier.com/

Great Falls Tribune, 205 River Drive So., Great Falls MT 59405 (791-1444or 800-438-6600)
http://www.greatfallstribune.com/

Havre Daily News, PO Box 431, Havre MT 59501-0431 (265-6795)
http://www.havredailynews.com/

Hays-Lodgepole Newsletter (Fort Belknap Reservation) PO Box 58, Hays, MT 59527

Hungry Horse News, 727 East Idaho, Kalispell MT 59901 (892-2151)
http://www.flatheadnewsgroup.com/hungryhorsenews/

Forsyth Independent Press, 183 N. 9th Ave., Forsyth MT 59327 (356-2149)
http://yellowstonecommunications.com/forsyth/index.html

Lake County Leader, PO Box 1090, Polson, MT 59860 (883-4343)
http://www.leaderadvertiser.com/

Liberty County Times, P.O. Box 689, Chester, MT 59522 (759-5355)
http://highline.townnews.com/news/

Little Shell Tribe of Chippewa Indians of Montana, P.O. Box 1384, Great Falls, MT 59403-1384 (452-2892) http://www.littleshellmt.com/

The Mountaineer News, PO Box 529, Big Sandy MT 59520-0529 (378-2176)

Northern Cheyenne News, Northern Cheyenne Agency, PO Box 128, Lame Deer MT 59043 (477-6284) http://www.cheyennenation.com/news.html

Ravalli Republic, 232 West Main, Hamilton, MT59840 (363-3300; Fax: 363-1767)
http://www.ravallinews.com/

Seeley Swan Pathfinder, PO Box 702, Seeley Lake MT 59868 (677-2022)
http://www.seeleyswanpathfinder.com/

The Shelby Promoter, PO Box 610, Shelby MT 59474 (434-5171)
http://www.goldentrianglenews.com/shelby_promoter/

Tobacco Valley News PO Box 307, Eureka MT 59917 (297-2514)
http://www.tobaccovalleynews.com/

The Western News, P O Box 1377 / Libby, MT 59923 / 406-293-4124
http://www.thewesternnews.com/

Whitefish Pilot, 312 2nd Street East, Whitefish MT 59937 (862-3505)
http://www.whitefishpilot.com/

Wolf Point Herald News, 408 Main, Wolf Point MT 59201 (653-2222)
http://www.northeastmontananews.com/index.php?option=com_content&view=section&id=8&Itemid=107

Wotanin Wowapi, PO Box 1027, Poplar MT 59255 (768-5387)
http://wotanin.blogspot.com/ http://www.ciij.org/newswatch?id=710

Montana Office of Indian Affairs

http://tribalnations.mt.gov/government.asp

Tribal Governments

- **Blackfeet Reservation** http://www.blackfeetnation.com/
- **Crow Reservation** http://www.crowtribe.com/
- **Flathead Reservation** http://www.cskt.org/gov/council.htm
- **Fort Belknap Reservation** http://www.ftbelknap-nsn.gov/index.php
- **Fort Peck Reservation** http://www.fortpecktribes.org/
- **Northern Cheyenne Reservation** http://www.cheyennenation.com/
- **Rocky Boy's Reservation** http://www.rockyboy.org/
- **Little Shell Tribe of Montana's Chippewa Indians** http://www.littleshellmt.com/

EXHIBIT 5-G

APPLICANT SUMMARY SHEET

Background: Employment recruitment records should include a summary of the number of applicants for each position relating to the CDBG Program, and the number of applicants who are minorities, women and handicapped persons. **Chapter 5: pages 5-15, 5-16, 5-33 and 5-34.**

CDBG Position	Total # of Applicants	# Minority Applicants	# Women Applicants	Handicapped Applicants

EXHIBIT 5-H

INTERVIEW AND HIRING FORM

NAME OF APPLICANT:	ADDRESS AND PHONE:
POSITION APPLIED FOR:	
HOW DID THE APPLICANT FIND OUT ABOUT THE POSITION?	
PLEASE CHECK THE APPROPRIATE BOXES AS THEY APPLY: ☐ WHITE ☐ BLACK ☐ AMERICAN INDIAN/ALASKAN NATIVE ☐ HISPANIC ☐ ASIAN/PACIFIC ISLANDER ☐ MALE ☐ HANDICAPPED ☐ ELDERLY (OVER 62) ☐ FEMALE ☐ HEAD OF HOUSEHOLD ☐ LOW / MODERATE INCOME	
WAS THE APPLICANT SELECTED FOR AN INTERVIEW? ☐ YES ☐ NO	
IF NOT INTERVIEWED, DESCRIBE THE REASON:	
DATE OF INTERVIEW:	
PARTICIPANTS IN INTERVIEW:	
WAS THE APPLICANT HIRED? ☐ YES ☐ NO	
IF NOT HIRED, DESCRIBE THE REASON:	
NAME AND TITLE OF PERSON PREPARING THIS REPORT: _____ Signature	
DATE REPORT PREPARED: __/___/___	

EXHIBIT 5-I

GRANTEE EMPLOYMENT SUMMARY

CDBG POSITIONS: Job Category	TOTAL # IN CATEGORY	# MALE		# FEMALE		% Minority in Category	% Minority in Labor Force	% Female in Category	% Female in Labor Force (*)
		Non-Minority	Minority	Non-Minority	Minority				

(*) Labor Force data available by county from U.S. Census data

EXHIBIT 5-J *(Exhibit 5-J is the same as Exhibit 9-K and Exhibit 13-E.)*

Montana Department of Commerce / CDBG Program

CONTRACT REPORTING FORM – CONTRACT AND SUBCONTRACT ACTIVITY

For contract and subcontract activities of $10,000 or more

Grantee Name			**Date Submitted:**
Contact Person	**Phone**		

(A) Contractor's Montana Registration Number	(B) Amount of Contract	(C) Type of Trade (See codes below)	(D) Business Ethnicity, Racial Category and Gender (See codes below)	(E) Contractor ID Number	(F) Sub-contractor ID Number	(G) Contractor/Subcontractor -- Name and Address				
						Name	Street	City	State	Zip

Trade Codes
1 Construction
2 Education / Training
3 Other

ETHNICITY CODES: HL: Hispanic or Latino. NHL: (Not Hispanic or Latino.

***RACIAL CODES*:** 1. White. 2. Black or African American. 3. Asian. 4. American Indian or Alaskan Native. 5. Native Hawaiian or Other Pacific Islander. 6. American Indian or Alaskan Native *and* White. 7. Asian *and* White. 8. Black or African American *and* White. 9. American Indian or Alaskan Native *and* Black or African American. 10. Other Multi-racial.

GENDER CODES: WBE (Woman-owned).

EXHIBIT 5-J CONTRACT REPORTING FORM

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

-- INSTRUCTIONS --

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

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

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

1. **Grantee Name.** Enter the name of the unit of government submitting report of contract/subcontract activity.

2. **Contact Person.** Enter name and phone number of person responsible for maintaining and submitting contract data at respective unit of government.

3. **Date Report Submitted.** Enter date the report is submitted to DOC.

4. **Contractor's Montana Registration Number [Column A].** Enter the contractor's license number.

5. **Amount of Contract [Column B].** Enter the dollar amount of the contract or subcontract. Round the figures to the nearest thousand dollars. If subcontractor ID Number is provided, the dollar figure would be for the subcontract only - not the prime contract.

6. **Type of Trade [Column C].** Enter the numeric code *(1 thru 3)* which best indicates the contractor's/subcontractor's service. If Subcontractor ID Number is provided, the type of trade code would be for the subcontractor only - not the prime contractor. The other category includes supply, professional services and all other activities except construction and education/training activities.

7. **Business Racial/Ethnicity/Gender Code [Column D].** Enter all the appropriate racial, ethnicity and gender codes (listed at the bottom of the form on page 1) that indicate the racial, ethnic and gender background of the contractor/subcontractor. If the Subcontractor ID Number is provided, the code would apply to the Subcontractor - not the Prime Contractor.

8. **Prime Contractor ID Number [Column E].** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of CDBG funds. Note that the Employer's Number must be provided for each contract or subcontract awarded.

9. **Subcontractor ID Number [Column F].** Enter the Employer (IRS) Number of the Subcontractor as the unique identifier for each subcontract awarded from CDBG funds. (When the Subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.)

10. **Contractor/Subcontractor Name and Address [Column G].** Enter the name and address information for each firm receiving contract / subcontract activity. This information needs to be provided only one time on each report for each firm.

EXHIBIT 5-K

SAMPLE LETTER OF WORK NOTIFICATION TO A DISADVANTAGED BUSINESS ENTERPRISE (DBE) FIRM

(Background: See Chapter 5: 5-11, 5-17, 5-18, 5-19, and 5-34.)

Monty M. Montana
Town of Sunrise Community Development Director
600 Cottonwood Street
Sunrise, Montana 5999S

Western Sky, Inc.
100 Main Street
Great Falls, MT 59401

To Whom It May Concern:

We understand that your firm is an eligible Disadvantaged Business Enterprise (DBE) according to the latest listing provided to us by the Montana Department of Transportation.

You are hereby notified that the Town of Sunrise is advertising for bids from interested firms in regard to construction of water system improvements planned for our community.

A copy of the bid advertisement is attached.

The deadline for receipt of bid offers is 5:00 pm, Wednesday, May 14, 20~~0~~__. If you desire further information, please contact me at _____.

Thank you very much.

Sincerely,

Monty M. Montana
Community Development Director
Town of Sunrise

Enclosure

EEO

EQUAL EMPLOYMENT OPPORTUNITY

The organization named herein receives Federal financial assistance from the US Department of Housing and Urban Development.

In its activities so assisted the organization is prohibited from discriminating against any employee or applicant for employment because of race, color, sex, national origin, religion, or handicap in connection with:

- employment, upgrading, demotion, or transfer
- recruitment or recruitment advertising
- layoff or termination
- rates of pay or other forms of compensation
- selection for training, including apprenticeship

This notice must be posed in conspicuous places available to employees and applicants for employment

(Your organization's name and address):

Requests for information and complaints of discrimination may be addressed to:

Human Rights Bureau
Department of Labor & Industry
P.O. Box 1728
Helena, MT 59620
(406) 444-2884

-- or to --
Montana CDBG Program
Department of Commerce
301 S. Park Avenue
P.O. Box 200523
Helena, MT 59620-0523
(406) 841-2791

EXHIBIT 5-M

SAMPLE FAIR HOUSING RESOLUTION

Whereas, the *(City/Town Council or Board of County Commissioners)* desires to give meaning to the guarantees of equal rights contained in the Constitution and laws of this State and the United States, and to encourage and bring about mutual self-respect and understanding among all citizens and groups in the *(City/Town/County)*; and,

Whereas, under the Federal Fair Housing Law, Title VIII of the Civil Rights Act of 1968, it is illegal to deny housing to any person because of race, color, religion, sex, or national origin; and,

Whereas, under the Montana State Fair Housing Law, Title 49-2-305, MCA, it is illegal to deny housing to any person because of race, sex, religion, color, age, physical or mental handicap or national origin;

Therefore, be it resolved the *(Name of CDBG Grantee)*, Montana makes a firm commitment to do all within its power to eliminate prejudice, intolerance, disorder and discrimination in housing.

Therefore, be it also resolved that a Fair Housing Law poster which has the "Equal Housing Opportunity " logo will be displayed at *(City/Town Hall or County Courthouse)*.

Therefore, be it also resolved that the following procedures will be used to accomplish the purpose of the aforementioned resolution:

1. The *(City/Town Council/Board of County Commissioners)* shall inform all *(City/Town/County)* employees of the *(City/Town/County's)* commitment to fair housing.

2. The *(City/Town/Council/Board of County Commissioners)* will post this resolution in *(City/Town/County)* buildings and other public places and publicize it.

3. The *(City/Town Council/Board of County Commissioners)* shall direct all employees to forward immediately to the *(Mayor/Chairperson)* any reports they receive of housing discrimination.

4. The *(Mayor/Chairperson)* shall forward such complaints to the Montana Human Rights Commission, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within 10 days of receipt of said complaint.

Signature: _____

Title: _____

Date: _____

EXHIBIT 5-N

EQUAL HOUSING OPPORTUNITY

We Do Business In Accordance With the Federal Fair Housing Law

(Title VIII of the Civil Rights Act of 1968, as Amended by the Fair Housing Act of 1988 – the Fair Housing Act)

IT IS ILLEGAL TO DISCRIMINATE AGAINST ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN:

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services.
- Blockbusting is also illegal

An aggrieved person may file a complaint of a housing discrimination act with the:
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
Call Toll-free: 1 (800) 669-9777
Or write:
HUD Office of Fair Housing and Equal Opportunity
451 Seventh St. SW, Room 5204
Washington, DC 20410-2000
Washington, D.C. 20410

Sample Fair Housing Handout and Complaint Pamphlet

"*Are You a Victim of Housing Discrimination?*"

HUD Pamphlet: HUD-903.1

http://www.hud.gov/offices/adm/hudclips/forms/files/903-1.pdf

---

Are You a Victim of Housing Discrimination?

Fair Housing is Your Right!

If you have been denied your housing rights…you may have experienced unlawful discrimination.

U.S. Department of Housing and Urban Development
HUD Pamphlet: HUD-903.1

EXHIBIT 5-P

SAMPLE HOUSING PROGRAM NOTICE

THE TOWN OF DILLON

THROUGH THE EAST END HOUSING REHAB PROGRAM
IS ACCEPTING

APPLICATIONS FOR HOUSING REHABILITATION AND DEMOLITION IN THE EAST END TARGET AREA

For more information regarding the program or income requirements, CALL 486-2700

Equal Housing Opportunity
We do business in accordance with the
Federal Fair Housing Act

EXHIBIT 5-Q

SAMPLE
HATCH ACT RESOLUTION

Background: Chapter 5, page 5-3 -- CDBG Grantees must adopt a Hatch Act Resolution and

- inform local government officials and CDBG grantee employees of the provisions of the Hatch Act; and
- designate a local government representative to disseminate the information and brochure regarding Hatch Act responsibilities.

RESOLUTION No: _____

WHEREAS, the federal Hatch Act (5 USC, §§ 1501 et seq.) restricts the political activity of local government employees employed in connection with programs financed in whole or in part by federal loans or grants; and

WHEREAS, the Hatch Act attempts to deter the political influence of public employees connected with federally funded programs; and

WHEREAS, the (*City/Town/County*) receives federal loans or grants from the federal government to support various programs; and

WHEREAS, local governments which receive loans and grants from the federal government are required to inform all employees of the provisions of the Hatch Act and to adopt a policy of compliance with its regulations;

THEREFORE, BE IT RESOLVED, that the (*City or Town Clerk, County Clerk and Recorder, or Personnel Officer*) is hereby appointed to serve as Hatch Act Information Officer, and that as such he/she will inform each of the *(City's/Town's/County's)* officials and employees of the provisions of the Hatch Act through the use of an employee manual, written memoranda or other written means of notification, maintain on file a copy of the brochure entitled *Political Activity and the State and Local Employee,* http://www.osc.gov/documents/hatchact/ha_fed.pdf, and monitor compliance with the provisions of the Hatch Act.

Signed: _____

Name: _____

Title: _____

Date: _____

Attested: _____

EXHIBIT 5-R

Sample
SECTION 504 and ADA
COMPLAINT RESOLUTION PROCEDURES
and ADA COMPLAINT FORM

… To be adopted by the CDBG Grantee as part of CDBG project start-up activities …
See Chapter 5: pages 5-2, 5-24, 5-25

Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990* (ADA) provide comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and programs, and telecommunications. Title II of the ADA states, in part, that:

> no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination in programs or activities sponsored by a public entity.

The (*Name of CDBG Grantee*) has adopted this complaint procedure to provide prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the ADA.

Any individual who believes that she/he or a specific class of individuals with disabilities has been subjected to unlawful discrimination on the basis of that disability by the (*Name of GDBG grantee*) or any of the (*Name of CDBG Grantee*'s) contractors or suppliers may, by himself or herself or by an authorized representative, file a written complaint.

Complaints or questions should be addressed to: (*Name, Title, Address and Phone Number of Contact Person*)**,** TDD # (406) ____-_____. Montana Relay System for the Deaf: Dial 711 or 1-800-253-4091 to use Montana Relay**.** The (*Title of assigned individual*) has been designated to coordinate compliance with Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990*.

1. The complaint must be filed in writing and contain the name, address, and telephone number of the individual or representative filing the complaint; a description of the alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation; the signature of the complainant or authorized representative; and a description of the corrective action that is being sought. Complaints filed on behalf of a third party must identify the alleged victims of the discrimination. Complaints may be filed on the attached complaint form.

2. The complaint must be received within 20 calendar days after the alleged violation occurs. This time may be extended, as determined by the Section 504/ADA Coordinator, for good cause shown.

3. The (*Name of CDBG Grantee*) shall promptly conduct an informal investigation of the complaint. Interested parties will be afforded an opportunity to submit information relevant to the complaint.

4. A written response will be issued and a copy forwarded to the complainant no later than 30 calendar days after completion of the investigation.

5. The (*Name of CDBG Grantee*) will maintain the files and records relating to the complaint and its investigation according to the records retention schedule for personnel documents found in Chapter 800, *Montana Operations Manual*, Volume I.

6. Nothing in this complaint resolution procedure shall be construed as preventing an individual from pursuit of other remedies, including filing a formal complaint with the Montana Human Rights Commission, with any federal agency the individual believes is appropriate, or with the U.S. Department of Justice. The time limit for filing a formal complaint is 180 days after the alleged incident. This procedure also does not preclude the individual's right to file a lawsuit in federal district court.

_____ _____

Chief Elected Official/Board Chairman Date

(*Name of CDBG Grantee*)

ADA COMPLAINT FORM

COMPLAINANT'S NAME: _____

MAILING ADDRESS: _____

_____

_____

TELEPHONE NUMBER: _____ (8:00 am to 5:00 pm, Mon-Fri)

PLEASE DESCRIBE THE ALLEGED DISCRIMINATORY ACTION OR DENIAL OF SERVICE.
Please provide sufficient details. Include: description of alleged discriminatory action, names, dates, places, actions/events, witnesses, etc.

[__] CHECK HERE if additional pages are attached

PLEASE SPECIFY WHAT CORRECTIVE ACTION YOU ARE SEEKING:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

[__] CHECK HERE if additional pages are attached.

_____ _____

SIGNATURE OF PERSON MAKING COMPLAINT DATE

COMPLAINTS SHOULD BE ADDRESSED TO: (*Name and Address of ADA/Section 504 Coordinator*). Telecommunications Device for the Deaf – TDD: (406) 444-2978. **Dial 711 or 1-800-253-4091 to use the Montana Relay Service.**

* *

FOR AGENCY USE ONLY

_____ _____

SIGNATURE DATE

_____

TITLE

Exhibit 5-S

Sample

ADA Self-Evaluation Inventory and Transition Plan

Sample
ADA Self-Evaluation Inventory and Transition Plan

PHILLIPS COUNTY

Americans With Disabilities Act (ADA)

Facility Inventory
Possible Solutions
Implementation Schedule
Grievance Procedure
Notice

April, 2003

PREFACE

With compliance of the Americans with Disabilities Act (ADA) in mind, the County undertook the Title II Action Guide for State and Local Governments. The Title II regulations prohibit public entities from discriminating against or excluding people from programs, services, or activities on the basis of disabilities. The Title II requirements are very similar to the requirements of the Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination in all entities that receive federal financial assistance. The County personnel followed the ADA Title II Action Guide dated 1992.

The Five Action Steps of this approach were the following:

1. Designate a responsible employee
2. Provide notice of ADA requirements
3. Establishment of grievance procedures
4. Conduct a self-evaluation
5. Develop a transition plan

County Personnel assisted with the development of the transition plan. They were Carol Kienenberger, Troy Blunt and Richard Dunbar.

The transition plan was approved and adopted by the Phillips County Commission on ____ day of _____, 2003.

Richard Dunbar

Troy Blunt

Carol Kienenberger

NOTICE

Phillips County does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Phillips County does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990.

Questions, concerns, complaints, or requests for additional information regarding the ADA may be forwarded to Phillips County's designated ADA Compliance Coordinator.

Name: Carol Kienenberger
Title: Commissioner
Address: 314 South 2nd Avenue West
Malta MT 59538-0360
Phone (406)654-2429
Available 8:00 a.m. to 5:00 p.m.

Individuals who need auxiliary aids for effective communication in programs or services of Phillips County are invited to make their needs and preferences known to the ADA Compliance Coordinator.

This notice is available in large print, on audio tape, from the ADA Compliance Coordinator.

Grievance Procedure

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provision of services, activities, programs, or benefits by Phillips County.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

Carol Kienenberger, ADA Coordinator
(406)654-2429
314 South 2nd Avenue West, Malta MT 59538

Within 15 calendar days after receipt of the complaint, the ADA Coordinator will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the ADA Coordinator will respond in writing, and, where appropriate, in a format

accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of Phillips County and offer options for substantive resolution of the complaint.

If the response by the ADA Coordinator does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision of the ADA Coordinator within 15 calendar days after receipt of the response to the Commissioners or their designee.

Within 15 calendar days after receipt of the appeal, the Commissioners or their designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting the Commissioners or their designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by ADA Coordinator, appeals to the Commissioners or their designee, and responses from the ADA Coordinator and Commissioners or their designee will be kept by Phillips County for at least three years.

PHILLIPS COUNTY
AMERICANS WITH DISABILITIES ACT

FACILITY INVENTORY

COURTHOUSE

The main County Offices are located within the Courthouse located at 314 South 2nd Avenue West in Malta. The following is a list of the offices within the Courthouse: Appraisal, Clerk & Recorder, Clerk of Court, Commissioners, District Judge, Justice of the Peace, Planning Board, Sheriff's Office & Jail, Treasurer, Sanitarian, Superintendent of Schools, Welfare Office and Youth Court Services.

Accessible Approach/Entrances

There is a route of travel that does not require the use of stairs. The route is stable, firm and is at least 36 inches wide. The sidewalks have curb cuts.

Parking

Parking around the Courthouse is parallel parking along the street, and a parking lot. Two handicapped parking spaces have been designated within the parking lot. The international symbol does not include the fine amount.

Entrances:

There are stairs at the main entrance. However, there is a ramp to the basement level. The slope of the ramp is not greater than 1:12. There is a hand railing on one side, which is sturdy and is 32 inches high. There are no signs at the inaccessible entrances indicating the accessible route. The entrance door has 35" clear opening. There is at least 18 inches of clear wall space on the pull side of the door. The threshold is less that 1/4 inch high. The door handle is no higher than 48 inches and can be operated with a closed fist. The door closer takes at least three seconds to close.

Emergency Egress

There is no alarm system. All exits are clearly marked. However, the signs are not in Braille.

Access to Programs/Services

The floor plans are basically the same on each floor. These are the issues that were consistent on each floor.The entrances into the offices have a direct access from the lobby. The accessible route is at least 36 inches wide. There is adequate maneuvering space. The doors into the public space are at least 32-inches. The doors cannot be operated with a closed fist. However, all the doors remain open during business hours. In the offices, there is adequate floor space for turning a wheelchair. In situations without adequate space, the furniture can be moved to accommodate. Several of the offices have a vault. The doorway into the vault is only 30-1/2 inches. In several of the offices, the counter is higher than 32 inches. The signs designating offices, rest rooms and exits do not have raised letters, Braille and are not mounted at correct height.

Rest Rooms

The public rest room is located on the 1st floor. However, there is no elevator access to the floor. The doorway is 22-1/2 inches. The door handles cannot be operated with a closed fist. There is not adequate maneuvering space within the room. There are grab bars on the side wall nearest the toilet. The toilet seat was lower than 17 inches. There is not a 36-inch wide path to the fixtures. There are no stalls. The lavatory is installed within vanity. The faucet cannot be operated with a closed fist. The soap, hand dryer and mirror are mounted too high.

Amenities

There are no drinking fountains or public telephones.

Elevator

There is no elevator. The accessible route provides access to the basement.

Assisted Listening Systems

TDD capability is available through 711 statewide systems.

1st FLOOR

The offices located on this floor include the Superintendent of Schools, Justice of Peace, Welfare, Sanitarian/Planner, Ambulance and Custodial.

2nd FLOOR

The offices located on this floor include the Clerk & Recorder, Treasurer, Commission and Assessor. The office space on the second floor is not accessible due to the lack of an elevator. Space is available to bring services to the individual.

3RD FLOOR

The offices located on this floor include the District Judge, Clerk of Court, Courtroom and Youth Court Services. The office space on the second floor is not accessible due to the lack of an elevator. Space is available to bring services to the individual.

SHERIFF AND JAIL

The facility is adjacent to the west side of the County Courthouse. The sheriff's office utilizes the same parking lot as the Courthouse.

Entrances

There is a route of travel that does not require the use of stairs. The entrance doors have 34 inches clear opening. There is at least 18 inches of clear wall space on the pull side of the door. The threshold level is less than 1/4 inch high. The door handle is at 41 inches and can be operated with a closed fist. The door closer takes at least three seconds to close.

Emergency Egress

The alarms do not have flashing lights. Six smoke alarms are in place.

Access to Programs

The layout of the building allows people with disabilities to obtain materials or services without assistance. The accessible entrances provide direct access to the main floor. All public spaces are on accessible routes. However, the accessible route is only 35 inches wide. There is adequate maneuvering space. The door into the public space has at least 32 inches clear opening. However, the pull side of the door, next to the handle, does not have at least 18 inches of clear wall space. The door can be opened without much force. The door handles are at 41 inches and can be operated with a closed fist. The thresholds level is less than 1/4 inch high. The rooms within the facility are accessible, i.e., adequate maneuvering space, adequate aisles and pathways. The controls are below the maximum height of 54 inches and can be operated with a closed fist. The counter tops are 30 inches and provide adequate knee space. The cells within the jail are accessible. The signs do not comply with the requirements for tactile signage. The tops of the counters are 30 inches high. There is adequate knee space at the accessible tables.

Rest Rooms

At least one rest room is fully accessible. However, there are no signs indicating the accessible restrooms. The doorway is 35 inches. The door handles are 41 inches high. The door can be easily opened. There is adequate maneuvering space. There is at least 36 inch wide path to all the fixtures. There are no stalls or grab bars. The lavatory has adequate clear space in the front. The faucets can be operated with a closed fist. The soap dispenser, hand dryers and mirror are mounted too high.

Amenities
There is no drinking fountain or public telephone within the building.

LIBRARY

The Library is located at 10 South 4th Street East. The library is located on the main floor. The Extension Office and PhillCo Economic Growth Council are located in the basement.

Accessible Approach
The route of travel does not require the use of stairs. The route of travel is stable, firm and is 35 inches wide. There are curb cuts available.

Parking
There is a parking lot on the south side of the building. There is also parking along the street. However, there are no designated handicapped parking spaces.

Entrances
The main entrance is on ground level; hence, it does not require the use of stairs. The south entrance cannot be used by a wheelchair and it does not have signs indicating the location of the nearest accessible entrance. The north entrance door is 35 inches wide. There is at least 18 inches of clear wall space on the pull side of the door. The threshold level is less than1/4 inch high. The door handle is 40 inches. However, it cannot be operated with a closed fist. The door closer takes at least three seconds to close.

Emergency Egress
There are no emergency alarms. The exit signs are not in raised letters or in Braille.

Access to Programs/Services
The accessible entrance provides a direct access to the main floor. The doors into the public spaces have at least 32 inches of clear opening. The pull side of the door, next to the handle, has at least 18 inches of clear wall space. The doors can be operated without too much force. The door handles can be operated with a closed fist. The threshold level is less than 1/4 inch. The rooms and spaces on the first level provide adequate maneuvering space. The aisles between the book shelves do not provide adequate clearance. There are insufficient signs designating rooms and spaces. There is no elevator. Hence, the offices in the basement, including the meeting room, are not accessible.

Rest Rooms
On the main floor, the rest room doorway has 35 inches of clearance. The doors are equipped with accessible handles and can be easily opened. The entry configuration provides adequate maneuvering spaces. There is at least 36 inch wide path to all fixtures. There are no stalls. Grab bars are installed. The toilet seat is only 15 inches high. The lavatory has adequate clear space in front. The faucets cannot be operated with a closed fist. The soap dispensers, hand dryers and mirror are mounted too high.

Stairs
The treads have a non-slip surface. However, the hand railing does not have extension beyond the top and bottom of the stairs.

Amenities
The spout on the drinking fountain is higher than 36 inches from the ground. The controls are mounted on the front and can be operated with one closed fist. The fountain does not protrude more than 4 inches into the circulation space.

There are no public telephones within the building.

COUNTY ROAD SHOP

The County has three county shops. The shops in Dodson and Saco were built in 1954. The shop in Malta was built in 2000. The facilities are used primarily for storage and maintenance of equipment. The buildings are at ground level.

Accessible Approach
The facility is on ground level. There is a route of travel that does not require the use of stairs. The route of travel is stable, firm and at least 36" wide. There are no curbs. The route to the facility is packed gravel.

Parking
There is no designated handicapped parking.

Entrances
The entrance doors have at least 32 inches of clear opening. There is at least 18 inches of clear wall space on the pull side of the door. The thresholds at the Dodson and Saco shops are 1-1/2 inches high. The door handles are no higher than 48 inches. The doors on the Malta and Dodson shops cannot be opened with a closed fist.

Emergency Egress
None of the shops have emergency alarms.

Access to Programs/Services
The layout of the building allows for people with disabilities to obtain materials or services without assistance. As large shop facilities, once inside there is adequate maneuvering space. The shops have concrete floors.

Rest Rooms
There is one unisex bathroom in each shop. The doorway at the Saco shop has less than 32 inches of clearing. The Saco and Dodson shops do not have adequate maneuvering space. There are no stalls in the restrooms. The Saco and Dodson shops do not have grab bars. The Saco and Dodson shops do not have adequate clear space in front of the lavatories and the faucets can not be operated with a closed fist.

Amenities
There is no drinking fountain or public telephone within the buildings.

FAIRGROUNDS (DODSON)

The fairground has several buildings, barns and a grandstand. The roadway and paths are packed dirt and gravel. Buildings are on one level; hence no stairs are necessary. Doors are at least 32

inches, except on the historic buildings. The doors are open if the building is open to the public. The grandstand has a ground level area for wheelchairs for events.

Restrooms
A new men's restroom was constructed in 2002 and is fully accessible. The women's restroom is accessible in an older building. However, there are no signs indicating the location of the accessible restroom.

PAVILION

The pavilion is located at Highway 2 East. The pavilion is enclosed with a viewing area and wooden bleachers. There is no sidewalk leading to the pavilion.

NURSE'S OFFICE - CLINIC

The facility is located at 105 South 2nd Street East in Malta. The County Nurse and Chemical Dependency offices are located at the facility.

Accessible Approach
There is a route of travel that does not require the use of stairs. The route is stable, firm and is at least 36 inches wide. There are curb cuts.

Parking
There is a small parking lot on the East side of the building, along with street parking. However, there are no designated handicapped parking spaces.

Entrances
The main entrance does not require the use of stairs. The building has a double door entrance. Both doors open to the inside. Because of the lack of space between the two doors, the second door would be more difficult to operate from a wheelchair. The main entrance door has 35 inches of clear opening. There is at least 18 inches of clear wall space on the pull side of the door. The threshold level is less than ½ inch high. The door handle is 35 inches and can be operated with a closed fist. The door closer takes at least three seconds to close.

Emergency Egress
The building has no alarm system.

Access to Programs/Services
The accessible entrance provides a direct access to the main floor. The public spaces have an accessible route. The route is 54 inches wide. The doors, into the public space, have 35-inch of clear opening. Of the five rooms, three rooms have at least 18 inches of clear wall space. The door handles are less than 48 inches high but cannot be operated with a closed fist. The rooms and spaces do provide adequate maneuvering space. The counter top is 42 inches high.

Rest Rooms
There is at least one rest room which is fully accessible. The doorway has 35 inches clear opening. The door handles are at 40 inches high and cannot be operated with a closed fist. The doors cannot be opened easily. The entry configuration provides adequate maneuvering spaces. There is a 60-inch wide path to the fixtures. There are no stalls. Grab bars are installed. The toilet seat is 19 inches high. The lavatory has adequate clear space in front. The faucet can be operated with a closed fist. There is no tactile signage identifying the rest rooms.

Amenities
There is no drinking fountain or public telephone within the building.

MUSEUM

The museum is located on Highway 2 East.

Accessible Approach
The route of travel does not require the use of stairs. The route of travel is stable, firm and at least 36 inches wide. There are curb cuts available.

Parking
There are designated handicapped parking spaces. The accessible space is the closest to the accessible entrance. The International Symbol does not have the fine posted.

Entrances
The main entrance is on ground level; hence, it does not require the use of stairs. The entrance door is 36 inches wide. There are at least 18 inches of clear wall space on the pull side of the door. The threshold level is less than1/4 inch high. The door handle is 45 inches and can be opened with a closed fist. The door closer takes at least three seconds to close.

Emergency Egress
There are no alarms.

Access to Programs/Services
The accessible entrance provides a direct access to the main floor. Some of the displays are on the 2nd level. However, there is no elevator available. The doors into the public spaces have at least 32 inches of clear opening. The pull side of the door, next to the handle, has at least 18 inches of clear wall space. The doors can be operated without too much force. The door handles cannot be operated with a closed fist. The threshold level is less than 1/4 inch. The rooms and spaces on the first level provide adequate maneuvering space. However, there are insufficient signs designating rooms and spaces.

Stairs
The treads have a non-slip surface. There are no extensions on the hand railings beyond the top and bottom of the stairs.

Rest Rooms
At least one rest room is fully accessible. The doorway is at least 32 inches. The doors are equipped with accessible handles. The doors can be opened easily. The entry configuration provides adequate maneuvering spaces. There is at least 36 inch wide path to all fixtures. There are no stalls. Grab bars are installed. The toilet seat is 18" high. The lavatory has adequate clear space in front. The faucets can be operated with a closed fist. The soap dispensers, hand dryers and mirror are mounted at the proper height.

Amenities
There is no drinking fountain or public telephone within the building.

FOOD BANK

The Food Bank is located at 133½ South 1st Street West.

Accessible Approach
The route of travel does not require the use of stairs. The route is stable, firm and at least 36 inches wide. There are curb cuts available.

Parking
There is no designated handicapped parking space.

Entrances:
The route of travel does require the use of stairs. There are no ramps into the facility. The entrance door has 40 inches clear opening. There is 24 inches of clear wall space on the pull side of the door. The threshold is 1 inch high. The door handle is 40 inches high and can be operated with a closed fist. The door closer takes at least three seconds to close.

Emergency Egress
No emergency egress system.

Access to Programs/Services
The door into the public space has 31 inches of clear opening. The pull side of the door, next to the handle, has at least 18 inches of clear wall space. The door can be opened without too much force. The door handle is at 36 inches and can be operated with a closed fist. The threshold level is less than 1/4 inch. There is adequate maneuvering space in the rooms, or the furniture can be rearranged to clear more room. The counter tops are 29 inches high.

Stairs
The stairs are stable, firm and at least 36 inches wide. The stairs have a non-slip surface. There are hand railings on one side.

Rest Rooms
There is only one restroom and it is not accessible. The doorway has 28 inches clearing. The door handles are accessible and can be opened with a closed fist. The door can be easily opened. The entry configuration provides for adequate maneuvering space. There is 36 inch wide path to all the fixtures. There are no stalls. There are no grab bars. The toilet seat is at 15-1/2 inches. The lavatory has adequate clear space in front. The lavatory rim is no higher than 34 inches. The faucet cannot be operated with a closed fist. The soap and hand dryers are within reach ranges. However, the mirror is mounted at 49 inches high.

Amenities
There is no drinking fountain or public telephone.

POSSIBLE SOLUTIONS

COURTHOUSE

Parking - The International Symbol of Accessibility signs should have the fee posted. (Cost $100)

Entrances - Install signs at the inaccessible entrances indicating the location of the accessible entrance. (Cost $100)

Program/Services - Access to other floors continues to be problematic. An intercom or phone system could be installed at the entrance to allow individuals to contact anyone on the other floors. Services can then be brought to individuals. Space should be available so meetings could be conducted on the first floor. (Cost $250). Ideally, an elevator should be installed. The only viable option would be an exterior elevator. (Cost $300,000 to $500,000). The offices utilize a vault, which is only 30" in width and cannot be structurally modified. Several of the offices have counters higher than 32 inches. An auxiliary table should be provided.

Egress - When updating the emergency egress system, the system should be updated to accommodate flashing lights and sirens. (Cost $5,000)

Rest Rooms - The doorways into the restroom cannot be structurally modified. An alternative is to construct one unisex restroom on one of the floors, preferably in the basement, and install signs indicating the location of the accessible restroom. (Cost $5,000). If missing, grab bars should be installed in all restrooms (Cost $100 each).

SHERIFF'S OFFICE AND JAIL

Emergency Egress - When updating the emergency egress system, the system should be updated to accommodate both flashing lights and audible alarms. (Cost $5,000)

Access to Programs - The proper signage should be installed (Cost $500).

Restrooms - Signs should be installed indicating the location of the accessible restroom (Cost $100). Install grab bars. (Cost $75 each restroom) Lower the soap dispenser, hand dryers and mirror.

LIBRARY

Parking - An accessible handicapped parking space should be designated and the proper signs posted. (Cost $100)

Entrances - The non accessible entrance (back door) should have a sign indicating the accessible door (Cost $100). When the door handle is replaced, a hoop handle should be installed.

Access to Programs - The Extension Service and PhillCo are willing to meet with handicapped individuals at different locations. This service should be publicized. Proper signs should be installed indicating the location of exits, restrooms and offices. (Cost $500). When replacing the faucet or handles, paddle type handles should be installed. Add a raised seat for the toilet. (Cost $100). Lower the soap dispenser, hand dryer and mirror.

COUNTY SHOP

Parking - An accessible handicapped parking space should be designated and the proper signs posted. (Cost $100)

Entrances - A ramp over the thresholds at the Saco and Dodson shops should be installed (Cost $100 each). When the door handles are replaced, the loop or lever handles should be installed.

Rest rooms - Grab bars should be installed at the Saco and Dodson shops. (Cost $75 each).

FAIRGROUNDS

Parking - An accessible handicapped parking space should be designated and the proper signs posted. (Cost $100)

Restrooms - Signs should be installed indicating the location of the accessible restrooms.

NURSING OFFICE - CLINIC

Parking - An accessible handicapped parking space should be designated and the proper signs posted. (Cost $100)

Access to Programs - an auxiliary table should be provided (Cost $20). When the door handles are replaced, looped or levered handles should be installed.

Bathrooms - When the door handles are replaced, looped or levered handles should be installed. The proper signage should be installed. (Cost $100)

MUSEUM

Parking - The existing international signs should have the fee posted (Cost $100).

Access to Services - The proper signs should be installed (Cost $200).

FOOD BANK

Parking - An accessible handicapped parking space should be designated and the proper signs posted. (Cost $100)

Entrances - Since the facility requires the use of stairs, perhaps a buzzer can be installed to indicate assistance.

Bathrooms - The doorway into the restrooms should be widened. Grab bars should be installed ($100). When replacing the faucet handles, the paddle type should be used.

EXHIBIT 5-T

National and State Contacts for ADA Information and Assistance
V = voice telephone T = text telephone

***ABLEDATA*.** 8630 Fenton Street, Suite 930, Silver Spring, MD 20910; Phone: 800-227-0216 (V); 301-608-8912 (T); Provides information on assistive technology. Website: http://www.abledata.com

***Access Board*.** Architectural and Transportation Barriers Compliance Board, 1331 F St. NW, Suite 1000, Wash., DC 20004; 800-872-2253 (V), 800-993-2822 (T), 202-272-0080 (V) or 202-272-0082 (T) [You can also fax questions to 202-272-0081; include your phone number and they'll call you back.] Website: http://www.access-board.gov

***ADA Regional Assistance Center- Rocky Mountain ADA Center*.** 3630 Sinton Road, Suite 103, Colorado Springs, CO 80907. 1-800-949-4232 Website: http://www.adainformation.org/

***AgrAbility Project*.** USDA sponsored project to assist handicapped farmers and ranchers. National: http://www.agrabilityproject.org/
and http://www.csrees.usda.gov/nea/ag_systems/in_focus/workforce_if_agrability.html
AgrAbility Project at Montana State University Extension Service, http://extn.msu.montana.edu/, 220 Roberts Hall, Bozeman MT 59717, 800-523-4342 (V).

***Disability Rights Montana, formerly Montana Advocacy Program*.** 1022 Chestnut Street, Helena, Montana 59601. Voice/TDD (406) 449-2344. Toll-free (800) 245-4743. Website: http://www.mtadv.org E-mail: advocate@disabilityrightsmt.org

E*qual Employment Opportunity Commission*. 1801 L St. NW, Washington, DC 20507; 202-663-4900 (V), 202-663-4494 (T); or regional offices at 800-669-4000 (V) or 800-669-0082 (T). Website: http://www.eeoc.gov

***Job Accommodation Network*.** P.O. Box 6080, Morgantown, WV 26506; 800-526-7234 (V/T). Website: http://jan.wvu.edu

Living Independently for Today and Tomorrow (LIFTT). 3333 2nd Avenue North, Suite 101, Billings, MT 59102; 800-669-6319 (In Billings, 259-5181); Serves Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Treasure, Wibaux and Yellowstone Counties. Website: http://www.liftt.org/

***Montana Human Rights Bureau*.** 1625 11th Avenue, P.O. Box 1728, Helena, MT 59624-1728; 406-444-2884 (V); 1-800-542-0807 (V), 406-444-0532 (T). Website: http://erd.dli.mt.gov/humanright/hrhome.asp

***Montana Independent Living Project (MILP)*.** 1820 11th Avenue, Helena, MT 59601; 800-735-6457 (In Helena, 442-5755) Serves Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson. Lewis & Clark, Madison, Meagher, Park, Powell, Silver

Bow, Sweet Grass and Wheatland counties and Yellowstone National Park. Website: http://www.milp.us/ and http://www.milp.us/links/independentliving.html

***National Rehabilitation Information Center (NARIC)*.** 8201 Corporate Drive, Suite 600, Landover, MD 20785 800-346-2742 (V); 301-459-5900 (V); 301-459-5984 (T); 800-346-2742 (V/T). Website: http://www.naric.com

North Central Independent Living Services (NCILS). 1120 25th Avenue NE Black Eagle MT 59414; (406) 452-9834 voice/TTY; (800) 823-6245 (toll-free); (406) 453-3940 fax;. Website: http://www.dphhs.mt.gov/dsd/independentlivingservices/index.shtml E-mail address: ncils.osborn@sofast.net (In Great Falls, 452-9834); Serves Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, McCone, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole and Valley counties.

Office of the Americans With Disabilities Act (ADA). Civil Rights Division, Disability Rights Section, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530; ADA Information Line **800-514-0301. (voice) 800-514-0383 (TTY).** Website http://www.ada.gov/

Parents, Let's Unite for Kids (PLUK). 516 N 32nd St, Billings MT 59101-6003. 800-222-7585; 406-255-0540 (V/T); Serves the state. Website: http://www.pluk.org E-mail: plukinfo@pluk.org PLUK is a private, nonprofit organization formed in 1984 by parents of children with disabilities and chronic illnesses in the state of Montana for the purpose of information, support, training and assistance to aid their children at home, school and as adults. PLUK is an organization of parents and other caring individuals who serve families and individuals with disabilities of any age and at no cost.

Rural Institute on Disabilities, University of Montana. 52 Corbin Hall, Missoula, MT 59812, 406/243-5467 (V/T), 1-800-732-0323 (V). Website: http://ruralinstitute.umt.edu/

SUMMIT Independent Living Center. 700 SW Higgins, Suite 101 Missoula, MT 59803; 800-398-9002 (In Missoula, 728-1630); Serves Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders counties. Website: http://www.summitilc.org/contact.html

Also see: **Return to Work** http://rmtd.mt.gov/aboutus/returntowork.asp, Risk Management & Tort Defense Division, State of Montana.

Exhibit 5-U
Civil Rights Responsibilities Checklist

CIVIL RIGHTS RESPONSIBILITIES CHECKLIST	
Dates(s)	**1. *Civil Right requirements at project start-up (before CDBG approval of first draw)***
	Set up a **CDBG Civil Rights file** (Chapter 1, pages 1-17, 1-19).
	1a. Adopt a Fair Housing Resolution (Exhibit 5-M). **Send a copy to CDBG**. **1b.** Display fair housing posters (Exhibit 5-N). **1c.** Start actions to affirmatively further fair housing (pages 5-2, 5-14, 5-20, 5-21and following).
	1d. Adopt Nondiscrimination (Equal Employment Opportunity/EEO) Policy Resolution (Exhibit 5-A). **Send a copy to CDBG**. **1e.** Implement EEO policies.
	1f. **Adopt ADA and Section 504 Complaint Resolution Procedures (Exhibit 5-R). Send a copy to CDBG. 1g.** Designate an ADA/Section 504 compliance coordinator.
	1h. **Conduct an ADA Self-Evaluation Inventory** (pages 5-3, 5-24 and following). **Send a copy to CDBG. 1i. Prepare an ADA Transition Plan for Handicapped Accessibility to Public Facilities** (Exhibit 5-S). **Send a copy to CDBG**
	1j. Adopt a Hatch Act Resolution (Exhibit 5-Q). **Send a copy to CDBG.**
Date(s):	**2. *Civil rights responsibilities after project start-up***
	2a. Maintain **(in the project's Civil Rights file) documentation/records of project activities related to progress concerning on-going implementation of and follow-through on each of the responsibilities 1.a** through **1.j** (as listed above and explained in Chapter 5). See pages 5-32 and following regarding record-keeping requirements.
	2b. **Publish Exhibit 5-B** (sample *Section 3 Public Notice: Economic Opportunities for Low-Income and Very Low-Income Persons*) or its equivalent. See 5-10 and following.
	2c. **Place the required appropriate contract language regarding civil rights in bid documents and in all contracts**. See Chapter 3, Procurement and Exhibit 3-F.
	2d. Take all civil rights protection action necessary (and keep records of actions taken) during the entire course of your project -- to ensure that no one is discriminated against in receiving services and benefits from the CDBG project, especially persons in the protected groups (page 5-4).
	2e. If your project includes *direct benefits* to LMI individuals/households (rather than *area-wide* benefits): Gather and record the information that shows how your project meets requirements that are applicable to those CDBG projects with direct benefits to individuals: Keep records of direct beneficiaries by using Exhibit 5-D and Exhibit 5-E.
	2f. Complete Exhibit 5-J, *Contract Reporting Form*, at the time that each contract and subcontract exceeding $10,000 is awarded (including contractors and subcontractors that are not minority owned).
	2g. **Assure contractor affirmative action responsibilities concerning contracting with Disadvantaged Business Enterprises** (pages 5-10 and 5-16 and following).

CHAPTER 6 -- LABOR STANDARDS

I. OVERVIEW 6-2
II. APPLICABLE REQUIREMENTS 6-2
A. FEDERAL LABOR STANDARDS REQUIREMENTS 6-3
1. Contract Work Hours and Safety Standards Act 6-3
2. Copeland "Anti-Kickback" Act 6-4
3. Davis - Bacon Related Acts 6-4
4. More Information About Davis - Bacon Act Compliance (website) 6-7
5. Labor Standards and CDBG Projects Within Indian Reservations 6-7
B. STATE LABOR STANDARDS REQUIREMENTS 6-8
1. Public Construction Contracts: Special Labor Conditions 6-8
2. Workers' Compensation Act 6-8
III. GRANTEE LABOR STANDARDS RESPONSIBILITIES 6-9
Step 1 - Designate a Person to Monitor Prevailing Wage Compliance (Compliance with federal Davis - Bacon wage provisions) 6-9
Step 2 - Include Labor Standards Provisions in Bid Documents 6-9
Step 3 - Request the Wage Rate Determination 6-10
Zone Hourly Rate Pay 6-11
Overtime Pay 6-12
Unclassified Workers 6-13
Step 4 - Re-verify the Wage Rate in the Solicitation for Bids 6-13
Step 5 - Verify Bidder Eligibility 6-14
Step 6 - Inform Contractor of Federal Requirements by Conducting A Pre - construction Conference 6-15
Step 7 - Monitor Contractor Performance 6-17
Use of Volunteers 6-18
Step 8 - Investigate Labor Standards Violations 6-19
Step 9 - Maintain Labor Standards Files 6-19
EXHIBITS 6-20

CHAPTER 6

LABOR STANDARDS

I. OVERVIEW

This chapter provides an overview of federal and State requirements which govern the wages and working conditions for laborers and mechanics employed under construction contracts funded in whole or in part by CDBG funds.

- **Compliance with labor standards provisions by the CDBG recipient is a condition for receipt of CDBG assistance.**
- **Section III (Grantee Responsibilities) in this chapter describes responsibilities of the grantee to ensure compliance with federal labor standards.**

  - **These requirements include:**

    (a) Designating a project labor standards officer -- an individual representing the CDBG grantee -- before the beginning of construction whose job will be to ensure compliance with all applicable labor standards provisions and to act as liaison with the contractor and the Montana Department of Commerce/MDOC (Step 1);

    (b) Ensuring that all construction bid documents, contracts and subcontracts contain applicable federal labor standards provisions (federal Davis-Bacon wage rates and other worker protections provisions) and the current federal wage determination(s), and that all contractors are eligible to receive federal funds in payment for work on your project (Steps 2, 3, 4, and 5);

    (c) Conducting a pre-construction conference to inform all contractors and subcontractors of their labor standards and civil rights and other obligations (Step 6);

    (d) Conducting interviews of the selected construction contractors' employee and checking that labor standards posters and wage determinations are posted and accessible at the project site (Step 7);

    (e) Weekly reviewing weekly payrolls for correctness (Step 7) and maintaining records that documenting that that the weekly reviews have been conducted;

    (f) Resolving all labor standards violations promptly (Step 8); and

    (g) Maintaining detailed records to document all administrative and enforcement activities with respect to labor standards (Step 9).

II. APPLICABLE REQUIREMENTS

The following laws provide the legislative authority for the requirements related to workers' wages and hours on projects receiving federal assistance.

- **HUD Form 4010** (included as **exhibits** of this CDBG Manual) provides a summary of the federal labor standards provisions which must be complied with.

- **All construction contracts entered into by CDBG recipients (or their subrecipients) which will be paid in whole or in part with CDBG funds, must contain a copy of HUD Form 4010 (see exhibits) or its equivalent.**

- A copy of **HUD Handbook 1344.1, (REV. 2), Federal Labor Standards Compliance in Housing and Community Development Programs**, is available to each public facilities grantee and additional copies are available upon request from CDBG staff.

  - It is available on the internet at: https://www.hudexchange.info/resource/2511/hud-handbook-13441-federal-labor-standards-compliance/ Any community that will be involved in construction activities as part of its CDBG project should review it and retain a copy for its files.

  - This handbook provides detailed guidance for achieving compliance with the federal labor standards provisions discussed in this chapter.

- In addition to compliance with **labor standards**, grantees must comply with applicable **civil rights requirements** as explained in the Civil Rights Chapter.

A. FEDERAL LABOR STANDARDS REQUIREMENTS

1. Contract Work Hours and Safety Standards Act (CWHSSA)

(40 USC 327-330), as supplemented by U.S. Department of Labor regulations , available on-line at https://www.dol.gov/whd/govcontracts/cwhssa.htm

- This act was enacted in 1962 and consolidated a number of "eight hour" laws, some dating back to the 1890s, which provided for overtime pay after 8 hours a day on federal construction contracts. It also provided for overtime pay after 40 hours a week.

- CWHSSA requires overtime pay for laborers and mechanics at a rate of one and one-half times the basic rate of pay for hours worked on covered contracts in excess of 40 in a workweek.
  - Effective January 1, 1986 the daily (8-hour) overtime requirement was eliminated. Therefore, the Fair Labor Standards Act (FLSA) and CWHSSA requirements are the same. In situations where there are concurrent FLSA and CWHSSA violations, the back wages should be computed and reported under CWHSSA rather than FLSA. In addition to back wages for unpaid overtime hours, CWHSSA also requires an assessment of liquidated damages at the rate of $10 per day for each day that each laborer and mechanic worked without payment of the required overtime compensation.

- The CWHSS Act applies to all federally assisted contracts in excess of $100,000 for construction contracts.

- Under Section 103 of the CWHSS Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

- Section 107 of the CWHSS Act applies to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which

are unsanitary, hazardous, or dangerous to health and safety as determined under construction, safety and health standards promulgated by the U.S. Secretary of Labor.

- CWHSSA has no job site limitation. If an employee performs part of the construction work at the job site and part of the work at a shop, the statute applies to all hours of the contract work.

2. Copeland "Anti-Kickback" Act, https://www.dol.gov/whd/regs/statutes/copeland.htm (18 USC 874),

- The Copeland "Anti-Kickback" Act and implementing regulations collectively provide for the following three safeguards: prohibits "kickbacks" of wages and back wages; requires contractors on DBRA covered project to submit weekly a "statement of compliance" (i.e., that the contractor has paid the required wages); and regulates payroll deductions from wages.

- This Act prohibits any contractor or subcontractor from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he or she is rightfully entitled.

- The following deductions are permitted from wages without the approval of the Secretary of Labor:

  a. Deductions for social security or federal or state income tax withholding.
  b. Deductions for bona fide prepayment of wages.
  c. Deductions for court ordered payments.
  d. Deductions for contributions to fringe benefit plans, provided that the deduction is not prohibited by law, that it is either voluntarily consented to by the employee in writing in advance of the time the work is done or provided for in a collective bargaining agreement, that no profit or other benefit is obtained by the contractor, and that the deduction serves the convenience of the employee.
  e. Deductions for purchase of U.S. savings bonds when voluntarily authorized by the employee.
  f. Deductions to repay loans or to purchase shares in a credit union.
  g. Deductions voluntarily authorized for contributions to organizations such as the Red Cross, United Way, or similar charitable organizations.
  h. Deductions to pay union initiation fees and membership dues, provided that a collective bargaining agreement provides for such deductions.
  i. Deductions for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of FLSA.
  j. Deductions for the cost of safety equipment purchased by the employee, if the equipment is not required by law to be furnished by the employer and if the cost on which the deduction is based does not exceed the actual cost to the employer.

- Contractors and subcontractors on federal Davis-Bacon covered construction projects are required to submit each week a "statement of compliance" certifying compliance with the Davis-Bacon Related Acts requirements. This "statement of compliance" is usually referred to as the certified payroll.

3. Davis-Bacon Related Acts (DBRA), on-line at https://www.dol.gov/whd/regs/statutes/copeland.htm as amended (40 U.S.C. 276 to A-7)

- Congress has extended Davis-Bacon prevailing wage requirements to other laws (related Acts) which provide federal assistance for construction through grants, loans,

loan guarantees, or insurance rather than direct contracts for construction with federal agencies.

- A determination whether the Davis-Bacon prevailing wage provisions apply to all or a portion of an assisted project requires an analysis of the actual labor standards provision in the related Act.

    - For example, the labor standards provision of the Housing and Community Development Act of 1974 does not apply to the rehabilitation of residential property designed for fewer than 8 families.

    - Certain statutes require the payment of Davis-Bacon prevailing wage rates only to those portions of a construction project assisted with federal monies while other statutes – by virtue of the language of the labor standards provision – clearly require the payment of prevailing wage rates to all construction work on a project funded "in whole or in part" by federal monies.

- **The Act applies to construction contracts over $2,000** and mandates that:

    - all laborers and mechanics be paid unconditionally and not less often than once a week,

    - without subsequent deduction or rebate on any account except "permissible" salary deductions,

    - the full amounts due at the time of payments, computed at wage rates not less than those contained in the appropriate Davis-Bacon wage determination issued by the U.S. Department of Labor.

        - Davis-Bacon wage rate webpage: http://www.wdol.gov/

        - Montana federal Davis-Bacon wage rates webpage:

          http://www.wdol.gov/wdol/scafiles/davisbacon/mt.html

- CDBG grantees must include a copy of the current prevailing wage determination issued by the U.S. Department of Labor in each bid solicitation.

    - The bid document must state that the award of a contract is conditioned upon the acceptance of the wage determination.

    - The grantee must report all suspected or reported violations to MDOC.

Comment: Federal Davis-Bacon Wages in the HOME Program and in the CDBG Program

■ Many projects funded by the Montana Department of Commerce include both **CDBG** funds and **HOME** (Home Investments Partnerships Program) funds.

■ Even though HUD funds the **HOME** and **CDBG** programs, they guided by different regulations and statutes.

MDOC HOME Program: http://housing.mt.gov/HM/default.mcpx

MDOC CDBG Program: http://comdev.mt.gov/CDBG/default.mcpx

HOME funds and payment of federal Davis-Bacon wages:

■ In contrast to the CDBG program, Davis-Bacon is triggered when **HOME** funds are used to finance the **construction of new affordable housing with 12 or more units**.
■ **HOME-**assisted contracts for the **rehabilitation or new construction** of **eleven or less residential units are exempt** from Davis-Bacon requirements

CDBG funds and payment of federal Davis-Bacon wages:

■ **CDBG**-assisted contracts for **construction of new housing** require compliance with the provision of the Davis-Bacon Act. According to Section 110(a) of the Housing and Community Development Act (HCDA) of 1974 (as amended), **Davis-Bacon wage requirements are triggered in the CDBG Program as follows:**

(i) When CDBG is used to finance construction work in whole or in part -- laborers and mechanics employed by contractors or subcontractors in such construction work shall be paid wages at rates not less than those prevailing on similar construction work in the same locality. **This provision does not mention anything about a number of units; it only states that Davis-Bacon is triggered when CDBG is used to finance construction work in whole or in part. The key activity here is "construction" that triggers the use of Davis-Bacon wages.**

(ii) When CDBG is used to finance the rehabilitation of a residential property that has at least 8 units. Key aspects of this provision are "rehabilitation", "residential", and "8 units". The activity must be rehabilitation; the property must be residential (be it an apartment complex, a home or an assisted living facility); and must have at least 8 units. **CDBG**-assisted contracts for the **rehabilitation** of seven or less residential units in a single residential are exempt from compliance with the provisions of the Davis-Bacon Act.

Example: A community wants to use **CDBG** funds to finance the building of an assisted living facility (which is the same as constructing the facility); therefore, Davis-Bacon wage requirements are under criterion item (i) above since the activity is construction. The number of units involved is irrelevant.

Example: A community plans to use **CDBG** funds to finance the **rehabilitation of homes for 9 households at 9 different locations**. Davis-Bacon wage requirements **do not apply** to this rehabilitation work – since the work will not be done at one residential property. Each of the 9 separate **residential** properties has only one housing unit – none of the properties has at least 8 units.

3. **For more information about Davis-Bacon Act compliance,** contact your CDBG project liaison. For updated regulations and guidance, you can visit **the Davis-Bacon Act compliance website** at https://www.dol.gov/whd/forstatelocalgovernments.htm

4. Labor Standards and CDBG Grants to Montana Counties for Projects within Montana's Indian Reservations

- Under federal law, eligible applicants for Montana Department of Commerce's **State CDBG Program** funding are limited to general-purpose local governments -- i.e., counties, incorporated cities and towns, and consolidated city-county governments.

- Among Montana municipalities, only Billings, Great Falls, and Missoula are ineligible to apply to the State CDBG Program because they receive CDBG funds from a separate HUD allocation for communities with populations over 50,000 (the **CDBG Entitlement Communities Program)**. You can get information about the Entitlements CDBG Program at: https://www.hudexchange.info/programs/cdbg-entitlement/
- Since 1982, Montana's CDBG Program has been providing infrastructure, affordable housing, and economic development assistance to Montana incorporated cities, towns, and counties. **This assistance has included funding for incorporated communities located within Montana's tribal reservations, such as Browning, Lodge Grass, and Poplar. The CDBG program has also assisted county water and sewer districts located on reservations, such as the Ashland Water and Sewer District where Rosebud County agreed to sponsor the project.**

- **Tribal governments are not eligible under federal law to receive CDBG grants from a state CDBG Program.**

    - However, there is a separate **Indian CDBG Program** for Tribal governments. https://www.hud.gov/program_offices/public_indian_housing/ih/grants/icdbg

    - Thus, Montana's Indian tribes also receive CDBG funds, but from a separate HUD **Indian CDBG (ICDBG) Program.** The ICDBG Program provides eligible grantees with direct grants for use in developing viable Indian and Alaska Native Communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low and moderate income persons. For more information regarding the Indian CDBG program, please contact the Office of Native American Programs at the HUD – Denver, Colorado regional office -- (303) 672-5465; website listed above.

- While Tribal governments cannot apply directly for State CDBG Program funds, **counties can apply for Montana CDBG funds for projects to assist unincorporated communities or tribal utility authorities within a reservation boundary**.

    - **While county governments can apply for and receive grants on behalf of projects on a reservation or to benefit tribal members, there are two important cautions that must be observed:**
        1) **the local county government needs to ensure that they have legal authority to carry out activities on a reservation; and**

        2) **Indian Preference hiring rules apply only to the Indian CDBG Program; it would violate civil rights laws for State CDBG funds to assist an activity where one must be Native American to participate.**

Background: On October 25, 2005, at Montana's request, HUD clarified that it is permissible, under federal law, for a county CDBG recipient to assist projects principally benefiting county residents who are members of an Indian Tribe. When members of an Indian Tribe are also residents of a county, that county can use CDBG funds to assist public facilities or services

predominantly used by Indians, including those who live on Indian reservations or on allotted Indian land. Therefore, the Montana State CDBG Program now allows State CDBG funds to be awarded to counties that apply on behalf of tribal utility authorities to assist tribal communities, providing all other federal and state CDBG requirements are met. All such applications will be considered during the regular grant competition for public facilities applicants.

B. STATE LABOR STANDARDS REQUIREMENTS

☞ If Community Development Block Grant (CDBG) funds will be used to help fund a public facilities project, the federal (Davis-Bacon) prevailing wage requirements supersede those of the State of Montana's Department of Labor and Industry.

The following laws provide the statutory authority for the state requirements related to workers' wages and hours on local government public facility projects.

1. **Public Construction Contracts: Special Labor Conditions (Title 18, Chapter 2, Part 4, MCA)** This Montana law includes special labor requirements applicable to state or local public works projects. Section 18-2-402, https://leg.mt.gov/bills/mca/18/2/18-2-402.htm , provides for the Montana Commissioner of Labor to determine the prevailing wages that will apply to public works projects which are **not** subject to the **federal** prevailing wage law (the federal Davis-Bacon Act). The **Montana** prevailing wage law is often referred to as the "Little Davis-Bacon Act." **CDBG-funded projects are subject to the federal prevailing wages law.**

   Section 18-2-403, MCA, https://leg.mt.gov/bills/mca/18/2/18-2-403.htm , requires that **a preference for the hiring of Montana residents for construction work** be included in all bid specifications and contracts for public works projects that are **not subject to federal requirements that prohibit such preferences**. **CDBG-funded projects are subject to the federal prevailing wages law.**

2. **Workers' Compensation Act (Title 39, Chapter 71, Part 1).** This law requires employers to provide workers' compensation insurance to assure wage supplements and medical benefits for workers suffering from work-related injury or disease. For the Workers' Compensation law, see https://leg.mt.gov/bills/mca_toc/39_71_1.htm . For more information visit the Montana Department of Labor's Workers' Compensation website: http://erd.dli.mt.gov/work-comp-regulations

NOTE: The above is a brief summary of Montana's major labor laws. Local officials and staff or project consultants should always consult the actual text of current Montana law and regulations if any questions arise.

For guidance on the application of Montana's labor laws contact:

Montana Department of Labor and Industry
http://dli.mt.gov/Telephone: (406) 444-1376

III. GRANTEE LABOR STANDARDS RESPONSIBILITIES

CDBG recipients must take the following actions to ensure that all requirements related to labor standards are satisfied for CDBG-funded construction projects. As noted earlier, applicable civil rights requirements must also be complied with.

Step 1 - Monitor and Assure Compliance with Federal Davis-Bacon Wage Provisions

Assuring compliance with the applicable federal Davis-Bacon prevailing wage provisions by CDBG recipients is a condition for receipt of CDBG funds.

- Local officials should designate a person who will be responsible for assuring prevailing wage compliance (i.e., compliance with federal Davis-Bacon wage provisions). This designation should be in the CDBG recipient's Project Management Plan, discussed in Chapter on Project Startup, and before holding the pre-construction conference.

- This person will be responsible for ensuring compliance with federal labor requirements **-- by means of documented weekly reviews of all weekly payrolls and interviews with contractors' employees** -- and will serve as liaison with the contractor, the project engineer or architect, and MDOC. In most cases, this will be the project manager who has been assigned overall administrative responsibility. In some cases, the project engineer/architect may be assigned to oversee prevailing wage compliance.

Step 2 - Include Labor Standards Provisions in Bid Documents

The Department of Labor regulations) establish the procedures for predetermining the wage rates required to be included in bid specifications and contracts for construction projects to which the federal Davis Bacon Act and related Acts apply.

- Contractors need to see the minimum wages they will be required to pay while they develop their cost estimates for work to be performed.

- Workers need to know what wages and benefits are required by the federal Davis Bacon Act; and the Davis-Bacon wages need to be posted at the work site.

- Additionally, each bidder and the contractor selected is required to provide specific certifications assuring the CDBG recipient that they will comply with the prescribed labor standards requirements.

- Specific bid and contract language and certifications are provided for construction contracts in the *CDBG Supplemental General Conditions and Federal Labor Standards Provisions*, which appears in exhibits in the Construction Management Chapterof this Manual, Construction Management: Public Facilities and New Housing Construction.

■ It is generally the responsibility of the CDBG grantee whose projects include Davis-Bacon covered construction to:

- Ensure that the proper Davis-Bacon wage determination(s) is/are applied to such construction contract(s).

- Advise contractors which schedule of federal prevailing wages applies to various construction items if a contract includes multiple wage schedules.

- Be able / ready to advise contractors regarding the duties performed by the various crafts in the wage determination, if they inquire.

- If two or more classifications in the applicable wage determination may perform the work in question, an area practice survey or other method of identifying the proper Davis-bacon wage may be required. Contact your CDBG liaison for guidance in handling this situation -- and also if the Davis-Bacon wage rate determination does not list a job category that is being utilized in the construction project.

- Bidders must also comply with civil rights requirements as described in the Civil Rights Chapter. The prescribed civil rights language for bid documents and contracts is also included in the *Supplemental General Conditions* (see exhibits). These contract provisions require that each contractor develop and document specific plans to:

    - utilize local businesses (the Civil Rights exhibits contains the required Section 3 clauses and has more details about Section 3);
    - promote nondiscrimination;
    - hire local low and moderate income persons (in compliance with Section 3 rules); and
    - utilize minority and Disadvantaged Business Enterprises (DBE) businesses.

- CDBG recipients are also required to maintain current data on bid awards to contractors and subcontractors in their labor standards file.
    - The *Contract Reporting Form***,** see exhibits in the Civil Rights Chapter must be completed at the time each contract and subcontract exceeding $10,000 is awarded,
        - including those with contractors and subcontractors that are not Disadvantaged Business Enterprises (DBEs – see Chapters on Civil Rights and Construction Management).

Step 3 - Request The Federal Davis-Bacon Wage Rate Determination

- **A "Request for Wage Determination" should be submitted to CDBG within the 90 days prior to a scheduled bid opening date.** (See **exhibits.)**

    - This request may be made by letter, electronic mail, fax, or a telephone call to the MDOC CDBG staff assigned as liaison for your project. If you request the wage determination (called a "general decision") by telephone, be sure to make and retain notes indicating the date and time of your request to MDOC.

    - Federal Davis-Bacon wage rate determinations ("general decisions") are issued by the U.S. Department of Labor for each State and county by means of issuing a "general decision" (published at http://www.access.gpo.gov/davisbacon/mt.html). Subsequent modifications of the original decision are also issued (also published at http://www.access.gpo.gov/davisbacon/mt.html)

    - These wage rate determinations are meant to be all-inclusive and representative of an area's prevailing basic wage (hourly wage) and fringe benefits for every type of job classification of laborers and mechanics within their respective industry category. These hourly wage rates will vary for the different *zones* that might be involved in a construction project. (See more below about "zones" and "zone hourly rate pay.")

- Your project's CDBG liaison will regularly review the wage determinations posted by the U.S. Department of Labor and will forward a copy of the applicable determination for inclusion in the bid document.
  - **To identify the correct wage determination, it is very important that the CDBG liaison be provided the following information, since each of these factors affects which rates are applicable to your project:**
    - estimated contract cost;
    - type of work (e.g., installation of waterlines, building construction, new housing construction, etc.)
    - anticipated bid opening date (wages rates published ten days before a bid open must be used); and
    - exact project location.

- **Your project's location may be in more than one wage district. When entering into construction services contracts that cover more than one wage district**, be aware of the requirements of ARM 24.17.144(2) which states:
  - "If a contract for public works is to be performed in more than one district where a different standard prevailing rate of wages is established for a particular craft, classification or type of worker, the highest rate is the rate to be included in the bid specifications and contract provision."
  - **This requires the contractor to pay the highest of the wage rates in effect for the districts covered by the contract.**

Zone Hourly Pay Rate ("Zone Pay")

"Zone pay" is actually **"zone hourly rate pay"** and it is **an amount that is to be added to the base hourly rate when calculating pay, including both regular pay and overtime pay.** The Denver office of the U.S. Department of Housing and Urban Development has confirmed that these zone rate requirements apply to the Montana State CDBG Program.

The published hourly wage (that is, the base hourly rate) **combined with the zone hourly pay amount** (that is, the **zone hourly rate** that is listed in the federal wage rate determination that applies to the project) **becomes an employee's base rate** (on which both regular pay and overtime pay are based).

"Zone pay" is thus a zone hourly rate – it is not travel pay. "Zone pay" is additional hourly pay related to proximity to services. "Zone hourly rate" is the terminology used in the federal Davis-Bacon wage rate determination documents for Montana, which can be found at the following website: **http://www.wdol.gov/wdol/scafiles/davisbacon/mt.html** Zone rate pay is not like fringe pay, since **zone rate pay is properly described as a "zone hourly rate"** and, as stated above, "zone pay" **it is an amount that is to be added to the base hourly rate when calculating pay, including when calculating both regular pay and overtime pay.**

There are three "zone hourly rates applicable to *Heavy Construction* wages. The zone hourly rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the nearest County Court House of the following listed towns to the center of the job: Billings, Bozeman, Butte, Great Falls, Havre, Helena, Kalispell, Lewistown, Miles City, Missoula.

Zone 1: 0 to 30 miles (Base Pay)
Zone 2**:** 30 to 60 miles (Base Pay + Zone 2 Hourly Rate)
Zone 3**:** Over 60 miles (Base Pay + Zone 3 Hourly Rate)

***Example of how to include zone hourly pay rates in calculations of pay due*:**

If the *base hourly rate* for a worker (as listed in the federal Davis-Bacon wage rate determination document for the project) is $21.09 and the *zone pay* is listed as $4.70, then the *appropriate employee's base hourly rate* is $25.79 an hour ($21.09/hour + $4.70/hour).

Under CDBG rules, that rate ($25.79 in this example) is the rate that is to be used in calculating pay for regular hours and also for overtime hours.

Overtime pay = 1.5 x [$21.09 base hourly pay rate + $4.70 zone hourly pay rate] + fringe pay.

Overtime Pay

Overtime pay must be provided after 40 hours have been worked in a workweek.

Overtime pay = (base hourly pay rate + zone hourly pay rate) x (1.5) + fringe pay

- **Federal Davis-Bacon wage rate determinations are issued in the four basic categories within the construction industry:**

    1. ***Heavy Construction***
    2. ***Highway Construction***
    3. ***Building Construction*, and**
    4. ***Residential Construction*.**

- In most cases, CDBG projects will use only one of the prevailing wage rates rate categories (usually the federal *Heavy Construction* prevailing wage rates for Public Facilities projects) and usually *Residential Construction* rates for projects such as the construction of new senior housing or construction of new low-income housing.)

    - **However, in certain cases, more than one wage determination needs to be included in the bid document by the project engineer or architect.**

    - A guideline from the HUD Labor Relations Office in Denver, referred to as the **"80-20 Rule,"** can generally be followed to determine when more than one wage determination should be used for CDBG-funded construction contracts.
        - Work with your CDBG project liaison to get approval for your bid solicitation document (which should include only wage rates that have been reviewed and approved by MDOC/CDBG).

    - **Example #1:** This "rule-of-thumb" provides that if building construction is a "significant component" of the project (the budget for building construction exceeds 20% of the total anticipated construction contract amount), then the project engineer should include *both* Heavy Construction *and* Building Construction rates in the bid document.
        - In addition the HUD Labor Relations Office has advised that where building construction exceeds $1 million dollars in value, the Building Construction wage rates should be included in the bid document.

    - **Example #2:** The same **"80-20 Rule"** would apply to a public facility project which is principally building construction, such as a sewage treatment plant building, but which also includes more than 20% of non-building construction activity. In such cases, the project

engineer should include both Building Construction and Heavy Construction prevailing wage rates in the bid document.

This is a guideline, not a rigid requirement. If your project appears to fall under the "80-20 Rule" -- or where another component representing a significantly different activity may exceed $1 million in value, consult your CDBG liaison for guidance.

- **Unclassified Workers: Job Classifications Not Listed in the Wage Determination**

  - In the event the construction project will involve laborers or mechanics **with job classifications that do not appear in the wage determination document provided**, the CDBG recipient must make a request to MDOC for an appropriate classification.
  - HUD Form 4230A, "Report of Additional Classification and Wage Rate" (**see exhibits**) should be used for this request.

Step 4 – Re-verify the Wage Rate in the Solicitation for Bids

- A copy of the current wage rate determinations provided by the CDBG liaison must be included in any solicitation for bids. Grantees must be sure to verify that the determination is the most current available from the U.S. Department of Labor.

  - Therefore, **not less than fifteen work days prior to the bid opening, your CDBG liaison must be contacted by telephone, electronic mail, fax, or in writing to determine whether the wage rate decisions included in the bid solicitation are still current**.

  - Federal Davis-Bacon wage rates for Montana are posted at the Davis-Bacon website's page for Montana, https://www.wdol.gov/dba.aspx Advance notice of any rate changes are also posted weekly at https://www.wdol.gov/currentdba.aspx

  - In those instances where the U.S. Department of Labor has issued a modification of an earlier wage determination that was thought to be applicable to a project MDOC may require local officials to provide the new rate decision to all potential bidders by addendum, should a reasonable amount of time allow for this procedure.

    - Modifications to applicable wage rate determinations for your project that are **posted by HUD at the Davis-Bacon website ten days before bid opening need to be utilized**.
    - Modifications to the wage rate determination that are **posted at the Davis-Bacon webpage less than ten days before bid opening do not have to be used in the project.**
      - **The federal Davis-Bacon wage rates applicable at the time of the bid opening are those that are applicable for the duration of the contract entered into with the lowest responsive bidder.)**

You should note that Davis-Bacon wage determinations have the following time limitations:

a) **If the wage determination received from MDOC is not used for bid solicitation within 180 days of issuance**, it is void and a new request for determination must be submitted to MDOC.

b) **If a contract is not awarded within 90 days of the bid opening**, any applicable later modifications to the original wage determination must be included in the contract.
c) **If construction has not commenced within 90 days of the signing of the contract**, any applicable later modifications to the original wage determination must be included in the contract.

According to the HUD Labor Relations Office, the modifications under items **b** and **c** above can be incorporated by a Change Order, and do not require re-bidding.

Grantees should also check with their legal advisors and consultant engineers/architects and with CDBG staff, since there may be more restrictive or different time frames, such as 60 days under State law, for such contract changes in the actual bid document. If this situation arises, please contact your CDBG liaison for guidance.

Step 5 - Verify Bidder Eligibility

- The U.S. General Services Administration maintains lists of contractors that have been found in serious violation of federal labor standards or other requirements, and therefore have been debarred, suspended, or otherwise declared ineligible for participation in federally assisted construction projects. CDBG **grantees are required to obtain MDOC clearance (by means of CDBG conducting a state and federal debarment check) on all tentatively proposed prime contractors (and identified subcontractors) and consultants** prior to **awarding any CDBG funded contracts.**

- As soon as possible following the bid opening, and before awarding any construction or consultant contract, notification must be given to MDOC of (1) the name of the firm selected for contract negotiation on the pending contract and (2) its principal owner(s) and subcontractors.

    - See sample letter in the exhibits. A copy of the letter requesting a debarment check can also be sent by facsimile machine (fax) to expedite the request. The request can also be made by telephone to the MDOC CDBG staff assigned as liaison for your project.

    - DUNS numbers for all the contractors are required so that CDBG can conduct the required federal debarment check. This new requirement, effective January 1, 2009, was listed in Appendix Q of the 2009 CDBG Housing and Public Facilities Grant Application Guidelines.

        - The requirement that the local government's DUNS (Data Universal Numbering System) Number must be provided by all applicants is a compliance requirement of the Federal Funding Accountability and Transparency Act of 2006 which went into effect January 1, 2009. **A contractor can get a DUNS number from the Dun & Bradstreet (D&B) Government Customer Response Center,** https://fedgov.dnb.com/webform

        - Getting a DUNS number can be done on the Web at the address above -- and it can also be obtained over the phone (call 1-866-705-5711). See https://fedgov.dnb.com/webform

    - The CDBG liaison will then check the General Services Administration's "System of Awards Management" (at https://sam.gov/SAM/ CDBG will also check the State of Montana debarment system, http://emacs.mt.gov/DebarredSuspendedVendors , to determine if that contractor's name, any principal's name, or the name of his/her firm appears.
    - MDOC will provide the grantee with a notice stating whether the prospective contractor is eligible or ineligible to be retained for the project.

- If the contractor is determined to be ineligible, the contract may be offered to the first alternate bidder or the bidding procedures may be reopened.
- A copy of any correspondence sent or received from MDOC or notes taken for telephone contacts with MDOC should be retained to document this step.

Step 6 –
Inform Contractor(s) of Federal Requirements by Conducting a Pre-construction Conference and by Posting Important Documents at the Work Site

- **Following the contract award for construction projects involving CDBG funds, the CDBG recipient should hold a pre-construction conference.**
  - The CDBG recipient and prime contractor should **include all subcontractors** in the discussions to ensure that they are aware that they must also comply with the federal labor standards and equal employment opportunity provisions. The project architect and/or engineer (if applicable) will attend the conference to cover the technical or other contract related issues for the CDBG recipient.
  - The CDBG recipient's project manager should be invited to cover the federal or state compliance issues.

- **The pre-construction conference represents a key opportunity prior to the beginning of project construction for giving instructions to the contractor.** A well-planned and executed conference can help prevent problems and misunderstandings that could delay the project.
  - **To assist CDBG recipients in preparing for and conducting the required pre-construction conferences for CDBG funded construction contracts, a Pre-construction Conference Planning Guide** (see exhibits) **has been provided.** This contains guidance for conference preparation, a general format to be used as an agenda, supplemental information on labor standards and civil rights requirements, and a blank conference checklist and agenda which should be followed to record minutes for the conference.

- **At a minimum**, the pre-construction conference should include discussions of:
  - prevailing wage requirements, including posting prevailing wages continually at the job site;
  - employment of apprentices or trainees;
  - weekly pay for employees;
  - submission of weekly payrolls;
  - penalties if prevailing wage requirements and labor standards requirements are not complied with;
  - payment of overtime;
  - equal employment opportunity requirements;
  - employment of minorities and local workers;
  - use of DBEs and local businesses;
  - notices that must be posted at the job site;
  - the use of bona fide, registered subcontractors; and
  - key responsibilities of the contractor, engineer/architect, and project manager.

- In order to document discussions that occur during the pre-construction conference, **the CDBG recipient is <u>required</u> to prepare minutes of the pre-construction conference**.
  - A verbatim record is not necessary -- the names of the persons who attend and a summary of the comments and issues covered is sufficient.
  - **A copy of the minutes should be maintained on file by the Project Manager as well as forwarded to the project's MDOC CDBG liaison**.

Copies of Pre-construction Planning Guide should be provided to each contractor representative who attends the pre-construction conference.

This helps to document that the key requirements have been covered. The form also provides a space for the participants to sign their names to acknowledge that compliance issues were discussed.

- **Notices that must be posted at the construction site** include:
  - Notice to Employees Working on Federal or Federally Financed Construction Projects, Form WH-1321 (see exhibits);
  - a copy of the wage rate decision;
  - Equal Employment Opportunity poster (see exhibits); and
  - Job Safety and Health Protection poster (see exhibits);
    - For posting the required notices at the job site, the contractor may use a bulletin board affixed to the inside or outside of a temporary field office or storage trailer, or if none of these are utilized, on a plywood billboard located near the site of construction activities.
    - The current wage rates would typically be put under a weatherproof plastic covering and posted with the required notices. Regardless of the method used, it is the contractor's responsibility to provide adequate information to his employees regarding payroll and labor protections.
- **Contractor reporting requirements** include:
  - **Weekly Payroll Reports**, which must be submitted **weekly** by both the prime **contractor** and **subcontractor(s)**; and
  - Notice of Approved Apprenticeship or Trainee Program, which must also be submitted -- if applicable.
  - Contractors are urged to use the U.S. Department of Labor (DOL), Payroll Form WH-347. (See sample Form WH-347 in this exhibits.) Contractors may also use and furnish computerized weekly payrolls in lieu of the standard Payroll Form WH-347, if the basic information contained on the WH-347 is provided and the contractor includes a signed certification, which is located on the reverse side of the WH-347. The text of the "weekly statement with respect to the payment of wages," which is required by regulations of the U.S. Secretary of Labor (see exhibits).
  - Contractors can use a numerical code system for reporting job classifications on their payroll form, if the contractor submits a copy of the numerical code system with the initial payroll report and the codes appear to accurately reflect the actual duties of workers observed at the job site.

- **Weekly Payroll Report Forms**, WH-347 contains not only samples of these forms but also examples and instructions for the contractor to follow for completing and filing all the required weekly payrolls on the project (see exhibits).

    - For example, the CDBG recipient should be aware that weekly payroll reports are also required from subcontractors identified as "working owners."

    - A "sole-proprietor" who performs work on the project must still submit weekly payrolls showing himself or herself as "owner", the work classification and the daily and total hours worked.

- To provide additional detailed guidance to contractors for the proper completion and use of the above weekly payroll reports, see "Contractor Payroll Information" (**see exhibits)**. These forms may be ordered from the Superintendent of Documents, Government Printing Office, Washington, D.C. 80402.

Step 7 – CDBG Grantees Monitor Contractor(s) Performance

- It is the Project Manager's responsibility to monitor construction activities to ensure that:

    a. all required notices are posted prominently at the construction site,

    b. the contractor's weekly payroll reports are accurate and submitted weekly as required, and

    c. that the contractor is complying with applicable labor standards.

- This monitoring function can be accomplished through the following activities:

    - **conducting on-site inspections** to ensure that required notices and copies of the applicable wage rates are posted at reasonably accessible locations for the workers to review;

    - **conducting (required) interviews with construction employees** to confirm job classifications and pay rates. **Interviews should be conducted at least once a month with a representative of each classification of laborers involved in the construction and at least 10 percent of the workforce.**

        - The form to be used for construction employee interviews, instructions for conducting the interviews, a completed sample interview form, and instructions for finding the appropriate wage rate based on the sample interview are provided in the exhibits);

    - **comparing weekly payroll reports to the prevailing Davis-Bacon wage rate decision and documenting the completion of these payroll reviews.**

        - Weekly payroll reports must be submitted by the contractor within seven days following completion of the workweek and should be promptly reviewed weekly by the Project Manager or by the designated Labor Standards Officer.

REVIEW OF WEEKLY PAYROLL REPORTS:

Additional guidance to CDBG recipients on the payroll review and employee interview processes is provided in the exhibitsof this chapter.

The CDBG recipient's Project Manager should initial and date each payroll to document that the payroll review has been completed. CDBG staff will review documentation that each weekly payroll has been reviewed. You must maintain adequate records such as these for MDOC review to demonstrate that all labor standards provisions have been complied with and workers' rights are protected.

CDBG has provided a form (see exhibits) for the Project Manager/Labor Compliance Officer to use to verify payroll review, to authorize payment to the contractor, and to certify that the contractor has complied with labor and civil rights requirements as outlined in the CDBG Project Administration Manual and agreed upon by contract. **The Certification of Labor Compliance (Exhibit 6-P) must be submitted to CDBG, during periods of construction, with all drawdown requests to any funding source.**

During periods of construction, drawdown requests to CDBG must be accompanied by Record of Employee Interviews. (See this chapter's exhibits and the Procurement Chapter.)

CDBG also requires that copies of the reviewed weekly payrolls (initialed, annotated as necessary and dated) be submitted with drawdown requests.

Use of Volunteers

The Housing and Community Development Act exempts volunteers from Davis-Bacon Act requirements on Community Development Block Grant (CDBG) Program funded projects.

Davis-Bacon wage rates shall not apply to any individual that:

- performs services for which the individual volunteered;
- does not receive compensation for such services; or is paid expenses, reasonable benefits, or a nominal fee for such services; and
- is not otherwise employed at any time in the construction work.*"*

The Project Manager should use and obtain a signed volunteer certification form (**see exhibits**) from each volunteer worker, other than the contractor's employees, performing work on CDBG-funded project activities.

Step 8 - Investigate Labor Standards Violations

- Violations of labor standards requirements may surface as the result of either monitoring or through a specific complaint by a construction worker.

    - In either instance, **the CDBG recipient is responsible for thoroughly investigating and documenting the alleged violation.**
    - If a violation is confirmed, the Project Manager should first work with the contractor on an informal basis to resolve the problem and allow a reasonable time for correction.
    - .Where the contractor refuses to address the violation or continues to violate labor standards provisions, the CDBG program specialist should be promptly notified in writing of the violation.
    - The contractor should be informed that an unresolved finding of labor standards violation could result in disbarment and make the contractor ineligible for participation in CDBG-assisted construction projects in the future.

Step 9 - Maintain Labor Standards Files

- **You must maintain adequate records for MDOC/CDB G review to demonstrate that all labor standards provisions have been complied with and workers' rights are protected.**

- **For each construction contract, a Labor Standards file should be maintained which includes the following items:**
    - ❑ copies of all applicable Wage Rate Decisions;
    - ❑ evidence that labor standards provisions are included in bid packages and contracts;
    - ❑ the MDOC/CDBG notice of contractor eligibility (not on the federal or state debarred parties list);
    - ❑ a copy of the pre-construction conference minutes;
    - ❑ the Contract Reporting Form (**see exhibits**);
    - ❑ evidence that all required notices have been posted at the construction site (such as photographs taken on site);
    - ❑ the contractor's weekly payroll reports (numbered sequentially and the final one marked "Final");
    - ❑ evidence (s*ignature/initials, review dates, notes*) that show that all weekly payroll reports have been reviewed and verified as correct (see **see exhibits**);
    - ❑ records of construction worker interviews conducted (see exhibits);
    - ❑ evidence of any violations with supporting documentation;
    - ❑ evidence of the resolution of any violations;
    - ❑ copies of lien releases; and

- ❑ completed volunteer certification forms, if applicable.

CHAPTER 6

EXHIBITS

6-A **Federal Labor Standards Provisions: HUD-4010**

6-B **Request for Wage Determination**

6-C **Report of Additional Classification and Wage Rate: HUD-4230A**

6-D **Request for Verification of Bidder Eligibility**

6-E **Pre-construction Conference Planning Guide**

6-F **Federal Wage Poster: WH-1321**

6-G **Equal Employment Opportunity Poster**

6-H **Job Safety and Health Protection Poster**

6-I **Weekly Payroll Report Forms: WH-347 (Payroll) with Instructions for Completing Payroll Form WH-347**

6-J **Contractor Payroll Information**

6-K **Employee Interview Form**

6-L **Labor Standards Definitions**

6-M **Volunteer Certification Form**

6-N **Contractor's Receipt of Required Program Materials**

6-O **Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects**

6-P **Certification of Labor and Civil Rights Compliance and Authorization for Payment**

EXHIBIT 6-A

"FEDERAL LABOR STANDARDS PROVISIONS": HUD 4010 FORM

http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf

Form HUD-4010(06/2009) . Ref. Handbook 1344.1

EXHIBIT 6-B

REQUEST FOR WAGE DETERMINATION

(Date)

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

The *(… name of grantee: City, Town or County of)* is preparing to go to bid for a contract involving FY 200__ Montana Community Development Block Grant (CDBG) funds. The project involves:

-- *(**brief description of activities**)*;
-- *(**estimated amount**);* and
-- *(**projected date of bid opening**)*.

Please send us a copy of the current wage determination that will apply to this project.

Fifteen days prior to the bid opening I will contact you to confirm that the wage rate determination you have sent in response to this request is still current.

Sincerely,

(signature)
Typed Name , Labor Standards Officer
Mailing Address
Telephone and FAX Number
E-mail Address

EXHIBIT 6-C: REQUEST TO CDBG FOR ADDITIONAL CLASSIFICATION AND WAGE RATE

http://www.hud.gov/offices/adm/hudclips/forms/files/4230a.doc

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT **REPORT OF ADDITIONAL CLASSIFICATION AND RATE**	**HUD FORM 4230A** OMB Approval Number 2501-0011 (Exp. 01/31/2010)

1. FROM (*name and address of requesting agency)*	**2. PROJECT NAME AND NUMBER** **3. LOCATION OF PROJECT** (City, County and State)
4. BRIEF DESCRIPTION OF PROJECT	**5. CHARACTER OF CONSTRUCTION** ☐ **Building** ☐ **Residential** ☐ **Heavy** ☐ **Other (specify)** ☐ **Highway**
6. WAGE DECISION NO. (include modification number, if any) ☐ **COPY ATTACHED**	**7. WAGE DECISION EFFECTIVE DATE**

8. WORK CLASSIFICATION(S)	**HOURLY WAGE RATES**	
	BASIC WAGE	**FRINGE BENEFIT(S) (if any)**

9. PRIME CONTRACTOR (name, address)	**10. SUBCONTRACTOR/EMPLOYER, IF APPLICABLE** (name, address)

Check All That Apply:

- ☐ The work to be performed by the additional classification(s) is not performed by a classification in the applicable wage decision.
- ☐ The proposed classification is utilized in the area by the construction industry.
- ☐ The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision.
- ☐ The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s).
- ☐ Supporting documentation attached, including applicable wage decision.

Check One:

- ☐ **Approved, meets all criteria. DOL confirmation requested.**
- ☐ **One or more classifications fail to meet all criteria as explained in agency referral. DOL decision requested.**

_____ **Agency Representative** *(Typed name and signature)*	_____ *Date* _____ *Phone Number*

FOR HUD USE ONLY
LR2000:

Log in:

Log out:

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered non-sensitive and does not require special protection. This information is required to obtain benefits. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Employers engaged on HUD-assisted construction projects subject to Davis-Bacon wage requirements must pay no less than the wages determined to be prevailing by the Secretary of Labor to all laborers and mechanics engaged on the construction work. On occasion, the applicable Davis-Bacon wage decision does not contain all of the work classifications and wage rates needed to complete the construction work. This information collection facilitates the addition of needed work classifications and wage rates for the construction work involved. This form is used by HUD and local agencies administering HUD programs to report employer request(s) for additional classification and wage rates so that an appropriate wage rate can be approved by the Department of Labor for the construction work. This information collection is required by Department of Labor regulations at 29 CFR 5.5. While no assurances of confidentiality are pledged to respondents, HUD generally discloses these data only in response to a Freedom of Information request.

Instructions

General:

Contractors/Employers: Do not need to complete this form. Submit a written, signed request to the responsible contracting agency naming the work classifications and the wage rates, including any fringe benefits, that are proposed.

Local Agency Staff: Complete items 2 through 10. Submit one copy of this form to the responsible HUD Labor Relations Office with a copy of the applicable Davis-Bacon wage decision and the written request from the employer naming the work classifications and wage rates that are proposed. (The employer's request must be made in writing and must be signed.)

1. For HUD or State CDBG Office use. Enter the name and address of HUD Office (or State CDBG office) submitting the report and to which the DOL reply should be sent.
2. Enter the name and number of the project or contract involved.
3. Enter the location of the project involved: city, county and state.
4. Describe the construction involved, e.g., new construction or rehabilitation, number and type of buildings, number of stories, number of units (as applicable). For example, New construction: 3 – 4-story buildings; 120 units.
5. Enter the character of construction as defined by DOL for Davis-Bacon prevailing wage rate purposes.
6. Enter the number of the Davis-Bacon wage decision applicable to the construction work. Include the number of wage decision modifications (if any) applicable to the work.
7. Enter the effective date of the wage decision for the project. (See DOL regulations at 29 CFR 1.6.)
8. Enter the work classifications and corresponding hourly basic wage rates and fringe benefit rates (if any) requested.
9. Self-explanatory.
10. If the requesting employer is not the prime contractor, enter the name and address of the subcontractor/employer making the request.

Remainder of Form: HUD Labor Relations/State CDBG use.

HUD Labor Relations/State CDBG Staff: Evaluate the employer's request against the criteria for approval (see DOL Regulations, 29 CFR Part 5, and related contract labor standards provisions). The criteria are reflected in "checklist" form to ensure that each factor is considered and to ensure that supporting documentation, including a copy of the applicable wage decision, is attached. Check the box next to each criterion that is met; do not check the box next to any criterion that is not met.

If the request meets all criteria, check the appropriate box, enter the name and telephone number of the HUD/State CDBG agency representative, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision and the written request from the employer involved.

If the request fails to pass all criteria, check the appropriate box, enter agency contact information, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision, the written request from the employer involved, *and* a cover letter explaining how the employer's request failed to meet one or more of the criteria.

Submission of Report

Completed forms shall be sent to: Branch of Construction Wage Determinations, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-3014, Washington, DC 20210.

HUD-4230A (8-03) PREVIOUS EDITION IS OBSOLETE
http://www.hud.gov/offices/adm/hudclips/forms/files/4230a.doc

EXHIBIT 6-D

REQUEST FOR VERIFICATION OF BIDDER ELIGIBILITY

(Date)

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

The *(name of grantee: City, Town or County of)* opened bids for the construction on the *(name of project)* on *(date of bid opening)* and we would like clearance on the *(lowest bidder; or two lowest bidders)*. Please check both the current U.S. General Services Administration "System of Awards Management" and the State of Montana List of Debarred Vendors to verify eligibility of the following contractor(s) and subcontractor(s):

[... Provide:]

- *business name(s);*
- *name of owners (principals or partners);*
- *business address and town; and*
- *DUNS Number (DUNS: See CDBG Manual Chapter 6, page 6-14 and* http://fedgov.dnb.com/webform/displayHomePage.do)

Sincerely,

(signature)
Project Engineer *(typed name)*
(or Labor Standards Officer)
Mailing Address
Telephone and FAX Number
E-mail Address

EXHIBIT 6-E

PRECONSTRUCTION CONFERENCE PLANNING GUIDE

PRE-CONFERENCE PLANNING

1. **Identify and notify conference participants of the time and place of the preconstruction conference. Invite your project's CDBG liaison.**

2. **Prepare the materials that will be needed for the conference** (e.g., agenda, notes, forms, posters, expected participants roster, and current approved wage determination).

3. **Organize the materials into individual packets for each conference participant.**

PRECONSTRUCTION CONFERENCE MODEL AGENDA

1. **Identify the official representatives of participating organizations and how they can be contacted for official roster** (include with minutes).

2. **Identify the responsibilities of the architect or engineer, if applicable** (responsibilities may include construction supervision, initial review of contractor payrolls, and certification of partial payment request, etc.).

3. **Identify the responsibilities of the grantee (local government)** (responsibilities may include on-site employee interviews, posting of appropriate posters, and resolution of labor complaints, etc.).

4. **Identify the responsibilities of the contractor** (responsibilities include conformance to prevailing wage determination, and other labor standards, civil rights regulations, Section 3 requirements, MBE/WBE requirements, and timely submission of required reports, etc.).

5. **General discussion of contract terms** (e.g., timing of requests for partial payments, etc.).

6. **Outline and discuss schedule for construction completion** (contractor should provide timeframes for sequences of major construction activities from beginning of construction to final project completion).

7. **Describe responsibilities of subcontractors** (primarily the same responsibilities as contractor -- e.g., prevailing wage rates and labor standards, etc.).

8. **Project inspection** (responsibilities of grantee's Labor Standards Officer, and architect/engineer should be discussed).

9. **Compliance with federal labor standards** (refer to checklist supplement).

10. **Compliance with civil rights regulations** (refer to checklist supplement).

11. **Notices that are required to be posted** (refer to checklist supplement).

12. **Forms the contractor must submit** (refer to checklist supplement).

13. **Contractor's Receipt of Required Program Materials** (to be signed at the conference).

PRECONSTRUCTION CONFERENCE FEDERAL REQUIREMENTS

LABOR AND CIVIL RIGHTS REQUIREMENTS

The grantee should include the following information concerning federal labor standards and civil rights compliance during preconstruction conferences for construction projects involving CDBG funds.

A. WAGE DETERMINATION AND EMPLOYEE CLASSIFICATION

Davis-Bacon Act is applicable to all construction contracts awarded by grantees in excess of $2,000. (The rehabilitation of less than eight residential units under one contract is exempt from this requirement. See Chapter 6, pages 6-5 and 6-6.)

1. Laborers, mechanics, apprentices, and trainees must receive no less than the prevailing wages, plus fringe benefits paid for similar work in the locality. Conference participants should be provided with a copy of the current wage determination that has been approved by the Montana Department of Commerce and included in the contract document.

    a. Workers are covered by the Davis-Bacon Act while working at the site, transporting materials to and from the site and manufacturing or furnishing articles, supplies, or equipment on-site.

    b. Apprentices or trainees may be paid less than journeyman wages if they are enrolled in an apprenticeship or training program approved by the U.S. Department of Labor (or State Apprentice Council recognized by the Department of Labor's Employment and Training Administration).

2. If the contractor needs laborers or mechanics whose classifications do not appear on the wage determination, the local CDBG administrator or designated Labor Standards Officer must make a request for an appropriate classification to the MDOC CDBG Project liaison Officer. (The CDBG staff will then propose a classification and submit it to the U.S. Department of Labor, which will advise the State as to the acceptability of the request within 30 working days. See **Exhibit 6-C** for a sample Report of Additional Classification and Wage Rate Form, #HUD-4230A, and instructions.)

3. Employees or supervisors working at other than their assigned classifications for 20 percent or more of their time must be paid and shown on the payrolls for each classification or, paid for all hours at the higher wage scale.

4. If the wage determination lists fringe benefits, the contractor must either provide them or pay the hourly equivalent in cash, in addition to the predetermined basic wage.

5. Claims and disputes should be reported in writing to the DOC CDBG Program Officer. Resolution of all claims and disputes must be reported to the U.S. Department of Housing and Urban Development (HUD), Labor Relations Office. HUD may be called upon by the State to investigate and settle claims and disputes, or may enter of their own volition if the need arises.

6. Laborers and mechanics must be paid no less than once per week.

B. WORK HOURS, OVERTIME, AND SAFETY STANDARDS

Contract Work Hours and Safety Standards Act, As Amended is applicable to all contracts awarded by local grantees in excess of $2,000 for construction projects employing mechanics or laborers.

1. Forty hours is the standard workweek.

2. One and one-half times the basic hourly rate of pay, exclusive of fringe benefit payments, must be paid for all hours over forty in a work week.

3. No worker shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health and safety.

C. DEDUCTIONS

Copeland "Anti-Kickback" Act is applicable to any federally assisted contract subject to Davis-Bacon standards.

1. Full wages earned must be paid.

2. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, or accident insurance, vacation or holiday pay, and defraying costs of apprenticeship or similar programs.

D. CONTRACTOR REPORTING REQUIREMENTS

In conjunction with the previously described labor and civil rights requirements the contractor is required to periodically submit several forms to the grantee's designated Labor Standards Officer. The prime contractor is fully responsible for providing all reports required from subcontractors.

1. Each contractor (prime and sub) must submit (through the prime contractor) Certified Payroll Forms (WH-347) for each week of work from the time the project begins through completion. If the contractor prefers to use a form other than WH-347, it must contain identical information. Weekly payrolls should be numbered sequentially, and be submitted to the grantee no later than seven days following the end of the pay period. **Exhibit 6-I** contains a blank Certified Payroll Form WH-347 and a completed example of WH-347.

2. A completed Statement of Compliance with Labor Standards and Prevailing Wage Requirements (**Exhibit 6-P**) must be submitted with each Certified Payroll Form. Certified payrolls must be submitted for each week that work is done on the project. Final payrolls shall be identified accordingly. If no work is performed on the project during a given period, on the next performance payroll, state: “No work performed from pay period ending (date) through (date).” The Statement of Compliance appears on the back of form WH-347 or as form WH-348 if WH-347 is not used. **Exhibit 6-I** contains a sample Statement of Compliance (WH-348).

3. The first week after work on the project begins the grantee's designated Labor Standards Officer should be supplied with the names of anyone (other than owner or officer) who is authorized to sign payrolls for each contractor (prime and sub).

4. The prime contractor should supply the grantee's designated Labor Standards Officer with the names of all subcontractors working on the project prior to the preconstruction conference. Each subcontractor may then be informed of the conference. The names of any new subcontractors must be supplied immediately after they begin work on the project. (Contractors and subcontractors need to be reviewed and cleared by CDBG on the federal and state lists of debarred and excluded contractors. DUNS numbers for contractors are required. DUNS: See Chapter 6 of the CDBG Manual, page 6-14.)

5. In accordance with E.O. 11246 each contractor (prime and sub) engaged in work totaling $10,000 or more is required to submit a Minority Contract Reporting Form, as well as any documentation regarding affirmative action efforts to the local grantee. **Exhibit 5-J** contains a sample Contract Reporting Form for use by the CDBG grantee).

6. **WORKING SUBCONTRACTORS.** Contractual relationships between contractors and alleged subcontractors (who perform mechanics' work) which are formed for the purpose of evading the application of prevailing wage requirements are expressly prohibited and may provide a basis for debarment. Where there is any doubt as to the bona-fide nature of a self-employed subcontractor who has no other employees, the following must be checked:

    a. Does the subcontractor have a registered trade name and is there a telephone listing under that name?
    b. Does the subcontractor have a license?
    c. Does the subcontractor have liability insurance or a subcontractor's bond?
    d. Does the subcontractor have a Federal Tax Identification Number?

Any of these criteria in conjunction with a signed contract containing HUD Federal Labor Standards Provisions from each such subcontractor should be sufficient to establish that he or she is a bona-fide subcontractor. Such a subcontractor will submit payrolls indicating only that he/she is the owner, the hours worked and the classification. The phrase "self-employed owner" shall be written under the name, address, and Social Security Number (See Column 1 on Form WH-347). Nonbonafide self-employed subcontractors must be carried as employees on the payroll of the contractor who engaged him/her, and must be paid the prevailing wage rate for the classification of work performed.

E. JOB SITE NOTICES

The prime contractor is required to post the following notices in a manner that is conspicuous to all workers engaged in the construction project:

1. A copy of the Department of Labor's Notice to Employees Working on Federal or Federally Financed Construction Projects (Form WH-1321), and the appropriate wage determination; **(Exhibit 6-F** provides a sample Notice to Employees.)

2. A copy of the Montana Department of Commerce's Equal Employment Opportunity poster (**Exhibit 6-G**); and

3. A copy of the Department of Labor's Job Safety and Health Protection poster (**Exhibit 6-H**).

F. MONITORING AND SANCTIONS

The grantee's designated Labor Standards Officer is responsible for monitoring the construction project to assure compliance with all relevant labor and civil rights requirements.

1. On-site inspections must be conducted by the grantee's Labor Standards Officer to ensure that required notices are posted.

2. Weekly payroll reports of the prime contractor and all subcontractors must be examined by the grantee's Labor Standards Officer to ensure compliance with labor standards. (See Chapter 6 of the CDBG Grant Manual, pages 6-16 through 6-18.)

3. At least once per month the grantee's Labor Standards Officer must conduct interviews with construction employees of the prime contractor and subcontractors. The interviews should be scheduled early into the first month of construction to assure initial compliance with labor standards, and on shorter projects, conducted midway towards completion. A representative of each classification of mechanic and laborer, and at least 10 percent of the work force should be interviewed. **Exhibit 6-K** contains a sample Record of Employee Interview, and instructions for conducting employee interviews.

4. Violations of the Davis-Bacon and related acts may result in restitution of wages to employees, suspension of the project payment, contract termination, and/or suspension or debarment of the contractor or subcontractor.

5. Violation of the Contract Work Hours and Safety Standards Act makes contractors liable for unpaid wages and for liquidated damages to the federal government in the sum of $10.00 per worker per day for each violation. Intentional violations are a federal misdemeanor, punishable for each and every offense by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or both.

6. Violations of the Copeland Anti-Kickback Act could be the basis for contract termination and could result in criminal prosecution by the federal government.

G. CONTRACTOR AFFIRMATIVE ACTION

Executive Order 11246, as amended by Executive Order 11375, requires nondiscrimination in employment under federally assisted contracts and requires affirmative action to ensure equality of opportunity in all aspects of employment.

The prime contractor and all subcontractors must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.

Disadvantaged Business Enterprises: Executive Order 12432 establishes the development of Disadvantaged Business Enterprises (DBEs) as a national priority.

1. The grantee should supply a list of area DBEs that the prime contractor can use for contacting such businesses.

2. In cases where subcontracts are still available, the prime contractor must make and document a good faith effort to contact qualified DBEs.

Section 3 of the Housing and Urban Development Act of 1968 provides that to the extent feasible, opportunities for training and employment must be given to lower-income residents of CDBG assisted project areas, and that contracts for work in connection with such projects be awarded to business concerns which are located in, or are owned in substantial part, by "project area" residents.

The grantee should inform the contractor of this requirement. The "project area" is defined as the county in which the project takes place.

HUD Administrative Requirements for Grants, 24 CFR part 85.36, establishes procurement standards to be followed in federal assistance programs.

Whenever possible, small, minority and women-owned businesses should be solicited as potential sources of supplies, construction and services.

PRECONSTRUCTION CONFERENCE CHECKLIST

PRE-CONFERENCE PLANNING

_____ 1. **Identify, and notify conference participants of the time and place of the preconstruction conference. Invite the CDBG Project liaison.**

_____ 2. **Prepare the materials that will be needed for the conference.**

_____ 3. **Organize the materials into individual packets for each conference participant.**

PRECONSTRUCTION MODEL AGENDA

_____ 1. **Identify the official representatives of participating organizations, and how they can be contacted for official roster.**

_____ 2. **Identify the responsibilities of the architect, or engineer if applicable .**

_____ 3. **Identify the responsibilities of the grantee (local government).**

_____ 4. **Identify the responsibilities of the contractor.**

_____ 5. **General discussion of contract terms.**

_____ 6. **Schedule for construction completion.**

_____ 7. **Subcontractors.**

_____ 8. **Project inspection (responsibilities of grantee (local government), and architect or engineer).**

_____ 9. **Compliance with federal labor standards.**

____ Contractor's Guide to Davis Bacon Requirements and Certified Payroll Forms
____ Federal Davis-Bacon Act
____ Contract Work Hours and Safety Standards Act
____ Copeland Anti-Kickback Act

____ 10. **Compliance with civil rights regulations.**

____ Executive Order 11246 as amended by Executive Order 11375
____ Minority and Women-Owned Business Enterprises: Executive Order 12432
____ Section 3 of the Housing and Urban Development Act of 1968

____ 11. **Notices that are required to be posted.**

____ Department of Labor's Notice to Employees Working on Federal or Federally Financed Construction Projects (**Exhibit 6-F**)
____ Appropriate wage determination
____ Montana Department of Commerce's Equal Employment Opportunity poster (**Exhibit 6-G**)
____ Department of Labor's Job Safety and Health Protection poster (**Exhibit 6-H**)

____ 12. **Forms the contractor must submit.**

____ Certified Payroll Forms (WH-347) (**Exhibit 6-I**), or equivalent
____ Statement of Compliance with Labor Standards and Prevailing Wage Requirements (WH-348) (**Exhibit 6-I**)
____ Copy of the approved plan or program, if fringe benefits will not be paid in cash
____ Apprenticeship or training program agreement, if any apprentices will be working on the project
____ Names of persons authorized to sign payrolls
____ Names of all subcontractors
____ Contract Reporting Form **(Exhibit 5-J**)

_____ 13. **Forms to be signed at preconstruction meeting.**

____ Contractor’s Receipt of Required Program Materials **(Exhibit 6-N)**

EXHIBIT 6-F

Federal Wage Poster: WH-1321

EMPLOYEE RIGHTS

UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICSEMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf

WH 1321(Revised April 2009)

EMPLOYEE RIGHTS
UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES — You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME — You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT — Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES — Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY — If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.

For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

U.S. Wage and Hour Division

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH 1321(Revised April 2009)

EEO

Equal Employment Opportunity

The organization named herein receives Federal financial assistance from the U.S. Department of Housing and Urban Development.

In its activities so assisted the organization is prohibited from discriminating against any employee or applicant because of race, color, sex, national origin, religion, or handicap in connection with:

- **employment, upgrading, demotion or transfer**
- **recruitment or recruitment advertising**
- **layoff or termination**
- **rates of pay or other forms of compensation**
- **selection for training, including apprenticeship**

This notice must be posted in conspicuous places available to employees and applicants for employment.

Organization's name and address:

Requests for information and complaints of discrimination may be addressed to:
Human Rights Division
Department of Labor & Industry
P.O. Box 1728
Helena, MT 59620
(406) 444-2884

--or--
Montana CDBG Program
Community Dev. Block Grant Program
Department of Commerce
P.O. Box 200523
Helena, MT 59620-0523
(406) 841-2791

EXHIBIT 6-H

JOB SAFETY & HEALTH PROTECTION

The Occupational Safety and Health Act of 1970 provides job safety and health protection for workers by promoting safe and healthful working conditions throughout the Nation. Provisions of the Act include the following:

EMPLOYERS

All employers must furnish to employees employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious harm to employees. Employees must comply with occupational safety and health standards issued under the Act.

EMPLOYEES

Employees must comply with all occupational safety and health standards, rules, regulations and orders issued under the Act that apply to their own actions and conduct on the job.

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor has the primary responsibility for administering the Act. OSHA issues occupational safety and health standards, and its Compliance Safety and Health Officers conduct jobsite inspections to help ensure compliance with the Act.

INSPECTION

The Act requires that a representative of the employer and a representative authorized by the employees to be given an opportunity to accompany the OSHA inspector for the purpose of aiding the inspection.

Where there is no authorized employee representative, the OSHA Compliance Officer must consult with a reasonable number of employees concerning safety and health conditions in the workplace.

COMPLAINT

Employees or their representatives have the right to file a complaint with the nearest OSHA office requesting an inspection if they believe unsafe or unhealthful conditions exist in their workplace. OSHA will withhold, on request, names of employees complaining.

The Act provides that employees may not be discharged or discriminated against in any way for filing safety and health complaints or for otherwise exercising their rights under the Act. Employees who believe they have been discriminated against may file a complaint with their nearest OSHA office within 30 days of the alleged discriminatory action.

CITATION

If upon inspection OSHA believes an employer has violated the Act, a citation alleging such violations will be issued to the employer. Each citation will specify a time period within which the alleged violation must be corrected.

The OSHA citation must be prominently displayed at or near the place of alleged violation for three days, or until it is corrected, whichever is later, to warn employees of dangers that may exist there.

PROPOSED PENALTY

The Act provides for mandatory civil penalties against employers of up to $7,000 for each serious violation and for optional penalties of up to $7,000 for each nonserious violation. Penalties of up to $7,000 per day may be proposed for failure to correct violations within the proposed time period and for each day the violation continues beyond the prescribed abatement date. Also, any employer who willfully or repeatedly violates the Act may be assessed penalties of up to $7,000 for each such violation. A minimum penalty of $5,000 may be imposed for each willful violation. A violation of posting requirements can bring a penalty of up to $7,000

There are also provisions for criminal penalties. Any willful violation resulting in the death of any employee, upon conviction, is punishable by a fine of up to $250,000 (or $500,000 if the employer is a corporation), or by imprisonment for up to six months, or both. A second conviction of an employer doubles the possible term of imprisonment. Falsifying records, reports, or applications is punishable by a fine of $10,000 or up to six months in jail or both.

VOLUNTARY ACTIVITY

While providing penalties for violations, the Act also encourages efforts by labor and management, before an OSHA inspection, to reduce workplace hazards voluntarily and to develop and improve safety and health programs in all workplaces and industries. OSHA's Voluntary Protection Programs recognize outstanding efforts of this nature.

OSHA has published Safety and Health Program Management Guidelines to assist employers in establishing or perfecting programs to prevent or control employee exposure to workplace hazards. There are many public and private organizations that can provide information and assistance in this effort, if requested. Also, your local OSHA office can provide considerable help and advice on solving safety and health problems or can refer you to other sources for help such as training.

CONSULTATION

Free assistance in identifying and correcting hazards and in improving safety and health management is available to employers, without citation or penalty, through OSHA-supported programs in each State. These programs are usually administered by the State Labor or Health department or a State university.

POSTING INSTRUCTIONS

Employers in States operating OSHA approved State Plans should obtain and post the State's Equivalent poster.

Under provisions of Title 29, Code of Federal Regulations, Part 1903 2(a)(1) employers must post this notice (or facsimile) in a conspicuous place where notices to employees are customarily posted.

EXHIBIT 6-I

Weekly Payroll Report Forms

- **WH-347/Payroll and WH-348/Statement of Compliance**
- **Instructions for Completing Payroll Form WH-347**

These forms are available on-line on the Internet at the following locations:

WH-347 and WH-348 together:
http://www.dol.gov/whd/forms/wh347.pdf

Instructions for Completing Payroll Form WH-347:
http://www.dol.gov/whd/forms/wh347instr.htm

PAYROLL

SAMPLE ONLY (For Contractor's Optional Use; See Instruction, Form WH-347 Inst.) **SAMPLE ONLY**

NAME OF CONTRACTOR [x] **OR SUBCONTRACTOR** [ ] — **ADDRESS**

(1) ACES CONSTRUCTION COMPANY, INC. — 1776 America Street; Anytown, Montana 59604

PAYROLL NO: #1 (Show # and FINAL at end) | **FOR WEEK ENDING**: July 4, 1983 | **PROJECT AND LOCATION**: Happy Valley Manor - Anytown, MT 59604 | **PROJECT OR CONTRACT NO.**: 101-35075-PM-WAH-18

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE: S 28	M 29	T 30	W 1	TH 2	F 3	S 4 — HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS: FICA	WITH-HOLDING TAX	STATE W / H	VAC FUND	* OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
(2) John Doe 521-44-7086 1974 Clark Ave. Downtown, MT 59624	1	Foreman Carpenter **	O		2	2	1		1		6	10.95	** A working foreman is one who, in addition to his supervisory duties - at least 20% - performs the work of a laborer or mechanic during a substantial part of his work week.							
			S		8	8	8	8	8		40	7.30	357.70	15.18	53.60	8.00	10.00		86.78	270.92
(3) Dick Brown 544-43-7806 Box 245 Anytown, MT 59601	2	3 cu. yd. Backhoe Operator	O															Ins.		
			S		8	8	8	8		8	40	6.00	240.00	10.00	45.00	5.00		5.00	65.00	175.00
(4) John Doe 501-44-7086 Anywhere St. Downtown, MT 59624	0	10 cu. yd. Truck Driver	O	(WORKING ON MORE THAN ONE JOB; ONE JOB IS AN FHA PROJECT, STATE: "Circled hours this project")																
			S		4		6		8		18	6.45	116.10							
					4	8	2	8			22		239.30	10.59	48.00	7.00			65.59	173.71
(5) Bill Thomas 515-38-1005 1050 Clearbridge St. Somewhere, MT 59011	1	Cement Mason	O	(FRINGE BENEFITS)																
			S		8	8	8		8		32	6.56	209.92	-- Fringe Benefits Paid in Cash						
John Johnson 505-43-5478 515 Broadway Anytown, MT 59601	2	Cement Mason	O																	
			S		8	8	8		8		32	5.90	188.80	-- Fringe Benefits Paid Into an Approved Fund or Plan						
(6) Tom Tompson 505-43-5478 Box 1010 Hallelujah, MT 59903	2	Laborer	O	(DUAL CLASSIFICATION: Worker must be entered on payroll twice and sign by the lower rate of pay received.)																
			S		4	7		8			19	4.95	94.05							
Tom Tompson 505-43-5478 Box 1010 Hallelujah, MT 59903		Cement Mason	O										123.90							
			S		4	1	8		8		21	5.90	217.95	10.80	15.90	5.80	10.00		42.50	175.45
(7) Harry Jamison 555-44-3372 Box 333 Friendly, MT 59526		(Owner) Tile Setter	O	(WORKING OWNER: Must show the daily and total hours worked on the site.)																
			S		8	8	8	8	8		40									
(8) Joe Smith 527-38-7537 730 - 3rd Street Anytown, MT 59601	0	Apprentice Carpenter 1st Step - 55%	O	(APPRENTICES: Apprenticeship Certificate Showing Dept of Labor Certification Must Be Submitted With the First Payroll The Apprentice Appears On.)																
			S		8	8		8	8		32	4.02	128.64	5.00	8.00	2.00			15.00	113.64

****ALL DEDUCTIONS UNDER "OTHER" SUCH AS PURCHASES, ADVANCES, BONDS, ETC. MUST BE IDENTIFIED AND SUPPORTED BY A SIGNED STATEMENT FROM THE EMPLOYEE AUTHORIZING SUCH DEDUCTIONS WITH THE TOTAL AMOUNT AND REPAYMENT AMOUNT.**

Date _____

I, Samantha Sammons (Name of signatory party), Bookkeeper (Title) do hereby state:

(1) That I pay or supervise the payment of the persons employed by Ace Construction Company (Contractor or Subcontractor) on the Happy Valley Manor (Building of work)

101-35075 ; that during the payroll period commencing on the 28th day of June , 19 83 and ending the 4th day of July 19 83 , all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said Ace Construction Company (Contractor or Subcontractor) from the full weekly wages earned by any person and that

no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), Issued by the Secretary of Labor under the Copeland Act as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

FICA, Federal, and State

Other: Vacation and Insurance

BE SURE TO INCLUDE EXPLANATION AND SIGNED STATEMENT FOR ALL "OTHER" DEDUCTIONS.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract, that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

John Johnson) (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH (Bill Thomas)

☐ Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Exceptions must be approved.	Use this space for any special
Send copy of plan.	or unusual circumstances which
	affects wages or employees.

Remarks

Additional space which can be used for explanations.

NON-COVERED JOB CLASSIFICATIONS: Workers performing the following classifications are not subject to the prevailing wage requirements - Project Superintendent, Project Engineer, Supervisory Foreman, Watchman, Waterboy, Messenger, and Clerical workers such as timekeepers, payroll clerks, and bookkeepers.

NAME AND TITLE	SIGNATURE
Samantha Simmons Bookkeeper ***	

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

***** AN AUTHORIZATION FORM OR LETTER MUST BE SUBMITTED FOR ANYONE SIGNING PAYROLLS OTHER THAN AN OFFICER OF THE COMPANY.**

Instructions For Completing Payroll Form, WH-347

http://www.dol.gov/whd/forms/wh347instr.htm

General: The use of the WH-347 payroll form is not mandatory. This form has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

This form meets needs resulting from the amendment of Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay not less than fringe benefits as predetermined by the Department of Labor, in addition to payment of not less than the predetermined rates. The contractor's obligation to pay fringe benefits may be met either by payment of the fringes to the various plans, funds or programs or by making these payments to the employees as cash in lieu of fringes.

This payroll provides for the contractor's showing on the face of the payroll all monies to the employees, whether as basic rates or as cash in lieu of fringes and provides for the contractor's representation in the statement of compliance on the rear of the payroll that he is paying to other fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Column 1 - Name, Address, and Social Security number of Employee: The employee's full name must be shown on each weekly payroll submitted. The employee's address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless his address changes. Although not required by Regulations, Parts 3 and 5, space is available in the name and address section so that Social Security numbers may be listed.

Column 2 - Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by employees. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. Employee may be shown as having worked in more than one classification provided accurate breakdown or hours so worked is maintained and shown on submitted payroll by use of separate entries.

Column 4 - Hours worked: On all contracts subject to the Contract Work Hours Standard Act enter as overtime hours worked in excess of 8 hours per day and 40 hours a week.

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay, including Fringe Benefits: In straight time box, list actual hourly rate paid the employee for straight time worked plus in cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus $3.25/.40. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. In overtime box shown overtime hourly rate paid, plus any cash in lieu of fringes paid the employee. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962. In addition to paying no less than the predetermined rate for the classification which the employee works, the contractor shall pay to approved plans, funds or programs or shall pay as cash in lieu of fringes amounts predetermined as fringe benefits in the wage decision made part of the contract. See "FRINGE BENEFITS" below.

FRINGE BENEFITS - Contractors who pay all required fringe benefits: A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of labor shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such a contractor shall check paragraph 4(a) of the statement on the reverse of the payroll to indicate that he is also paying to approved plans, funds or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in section 4(c).

Contractors who pay no fringe benefits: A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check paragraph 4(b) of the statement on the reverse of the payroll to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes. The contractor shall pay, and shall show that he is paying to each such employee for all hours (unless otherwise provided by applicable determination) worked on Federal or Federally assisted project an amount not less than the predetermined rate plus cash in lieu of fringes as shown in Section 4(c). The rate paid and amount of cash paid in lieu of fringe benefits per hour should be entered in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of the employees' weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally

assisted project and then the gross amount earned during the week on all projects, thus $63.00/$120.00.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction should be involved, use first 4 columns; show the balance deductions under "Other" column; show actual total under "Total Deductions" column: and in the attachment to the payroll describe the deduction contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR, Part 3. If the employee worked on other jobs in addition to this project, show actual deductions from his weekly gross wage, but indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory

Totals - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While this form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 USV 1001, namely, possible imprisonment of 5 years or $10,000.00 fine or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Space has been provided between item (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See paragraph entitled "FRINGE BENEFITS" above for instructions concerning filling out paragraph 4 of the statement.

INSTRUCTIONS TO CONTRACTORS
FOR PREPARATION OF PAYROLL FORM WH-347

1. Make certain all items in the heading are completed, including payroll number and project number. Also review reverse side of from to make certain proper block is checked and signature is affixed.

2. Include each employee's full name, address, and social security number the first time such employee is listed on a payroll report. On subsequent reports, you may put the employee's name and social security number only. In the same box annotate one of the following codes for each employee:

    - MF *(minority female)*
    - WM *(white male)*
    - MM *(minority male)*

3. For equipment operators and truck drivers, include a brief but clear description of the equipment the employee is operating. (This is to be shown on each payroll report.)

4. Show the hours and wages actually worked on the project separate from the employee's total wages for the week. To illustrate: "John Doe" on this example worked on the project 18 hours and on other projects for the same contractor 22 hours. (18 x 6.45 = $116.10 earned this project, $239.30 gross amount earned all projects.)

5. If voluntary deductions are being taken from an employee's wages, there must be a description/letter signed for the deduction. The letter must include the period of time the deduction will be made.

6. When fringe benefits are sent to an approved program, they need not be included in the rate of pay. (See Example.) Cement Mason, John Johnson receives $5.90 per hour, an additional $0.66 is being sent to approved plan which is indicated by marking box (a) of paragraph (4) on the Statement of compliance. Cement Mason, Bill Thomas receives the required fringe benefits in cash. The total rate of pay shown must be equal to the wage rate for that classification plus fringe benefits. $5.90 (wage rate) plus $0.66 (fringe) = $6.56 and is indicated by marking box (b) of paragraph (4).

7. When an individual performs work on the project in more than one classification within the same workweek, have that individual sign the payroll report or submit a copy of his time card with the payroll report, if a lower rate of pay per hour is applicable.

8. When a valid subcontractor works with his employees on the job, he will be listed with his employees on each payroll. However, he need only show his name as owner. (See Example: Harry Jamison (Owner).) If the subcontractor has no employees and performs alone on the project, he will submit weekly payrolls showing daily and total hours worked. When two or more working owners/operators (partners, co-owners, corporation officers, etc.) perform work on the project they must show daily and total hours worked. (Always show exact work classification.)

9. Submit an apprenticeship certification with the payroll report on which the apprentice is first reported. Indicate what step of apprenticeship and percentage of the journeyman wage he is receiving. (See Example.)

10. It is the General Contractor's responsibility to submit correct payrolls. The General Contractor should therefore compare the wage rate shown on each Subcontractor's payroll with the required rate shown on the wage determination for this project. If there are underpayments, restitution should be required and the payroll report corrected prior to submitting it to the Contracting Agency.

11. Payroll Form: Contractors are urged to use the Department of Labor (DOL) Form WH-347, Payroll. The text of the Weekly Statement with Respect to the Payment of Wages, which is required by regulations of the Secretary of Labor, appears on the reverse side of this optional payroll form. A contractor may use an appropriate payroll form of his own choice, but he must report all required items of information and he must attach a copy of the "weekly statement", using either DOL Form WH-348, Statement of Compliance, which contains the "weekly statement" and related instructions, or any form containing the "weekly statement" in the identical wording as contained in Forms WH-347 and WH-348.

12. In the event any contractor sees he will be employing a trade for which a wage is not listed on the wage determination, it should be brought immediately to the attention of the Contracting Agency so that a wage rate determination for that trade can be made at the earliest possible date. A HUD Form 4230A should be completed, so that a rate can be established. (See Example.)

13. Submission of Payrolls: Each contractor or subcontractor shall submit to the Contracting Agency a completed payroll for each workweek that work is done on the project. All payrolls are to be sequentially numbered, and final payrolls shall be identified accordingly. If no work is performed on the project during a given period, on the next performance payroll, state: "No work performed from pay period ending _____through_____."
(date) (date)

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC
CONTRACTS DIVISIONS

STATEMENT OF COMPLIANCE

Form Approved
Budget Bureau
No. 44.R1093

Date _____

I, _____ , _____ do hereby state:
(Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by _____ on
(Contractor or subcontractor)

the _____ ; that during the payroll period commencing on the _____ day of _____
(Building or work)

20 ___ and ending the _____ day of _____ , 20 ____ , all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ from the full weekly wages earned by any person and that no deduction have
(Contractor or subcontractor)

been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

_____

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete: that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract: that the classifications set forth therein for each laborer or mechanics conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exist in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4 (c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTARCTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

FORM WH 348

INSTRUCTIONS FOR PREPARATION OF STATEMENT OF COMPLIANCE

This statement of compliance meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay fringe benefits as predetermined by the Department of Labor, in addition to payment of the minimum rates. The contractor's obligation to pay fringe benefits may be met by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

The contractor should show on the face of his payroll all monies paid to the employees whether as basic rates or as cash in lieu of fringes. The contractor shall represent in the statement of compliance that he is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions follow:

Contractors who pay all required fringe benefits:

A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of his payroll the basic cash hourly rate and overtime rate paid to his employees, just as he has always done. Such a contractor shall check paragraph 4(a) of the statement to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted in Section 4(c).

Contractors who pay no fringe benefits:

A contractor who pays no fringe benefits shall pay to the employee and insert in the straight time hourly rate column of his payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall not be less than the sum of the basic predetermined rate, plus the half time premium on the basic or regular rate plus the required cash in lieu of fringes at the straight time rate. To simplify computation of overtime, it is suggested that the straight time basic rate and cash in lieu of fringes be separately stated in the hourly rate column, thus $3.25/.40. In addition, the contractor shall check paragraph 4(b) of the statement to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes, and the hourly amount paid to plans, funds, or programs as fringes.

EXHIBIT 6-J

ADDITIONAL CONTRACTOR PAYROLL INFORMATION

PREPARATION OF PAYROLLS

Payrolls may be completed in dark lead #2 pencil, in pen or typed, but they must be legible. If typed, we suggest you make a "master" listing each employee's name, address, city, state, zip code and social security number. Reproduce the "master" each week, ensuring you number each week of work sequentially. For those employees who did not work during a given week, draw a line through the entry by their names and write "no work."

Of course, the column and block headings would already be completed except the "Week Ending" block and the "Date and Days" columns, and the "Payroll No." block.

1. You must sign payrolls in ink. We will not accept payrolls signed in pencil or illegible payrolls that are difficult to read.

2. We need payroll authorization forms completed for anyone signing and certifying accuracy of payrolls who is not an owner or officer of the company. We will not accept payrolls signed by an unauthorized person.

3. You must show daily hours, total hours, basic rates, overtime rates and gross amounts earned on our jobs separately from work done on other jobs. We suggest you "circle" hours and amounts earned on our jobs. However, you must indicate work on our job by stating on the bottom of the first payroll that "Circled hours represent hours worked on HUD job."

   The gross and net amounts, in any case, must represent the check amount. In other words, if you are paying by separate check for work done on the HUD job, providing information about other work is not necessary. However, the check received by the employee must coincide with certified payrolls submitted to this office.

4. You must identify deductions. You must specify what each deduction is. You cannot lump sum deductions under the "other" column. We must ensure deductions are "authorized" such as Insurance, Vacation, Health Benefits, etc. For other deductions such as Union Dues, Credit Union, Monetary Advance, and deductions probated by the Courts, we require employee authorization statements. Each employee must provide a statement authorizing the deduction for a specific purpose and time period.

5. Overtime: Overtime (O/T) is earned at one and one-half (1½) times the basic hourly rate (**BHR**) for each hour in excess of forty (40) hours in each week, and must be paid accordingly. BHR x 1.5 = O/T Rate Do not include fringes in BHR. **Note: BHR = base hourly pay rate + zone hourly pay rate**

6. Fringe Benefits: Fringe benefits must be paid for each hour worked. If an employee works forty-four (44) hours, you must pay him the fringe benefits shown in the wage determination for 44 hours, in cash, to plan, or trust. Fringe benefits are not paid at one and one-half (1-½ times) for hours worked in excess of forty (40) hours.

7. Computerized Payroll Forms: These are acceptable, but must contain the same information currently required by the Form WH-347 and/or WH-348. You may attach the WH-348 (Statement of Compliance) when completed to the Computerized Payroll Form if desired.

PERMISSIBLE PAYROLL DEDUCTIONS

You may make the following payroll deductions without requesting approval:

1. Any deductions paid in accordance with Federal, State or local law.

   Examples: Federal withholding of income tax
   State withholding taxes
   Federal Social Security taxes

2. Any deductions of sums previously paid to the employee as a bona fide prepayment of wages when the prepayment is made without discount or interest.

   Example: A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of advanced funds.

3. Any mandated deduction determined by a court process to be paid to another (child support payments or garnishments by order of the court), unless the deduction favors:

   the contractor,
   the subcontractor,
   any affiliated person, or
   when collusion or collaboration exists.

   Note: A copy of the court order should be kept on file.

4. Any deduction constituting a contribution on behalf of the person employed to funds established by the employer, or representatives of the employer, or both for providing (from principal, income, or both):

   medical or hospital care,
   pensions or annuities on retirement,
   death benefits,
   compensation for injuries, illness, accidents, sickness, or disability,
   insurance for any of the foregoing,
   unemployment benefits,
   vacation pay,
   savings accounts, or
   similar payments for the benefits of employees, their families and dependents so long as law does not prohibit the deduction and it is:

   a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done, AND

      Such consent is not a condition either for the obtaining of or for the continuation of employment, OR

Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

b. No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person as commission, dividend, or otherwise; and

c. The deductions shall serve the convenience and interest of the employees.

5. Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

6. Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

7. Any deduction voluntarily authorized by the employee for making contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
8. Any deduction voluntarily authorized by the employee for making contributions Community Chests, United Givers funds, and similar charitable organizations.

9. Any deduction to pay regular union initiation fees and membership dues not including fines or special assessments, IF a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the law has not otherwise prohibited the deductions.

10. Any deductions for not more than the "reasonable cost" of board, lodging or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made, the additional records required under §516.27(a) of this title will be kept.

11. Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if:

- Law does not require such equipment to be furnished by the employer;
- The deduction does not violate the Fair Labor Standards Act or is not prohibited by law;
- The cost on which the deduction is based does not exceed the actual cost to the employer when:

    a. the employee purchases the equipment from the employer, and

    b. there is not any direct or indirect monetary return to the employer when the equipment is purchased from a third person, and the deduction is either:

- voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or

- provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

EXHIBIT 6-K

RECORD OF EMPLOYEE INTERVIEWS

Form HUD-11 (updated 8/2004)

This form is available on-line at:

http://www.hud.gov/offices/adm/hudclips/forms/files/11.doc

Record of Employee Interview

U.S. Department of Housing and Urban Development
Office of Labor Relations

OMB Approval No. 2501-0009
(exp. 10/31/2010)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information is collected to ensure compliance with the Federal labor standards by recording interviews with construction workers. The information collected will assist HUD in the conduct of compliance monitoring; the information will be used to test the veracity of certified payroll reports submitted by the employer. **Sensitive Information**. The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. **The information collected herein is voluntary, and any information provided shall be kept confidential**.

1a. Project Name	2a. Employee Name
1b. Project Number	2b. Employee Phone Number (including area code)
1c. Contractor or Subcontractor (Employer)	2c. Employee Home Address & Zip Code
	2d. Verification of identification? Yes ☐ No ☐

3a. How long on this job?	3b. Last date on this job before today?	3c. No. of hours last day on this job?	4a. Hourly rate of pay?	4b. Fringe Benefits?	4c. Pay stub?
				Vacation Yes ☐ No ☐ Medical Yes ☐ No ☐ Pension Yes ☐ No ☐	Yes ☐ No ☐

5. Your job classification(s) (list all) --- continue on a separate sheet if necessary

6. Your duties

CONFIDENTIAL

7. Tools or equipment used

	Y	N		Y	N
8. Are you an apprentice or trainee?	☐	☐	10. Are you paid at least time and ½ for all hours worked in excess of 40 in a week?	☐	☐
9. Are you paid for all hours worked?	☐	☐	11. Have you ever been threatened or coerced into giving up any part of your pay?	☐	☐

12a. Employee Signature	12b. Date

13. Duties observed by the Interviewer (Please be specific.)

14. Remarks

15a. Interviewer name (please print)	15b. Signature of Interviewer	15c. Date of interview

Payroll Examination

16. Remarks

17a. **Signature of Payroll Examiner**	17b. **Date**

EXHIBIT 6-K

INSTRUCTIONS FOR CONDUCTING EMPLOYEE INTERVIEWS

A. The foreman or construction supervisor should be notified in advance of the time of the employee interviews as a courtesy and try to schedule interviews at a time that will not disrupt key work activities.

B. The person performing interviews should be knowledgeable of labor standards procedures.

C. Number of employees interviewed should be:

1. Sufficient in number to establish the degree of accuracy of the records (*10% or greater*); and

2. Representative of all classifications of employees on the project over the term of the project (at least one in each job classification).

D. Place of Interview could be:

1. On the job site, if it can be conducted properly and privately (this is a one-on-one process);

2. At the employee's home;

3. At the agency's office; or

4. By mail

E. The interviewer should observe duties of the workers on the job site before initiating any interviews.

F. To initiate the interview, interviewers should:

1. Properly identify themselves;

2. Clearly state the purpose of interview; and

3. Advise the worker that the information given is confidential, and that their identity will be disclosed to the employer only with the employee's written permission.

G. Employee interviews are to be recorded on form HUD-11or equivalent format. The interviewer should pay particular attention to:

1. The employer's actual name and not just the name of a first line supervisor;

2. The employee's full name;

3. The employee's permanent mailing address;

4. The last date the individual worked on the project and number of hours worked that day (The interviewer should make it clear that these questions solely relate to work on this project and not other work.);

5. The hourly rate of pay;

    a. Determine if the worker is being paid at least the minimum required by the proper wage decision;

    b. Be sure the worker is not quoting the "net" hourly rate; and

    c. If it appears the individual may be underpaid, closely question the worker, ask for any records, and arrange to re-interview the employer.

6. Enter the worker's statement of his classification, but not a nickname for the trade;

7. The duties and tools used. If the worker's statements and the observation made by the interviewer indicate that this individual is performing under the correct job classification, the word "trade" may be entered across both items.

8. Any comments that seem necessary or pertinent; and

9. The exact date the interview took place.

H. **The designated payroll examiner then will check the information on the Employee Interview Form HUD-11, against the payroll submitted for the same date as the interview**:

1. If no discrepancies appear "None" should be written in the "comments" space;

2. If discrepancies do appear, appropriate action should be initiated; and

3. When necessary action has been completed, the results are also noted on the same interview form.

I. **The interviewer and payroll examiner will identify and correct any discrepancies between on-site interviews, payrolls and the wage decision.**

Supplemental Instructions for Conducting Employee Interviews

These supplemental instructions are provided with the sample of a completed Record of Employee Interview, form HUD-11, and pages from an actual general wage decision to aid your understanding of the interview process, and to illustrate how to find the appropriate wage rate based on the sample interview.

The sample employee interview form presents an interview of a person working on landscape improvements in conjunction with a CDBG-assisted water system project in a hypothetical Montana community called Sunrise.

In using the form, the interviewer (the grantee's labor standards officer) completed the information on lines #1 though #12 on the day of the interview, which was August 8, 1997. When the weekly payroll report #4, which covered the day of the interview, was received from XYZ Landscaping Company, the interviewer compared the contractor's payroll information with the information given by the employee, John Doe. The payroll report showed this employee was paid $14.29 per hour base rate (plus $.65 per hour for Zone 2 pay, for a total of $14.94 per hour base pay) and $3.80 per hour fringe benefit as a landscaper. The interviewer, after finding the wage rate matched those provided in the construction contract, then showed this as verified in the remarks section (#13) and would sign and date the form (#14).

To determine if this was the appropriate wage paid by the contractor to this employee, the following steps were used to find the prevailing wage rate for a landscaper:

1. Determine the applicable job classification (e.g., landscaper as given by the employee and by observation of his duties as recorded on page 6-K.5, sample of completed interview form).

2. Locate the federal Davis-Bacon Wage Rate Decision applicable to this construction contract. (For purposes of illustration, only the title page and two other applicable page were used for this review, beginning on page 6-K.6. The full decision, MT960001, consisted of 13 pages, from page MT960001-1 through page MT960001-13).

3. Locate on this decision the "basic" job classification (e.g., Laborers as listed on page 6-K.8).

4. Determine which "group" of laborers is appropriate (e.g., Landscaper is listed under Group 2 on page 6-K.8).

5. Determine which "zone hourly rate" (if any) is appropriate for this worker. (Note: Sunrise, MT is located 20 miles on I-90 from one of the communities listed on page 6-K.7).

6. Locate the appropriate wage rate for this classification -- e.g., for Group 2/ Zone 2, $14.29 for base hourly rate (plus an additional $0.65 hourly for Zone 2 hourly pay for a total of $14.94 hourly base rate) and $3.80 for fringe benefit on page 6-K.8

EXHIBIT 6-L

LABOR STANDARDS DEFINITIONS

Apprentice - (1) a person employed and individually registered in a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training administration, Bureau of Apprenticeship and Training or with a State apprenticeship agency recognized by that Bureau; or (2) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in a program but who has been certified by the Bureau.

Basic Rate - For overtime pay purposes the basic rate is the greater of: (1) the contract minimum rate; (2) the minimum rate under the Fair Labor Standards Act; or (3) the rate actually being paid.

Building or Work - These terms generally include construction activity as distinguished from manufacturing, furnishing of materials or servicing and maintenance work. The terms include, without limitation, buildings, structures and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, scaffolding, drilling, blasting, excavating, clearing and landscaping.

CDBG - Community Development Block Grant Program, as administered by the Montana Department of Commerce.

Contract - The term "contract" means any prime contract which is subject wholly or in part to the labor standards provision of any of the acts listed in section 5.1, 29 CFR, and any subcontract of any tier thereunder, let under the prime contract. A state or local government is not regarded as a contractor under statutes providing loans, grants or other federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing and Community Development Act of 1974, State and local recipients of federal-aid must pay these employees according to Davis-Bacon labor standards.

Contractor - Any person, corporation, partnership or unincorporated association that holds a federally assisted construction contract or subcontract regardless of tier.

Copeland "Anti-Kickback" Act - The Copeland "Anti-Kickback" Act makes it a criminal offense for any person to make unauthorized deductions or to exact rebates from the wages paid to any person employed by a contractor or subcontractor engaged in the construction, prosecution, completion or repair of any public work or work financed in full or in part by loans or grants from a federal agency. The Secretary of Labor is authorized to promulgate regulations with respect to this act. Except as is provided in the regulations issued by the Secretary of Labor, no deductions of any kind are authorized from the wages of employees.

DOC - Montana Department of Commerce.

Davis-Bacon Act - The Davis-Bacon Act provides, in general, that contracts in excess of $2,000 to which the United States is a party, for the construction, alteration and/or repair, including painting and decorating, of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions and termination of the contract for failure to pay the required wages. The Act contains provisions for debarment by the Comptroller general of the United States of contractors who are found to have disregarded their obligations to employees and subcontractors and provides for the direct payment to employees of wages due by the Comptroller General. If funds withheld from the contractor are insufficient for full reimbursement of the amounts due laborers or mechanics, the Act creates a right of action and/or intervention by laborers and mechanics against the contractor and his sureties, unless otherwise specified.

Days - Calendar days.

Deduction - A deduction is any sum of money which the contractor, or someone else in the chain of payment responsibility, withholds from the wages due an employee.

Discrimination - A distinction in treatment based on race, color, religion, handicap, marital status, age, sex or national origin.

Equal Employment Opportunity - The absence of partiality or distinction in employment treatment, so that the rights of all persons to work and advance on the basis of merit, ability and potential is maintained.

Good Faith Effort - Affirmative action measures designed to implement the established objectives of an Affirmative Action Plan.

Immediate Labor Area - The immediate labor area describes the geographic area from which employees and/or applicants could reasonably commute to the project site. The immediate labor area should also be defined so as to include a reasonable recruiting area.

Laborer or Mechanic - The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive or clerical, rather than manual. Persons employed in a bona fide executive, administrative or professional capacity as defined in Part 541 of this title (CFR 29, Subtitle A) are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a work week to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

LSO - Grantee's designated "Labor Standards Officer".

Materials Supplier - A vendor engaged in sales to the public from an established place of business or source of supply.

MDOC - Montana Department of Commerce

Nonhauling Equipment Owner-Operators - Owner-operators of nonhauling equipment (in general, equipment other than trucks) are considered to be employees, not subcontractors, and are covered by wage rate decisions.

Payrolls and Basic Records - Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter of all laborers and mechanics working at the site of the work (or under the United States Housing act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

Standards Violation Notice - A written notification to a contractor based on the determination of the Labor Standards Officer (or in appropriate cases by higher level authority) to be in noncompliance with the labor standards requirements. The notice informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed.

Site of Work - (1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (2) of this definition, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site". (2) Except as provided in paragraph (3) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them. (3) Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work," even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Subcontractor - An individual or organization under contract with the prime contractor or another subcontractor to perform a portion of the work.

Supplemental Payroll - An additional payroll used to correct a deficiency or omission on a certified payroll.

Suppliers - Contracts or subcontracts for furnishing supplies and equipment, including installation where the installation requires only an incidental mount of work are not covered by wage rate decisions.

Trainee - (Programs of the United States Department of Labor) means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, as meeting its standards for on-the-job training programs and which has been so certified by that Bureau.

Truck Drivers Owner-Operators - Truck owner-operators are not subject to the wage rates prescribed by the Department of Labor. Such owner-operators shall be listed on payrolls with the notation "owner-operator" after each name. Neither hours worked nor wages paid need be shown (Department of Labor All Agencies Memorandum #119, October 8, 1974).

US DOL (or DOL) - United States Department of Labor.

US DHUD (or HUD) - United States Department of Housing and Urban Development.

Wage Determination - The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of the Davis-Bacon Act.

Wages - The term "wages" means the basic hourly rate of pay, any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan or program, and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other federal, state or local law.

Withholding - The federal agency or the loan or grant recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or

advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee or subrecipient may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

Zone rate pay or zone hourly rate is an amount that is to be added to the base hourly rate when calculating pay, including both regular pay and overtime pay.

- The Denver office of the U.S. Department of Housing and Urban Development has confirmed that these zone rate requirements apply to the Montana State CDBG Program.

- The published hourly wage (that is, the **base hourly rate**) combined with the zone hourly pay amount (that is, the zone hourly rate that is listed in the federal wage rate determination that applies to the project) becomes an employee's base rate (on which both regular pay and overtime pay are based).

- Zone pay is not travel pay. It is additional hourly pay related to proximity to services.

- "Zone hourly rate" is the terminology used in the federal Davis-Bacon wage rate determination documents for Montana, which can be found at the following website: http://origin.www.gpo.gov/davisbacon/mt.html

- Zone rate pay is not like fringe pay, since zone rate pay is properly described as a "zone hourly rate" and, as stated above, it is an amount that is to be added to the base hourly rate when calculating pay, including when calculating both regular pay and overtime pay. See Chapter 6, page 6-11.

EXHIBIT 6-M

VOLUNTEER CERTIFICATION FORM

FOR VOLUNTEER CONSTRUCTION WORKERS ON MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS

I,_____, do hereby attest and certify the following
(print name)

regarding the _____
(name of project)

located at_____, in_____, _____:
(address) *(City)* *(State)*

1. I am not now receiving nor will I receive wages to perform any type of construction work on the above named project.

2. I agree to report to the designated official the dates, number of hours, and the work I performed on the above named project.

3 I understand I am volunteering my services on this project and will not receive monetary or other remuneration for my services.

_____ _____
(Signature) (Date)

Note: This language is recommended by the HUD Denver Regional Office for compliance with the volunteer provisions of 42 USCA §§ 1437j(b), 5310(b) and 12 USCA § 1701q(c) (3) (B).

EXHIBIT 6-N

CONTRACTOR'S RECEIPT OF REQUIRED PROGRAM MATERIALS

Local Government: _____

Community Development Block Grant (CDBG) Project: _____

Pre-construction Meeting
Date: _____

On _____ we, the undersigned, attended the pre-construction meeting for the (local government) _____, (CDBG project) _____. At the meeting, we acknowledge receiving the following information:

1. Federal Labor Standards (outlined in CDBG Exhibit 6-A)
   - Federal Davis-Bacon Wage Determination and Employee Classification
   - Work Hours, Overtime and Safety Standards

2. Contractor Reporting Requirements (outlined in CDBG Exhibit 6-E)
   - "Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects" (CDBG Exhibit 6-O)
   - Certified Payroll Forms (CDBG Exhibit 6-I)
   - Payroll Information (CDBG Exhibit 6-J)
   - Labor Standards Definitions (CDBG Exhibit 6-L)

3. Compliance with Civil Rights Regulations (Exhibit 6-G, Exhibit 9-B)

4. Job Site Notices

   - Notice to Employees (CDBG Exhibit 6-F)
   - Equal Employment Opportunity (CDBG Exhibit 6-G)
   - Job Safety and Health Protection (CDBG Exhibit 6-H)
   - Current federal Davis Bacon Wage Determination
     - Decision # _____, dated: _____.

5. Other

_____
Contractor

_____
Date

U.S. Department of Housing and Urban Development
Office of Labor Relations
January 2012

Davis-Bacon Labor Standards: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects

The *Making Davis-Bacon Work* document in Exhibit 6-O is available as a PDF document at the following HUD Office of Labor Relations webpage:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/4812LR

(as updated January 2012)

EXHIBIT 6-P

CERTIFICATION OF LABOR COMPLIANCE

Date:_____. Pay Estimate Number:_____

Contractor:_____

Project:_____

MT-CDBG Contract #_____

For the time period of the pay estimate referenced above and the actions completed as listed below, I hereby certify that to the best of my knowledge the above named contractor and _____ (sub-contractors) have complied with the labor requirements as set forth in the Montana Department of Commerce (MDOC) Community Development Block Grant (CDBG)/Neighborhood Stabilization Program (NSP) Project Administration Manual including:

1. The Davis-Bacon wage rates were posted in a prominent and accessible site on the project or work area. _____Yes _____No.

2. Weekly payroll reports covering the pay estimate referenced above were received. _____Yes _____No.

3. Weekly payroll reports were compared to the prevailing federal Davis-Bacon wage rates. _____Yes _____No.

4. Documentation of weekly payroll reviews is included with the drawdown request submitted to CDBG and is also maintained in the local project records. _____Yes _____No.

5. Errors or discrepancies were noted. _____Yes _____No. If yes, explain error or discrepancy and how it was resolved.

6. Interviews of the contractor/sub-contractor's employees were conducted during the time period of the pay estimate. _____Yes _____No.
   If yes, number of interviews conducted _____

7. Information obtained through interviews with the contractor/subcontractor's employees was compared to the corresponding payroll, and follow-up action was taken if needed to assure proper wages and benefits were paid. _____Yes _____No.

8. Has the contractor or sub-contractor hired any new employees as described in Section 3 of the Housing and Urban Development Act of 1968? _____ Yes _____ No.

9. If the answer to Question 8 is 'yes', update and submit the Section 3 Summary Report (Exhibit 9-L) with this Certification. _____ Attached _____ Not Applicable.

_____
Name of Person Responsible for Ensuring Compliance with Labor Requirements

_____ _____
Signature Date

CHAPTER 7 -- ACQUISITION AND RELOCATION

I. OVERVIEW 7-2
II. APPLICABLE REQUIREMENTS 7-2
A. FEDERAL 7-2
Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 7-2
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 7-2
Title VI of the Civil Rights Act of 1964 7-3
B. STATE 7-3
Relocation Assistance/Fair Treatment of Condemnees, Title 70, Chapter 31, Montana Code Annotated (MCA) 7-3
III. GRANTEE RESPONSIBILITIES 7-3
A. VOLUNTARY ACQUISITIONS 7-4
B. NON-VOLUNTARY ACQUISITIONS 7-5
1. Obtain a Copy of HUD Handbook 1378 7-5
2. Send Preliminary Acquisition Notice 7-5
3. Have Property Appraised to Determine Fair Market Value 7-6
4. Have Appraisal Reviewed 7-7
5. Determine Just Compensation for the Property 7-7
6. Make a Written Offer to the Owner 7-7
7. Review Any Additional Materials Related to Determination of the Purchase Price 7-7
8. Administrative Settlement 7-7
9. Make Payment or Make a Final Offer Before Initiating Condemnation Procedures 7-7
C. FINAL OFFER BEFORE INITIATING CONDEMNATION PROCEDURES - ADMINISTRATIVE SETTLEMENT 7-8
D. CONDEMNATION PROCEEDINGS 7-8
E. OTHER ACQUISITION CONSIDERATIONS 7-9
1. Donations 7-9
2. Decision Not To Acquire 7-9
3. Uneconomic Remnant 7-9
4. Tenant-Owned Improvements 7-9
5. Owner Retention of Improvements 7-9
6. Rental Payments 7-9
IV. RECORDKEEPING REQUIREMENTS 7-9
V. RELOCATION 7-10
EXHIBITS 7-12

CHAPTER 7

ACQUISITION AND RELOCATION

I. OVERVIEW

The purpose of this chapter is to provide guidance to local CDBG grantees for dealing with the complex issue of acquiring real property. Two different acquisition procedures are defined and described: voluntary acquisition and non-voluntary acquisition. The appendix provides sample letters, notices, and forms that should be helpful to the grantee.

Grantees involved in the acquisition of real property for CDBG assisted activities should keep these key issues in mind:

- ❑ two options are available for grantees when acquiring property: voluntary acquisition or nonvoluntary acquisition;
- ❑ property owners must be paid at least the appraised fair market value for acquired property and improvements;
- ❑ Condemnation and litigation should be avoided and used only as a last resort;

sites for CDBG activities should be chosen so that displacement is avoided; and acquisitions should be documented in accordance with procedures outlined in Section IV, RECORDKEEPING REQUIREMENTS, of this Chapter.

II. APPLICABLE REQUIREMENTS

A. FEDERAL

1. Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, more commonly known as the Uniform Relocation Act Amendments of 1987, which amends the 1970 Uniform Relocation Act.

2. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA, which provides uniform procedures for the acquisition of real property for federal or federally assisted projects, and ensures the uniform and equitable treatment of persons and businesses displaced as a result of federal or federally assisted projects.

   HUD Handbook 1378 explains and summarizes the URA and implementing regulations and delineates the requirements that are passed on to state CDBG programs and their grantees.

Excerpts from Handbook 1378 – Tenant Assistance Relocation and Real Property Acquisition
5-1 APPLICABILITY OF ACQUISITION REQUIREMENTS
a. General. The requirements of this chapter apply to any **acquisition of real**

property for a project.

b. Less-Than-Full-Fee Interest in Real Property. The provisions of this chapter apply to: **the acquisition of permanent easements**.

5-2 BASIC ACQUISITION POLICIES

a. Expeditious Acquisition. The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

b. Notice to Owner. As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property. (Public Agencies may meet the requirement to notify the owner of the basic protections available **by providing and explaining, as appropriate, the HUD information brochure, "When a Public Agency Acquires Your Property"** (HUD-1041-CPD). It is available from HUD Field Offices.)

5-8. DONATIONS A property owner may, after being fully informed by the Agency of a person's right to receive just compensation for property taken for a project, donate his or her property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency must obtain an appraisal of the real property unless the owner, in writing, releases the Agency from such obligation, or, as provided in Paragraph 5-2c(1)(b), the valuation problem is uncomplicated and the fair market value does not exceed $2,500. **Whenever a State agency acquires real property under this donation provision, it must obtain the written consent of the owner. Such consent must indicate that the owner understands that under the URA he/she cannot be required to sell the real property to the State agency for less than its appraised fair market value.**

Section 2. State CDBG Program

8-21 APPLICABLE RULES. **The State CDBG Program is subject to the URA and implementing regulations.**

3. Title VI of the Civil Rights Act of 1964, which prohibits the selection of sites for facilities of federally assisted programs with the purpose or effect of discrimination. For a more detailed explanation of applicable civil rights requirements refer to the Civil Rights Chapter.

B. STATE

Relocation Assistance/Fair Treatment of Condemnees, Title 70, Chapter 31, Montana Code Annotated (MCA, is the state statute that compliments requirements in the federal legislation.

III. GRANTEE RESPONSIBILITIES

For each acquisition activity, the grantee must determine whether or not the acquisition is voluntary or non-voluntary. This will determine how the transaction is governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which deals specifically with real property acquisition.

A. VOLUNTARY ACQUISITIONS

The acquisition can be considered voluntary, and not subject to the stricter requirements of the Uniform Relocation Act if, in the case of an acquisition by a state agency (i.e., an entity with the power of eminent domain), ALL of the following conditions are present:

- ❑ the state agency determines and informs the owner in writing that it will not use its power of eminent domain to acquire the property if negotiations fail to result in an amicable agreement; and

- ❑ no specific site or property is designated for acquisition, although the grantee may have a general geographic area in mind; and

- ❑ the property to be acquired is not part of an intended, planned or designated project area where all or substantially all of the property within the area will eventually be acquired; and

- ❑ the grantee informs the owner of its estimate of the fair market value of the property. An appraisal is not required; however, the estimate must be prepared by a person familiar with real estate values, and the grantee's files must include an explanation of the basis for the estimate. However, if the property owner requests an appraisal, one must be done.

The acquisition can also be considered voluntary, if, in the case of an acquisition by an entity that does not have the power of eminent domain, ALL of the following conditions are present:

- ❑ the grantee determines and informs the owner in writing that it does not have the power of eminent domain, and therefore will not attempt to acquire the property if negotiations fail to result in an amicable agreement; and

- ❑ the grantee informs the property owner of its estimate of the fair market value of the property. **This notice must be in writing and provided before the seller enters into the contract for sale.** An appraisal is not required; however, the estimate must be prepared by a person familiar with real estate values, and the grantee's files must include an explanation of the basis for the estimate. An appraisal must be completed if requested by the property owner.

The required notices must be in writing and provided before the seller enters into the contract for sale. In those cases where there is an existing option or contract, the seller must be provided the opportunity to withdraw from the agreement after this information is provided.

If the grantee determines that an acquisition will be voluntary in nature, the grantee should adhere to the procedures outlined below:

1. If the grantee receives a voluntary offer of sale for an acceptable property, the offer should be documented in a manner similar to, Voluntary Agreement Between Grantee and Individual Seller. Properties may be voluntarily donated as well. For such cases the Waivercan be used to reflect a donation rather than a sale (see exhibits).

The voluntary seller or donor should be provided with a copy of **"When A Public Agency Acquires Your Property"** so as to be properly informed regarding the important features of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (see exhibits)..*

2. Real property being acquired through voluntary acquisition may be appraised in order to assure that fair market value is paid for the acquisition. The name of the appraiser, date of appraisal, appraised value of the property, and a copy of the appraisal must be retained in the grantee's CDBG Project File. An appraisal is not required for a voluntary acquisition in the following situations:

   a) if the landowner agrees to donate the property;

   b) if the grantee determines that an appraisal is unnecessary because the determination of valuation is uncomplicated and the fair market value is estimated at $2,500 or less, based upon a review of available data[1] prepared by a person familiar with real estate values (with a written explanation of the basis for the estimate kept in the grantee's appropriate CDBG Project file); or

   c) if the property owner agrees to waive the appraisal, and such approval is obtained in writing.

3. In cases involving voluntary acquisitions, property owners are not eligible to receive relocation assistance payments. However, tenants of acquired property are eligible for relocation assistance. The federal requirements for relocation of households or businesses are extensive and extremely complex. **Displacement of households or businesses should be avoided whenever possible.** Contact your assigned CDBG Program Officer for further guidance on how to proceed for potential relocation situations.

4. To document acquisition of property on a voluntary basis, the grantee should complete the Voluntary Acquisition File Checklist (**see exhibits**).

5. A copy of the contract for sale, purchase price of the property, settlement costs, donation agreement (if applicable), recorded deed of property to the grantee, and proof of payment must be retained in the applicable CDBG Project file.

B. NON-VOLUNTARY ACQUISITIONS

If the acquisition is not voluntary in nature, and therefore subject to the stricter rules and regulations of the Uniform Relocation Act, the following procedures should be followed:

1. Obtain a Copy of HUD Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition. Grantees who have activities involving non-voluntary acquisition must obtain a copy of HUD Handbook 1378 available on-line before proceeding with the acquisition activities. Find the handbook at: https://www.hudexchange.info/resource/310/hud-handbook-1378-tenant-assistance-relocation-and-real-property-acquisition/ This handbook provides the grantee with guidelines for acquisition under the Uniform Relocation Act, and it should be used in conjunction with instructions in this Chapter. **See the exhibits for a description of** a typical acquisition process under the Uniform Relocation Act.

[1] If the owner requests an appraisal, the grantee must obtain an appraisal.

2. Send Preliminary Acquisition Notice. A Preliminary Acquisition Notice (**see exhibits**) must be delivered in person or sent by registered mail to the property owner to inform the property owner of the grantee's intent to acquire the property and of the owner's basic protections under the Uniform Relocation Act. The notice should include information about the activity for which the property will be used, indicate that the notice is not a notice to vacate the property, describe the procedures by which the grantee will proceed with its attempt to acquire the property, and provide the name and telephone number of a local contact person who can answer questions and provide further information. **The grantee's CDBG Project Manager should enclose a copy of HUD's information booklet, When a Public Agency Acquires Your Property, or its equivalent.** This booklet is available from MDOC.

3. Have Property Appraised to Determine Fair Market Value. Once the grantee has obtained preliminary title evidence, a boundary description, and a legal description of the property to be acquired, it should have the property appraised. The term “appraisal” means a written statement independently and impartially prepared by a qualified, professional appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

   The Uniform Relocation Act requires that the public agency must compensate the owner at no less than the fair market value of the property. Although only one appraisal is required by law, past experience suggests that two appraisals are preferred in instances where the property is valued at greater than $25,000. Regardless of the number of appraisals, **the property owner or his or her representative must be invited to accompany the appraiser during his/her inspection of the property.**

   To determine the standards for a "qualified professional appraiser," the Montana CDBG program recommends, at a minimum, professional affiliation with one of the eight national appraisal organizations (see list below), or a listing on the Montana Department of Transportation’s list of appraisers.

   List of National Appraisal Organizations:

   American Society of Appraisers
   American Institute of Real Estate Appraisers
   American Society of Farm Managers and Rural Appraisers
   International Association of Assessing Officers
   International Right of Way Association
   National Association of Independent Fee Appraisers
   National Society of Real Estate Appraisers
   Society of Real Estate Appraisers

   The appraiser must also be someone who does not have interest in the property, nor can the appraiser be the person secured as an agent to sell it.

   Under the Uniform Relocation Act an appraisal is not required in the following situations:

   - ❑ if the landowner agrees to donate the property. However, the landowner(s) must first be informed of their rights under the Uniform Relocation Act, including the right to receive just compensation. They must also state in writing that they have been informed of these rights; that they agree to waive the appraisal requirement; and they have been informed

that the grantee will not exercise its right of (or does not have the power of) eminent domain as a means of acquiring the property. (See the exhibits for a model for waiver of procedures required under the Uniform Relocation Act when a property donation is involved);

- ❑ if the determination of valuation is uncomplicated and the fair market value is estimated at $2,500 or less, based upon a review of available data prepared by a person familiar with real estate values (with a written explanation of the basis for the estimate kept in the grantee's appropriate CDBG Project file); or

- ❑ if the landowner agrees to waive the appraisal, and approval of such waiver is obtained in writing.

Contracting for appraisal services is subject to federal requirements for procurement of professional services (see the Procurement Chapter). Agreement for Appraisal Services (Acquisition) should be used when securing appraisal services for CDBG acquisitions (see exhibits).

4. Have Appraisal Reviewed. The Uniform Relocation Act requires that a "qualified review appraiser" examine all appraisals. The Acquisition File should include the review appraiser's certification and the recommended or approved value of the property in a signed written statement. An explanation of the basis for the recommendations should be included as well. (See exhibits for a sample Appraisal Report Review Form). Contracting for review appraisal services is also subject to federal requirements for procurement of professional services (see the Procurement Chapter). The review appraisal can also be waived so long as the landowner(s) are informed of their rights and agree to the waiver in writing.

5. Determine Just Compensation for the Property. The grantee will establish what it considers to be a fair price for the property. **This amount shall not be less than the review appraiser's recommendation as to the fair market value of the property.**

6. Make a Written Offer to the Owner. As soon as possible following the determination of just compensation for the property, the grantee should submit a written offer to the property owner. The grantee is encouraged to deliver the written notice in person, although this is not required under the Uniform Relocation Act. A written statement of the basis for the offer, must be included with the notice to acquire. (See the exhibits for a sample Written Offer to Purchase that includes a Statement of the Basis for Determination of Just Compensation.)

7. Review Any Additional Materials Related to Determination of the Purchase Price. Based on discussions with the owner(s) and any additional information that they have supplied, the grantee may determine that the original appraisal requires updating, or the grantee may request a new appraisal. If subsequent updating or a new appraisal justifies a higher rate of compensation, the grantee should immediately establish a new offer price and submit the new offer in writing as described in step 6 above.

8. Administrative Settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized MDOC official approves such administrative settlement as being reasonable, prudent, and in the public interest. A written justification explaining the basis for the settlement shall be included in the grantee's files (see Section C, FINAL

OFFER BEFORE INITIATING CONDEMNATION PROCEDURES - ADMINISTRATIVE SETTLEMENT, below).

9. Make Payment or Make a Final Offer Before Initiating Condemnation Procedures **In those cases where the grantee and the property owner arrive at a mutually agreed upon price, the grantee must make direct payment to the owner before requiring that possession of the property be surrendered.** In addition, the grantee must reimburse the owner for all reasonable expenses necessarily incurred for:

   - ❑ recording fees, transfer taxes, documentary stamps and similar expenses incidental to conveying the real property to the grantee;
   - ❑ penalty costs and other charges for prepayment of any preexisting mortgage; and
   - ❑ the pro rata portion of any prepaid real property taxes, allocable to the period after the grantee obtains title to the property.

   However, the grantee is not required to pay costs required solely to perfect the owner's title.

   The Uniform Relocation Act specifically prohibits the grantee from taking actions such as threatening to move up the condemnation date in order to coerce the property owner into agreeing to the agency's final offer.

C. FINAL OFFER BEFORE INITIATING CONDEMNATION PROCEDURES - ADMINISTRATIVE SETTLEMENT

The Uniform Relocation Act allows for an administrative settlement when reasonable efforts at negotiation have failed. A written justification must be prepared which indicates that available information supports such a settlement (e.g., appraisals, recent court awards, estimated trial costs, and valuation problems). The grantee and MDOC must agree that such a settlement is reasonable, prudent, and in the public interest.

MDOC generally considers a figure that does not exceed 10 percent of the established just compensation as a reasonable alternative to condemnation. If the grantee's justification for an administrative settlement appears unreasonable, MDOC may determine the excess payment to be an ineligible cost under the CDBG program. The purpose of this provision is to allow the grantee flexibility in the negotiation process, while discouraging windfall profits from the sale of properties for use in publicly assisted projects.

The final offer should be hand delivered or sent by registered mail. It must include: the final offer; an invitation to discuss again the basis of the final offer; and the anticipated date on which the grantee intends to begin condemnation procedures. The notice should be received by the property owner at least seven days prior to the date provided for the commencement of condemnation proceedings (see the exhibits for a sample Final Notice to Acquire by Negotiation).

D. CONDEMNATION PROCEEDINGS

In the event that the property cannot be acquired by negotiations, condemnation proceedings can begin on the date provided in the Final Notice to Acquire by Negotiations. The Uniform Relocation Act requires that an amount not less than the grantee's approved appraisal of the fair market value of the property be deposited with the court for the benefit of the owner. Section 70-30-101, MCA describes state procedures for counties and municipalities when exercising the power of eminent domain. Any grantee involved in a condemnation proceeding is strongly encouraged to work closely with their attorney to assure compliance with relevant state and federal laws.

E. OTHER ACQUISITION CONSIDERATIONS

1. Donations. Donation of property can occur under either the voluntary acquisition process or under provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Relocation Act). The Act allows for reduction of the costs of acquiring land without reducing the protection of affected persons, by permitting the full or partial donation of real property to an acquiring agency as long as the donor is informed of his or her right to just compensation. An owner of real property to be donated may waive the right to appraisal of the property, as long as he or she is informed that they are entitled to an appraisal. For donations falling under the Uniform Relocation Act, the CDBG Acquisition File should contain documentation that the owner was informed of his or her rights when agreeing to make the donation, and the file must include a copy of the deed for the donated property.

2. Decision Not To Acquire. If, at any time after the Preliminary Acquisition Notice (see exhibits) has been sent, a decision is made not to buy or condemn a property, the property owner and any tenants should be notified in writing. The notice should specify that any person moving from the property thereafter will not be eligible for relocation payments and assistance.

3. Uneconomic Remnant. If the grantee acquires only a portion of the owner's parcel and the remaining portion(s) would have little or no utility or economic value, the agency must offer to acquire the "uneconomic remnant" as part of the total acquisition offer.

4. Tenant-Owned Improvements. The grantee must offer" just compensation" for any improvements on the acquired property. Just compensation is the amount that the improvement adds to the total value of the real property, or the salvage value of the improvement, whichever is greater.

5. Owner Retention of Improvements. If the property owner chooses to remove any improvements that have been included in the fair market appraisal of the property, the grantee may subtract the salvage value of the removed improvements from the purchase offer. For example, if a property value includes a utility shed that the owner removes from the property upon public acquisition, the offer to the owner may be decreased to the appraised property value, less the salvage value of the shed.

6. Rental Payments. If the grantee agrees to allow the owner to remain on the property for a period of time following payment for acquisition, it can charge the owner rent for an amount up to the fair market rent for the period during which the owner remains on the property.

IV. RECORDKEEPING REQUIREMENTS

The grantee is responsible for maintaining files and documentation on each property acquired. To assist the grantee in complying, a Uniform Relocation Act Governed Acquisition Checklist (see exhibits) has been developed to serve as a left inside attachment in each CDBG Acquisition File. Through using it and maintaining a comprehensive file in chronological order, the grantee can better and more easily comply with Uniform Relocation Act documentation requirements, and complete the acquisition process in a manner that complies with requirements of the Act. At a minimum, the CDBG Acquisition File should include the following items (see exhibits):

- ❑ copy of the Public Invitation for Acquisition of Real Property;
- ❑ completed Uniform Relocation Act Governed Acquisition Checklist and completed Voluntary Acquisition File Checklist, if applicable;
- ❑ description of property and reasons for acquisition;
- ❑ completed Preliminary Acquisition Notice ; Voluntary Agreement Between Grantee and Individual Seller ; and Waiver of Procedures and Rights Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- ❑ appraiser contracts Agreement for Appraisal Services (Acquisition);
- ❑ invitation of owner to accompany appraisers;
- ❑ copy of appraisals;
- ❑ completed Appraisal Report Review Form;
- ❑ copy of the Written Offer to Purchase, which includes a Statement of the Basis for Determination of Just Compensation;
- ❑ records of any negotiations with owner;
- ❑ copy of any materials supplied by the owner to determine just compensation;
- ❑ copies of any written agreements to waive or modify benefits or compensation requirements under the Uniform Relocation Act;
- ❑ copy of agreements for compensation of related improvements;
- ❑ if applicable, completed Final Notice to Acquire by Negotiations;
- ❑ evidence of payment;
- ❑ copy of deed and settlement costs;
- ❑ justification of excess payment (if applicable); and

- ❑ notice of initiation of condemnation (if applicable).

V. RELOCATION

The federal requirements for relocation of households or businesses are extensive and extremely complex and were intended by Congress to discourage the displacement of low and moderate income persons by CDBG projects. The amendments generally require the one-for-one replacement of all occupiable, lower income units that are demolished or converted to other uses as a direct result of CDBG activity. The amendments further mandate that any replacement housing be affordable to lower income families for at least 10 years and authorizes assistance to displaced lower income persons that, in some cases, is more generous than they could have received under the federal Uniform Relocation Assistance Act.

Grantees planning CDBG-assisted projects that may involve either temporary or permanent displacement of local residents or businesses as a result of their acquisition activities should contact their CDBG Program Specialist for guidance on the federal requirements that apply.

CDBG grant recipients are strongly encouraged to design their programs so as to avoid actual or potential relocation as part of their CDBG projects. Grantees who foresee or contemplate a relocation action as part of their project should contact their CDBG program specialist immediately for further guidance.

CHAPTER 7

EXHIBITS

7-A **Public Invitation for Acquisition of Real Property**

7-B **Voluntary Agreement Between Grantee and Individual Seller**

7-C **Voluntary Acquisition File Checklist**

7-D **Preliminary Acquisition Notice**

7-E **Agreement for Appraisal Services (Acquisition)**

7-F **Sample Appraisal Report Review Form**

7-G **Written Offer to Purchase (including Statement of the Basis for Determination of Just Compensation)**

7-H **Final Notice to Acquire by Negotiations**

7-I **Uniform Relocation Act Acquisition File Checklist**

7-J **Typical Acquisition Process Under the Uniform Relocation Act**

7-K **Waiver of Procedures and Rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**

7-L **"When A Public Agency Acquires Your Property"**

7-M **Anti-displacement and Relocation Assistance Plan**

EXHIBIT 7-A

PUBLIC INVITATION FOR ACQUISITION OF REAL PROPERTY

(Date of letter to landowner, or publication of notice)

Under provisions of the CDBG program, the (*name of grantee: City, Town, or County of _____*) publicly invites response from owners with real property located in the CDBG project area (shown on the map below) who desire to sell their property to the (*name of grantee)* for the purpose of (*describe CDBG project)*. Interested property owners should contact the (*name of grantee, local CDBG office, address, telephone number, and TDD number*) on or before (*date*).

Offers to sell under this invitation for acquisition must be on a voluntary basis. If a mutually satisfactory agreement cannot be reached between (*name of grantee*) and seller, the (*name of grantee*) will not acquire the offered property.

Attached is a map of the general geographic area under consideration for this CDBG project.

EXHIBIT 7-B

VOLUNTARY AGREEMENT
BETWEEN GRANTEE AND INDIVIDUAL SELLER
(used in the case of voluntary acquisition of property)

I/We, the undersigned, (*name of seller*), owner(s) of the following property: (*describe by general location and address, as well as legal description, for example: 345 Chinook Avenue, Lots 8-9, Block C of the Palmer Addition)* do hereby voluntarily offer the said property for sale to the (*name of grantee)* to be used for (*description of CDBG activity*), in consideration for the amount of (*$ _____*). This offer is in response to the (*name of grantee's*) proposal of purchase dated (*date of Public Invitation for Acquisition of Real Property*).

The (*grantee*) has explained my/our rights and benefits as property owner(s) under the Act; has notified me/us that the (*grantee*) waives its right of condemnation by eminent domain, and therefore will not acquire the property if negotiations fail to result in an amicable agreement; and I/we have received a copy of the Housing and Urban Development (HUD) pamphlet, *When a Public Agency Acquires Your Property*. I/We have read this pamphlet and understand it.

I/We have discussed with a representative of the (*County/City or Town*) the compensation and other assistance required under the Act. I/We understand the I/we cannot be required to sell the (*property description*) to the (*County/City or Town*) for less than the appraised Fair Market Value, and without other assistance to which I/we may be entitled to under the Act.

Date:_____, 20___

Signature of CDBG Grant Administrator: Signature of Seller(s):

_____ _____

STATE OF MONTANA)
)ss.
County of _____)

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

(NOTARIAL SEAL)

Printed Name:_____
NOTARY PUBLIC FOR STATE OF MONTANA
Residing at_____
My Commission expires_____

EXHIBIT 7-C

SAMPLE VOLUNTARY ACQUISITION FILE CHECKLIST

Name of Property Owner _____
Telephone Number_____
Location of Acquired Property _____

Property Use: ☐ Single Family Residence ☐ Business ☐ Agriculture
☐ Multi-Family Residence ☐ Nonprofit

Occupants? ☐ No ☐ Yes
Tenants? ☐ No ☐ Yes

If there are tenants, refer to guidance at the end of Chapter 7 and provide relocation assistance.

DATE	DOCUMENTATION IN FILE	AMOUNT
_____	MDOC authorization to incur costs	
_____	Public Invitation for Acquisition of Real Property **(7-A**)	
_____	Voluntary Agreement Between Grantee and Individual Seller (**7-B**)	$_____
_____	Appraisal	$_____
_____	Contract signed/Proof of payment $_____	
_____	Survey Conducted and Filed	
_____	Recording of property deed	
_____	Record of settlement costs	$_____
_____	Filing of complaint or appeal (if applicable)	
_____	Resolution of complaint or appeal (if applicable)	

As part of its FY 20___ CDBG project, the grantee has acquired the parcel of land described below. The CDBG Office selected this site after soliciting for a voluntary offer by landowners in the general project area. The property was acquired through a voluntary proposal submitted by the owner in response to a public invitation and the CDBG office has determined that the acquisition is exempt from procedures required under the Uniform Act.

The grantee acknowledges that any dislocation of tenants on the property must be conducted according to provisions related to relocation in the Uniform Act, and noted in Chapter 7.

Checklist completed by: (*name*)_____ (*date*)_____

(*title*):_____

EXHIBIT 7-D

PRELIMINARY ACQUISITION NOTICE

(Date)

(*name of property owner*)
(*mailing address*)
(*City, MT Zip*)

Dear (*name of property owner*):

This is to inform you that the (*name of grantee: City, Town, or County of _____*) is interested in acquiring your property at (*describe by general location, address and legal description, for example 345 Chinook Avenue, Lots 8-9, Block C of the Palmer Addition*) to be used for (*describe proposed CDBG activity)*.

A brochure describing your rights and the (*City, Town, or County's*) procedures for acquiring property is enclosed for your information. If you have any questions, please contact our acquisition/relocation specialist (*name*) at (*telephone number*).

The (*City, Town, or County*) will be hiring an independent appraiser to appraise your property. You have the right to accompany him or her on the property inspection if you wish to do so. A letter inviting you to accompany him or her will be sent by the appraiser at least five days prior to the visit. This notice is not a notice to vacate and it does not establish eligibility for relocation payments or other relocation assistance.

Sincerely,

_____
CDBG Administrator

(*Mailing Address*)
(*telephone number*)

Enclosure: brochure entitled *When a Public Agency Acquires Your Property*

AGREEMENT FOR APPRAISAL SERVICES (ACQUISITION)

THIS AGREEMENT entered into this ____ day of _____20___, by and between _____ of the City of _____, State of _____, hereinafter referred to as the "Agency," and _____, hereinafter referred to as the "Appraiser."

WITNESSETH THAT:

WHEREAS; the Agency proposes to acquire certain real property and desires that the Appraiser furnish the Agency certain services with respect to such property, including an appraisal of each parcel of the property, and the Appraiser represents that he or she is fully qualified to perform such services and will furnish such services personally; and

WHEREAS the services to be provided under this Agreement are necessary to achieve the purposes of and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).

NOW, THEREFORE, the Agency and the Appraiser, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE 1. Property To Be Appraised. A description of the real property to be appraised, including an identification of any interests in the real property to be specifically excluded from appraisal, are set forth in the attached Exhibit A. A separate appraisal is to be furnished for each "parcel." (The term "parcel" means any tract or contiguous tracts of land in the same ownership, whether any such tract consists of one or more platted lots or a fractional part of a lot. An easement or other separately held interest in two or more parcels shall be considered to be a separate parcel for appraisal purposes and an exception to the title to the parcels so encumbered. An easement in a parcel that is appurtenant to another parcel to be acquired by the Agency shall be considered to be part of such other parcel and an exception to the title of the parcel encumbered. Each parcel shall be considered to include all rights, title, and interest of the owner in or to any adjacent or abutting streets, alleys, or other public rights of way.

ARTICLE 2. Purpose and Basis of Valuations.

(a) Purpose and Significance of Appraisals. The appraisals to be furnished under this agreement are required by the Agency for its guidance in retaking fair and impartial determinations of fair market value and the just compensation to be offered to each property owner. The Appraiser shall be guided by those objectives when estimating values. Appraisal reports will be reviewed carefully by the Agency. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and his analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how he reached his valuation conclusions.

(b) Appraisal Standards. The appraisals under this agreement shall be based on nationally recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of value and the rules on the admissibility of evidence of value under the eminent domain law of the State. Factors relating to race, color, religion, sex or national origin, or to racial, religious or ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisals of residential real property.

(c) Date of Valuation. The Appraiser's valuation shall be as of a date concurrent with the preparation of the report unless the Agency has specified some other date of valuation.

(d) Relocation Assistance. The Appraiser's analyses and opinions of property value shall not reflect any allowance for the relocation payments and other assistance provided under the URA.

(e) Influence of Project on Property Value. In forming opinion(s), the Appraiser shall disregard any decrease or increase in the fair market value of the real property to be acquired, prior to the date of valuation, caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner. (In the case of a partial acquisition, using the before-and-after method of valuation, the Appraiser's opinion of the value of the remaining not-to-be-acquired portion of the property shall reflect any increase or decrease in value attributable to the project.) If the determination of changes in value caused by the project is a problem, the Appraiser's report shall cite the ruling followed and its source and shall explain the effect of the ruling on his opinion of value.

ARTICLE 3. Scope of Appraiser's Services. The Appraiser agrees to perform the following services:

(a) Appraise each parcel and prepare and deliver to the Agency, within _____ calendar days after the date of this agreement, _____ copies of the appraisal report(s) conforming to the provisions of this agreement. The Appraiser shall personally inspect each parcel, including all buildings, structures, fixtures, and other improvements to the property. The Appraiser shall give the owner or his designated representative an opportunity to accompany the Appraiser during his detailed inspection of the property. If the owner of a compensable interest in the property or a representative of such owner does not accompany the Appraiser during the inspection, the Appraiser shall include in his appraisal report a copy of his notification to the owner of the opportunity to accompany the Appraiser and evidence of the owner's receipt of such notification. In the process of inspecting the property, the Appraiser shall, to the extent practicable, ascertain the rights of all parties in possession and note for consideration all factual information and comments furnished by the owner or his representative relevant to the appraisal.

(b) Testify as an expert witness on behalf of the Agency in any judicial proceeding involving any property appraised under this agreement. Such services shall include such reasonable time as may be required for reinspection of the property, updating the Appraiser's valuation, participation in pretrial conferences with counsel for the Agency, and testifying in the judicial proceeding. The compensation for such services shall be determined in accordance with Article 6.

(c) Modify or furnish supplements to any appraisal report furnished under this agreement, without additional cost to the Agency, if (1) applicable principles of law with respect to the valuation of the property require the modification or supplementing of such appraisal, (2) material omissions, inaccuracies, or defects in the appraisal report are discovered after delivery and acceptance of the report by the Agency, or (3) the Appraiser receives or becomes aware of relevant additional appraisal information in existence prior to the date the Appraiser signed the report. If there is a significant delay between the date of valuation and the date of acquisition of any parcel or if the property has been materially altered since the appraisal by a fire, a revised determination of the boundaries of the property to be acquired, or other cause, the Appraiser shall, if requested by the Agency, furnish the Agency a supplementary report updating this valuation and the supporting data

and analyses to a current date. The compensation for such updating of an appraisal shall be determined in accordance with Article 6.

(d) Estimate the value of any right or interest proposed to be reserved by the owner in a property appraised by the Appraiser, such as an easement for access to other property of the owner, the right to continue occupancy for an extended period after the Agency acquires the property, or the right to remove any building, structure, fixture, or other improvement. The compensation to be paid to the Appraiser for furnishing any such valuation shall be determined in accordance with Article 6.

(e) Consult with the Agency and its legal counsel regarding services to be performed by the Appraiser, at such time(s) as may be mutually convenient for the parties to this agreement. The Appraiser shall initiate such consultations whenever the Appraiser is in doubt as to whether an element of property is real or personal property or needs legal advice on any aspect of the appraisals to be furnished under this agreement. There shall be no charge by any party for such consultations.

ARTICLE 4. Contents of Appraisal Reports. Each appraisal report to be furnished by the Appraiser under this agreement shall contain certain information and the Appraiser's conclusions and opinions, together with the data and analyses by which they were derived, as set forth below. A separate report shall be submitted for each parcel. However, if more than one parcel is to be appraised, all general data may be included in a separate data volume that is referenced in the separate appraisal reports on the individual parcels. The appraisal report on each parcel shall include the following:

(a) A summary headed “Appraisal Report for _____” that provides the following:

(1) Project name and number.

(2) Date of the report.

(3) Parcel number, address of the property, brief identification of all interests in the property appraised, and the name of the owner(s) including any tenant-owners.

(4) Date(s) of the Appraiser's inspection of the property with the owner or the owner's designated representative. Include the name of each owner or representative of an owner who accompanied the Appraiser during the inspection and the interest held in the property or the representative capacity of each such person.

(5) The Appraiser's estimate of the fair market value of the entire parcel and the fair market value of the same interest in the land, as if vacant.

(6) The limiting conditions of the appraisal, which may include assumptions (i) that the title is good and marketable, (ii) that no responsibility is assumed by the Appraiser for legal matters, especially those affecting the title to the property, (iii) that the legal description of the property and the interest in the property to be appraised, furnished to the Appraiser by the Agency, is correct, and (iv) that no survey of the property has been made. Any other appropriate assumption or limiting condition may be added if it has been specifically approved in writing by the Agency.

(7) The certifications of the Appraiser (i) that the Appraiser personally made a thorough inspection of the property, (ii) that, to the best of the Appraiser's knowledge and belief, everything contained in the report is true and no relevant and important fact has been omitted, (iii) that neither the Appraiser's employment nor compensation is contingent on the valuation reported, and (iv) that the Appraiser has no past, present, or prospective interest (including that of real estate agent or broker) in the property, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial report.

(8) A certification that, in the Appraiser's opinion, the fair market value of the property is (an amount to be stated) as of (the date of valuation).

(9) The signature of the Appraiser.

(b) The name and address of the owner of the property and the name and the address, if known, of any other party known or believed to hold a separate compensable interest in the property.

(c) The street address and an accurate description of each parcel and all interests in the parcel appraised. The property description shall identify all conditions, restrictions, easements, servitudes, and reservations affecting the title. The property description shall specifically exclude and describe any separately held interest in the property that is to be acquired separately or as part of another parcel. The description shall also specifically exclude all separately held interests which are not to be acquired and will not be affected adversely by the Agency's project. If there are any separately held interests in a parcel, which are to be acquired with other interests in the same parcel, such as leaseholds, tenant-owned improvements, life estates, easements, and water, gas, oil, or mineral rights, a description of each such separate interest and the name of its owner shall be furnished.

(d) Off-record title information concerning interests or instruments that affect title, but are not of record; such as leases, options to renew a lease, contracts of sale, and other interests or rights of parties in possession. Such information shall be reported, and if available facts are sufficient, the Appraiser's report shall be based on such additional title information and so noted in the appraisal report. Otherwise, the Appraiser shall refer the matter to the Agency and defer completion of the appraisal until the question is resolved.

(e) Basic property data including pertinent information with respect to such matters as (1) the environment and location of the property, (2) the zoning and any restrictive covenants, conditions, or servitudes affecting the available use or occupancy of the land, (3) the assessed value of the real property and the current annual real estate tax burden, (4) the use and occupancy of the property at time of appraisal, (5) the public improvements, services, and utilities serving and providing access to the property, (6) the character, topography; dimensions, and area of the land, (7) the freedom of the property from special hazards, (8) the current rental and rental history of the property, if rented, (9) the estimated annual costs of ownership and for operation and maintenance of the property, and (10) a description of the buildings, structures, and other improvements, if any, including relevant information as to type of improvement, designed use, construction materials and finish, equipment, dimensions, floor area, age, condition, space or room arrangement, functional utility, and any other characteristics or attributes of the improvements germane to the value of the real property. The appraisal report shall contain a general sketch plat showing the shape and dimensions of the land, the location of the principal improvements on the land, the location of

any easements in the land, and the abutting streets, alleys, or other public rights of way. The report shall also include such photographs, each clearly identified, as may be appropriate.

(f) Report of any condition or occupancy of the property in violation of law that may affect the value of the property.

(g) The Appraiser's opinion as to the highest and best use for the property. The appraisal report shall also include the appraiser's opinions as to any other use(s) for which the property is reasonably suitable or adaptable. If the property is unused vacant land or the highest and best use is not self-evident or is found to differ significantly from the present use, the appraisal report shall contain the analyses by which the Appraiser reached the conclusions as to the highest and best use of the property and as to its suitability or adaptability for any other use(s). The analysis of a potential use shall include consideration of relevant matters, such as the suitability of the location, the environment and the legal and physical attributes of the property for such use, the estimated cost, if any, of converting the property to such use, and the supply, sale price levels, and relative desirability of other properties that would compete for the same kind of use. The analysis of the property for the future use or uses found to be the highest and best use is part of the process of appraising the property and, therefore, may be included in the valuation analysis furnished in accordance with Paragraph 4(h) below.

(h) The opinion of the Appraiser as to the fair market value of the property. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching the conclusion as to value and all data and analyses needed to explain and support the valuation. The supporting data and analyses furnished in the appraisal report shall include the following:

(1) An analysis of the property, from the point of view of evaluating the effect of its characteristics and attributes on its value for the available use or uses for which the property is best suited. Particular attention shall be given to the characteristics of the property most relevant to its value, such as, in the case of an investment property, the income potential and the expenses of ownership, maintenance, and operation.

(2) An identification of the most recent sale of each property appraised and any other sales of such property during the last five (5) years preceding the appraisal. Such sale(s) of the property appraised and all recent sales of comparable properties considered by the Appraiser in forming the opinion(s) of fair market value shall be verified insofar as practical. The information furnished with respect to each such sale shall include, among other pertinent facts, the names of the grantor and grantee, the date of the sale, the sale price, any special terms or conditions or circumstances of the sale that affected the transaction, and a description of the property and its condition at time of sale in sufficient detail for use in making the appraisal.

(3) The analyses that constitute the principal basis for the Appraiser's opinion of the fair market value. The appraisal report shall contain the Appraiser's evaluation with respect to previous sales of the property appraised and any recent offer of the owner to sell the property. The appraisal report shall also contain the Appraiser's analysis of each comparable property and its sale in relation to the property appraised. The Appraiser's analysis shall reflect appropriate allowances for the difference in the time of the sale of the comparable properties and the date of appraisal and the differences in the utility, desirability, and productivity of the properties that are pertinent to their relative

value. The appraisal report shall contain a valuation data map showing the location of the property appraised and the comparable properties referred to in the appraisal report.

(4) All other information, analyses, and estimates considered by the appraiser to be relevant to the estimation of the fair market value of the property.

(5) If the property appraised is part of a larger parcel in the same ownership or is less than the entire interest of the owner in the property, the appraisal report shall contain the Appraiser's opinion of just compensation for a taking of such property or interest, using the before-and-after method of valuation as interpreted under State law unless it is obvious that there would be no damages or benefits to the remaining property or interest of the owner. However, if the part or interest to be taken is such a small part of the whole property that the damages for the taking can be more accurately estimated directly, that method may be used if permitted under State law, without estimating the fair market value of the entire property of the owner. The foregoing opinions of the Appraiser shall be supported in the report by the data and analyses by which the Appraiser reached his/her conclusions.

For information purposes, the appraisal report shall also contain the Appraiser's estimates of the fair market value of the to-be-acquired part or interest as part of the whole property and the net damages or benefits to the remaining property of the owner. If in the opinion of the Appraiser, acquisition of the part of, or interest in, the property proposed for acquisition would leave the owner with an uneconomic remnant, the Appraiser, shall furnish a separate estimate of the fair market value of a "parcel' comprising both the parcel proposed for acquisition and the uneconomic remnant. (A remainder parcel or interest shall be considered to be an uneconomic remnant if by itself it has little or no utility or value to the owner.)

(6) Such maps, plans, photographs, or other exhibits as are necessary to explain or illustrate the analyses of the Appraiser.

(7) The Appraiser's evaluation of the indications of value deduced from the separate analyses of the various evidences of value and an explanation of how the Appraiser reached his/her final conclusion as to the fair market value of the property.

(i) The opinion of the Appraiser as to the fair market value of the land, as if vacant. The valuation shall be for the same interest in the land as is to be acquired in the real property. The report shall contain information with, respect to the available use or uses for which the land would be suitable if vacant, the opinion of the Appraiser as to its highest and best use, and the Appraiser's analysis of the evidences of value and of the use potential by which the Appraiser reached his/her conclusions as to the highest and best use of the land and the land value.

(j) A property analysis if the property is a commercial, industrial, institutional, governmental, or farm property that involves substantial quantities and kinds of fixtures such as machinery and equipment. Any building, structure, fixture, or other improvement, which would be real property if owned by the owner of the land, shall be considered to be real property (even if the improvement is the property of a tenant who has the right to remove it or the obligation to remove it at the expiration

of the lease term). The property analysis must be approved by the Agency before the appraisal is completed and, as approved by the Agency, shall be included as an exhibit in the Appraiser's report. The property analysis shall list, identify, and classify as to ownership and type of improvement, all items of physical property considered to be part of the real property. The property analysis shall also identify tangible personal property located on the premises to the extent reasonably necessary to prevent misunderstandings as to what is regarded as being real or personal property. Buildings, structures, fixtures and other improvements, including their accessories and spare parts, shall be identified and classified -as to ownership and type of property as follows:

(1) Ownership.

(i) Owner of the land.

(ii) Each tenant in occupancy.

(iii) Each non-occupant owner of any fixtures or other improvements, or personal property on the premises.

(2) Type of property.

(i) Building, structure, or fixed improvement.

(ii) Building equipment, removable.

(iii) Fixtures, classified as to whether economically removable for reuse, removable for salvage only, or irremovable.

(iv) Personal property, identified as to types and approximate amounts, or otherwise, as needed to prevent misunderstandings as to the classification of any item.

If any building, structure, fixture or other improvement is not to be acquired, will not be adversely affected by the Agency's project, and will not be required by the Agency to be removed, such as a pipeline in an easement not to be acquired, such improvement shall be identified as excluded from the appraisal

(k) If machinery and equipment or other fixtures used in a trade or business, farm operation, or institutional or governmental function constitute part of the real property, the appraisal report shall contain a separate schedule which provides separate estimates for each such item, as prescribed below. If there is more than one owner of such items, a separate schedule shall be furnished for each owner. The information and conclusions to be furnished on each item are as follows:

(1) Description of the item, including, as appropriate, the manufacturer, model and serial number, size or capacity, age and condition, and degree of obsolescence. Accessories and spare parts, special foundations, and power wiring and process piping generally shall be listed separately, following the listing of the item(s) to which they apply.

(2) Estimate of the replacement cost installed of the item as listed and identified (excluding any elements listed separately). Separately identify the basis of estimated replacement cast (new or used).

(3) The contributive (enhancement) value of the item to the fair market value of the real property as a whole.

(4) Estimated fair market value of the item for removal from the property at a purchaser's expense. Such value shall be considered to be the probable selling price if the item were offered for sale for removal from the property at the purchaser's expense, allowing a reasonable time to find a purchaser buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including salvage for serviceable components and scrap when it appears that will provide the highest value.

The schedule(s) of estimates shall be consistent with the property analysis approved by the Agency, as provided in Paragraph 4(j). The Appraiser is permitted to use the services of such technical specialists as may be needed to enable the Appraiser to provide valid estimates and sound valuations. The schedule(s) shall be supported by an explanation of the procedures followed in gathering the necessary market information and technical data. The principal purpose of the Appraiser's accompanying narrative, however, must be to explain his analyses and his evaluations of the dollar amount of the overall contribution of the machinery, equipment, and fixtures to the fair market value of the real property as a whole. The report shall contain any layout plans, sketches, or photographs that are reasonably necessary for locating or identifying the facilities or illustrating the Appraiser's analyses.

(l) If there are separately held interests in the real property to be acquired, such as easements, leaseholds, air rights, life estates, and oil, gas, or mineral rights, and the division of ownership is not of such character as to destroy the practical unity of the property, the Appraiser shall apportion his estimate of the fair market value of the property (all interests in the property to be acquired) to each separately held interest. (However, tenant-owned improvements shall be valued in accordance with Paragraph 4(m) below.) The report shall contain the data, analyses, and reasoning by which the Appraiser made the apportionment. If the "unit rule" is regarded as not applicable because the division of ownership is such as to diminish the fair market value of the property as a whole, the separate interests involved shall be appraised separately.

(m) Tenant-owned improvements. If any building, structure, fixture, or other improvement to the property is identified as being the property of a tenant who has the right or obligation to remove it at the expiration of the lease term, the Appraiser's estimate of the fair market value of the improvement shall be the greatest of (1) the amount which the improvement contributes to the fair market value of the property, (2) the in-place value of the improvement as part of the real property (the depreciated replacement cost of the improvement installed), or (3) the fair market value of the improvement for removal from the property at the purchaser's expense. The appraisal report shall state the basis for the valuation of the improvement and furnish the data and analyses on which the valuation was made.

(n) If the property is a multifamily or mixed-use (residential and nonresidential) property and an owner of a compensable interest in the property also occupies a dwelling in the property, the Appraiser shall furnish an apportionment of the estimate of the fair market value of the whole property to such dwelling and to the remainder of the property. For the purpose of this paragraph, an occupant of a dwelling shall be considered to own a compensable interest in the property if he or

she holds fee title, a life estate, a 99-year lease, or a lease with not less than 50 years to run from the date of valuation, or holds an interest in a cooperative housing project which includes the right to occupy the dwelling, or is the contract purchaser of any of the foregoing estates or interests, or has a leasehold interest with option to purchase. The Appraiser's report shall explain how the apportionment was made.

ARTICLE 5. Services To Be Provided by Agency. The Agency agrees to furnish the Appraiser the following:

(a) A map or plat, based on official records, of the property described in Article 1, showing the boundaries and dimensions of the parcels to be appraised. Each parcel shall be designated by a number, and the parcel numbers shown on the Appraiser's reports shall correspond to the parcel numbers shown on the map or plot. However, additional parcel numbers may be assigned by the Appraiser for easements appraised separately or for additional parcels revealed while making the appraisals. The Appraiser shall promptly advise the Agency of any, such additions.

(b) An ownership data report for each parcel. That report will show all estates and interests in the parcel as. shown of record and consequently shall not be assumed to accurately define the interests to be appraised. The ownership data report on each parcel as shown on the parcel map will include:

(1) The name (and address, if available) of the owner appearing on record;

(2) The legal description of the parcel as shown by the conveyance(s) by which the record owner acquired title;

(3) Identification of the conveyance(s) by which the present owner acquired title, including: The date of the conveyance(s); the date, book and page numbers, and place of recordation; the name (and the address, if available) of the grantor, of such conveyance; the stated consideration; the amount of any mortgages or encumbrances placed of record or to which tide was subject at time of conveyance (so far as determinable from an examination of the conveyance); and the amount of any State or local transfer taxes that were based on the amount of the consideration;

(4) Outstanding estates and other rights or interests of record, including easements, use restrictions, mineral rights, leases, and any known, but unrecorded, interests of other parties. Sufficient *information shall* be furnished to disclose the probable effect of such outstanding interests on the title of the record owner;

(5) Outstanding special assessments, if any, for public improvements such as streets, sidewalks; public utilities, and similar public facilities;

(6) The amount of real estate taxes for the current year and the assessed valuation stated separately for land and for improvements.

(c) Legal advice, upon request of the Appraiser, on legal matters affecting the appraisal of any property to be appraised.

ARTICLE 6. Payment. In consideration of the services provided by the Appraiser under this agreement, the Agency agrees to make payments to the Appraiser upon the submission to the Agency of properly certified invoices, as follows:

(a) For appraisal reports accepted by the Agency, and for all other services furnished in accordance with Article 3, except services furnished, in connection with judicial proceedings under Paragraph 3(b), the updating of appraisals under Paragraph 3(c), and the valuation of reservations of rights in owners under Paragraph 3(d), the lump sum of _____dollars, which shall constitute full payment to the Appraiser for all of such services and for all supplies, materials, and equipment used or furnished by the Appraiser and all expenses incurred by the Appraiser in connection with the performance of such services.

(b) For services furnished by the Appraiser in connection with judicial proceedings as provided in Paragraph 3(b) (except services as an expert witness in such a proceeding), the updating of appraisals as provided in Paragraph 3(c), and the valuation of reservations of rights in owners as provided in Paragraph 3(d), _____dollars per hour or fraction of an hour actually engaged in performing the services, including travel time. All expenses of the Appraiser, including travel expense and subsistence, shall be borne by the Appraiser.

(c) For services as an expert witness for the Agency in judicial proceedings as provided in Paragraph 3(b), the Appraiser and the Agency hereby agree that the fair and reasonable compensation for the Appraiser's services shall be _____dollars for each day's attendance in court.

ARTICLE 7. Agreements of Appraiser. As an inducement to the execution of this agreement by the Agency and in consideration of the agreements to be performed by the Agency, the Appraiser agrees that:

(a) Qualifications. The Appraiser is qualified to perform the services to be furnished under this agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform. Attached as Exhibit B, is a statement by the Appraiser, certified by the Appraiser to be true and correct, setting forth the Appraiser's technical qualifications, general appraisal experience, specific experience in appraising properties of the type involved in this agreement, the courts in which he or she has testified as an expert witness, and other information pertinent to establishing his or her technical qualifications.

(b) Solicitation of Agreement. The Appraiser has not employed any person to solicit this agreement and has not made and will not make any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this agreement.

(c) Interest of Appraiser and Appraiser's Employees. The Appraiser does not have any interest (including that of real estate agent or broker) direct or indirect, present or prospective, in any property described in Article 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this agreement, any person having any such interest. Until the property is acquired by the Agency or excluded from its project by resolution of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other

than the Agency, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.

(d) Services To Be Confidential. All services, including reports, opinions, and information, to be furnished under this agreement are confidential and shall not be divulged, in whole or in part, to any person, other than to duly authorized representatives of the Agency, without prior written approval of the Agency, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of the Appraiser's staff or organization divulges any such information except as may be required by law.

(e) Facilities and Personnel. The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of a property appraised under this agreement, the employment of such person or persons for such purpose shall not place the Agency under any obligation to such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished, under this agreement.

(f) Equal Employment Opportunity. During the performance of this agreement:

(1) The Appraiser will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Appraiser will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Appraiser agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

(2) The Appraiser will, in all solicitations or advertisements for employees placed by or on behalf of the Appraiser, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(g) Assignment. The Appraiser's rights, obligations, and duties under this agreement shall not be assigned in whole or in part, but this shall not prohibit the assignment of the proceeds due under this agreement to a bank or financial institution. This agreement may be assigned by, the Agency to any corporation, agency, or instrumentality having authority to accept the assignment.

(h) Subcontracting. None of the work or services covered by this agreement shall be subcontracted without the prior approval of the Agency.

(i) Records. The Appraiser shall maintain records of all details with respect to the services to be performed under this agreement, including one complete copy of each appraisal report and related notes, for three (3) years after delivering the report or until the property is acquired by the Agency or the acquisition is abandoned, whichever is later.

(j) Affidavits of Compliance. The Appraiser will, if requested by the Agency, furnish the Agency affidavits certifying compliance with the provisions of this Article 7.

ARTICLE 8. Changes. The Agency, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under this agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for their performance, equitable adjustment shall be made in the provisions of this agreement for payments to the Appraiser or for the time for performance of the services or for both, and this agreement shall be modified by agreement of the parties accordingly.

ARTICLE 9. Termination of Agreement for Cause. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner his or her obligations under this agreement, or if the Appraiser shall violate any of the provisions of this agreement; the Agency may upon written notice to the Appraiser terminate the right of the Appraiser to proceed under this agreement or with such part or parts of the agreement as to which there has been default, and may hold the Appraiser liable for any damages caused to the Agency by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this agreement shall, at the option of the Agency, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the Agency. The Appraiser, however, shall not thereby be relieved of liability to the Agency for damages sustained by the Agency by reason of any breach of the agreement by the Appraiser, and the Agency may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the Agency from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Article solely for reasons of delay if the delay is due to causes beyond his or her control and without his or her fault or negligence, but this shall not prevent the Agency from terminating this agreement because of such delay.

ARTICLE 10. Interest of Members of Agency. No member of the Agency shall participate in any decision relative to this agreement affecting, directly, or indirectly, his or her personal interests. No such member and no other officer, agent or employee of the Agency having any responsibility or function in connection with this agreement shall have any private interest, direct or indirect, in this agreement or the proceeds of this agreement.

ARTICLE 11. Officials Not To Benefit. No Member of or Delegate to the Congress of the United States of America, and no Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise from the same.

ARTICLE 12. Notices. Any action by the Agency under this agreement may be taken by or such other person(s) as the Agency may, by written notice to the Appraiser, designate for such purpose. All notices to the Appraiser shall be considered to be properly given if mailed to the address specified below, or delivered personally to the Appraiser. All notices or other papers given to the Agency shall be considered to be sufficiently given if mailed, postage prepaid to at or to such other representative or address as the Agency may designate to the Appraiser in writing.

IN WITNESS WHEREOF, the Agency and the Appraiser have executed this agreement on or as of the date first above written.

_____
(Appraiser)

_____
(Street Address)

_____
(City) (State) (Zip code)

_____
(Agency)

By: _____

_____
(Title)

EXHIBIT 7-F

SAMPLE APPRAISAL REPORT REVIEW FORM

Project:_____ Book Number: _____

Parcel Number: _____

Project Address: _____ Name of Appraisers:

City: _____ 1. _____

State & Zip: _____ 2. _____

Owner of Record: _____

Type of Appraisal: □ Fee Simple □ Easement □ Severance or Partial Take

Property Type: _____ Zoning: _____ Restrictions: _____

Purpose of the Appraisal: □ Market Value Estimate □ Other: _____

Date of the Appraisal: (1)_____ (2)_____

Appraisals Signed and Dated: □ Yes □ No

Was the owner or a designated representative invited to accompany the appraisers on the property inspection? □ Yes □ No**

****IF THE ANSWER IS "NO", THE APPRAISAL IS UNACCEPTABLE!**

Have the appraisers complied with the appraisal contract? □ Yes □ No

Comments:

	Appraiser #1			Appraiser #2		
	Yes	No	NA	Yes	No	NA
I. DESCRIPTION						
A. Local Government Analysis Acceptable?						
B. Neighborhood Analysis Acceptable? (Location, Percentage Buildup, Value Range Stated, Present and Proposed Land Uses, Trends, Occupancy, Employment, Distances to Shopping, Recreation, Fire and Police Protection)						
C. Acceptable Site Description						
D. Acceptable Improvements Description						
E. Acceptable Tax Information						
F. Acceptable Highest and Best Use Analysis						
II. APPRAISAL PROCESS						
A. Direct Sales Comparison Approach						
1. Is the comparable sales data complete, i.e., sales date, grantor, grantee, comparable address, deed book and page no., sales price, complete description?						
2. Is the adjustment analysis satisfactory?						
3. Is the market value reconciled correctly? (That is, no averaging and explanation is satisfactory.)						
B. Cost Approach						
1. Did the appraiser provide adequate support for the land cost estimate?						
2. Did the appraiser provide adequate support for the building cost estimate?						
3. Did the appraiser use acceptable method of estimating accrued depreciation?						
4. Were all forms of depreciation supported?						
5. Is the Cost Approach Summary acceptable?						

List corrections required to make appraisal reports adequate and acceptable (including deficiencies not listed above):

Appraiser #1:

_____

_____

Appraiser#2:_____

_____

_____

Reviewer's Recommendation Regarding Fair Market Value:

_____

Explain the basis for the reviewer's recommendation of Fair Market Value (If there are 2 or more appraisals for each parcel, the reviewer should give a comparative analysis of each appraisal report, and the reasoning for accepting the appraised value of one of the appraisal reports.)

_____

_____

_____

_____

I hereby certify that I have inspected the subject property and the appraiser's comparable sales; that I have no interest in the property, either past, present, or contemplated; that except as noted, the appraisals are complete and technically acceptable; and that the appraisals meet the requirements of the Department of Housing and Urban Development, and those outlined in the appraisers' contracts.

It is recommended that the appraiser's fee of $_____

☐ Be Paid ☐ Not be paid for the following reasons:

_____

_____

_____

_____

☐ The reviewer recommends that the locality hire another appraiser to appraise the parcel.

Date:_____ _____

Review Appraiser

EXHIBIT 7-G

WRITTEN OFFER TO PURCHASE

Date

(*name of property owner*)
(*mailing address*)
(*city, MT Zip*)

Dear (*name of property owner*):

This letter serves as a written offer to purchase property at (*describe by address or general location and legal description, for example: 345 Chinook Avenue, Lots 8-9, Block 6 of the Palmer Addition*), which our records indicate is owned by (*name of property owner*). This property is required for (*describe proposed CDBG activity*).

We have had the property appraised by a competent and unbiased fee appraiser and this report has been thoroughly analyzed by a certified review appraiser and found to be well supported. Based on the appraisal and review, the (*name of grantee*) hereby makes you a firm offer in the amount of ($_____) for the purchase of your property.

We feel that the above offer is most equitable and we urge your favorable consideration and acceptance of it. If this meets with your approval, the CDBG Project Manager (*name*) has prepared an Act of Sale and will assist in any way convenient to you in finalizing the acquisition. Negotiations for the purchase of your property will begin on (*date*).

In addition to the offered purchase price, the CDBG office will also reimburse you for any incidental costs associated with the transfer of the property. If you feel that the CDBG office has not examined all the relevant information needed to determine just compensation for your property, please contact the acquisition/relocation specialist (*name)* at (*telephone number*), who will be more than willing to review the material.

Thank you very much for your cooperation and favorable consideration of this offer.

Sincerely,

(*name of Chief Elected Official*)
(*Mayor or Chairperson, County Commission*)
(*name of grantee: City, Town, or County of* _____)

Enclosure: Statement of the Basis for the Determination of Just Compensation

STATEMENT OF THE BASIS OF DETERMINATION OF JUST COMPENSATION

DESCRIPTION AND LOCATION OF PROPERTY

The *(name of grantee: City, Town, or County of)* proposes to purchase land and improvements at *(describe by address or general location and legal description, for example: 345 Chinook Avenue, Lots 8-9, Block 6 of the Palmer Addition)* from owner *(name)* at *(owner's address, Montana Zip)*. It is a *(describe use and character of structure and area, for example: single -family residential unit which conforms to zoning, present use, surrounding land use, and area trends)*.

PURPOSE OF PURCHASE

The *(name of grantee)* intends to use the parcel for *(describe proposed CDBG activity, for example: construction of a new fire station adjacent to the existing library)*.

IMPROVEMENTS

Describe the structure in detail, for example:

> *It is a one-story, single-family residence of wood frame construction with concrete foundation, stucco siding, a tar and gravel roof and aluminum gutters and downspouts.*
>
> *It contains a living room, kitchen, center hall, two bedrooms, and one bath.*
>
> *Interior finish is hardwood floors, except hall, two bedrooms and one bath.*
>
> *The kitchen has counters and painted wood cabinets. There are no built-in appliances.*
>
> *Heat is gas-fired, forced-air, 120,000 BTU furnace.*
>
> *The house is 25 years old. Design is good. Maintenance is average.*.

DECLARATION OF OFFER

Based on the appraisal, the *(name of grantee)* hereby makes you an offer in the amount of *($)* for the purchase of your property. This offer is for the fair market value of your property. This offer does not include any consideration of decrease or increase in value contributed to the project for which it is being acquired. It reflects no relocation payments which the owner/tenant may be

entitled to receive under provisions of the *Uniform Relocation and Real Property Acquisition Policies Act of 1970*.

EXHIBIT 7-H

FINAL NOTICE TO ACQUIRE BY NEGOTIATION

Date

(*name of property owner*)
(*mailing address*)
(*city MT Zip*)

Dear (*name of property owner*):

This letter serves as final written notice of the (*name of grantee: City, Town, County of*)'s offer to purchase through negotiations your property at (*describe by address or general location and legal description, for example: 345 Chinook Avenue, Lots 8-9, Block 6 of the Palmer Addition*). We have taken the following steps to attempt to reach a mutually agreed upon price for the property.

Describe dates and actions taken. For example:

May 01, 20__ *Submitted a written offer to you of $37,500.*

May 20, 20__ *Met with you and your representative to review additional material which you felt should be included in determining just compensation.*

May 27, 20__ *Submitted a second written offer based on the information you presented, raising the level of compensation to $39,000. At that time we established June 13, 19__ as the date by which you must indicate your acceptance or refusal of the second written offer.*

We have not received any correspondence or communications from you concerning our second written offer of (*date of second offer*), and therefore consider it refused. In an attempt to avoid litigation and reach an administrative settlement, we are prepared to make one final offer of $_____ (*final offer reached through administrative settlement, generally no more than 10% of just compensation*). In the event that you refuse this final offer, the CDBG office will have no choice but to proceed with condemnation of your property on (*date of initiation of condemnation; no sooner than 7 days from receipt of this notice*), through exercise of the (*City, Town or County's*) powers of eminent domain as provided for under Title 70, Chapter 30, Part 101 et. seq., MCA).

We strongly recommend that you obtain legal counsel to represent you in these proceedings.

We regret that we must take this action. If you desire to consider our final offer, please contact (*name*), Acquisition/Relocation Specialist for the (*name of grantee*) CDBG Office, immediately, at (*telephone number*).

Sincerely,

(*Name*)
CDBG Project Manager
(*Mailing Address*)

EXHIBIT 7-I

UNIFORM RELOCATION ACT ACQUISITION CHECKLIST

Name of Property Owner: _____
Location of Acquired Property: _____
Telephone Number: _____

Property Use: □ Single Family Residence □ Business □ Agriculture
□ Multi-Family Residence □ Nonprofit

Occupants? □ No □ Yes
Tenants? □ No □ Yes
Comments:_____

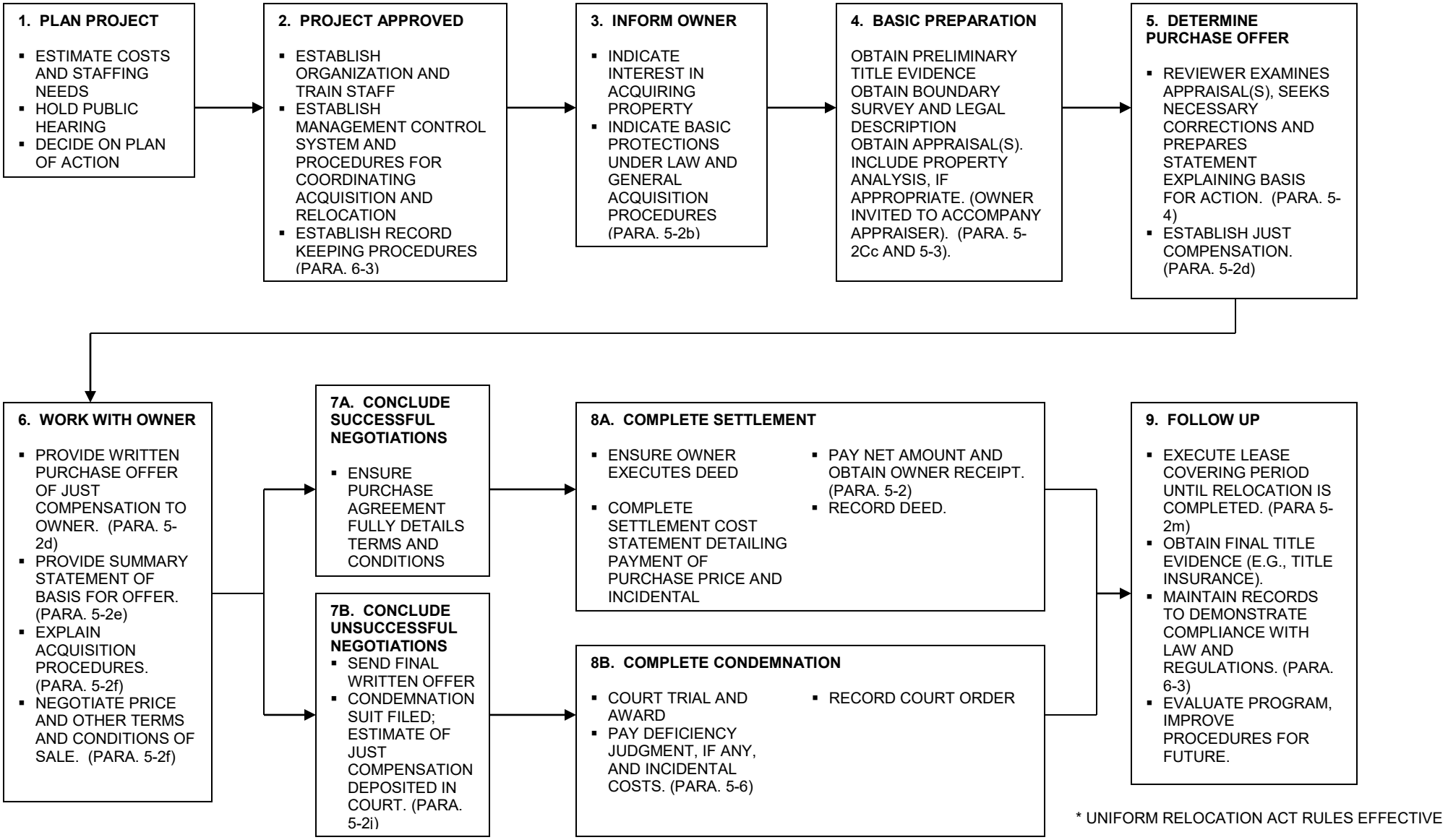
Name(s) of Tenants: _____
Address After Move: _____
_____

DATE	DOCUMENTATION IN FILE	AMOUNT
_____	MDOC authorization to incur costs	
_____	Preliminary Acquisition Notice issued **(7-D)**	
_____	Contract for appraisal **(7-E)** Owner invited to accompany appraiser? □ No □ Yes	
_____	First appraisal completed	$_____
_____	Second appraisal completed *(if over $25,000)*	$_____
_____	Review appraisal completed **(7-F)**	$_____

DATE	DOCUMENTATION IN FILE	AMOUNT
_____	Written Offer to Purchase issued **(7-G)**	$_____
_____	Statement of Determination of Just Compensation	
_____	Owner accepted offer	$_____
_____	Contract signed/Evidence of payment	
_____	Survey Filed	
_____	Recording of property deed	
_____	Record of Settlement Costs	
_____	Agreement for Compensation of Related Improvements *(if applicable)*	
_____	Justification of Excess Payment *(if applicable)*	
_____	Final Notice to Acquire by Negotiation issued *(if applicable)*	$_____
_____	If condemnation, date proceedings started	
_____	If condemnation, date just compensation deposited with court	$_____
_____	Filing of complaint or appeal *(if applicable)*	
_____	Resolution of complaint or appeal (if applicable)	

EXHIBIT 7-J
ACQUISITION PROCESS UNDER THE URA*

HUD HANDBOOK 1378
APPENDIX 19



* UNIFORM RELOCATION ACT RULES EFFECTIVE

EXHIBIT 7-K

WAIVER OF PROCEDURES AND RIGHTS UNDER THE
UNIFORM RELOCATION ASSISTANCE AND
REAL PROPERTY ACQUISITION POLICIES ACT OF 1970
(used in the case of donation of property)

I/We, as property owner(s), waive, or give up, my/our right to have the (*County/City or Town of*), State of Montana, follow completely the procedures required under the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* (the "Uniform Act"). I/We further waive, or give up, the right to an appraisal and to any and all claims for compensation by the (*County/City or Town*) with respect to my/our donation of the (*property description*) described on Exhibit "A" attached to this agreement.

The (*County/City or Town of _____)* has explained my/our rights and benefits as property owner(s) under the Act; has notified me/us that the (*County/City or Town*) waives its right of condemnation by eminent domain for acquisition of this property; and I/we have received a copy of the Housing and Urban Development (HUD) pamphlet, *When a Public Agency Acquires Your Property*. I/We have read this pamphlet and understand it.

I/We have offered to donate the (*property description*) to the (*County/City or Town*) on _____, 20___. I/We have discussed with a representative of the (*County/City or Town*) the compensation and other assistance required under the Act. I/We understand the I/we cannot be required to donate or sell the (*property description*) to the (*County/City or Town*) for less than the appraised Fair Market Value and without other assistance to which I/we may be entitled to under the Act.

Date:_____, 20___

_____ _____
(Signature of CDBG Grant Administrator) *(Signature of Seller(s))*

STATE OF MONTANA)
)ss.
County of _____)

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

(NOTARIAL SEAL)

Printed Name:_____
NOTARY PUBLIC FOR STATE OF MONTANA
Residing at_____
My Commission expires_____

EXHIBIT 7-L

"When A Public Agency Acquires Your Property"

HUD Pamphlet: HUD-1041-CPD (Revised 3/2005)

http://www.hud.gov/offices/cpd/library/relocation/publications/1041.pdf

Exhibit 7- M

ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

Montana CDBG Program
Montana Department of Commerce

1. The Montana Department of Commerce (DOC) encourages applicants to design their project so as to displace as few persons as necessary to meet the goals and objectives of the State CDBG program and critical local community development needs.

2. DOC will carefully consider any proposed relocation and/or displacement activities during application ranking.

3. When a proposed CDBG project could result in direct or indirect involuntary displacement of community residents (including businesses), the applicant must prepare a plan which describes the actions to be taken to assist such persons to remain in their neighborhoods, when they prefer, and to provide equitable and reasonable benefits to those persons who will be involuntarily and permanently displaced. The adequacy of any displacement mitigation plan will be assessed by the Department of Commerce on the basis of:

    -- its responsiveness to displaced persons;
    -- the timeliness of the remedy; and
    -- the reasonableness of projected costs, including safeguards that will be established to assure prudent use of scarce public resources.

4. Grant recipients must replace on a one-for-one basis all occupied and vacant habitable low and moderate income dwelling units demolished or converted to a use other than as low and moderate income housing. The one-for-one replacement requirement will not apply if the U.S. Department of Housing and Urban Development HUD) finds there is an adequate supply of available, vacant low and moderate income dwelling units in standard condition in the area.

5. DOC will require CDBG recipients to provide benefits to any person involuntarily and permanently displaced as a result of CDBG funded activities in accordance with Title V of the federal Housing and Community Development Act.

6. DOC will require all CDBG recipients to certify that they will comply with this residential anti-displacement and relocation assistance plan.

CHAPTER 8

COMMUNITY DEVELOPMENT BLOCK GRANT ECONOMIC DEVELOPMENT PROJECTS

I. OVERVIEW

The purpose of this chapter is to assist local governments and local development organizations implementing economic development projects funded by the Community Development Block Grant – Economic Development (CDBG-ED) Program. Because economic development projects involve both the private and the public sectors, clarification of the federal and state requirements that are applicable to each private and public sector participant is necessary. Many requirements that will apply to the local government, as a public entity, will not apply to the private sector for-profit or nonprofit entity. In addition, some requirements that may apply to one type of economic development project may not apply to another project because of the different activities being conducted.

To a private business person, many of the federal regulations associated with the program may seem more applicable to traditional public sector projects. However, it is the responsibility of all CDBG-ED recipients to comply with applicable federal and state laws, executive orders, and regulations affecting their projects. The major federal requirements that may apply, as listed in the CDBG Certifications for Application, will become specific conditions of the grant contract between the Montana Department of Commerce (MDOC) and the local government. Certain requirements will also apply to the agreement between the local government and any business or agency that will receive CDBG-ED assistance through a loan or grant.

Local governments should carefully review these requirements and consider their potential impact when implementing their CDBG-ED project. These laws can affect the costs and complexity of the project and the schedule for completion.

NOTE: Communication with CDBG-ED staff during the MDOC contract period ensures grant recipients meet program requirements. Program requirements can be complicated. Your CDBG-ED liaison can provide guidance towards meeting contractual obligations.

Local governments and businesses should also be aware that **it will take at least two months or longer after the decision to award funds has been made before they will actually receive any funds**. This delay occurs because several activities must take place, called “start-up conditions”. For example, the contract between the local government and the Department must be prepared, the local government must conduct a review of environmental factors, and all the details for assuring proper management of the project and the expenditure of federal funds must be finalized.

NOTE: It is absolutely essential that the applying local government and the assisted business not incur ACTIVITY costs or obligate funds, which are intended to be reimbursed with CDBG-ED funds prior to the date that all contract start-up conditions including signing the loan agreement if applicable, are satisfied by the local government and approved in writing by the MDOC. The local government may incur ADMINISTRATIVE costs as directed by the Department, from the date of CDBG-ED award.

II. APPLICABLE REQUIREMENTS

The following state and federal requirements are discussed in more detail in the appropriate chapters of the CDBG Program Grant Administration Manual. Each of the following sections discusses the requirements of each chapter in terms of how the requirements may be different for economic development projects.

A. Chapter 1 - Project Start-up

All of the requirements discussed in **Chapter 1, Project Start-up**, apply to all economic development projects. The local government must complete all of the steps outlined in the chapter before CDBG-ED funds will be made available for drawdown. Shortly after the funding award decision, the CDBG-ED program will notify the local government of required start-up conditions.

When a project audit is completed, Chapter 1 can provide guidance regarding the CDBG requirements. Audits regarding loans or grants to private sector entities are limited to the CDBG regulatory compliance and not to audit business operations. The local government, however, must require financial documentation and reports from the business, including documentation of the propriety of the use of CDBG-ED funds by the assisted entities and periodic financial statements. This is more thoroughly discussed in Chapter 1 of this manual.

When involving the public, both the local government and the business should carefully consider how they represent the project to the general public and interested parties. The local government should keep proprietary information secured and maintain the confidentiality of business financial statements received from the business. This is more thoroughly discussed in Chapter 1 of this manual.

B. Chapter 2 - Environmental Review

Local governments must follow all of the applicable steps in this chapter and receive either a written release of funds or a concurrence with a finding of exemption from MDOC before CDBG-ED funds can be released. Completion of the full environmental review checklist must be initiated soon after CDBG-ED funds are awarded since it may take one month or more to complete the environmental review *(see Full Environmental Checklist for CDBG Economic Development Applications, Application Guidelines for CDBG Economic Development Projects)*. Different projects will require varying levels of environmental review (see Chapter 2 for information on the environmental process). The CDBG-ED staff should be contacted for help in determining the appropriate finding level for each project.

NOTE: It is absolutely essential that the applying local government and the assisted business not incur ACTIVITY costs or obligate funds, which are intended to be reimbursed with CDBG-ED funds prior to the date that all contract start-up conditions and special contract conditions, including signing the loan agreement if applicable, are satisfied by the local government and approved in writing by the MDOC. The local government may incur ADMINISTRATIVE costs as directed by the Department, from the date of CDBG-ED award.

C. Chapter 3 – Procurement Standards

All of the provisions contained in **Chapter 3, Procurement**, apply to a local government's procurement of goods or services that will be paid for in whole or in part with CDBG-ED funds. The procurement requirements and their relationship to private sector procurement of goods or services

should be discussed with your CDBG liaison to ensure compliance with the program can occur, but do not impact the project beyond the necessary program regulations.

D. Chapter 4 - Financial Management

Local governments must comply with all of the applicable financial management requirements contained in **Chapter 4, Financial Management**. A private sector entity's compliance is only limited to that which the federal regulations may require, contact your CDBG liaison for additional details that are not provided in Chapter 4. Any agreements between the local government and MDOC, and between the local government and the assisted private sector entity should be retained for documentation of federal compliance. There are specific requirements related to the drawdown of funds by the local government for economic development projects, program income and revolving loan funds, and other financial requirements that will apply to the local government and the assisted private sector entity. These requirements will be discussed later in this chapter.

A management plan will have to be completed, as part of project start-up conditions that outlines responsibilities of all parties during the contract, including financial management. Please refer to **Exhibit 8-M1, 8-M2, or 8-M3** for CDBG-ED projects.

E. Chapter 5 - Civil Rights

All civil rights requirements apply to the local government even if the requirements are not directly related to economic development, such as adopting and publicizing a fair housing resolution by the local government. The local government must obtain information from the business in order to comply with some direct benefit reporting requirements discussed in **the Civil Rights and Project Closeout Chapters**. The assistance agreement between the local government and the business will contain sections requiring the business to comply with federal nondiscrimination laws. The hiring and training plan also must contain a provision that the business will comply with equal opportunity and nondiscrimination laws.

F. Chapter 6 - Labor Standards

Federal Davis-Bacon wage and labor requirements should be given careful consideration when planning CDBG-ED funded economic development projects. Davis-Bacon wage rates could apply to some economic development projects. Projects that include construction, remodeling, site development, equipment installation or other similar activities involving the use of CDBG-ED funds for contracted labor and services will usually have to comply with Davis-Bacon requirements. The additional costs associated with Davis-Bacon wage rates should be considered when calculating project costs and when obtaining estimates from potential contractors.

All construction contracts funded in whole or in part with CDBG-ED funds must include federal labor standards provisions. This includes contracts funded either with CDBG-ED funds directly by the local government or with CDBG-ED funds provided to the business. The local government must ensure that the business complies with the following federal labor standards laws: Davis-Bacon Act, Copeland Anti-Kickback Act and the Contract Work Hours and Safety Standards Act.

The Davis-Bacon Act requires that workers on federally funded construction contracts receive no less than the federal prevailing wage as established by the U.S. Department of Labor. The law applies to most construction, alteration and renovation contracts of $2,000 or more.

The Copeland Anti-Kickback Act requires that workers be paid weekly and that their employer not illegally charge them for the privilege of working. Contractors and subcontractors must maintain complete employment and payroll records, and submit weekly payroll records to the local

government, even if the construction is procured and contracted by the assisted private sector entity, using CDBG-ED funds in whole or in part, to pay for the contracted services.

The federal Contract Work Hours and Safety Standards Act specifies overtime compensation for workers.

Labor Standards and Construction Management Chapters, contain a much more detailed description of the requirements that will be applicable to economic development projects that include construction activities.

Davis-Bacon wage rates would not apply in cases where:

- Equipment installation is limited to the equivalent of plugging it into the electrical system or placing it on the floor with only minor attachment work required

- Equipment installation by the company selling the equipment is a condition of the equipment's guarantee

Davis-Bacon wage rates do not apply to the business' existing work force or to newly hired low and moderate-income persons when they are occupied at their regular duties as described in their regular job description. The entity to receive assistance may utilize its existing labor force for minor, incidental work on project activities only when no separate contracts to perform the work involved in the project activities are entered into by the entity and its existing work force. The workers cannot conduct work, which would be required to be done by licensed or certified persons (e.g., electricians, carpenters, or plumbers).

There are many combinations of activities and funding sources in CDBG-ED economic development projects that may or may not trigger federal labor standards. Consult with the CDBG-ED Program staff when in doubt about when the project activities will trigger federal labor standards. Often, the local government and the business may not know exactly in advance which contracts or activities could trigger federal labor standards for the project. Assistance agreements, therefore, should include the appropriate federal labor standards compliance sections if there is a possibility that some CDBG-ED funded activities could trigger compliance actions.

G. Chapter 7 - Acquisition and Relocation

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, applies to any acquisition of real property if federal funds are involved in any part of the project cost. "Voluntary" acquisitions are not subject to the stricter provisions of the Uniform Relocation Act. Contact your CDBG-ED liaison to determine the project scope and whether the acquisition is voluntary or non-voluntary.

H. Chapter 9 - Public Facilities Construction Management

This chapter applies to economic development projects that involve publicly contracted construction by the local government. Application to private-sector construction projects should be discussed with CDBG liaison to ensure regulations are carried out only to the extent necessary to meet federal regulations. Chapter 9 would apply, however, to the development of an industrial park that involves the construction of related water, sewer, and street improvements by the local government using CDBG-ED funds.

I. Chapter 11 – Project Monitoring

CDBG-ED program personnel will conduct a monitoring visit to the local government at least once during the implementation of the project. The monitoring agenda will include a visit to the local government, the project manager, if applicable, and the assisted business, with a review of specific loan documentation and other records. The local government and its project manager, if applicable, will have the responsibility to monitor the process and compliance actions of the business during the project.

Not all of the monitoring items found in Chapter 11 may apply to economic development projects. Your CDBG-ED liaison will provide you with additional guidance before the monitoring visit.

K. Chapter 12 - Project Closeout

This chapter applies to all local governments. The business must provide sufficient information for the local government to fill out the closeout certifications and reports.

Local governments must submit a conditional closeout report within 90 days of completion of project activities. When the final audit is completed, a final closeout will be issued if there are no outstanding issues.

III. LOCAL GOVERNMENT RESPONSIBILITIES

In addition to all of the applicable compliance actions and procedural steps contained in the chapters discussed above, the local government and the assisted business must follow the steps outlined in the following sections.

A. Prepare the MDOC Grant Contract

As part of the project start-up process, MDOC and the local government will work together to prepare the grant agreement or contract. The grant contract is the legal document that governs the administration of the grant and includes the following items:

- The amount of CDBG-ED funds to be provided;
- The scope of services;
- A detailed budget for the CDBG-ED funds and any other funds involved in the project;
- The schedule for implementation of project activities and the scope of work to be completed; and
- The general and special terms and conditions associated with the grant.

The negotiation process will include fine-tuning the project budget and implementation schedule, identifying any special conditions that will be included, and defining the key elements of the project in specific terms. If major changes in the project are proposed when the contract is being developed, MDOC will consider whether the modifications are substantial enough to require reevaluating the project by the loan review committee. Each provision is legally enforceable and designed to spell out the respective obligations of MDOC and the local government.

The CDBG-ED liaison assigned to your project will prepare the MDOC contract. The contract will reflect the key elements of the project as described in the original CDBG-ED application. Local officials should pay particular attention to the sections addressing grant amount, scope of work, conditions, budget, and project implementation schedule.

The MDOC recommends that the local government's attorney review the contract to ensure that it is consistent with the community's legal authority and interests. Any concerns should be communicated to the CDBG-ED liaison assigned to the project. The CDBG-ED liaison will work with the local government on any necessary modifications before the contract is signed by the MDOC Director, and the local government's chief elected official or executive officer. The local government will receive an electronic executed copy.

NOTE: No CDBG-ED funds will be released to the local government until a grant contract is fully executed and the local government complies with all required contract start-up conditions.

B. Prepare a Grant Assistance Agreement and/or Loan Agreement

A grant assistance agreement or loan agreement must be executed for all economic development projects. Generally agreements involve loans for working capital or equipment purchases, grants for job training, or grants for indirect assistance such as the construction of supporting public facilities in an industrial park. Each type of agreement involves different considerations. However, all

agreements commit the business to the specific scope of activities, to compliance with the hiring and training plan, and to compliance with other applicable requirements.

No agreement will be executed until the draft is sent to MDOC and the contract's CDBG-ED liaison has reviewed it. Agreements are not in force or in effect until the business and the local government representative have signed it.

Assistance agreements for infrastructure improvements for a business must contain a signed assurance from the company that in the event the company does not meet its hiring and training goals within the contract period, the company will reimburse the local government for the full amount of the infrastructure grant.

NOTE: After agreements are signed, no amendments can be made during the CDBG-ED grant contract period without prior written approval from the MDOC.

Chapter 8 exhibits contain sample assistance agreements for training grants and infrastructure projects. Grant assistance agreements must be used between the local government or local development organization, and the assisted business. It is very important that the local government's attorney review and approve all assistance agreements involved in the project.

Loans typically include the following documents:

Loan application
Insurance policy
Loan agreement
Promissory note
Security agreement
Deed of Trust or Mortgage (as applicable)
Agreement of prior lien holder (as applicable)
Personal guarantee
UCC filings or security lien filings

NOTE: No CDBG-ED funds will be released to the local government until the loan agreement is signed and the local government complies with all contract start-up conditions.

C. Obtain Final Approval of the Hiring and Training Plan

A draft Hiring and Training Plan is to be submitted with the application for funding. Before funds can be released for a project, the MDOC must review and give written approval of the Hiring and Training Plan. In many cases, some modifications must be made to the Plan. The final Plan must then be signed by all responsible parties and resubmitted to the MDOC for approval.

The assistance agreement between the local government and the business must contain conditions regarding the hiring of LMI persons. The business must show substantial compliance with the hiring and training plan and a "good faith" effort toward accomplishing the hiring goals set out in the assistance agreement before the project can be closed out. To comply with federal requirements, the MDOC must ensure that performance goals are achieved; therefore, the assistance agreement will contain a penalty clause for noncompliance with the hiring and training plan that could result in the recovery of grant funds from the business or the local government recipient.

Local governments and assisted entities must take into consideration equal opportunity and nondiscrimination laws to ensure that women and minorities are not excluded from participation in,

denied the benefit of, or subjected to discrimination under any program or activity funded in whole or in part with CDBG-ED funds.

At a minimum, an acceptable hiring and training plan should contain the following:

- A breakdown of jobs to be created or retained, indicating the percentage which are full-time, part-time, skilled, semiskilled, or unskilled;

- A discussion of the actions to be taken to ensure that the positions created will be made available to persons of low and moderate income;

- A breakdown of jobs to be created, indicating the job titles and descriptions and the rates of compensation. For applications proposing positions involving less than full-time employment, an estimate must be included of the number of hours to be worked each week or months to be worked each year for each position;

- A timetable for creating the jobs, the total number of persons to be hired, and number of LMI persons to be hired. The Department will generally use the number of jobs to be created or retained within a period of two years from the date of grant award;

- An assurance that the business will comply with equal opportunity and nondiscrimination laws;

- Procedures for the outreach, recruitment, screening, selection, training and placement of workers that will ensure maximum access for local residents, particularly persons of low and moderate income;

- A description of the training curriculum and resources, if applicable;

- Written commitments from any agencies or organizations participating in the implementation of the plan; and

- A written commitment from the business to comply with the plan.

Minimum job requirements should not exceed the equivalent of a high school education in order to be counted as a job opening available to LMI persons. If job qualification requirements exceed the equivalent of a high school education, training can be provided to enable otherwise unqualified persons to qualify for the position. The jobs that are to be created must be physically accessible to the LMI population within a reasonable geographic area.

D. Obtain Final Approval of the Hiring and Training Plan for Customized Training of Employees

In addition to the information above, the Hiring and Training Plan for a business receiving a grant for customized employee training must contain a signed assurance from the company that in the event the company does not meet its hiring and training goals within the contract period, the company will reimburse the local government for the full amount of the labor-training grant. The Hiring and Training Plan for Customized Training of Employees becomes an attachment to the contract between the MDOC and the local government.

E. Revolving Loan Fund Plan

CDBG-ED projects that involve the loan of CDBG-ED funds to the business must plan for the use of program income. There are a large number and variety of eligible uses for CDBG-ED funds. The local government has flexibility in planning for the use of program income. Generally, local governments choose to use program income from economic development projects involving loan repayments to capitalize an economic development Revolving Loan Fund (RLF). Program income from economic development projects can be blended with program income from other CDBG-ED projects, such as housing rehabilitation, and used for eligible community development projects. The MDOC encourages local governments to use program income from economic development projects for similar purposes such as developing local capacity for packaging economic development projects and for ongoing economic development activities.

Program income can be used for hiring experienced staff trained in financial analysis that can actively promote economic development for the community. Local governments are strongly encouraged to subcontract with the Certified Regional Development Corporation (CRDC) in their area for regional revolving loan fund activities. For a list of CRDC's see the following website: http://marketmt.com/partners

The Department allows program income to be retained by the local government if the local government has developed an adequate plan for the expenditure of these funds. The local government must submit to the Department, for approval, a plan for the ongoing use and financial administration of any program income. The plan must be submitted **before** the Department will release funds and before the business begins making loan repayments. It is very important that the local government demonstrate that it has, or will quickly develop, the capacity to set up and manage an RLF for future eligible community development projects.

"Program Income" is any income earned by a local government from CDBG-ED-supported activities such as repayments of principal and interest to a local RLF for an economic development project. An "RLF" is the administrative umbrella for the re-use of program income in the making of low-interest community loans that is managed according to a written set of guidelines developed by the community. Revolving loan funds are a subset of program income that has been set-aside in a separate fund with a separate set of accounts. In the case of a CDBG-ED project, the RLF is established to carry out eligible economic development activities that in turn generate program income through loan repayments and interest earned. Revolving loan funds are allowed to earn interest and grow. The funds do not have to be drawn down while the project is open. Theoretically, the revolving loan fund becomes a fund from which monies are continuously expended, replenished, and again expended.

The MDOC can recover program income from local governments if the program income is not going to be used on the same project that has generated program income and if the local government does not develop a satisfactory program income plan. For further guidance you may request from MDOC the *CDBG-ED Program Income and Revolving Loan Fund Manual* published by MDOC. Contact your CDBG liaison for assistance. The Financial Management Chapter also has additional information on program income.

1. State and Federal Requirements for Program Income Plans or Revolving Loan Fund Plans

Federal regulations and guidance from the U.S. Department of Housing and Urban Development require that program income received by a local government before the project is closed out be used in accordance with the provisions of Title I of the Housing and Community Development Act of 1974, as amended. All regulations and requirements that applied during the term of the project would apply to program income received before closeout.

Any program income received by the local government after closeout is subject to the provisions of Title I of the Act until all open CDBG-ED projects are closed out by the local government, if any. Program income received after a project is closed out is also subject to the provisions of Title I. Montana CDBG-ED Application Guidelines require that all program income received be expended on CDBG-ED eligible activities, benefit 51% LMI persons, and be accounted for. The local government must continue to maintain the following records and information:

- Sources of program income including interest earned;

- Dates and amounts of program income receipts and disbursements;

- The CDBG-ED-eligible activities funded with program income;

- For program income received before all open CDBG-ED projects are closed out, records documenting compliance with Title I requirements.

In addition, the local government must:

- Submit the Loan Portfolio Data (LPD) report once a year, for period ending December 31. Receipts of loan payments and expenditures must be reported in addition to project specific data. This report should include the entire loan fund's activity and balance for primary and secondary loans.

The local government must develop a process for managing, accounting and reporting program income, which must be incorporated into the Program Income Plan, or RLF Plan. In addition, the local government must develop a process for selecting eligible firms that will likely maximize the benefits received from the use of program income. It will be necessary for the local government to develop guidelines for the selection of the best applicants and for the management of economic development projects selected for funding. Local governments must develop the capacity for handling the complexities of managing economic development RLF's.

The MDOC recommends that local governments base their RLF guidelines on the *Application Guidelines for the Community Development Block Grant Economic Development Program*. The local government can select the sections that best apply to their situation and economic development goals. Keep in mind that if Title I requirements apply to the use of program income in the revolving loan fund, the local government must use at least the equivalent of the Montana CDBG-ED guidelines and also comply with the CDBG-ED requirements contained in this manual.

The local government should select a loan review board that will be responsible for publicizing the availability of economic development funds for local projects, for applying the selection criteria when choosing the best applications, and for managing the loan portfolio. Local governments are encouraged to include bankers, certified public accountants, lawyers, the business community, as well as include the general public in the loan review board activities.

Local governments are strongly encouraged to subcontract with the Certified Regional Development Corporation (CRDC) in their area for regional revolving loan fund activities. For a list of CRDC's see the following website: http://marketmt.com/partners

2. State Guidance for CDBG-ED Revolving Loan Funds Administered by a Local Government

Program income (loan repayments) received by a local government after closeout must continue to be used in accordance with the provisions of Title I. As such, all regulations and requirements that applied during the term of the project will apply to the program income received after closeout

a. Before Project Closeout – All Years:

- Program income received by a grantee before closeout must be used in accordance with the provisions of Title I. As such, all the regulations and requirements that applied during the term of the project will apply to the program income received before closeout. For the most part, this means that program income must be used for eligible CDBG activities, and that a minimum of 51% of the funds must be used for activities that are clearly designated to meet identified needs of persons of low and moderate income.

b. After Project Closeout -- For the years of 1992 and prior:

- The MDOC encourages the use of program income for CDBG eligible activities that assist a minimum of 51% low and moderate-income persons.

- Program income should be expended on activities as specified in the local government's program income plan and/or closeout agreement.

c. After Project Closeout -- For the years of 1993 and Later:

MDOC has developed the following proposed policy for expenditure of program income after close-out which will meet the federal national objective of benefiting low and moderate income persons (LMI) and allow local governments some flexibility with their program income:

- For CDBG economic development activities: a maximum of 18% would be allocated to an administration fund and a minimum of 82% allocated to an activity fund for each state fiscal year.

- Program income should be spent on CDBG eligible activities that principally benefit 51% low and moderate-income persons, the original intent of the program, but allows some flexibility to carry out eligible CDBG activities in those communities that are not 51% LMI community-wide**.**

All program income received by a grantee after closeout must continue to be used in accordance with the provisions of Title I and all other federal requirements (Davis Bacon wage rates, environmental review, etc.). As such, all regulations and requirements that applied during the term of the project will apply to the program income received after closeout.

If a community has a CDBG-ED grant that is not closed out, and that community receives a new CDBG-ED grant, the community may be required to expend un-obligated program income from the earlier CDBG-ED project on activities under the new CDBG-ED project before the community can request funds from its new grant. This would not apply if the funds have been set-aside in a separate revolving loan fund account and have been allocated for specific projects. However, local revolving loan funds must be substantially disbursed before additional funds are requested from the MDOC.

In addition, for projects funded in 1993 or later, the MDOC has determined that:

- To maintain a minimum level of funding for future borrowing needs, repayments of principal must be placed in the RLF for relending. Repayments of interest, and interest earnings on loan repayments deposited into an interest-earning account, may be used either for relending or for administrative activities.

Chapter 8 exhibits contain sample guidelines for an economic development revolving loan fund that MDOC adapted from an actual CDBG-ED-funded project for a small town. The local government may follow this sample and design its guidelines with its own needs in mind. Please contact your CDBG-ED liaison for more examples of RLF Plans from across the state.

⇨ **According to federal regulations, program income never loses its federal identity. When loans are repaid, all HUD Title I requirements as well as all other federal requirements including environmental review and Davis-Bacon wage rates must be met in any subsequent reuse of these funds. The only exception is when loan repayments are made to a qualified nonprofit community development organization.**

When program income is managed by a non-profit, it is no longer considered program income as it is with a local government. Prior to project closeout, the local government is the recipient of the CDBG-ED funds and Title I and all other federal requirements apply to all activities. After project closeout, if program income is managed by a non-profit, Title I and the other federal requirements do not apply to the non-profit's activities. Annual loan portfolio reports must be submitted to the Department by all revolving loan fund managers.

Local governments are strongly encouraged to subcontract with the Certified Regional Development Corporation (CRDC) in their area for regional revolving loan fund activities. For a list of CRDC's see the following website:
http://businessresources.mt.gov/CRDC/default.mcpx

3. State Guidance for CDBG-ED Revolving Loan Funds Administered by a Local Development Organization (LDO)

Title I of the Community Development Act (the Act) allows loan repayments made to a qualified nonprofit LDO to be free of CDBG-ED program income requirements. That is, loan repayments made to a nonprofit LDO are not defined as program income and therefore are not subject to federal CDBG-ED requirements. A qualified nonprofit LDO is defined under Section 105(a) of the Act. This change was made to the Act in 1992 and was incorporated into the regulations as of February 6, 1995. Therefore, this will apply to program income generated from CDBG-ED projects funded with 1995 and later.

In this scenario, the unit of local government gives the CDBG-ED funds to a regional loan fund administering entity, the nonprofit LDO. There must be a sub-recipient agreement between the LDO and the unit of local government**.** The LDO lends the funds to businesses in its service area or to cities or counties specified in the sub-recipient agreement. Businesses repay loans back to the administering entity's loan fund. According to 24 CFR Part 570.489(e)(2)(ii), this income would not be defined as program income. The loan repayments are considered miscellaneous revenue and would not be subject to CDBG-ED program income requirements. However, the MDOC encourages the following:

For CDBG economic development payments made to a qualified non-profit:

Payments made to a community development organization that uses the funds for continued economic development activities do not have to meet any Federal requirements. However, the local government can still establish requirements for re-use of the funds, and require some CDBG requirements to be followed through grant agreements between the local government and the community development organization. A revolving loan fund plan must be executed that is agreeable to the local government. The local government must also execute a sub-recipient agreement with the community development organization for management of the revolving loan fund.

⇨The Department encourages community development organizations to continue to use loan proceeds for CDBG-ED eligible activities that benefit 51% low and moderate-income persons, and to follow activities specified in the revolving loan fund plan.

F. Show Benefit to Low and Moderate Income (LMI) Persons

It is the responsibility of the local government to document the proposed benefit to low and moderate-income (LMI) persons at the time of application. In addition, the local government must monitor this for the duration of the MDOC contract and document the actual benefit at the time of project closeout.

All CDBG-ED projects are required to meet the Congressional National Objective of benefiting LMI families. LMI families are defined as those families whose income does not exceed 80% of the county median income for the previous year, or 80% of the median income of the entire non-metropolitan area of the State of Montana, whichever is higher. Contact your CDBG-ED liaison to get the most current HUD income tables.

For economic development activities to meet this National Objective the local government must demonstrate a benefit to LMI in one or more areas listed below. The activity must:

- Be carried out in a neighborhood or community where 51% or greater number of LMI persons reside (contact your CDBG-ED program liaison for activity eligibility);
- Employ people, a majority of who qualify as LMI persons;
- Make training available to LMI persons to help them qualify for higher skilled employment; or
- Engage in advertising and recruitment efforts targeted to LMI persons.

To document the benefit to LMI persons, determine which of the four activities listed above applies to the project. The local government must determine the best method by which to substantiate this determination and provide appropriate documentation. Possible methods include:

- Identifying the specific neighborhood or community boundary and conducting an income survey of the project's intended beneficiaries;
- Obtaining income certifications from individuals hired;
- Documenting the type of training to be provided; and
- Documenting efforts to advertise and recruit LMI.

Area-wide Benefit (City or County-wide Benefit)

An area-wide project must be in an area that is predominately residential. Fifty-one percent (51%) of all persons living within the city or county boundaries must be LMI. This percentage should be documented by current program year, HUD income tables provided by the CDBG-ED liaison. A fairly current income survey for the area may also be used if the documented methodology complies with MDOC survey requirements. (Contact your CDBG-ED program liaison for more information on area-wide benefit.) Most economic development projects are "direct benefit", where LMI documentation is

used only for those persons directly benefitting from CDBG-ED funding, such as jobs created or retained.

Limited Clientele

Benefits must be provided exclusively to a **clearly** defined, specific clientele. If a population is targeted to be the beneficiary of a project, the project scope must demonstrate that the benefits to be provided to that population are **not** available to all residents and that the targeted population meets one of the criteria below:

a. Benefit is specifically targeted to a group presumed to be 51% or more LMI, unless there is evidence to the contrary. The limited clientele definition can be applied only to those groups included under HUD regulations, which includes:

- Abused Children
- Homeless Persons
- Battered Spouses
- Illiterate Adults
- Elderly Persons
- Migrant Farm Workers
- Adults meeting the Bureau of Census' definition of severely disabled adults
- Persons living with the disease AIDS

b. Information on family size and income shows that at least 51% of the clientele is LMI (e.g., programs being operated where LMI income certification is routinely requested to allow participation in the program);

c. Benefits are limited to LMI (e.g., a nursing home whose occupancy is limited to LMI);

d. The nature of activity and location supports conclusion that clientele is 51% or more LMI (e.g., a day care operated in an inner city neighborhood, a micro-enterprise as defined by HUD, or an organization that supports micro-enterprise development);

e. Removal of architectural barriers that limit the mobility of elderly and handicapped.

The local government's project must be designed specifically to benefit LMI persons such as those groups previously identified.

Micro-enterprises

Projects that meet HUD's definition of a micro-enterprise are automatically assumed to provide a 51% benefit to LMI persons. Micro-enterprises do not have to meet the cost per LMI job requirement. A micro-enterprise, as defined by HUD, is a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise. A micro-enterprise under HUD's definition automatically meets the 51% low-moderate income national objective if the income status of the assisted micro-enterprise owner is LMI. That person is presumed to continue to qualify as LMI up to a three-year period after the CDBG-ED assistance is provided. This allows business owners to continue receiving CDBG-ED assistance even when they no longer qualify as an LMI household.

G. Documenting LMI Jobs Created or Retained

Local governments must ensure that methods are used to ensure preferential recruitment, hiring, and training of local workers, particularly those of low and moderate-income. When a grant is awarded, the applicant's commitment to the hiring plan is considered binding and will be incorporated in the grant agreement between the local government and MDOC.

1. All jobs must be converted into full-time equivalent positions. A full-time equivalent employee is an individual who is employed for 40 hours a week on the average or a combination of individuals whose combined hours of employment equal 40 hours per week.

Using the income certification forms verify the number of positions currently held by LMI persons for an existing business, and project those full-time equivalent (FTE) LMI jobs to be created based on the company's hiring plan. Aside from using the HUD income tables, a person may be presumed to be LMI under certain conditions (see F. above).

Permanent, year-round jobs are the priority of the program. Only permanent jobs may be counted. Temporary construction jobs and other temporary and some seasonal jobs may not be counted. Projects involving primarily seasonal jobs are not generally acceptable under federal CDBG-ED requirements. In order to be counted, a seasonal job must be the primary occupation and the principal source of income to the LMI person for the year. This situation is very difficult to document and is not encouraged for CDBG-ED projects.

The base level of employment with a list of all current employees and job titles must be provided with the application for CDBG-ED funding to determine the actual number of new hires. For existing firms, applicants must provide employment levels for the past year. The date for determining the base level of employees will be the application submission date. Only jobs that the assisted business creates directly within a 24-month period following grant award will usually be counted toward this requirement. The Department cannot consider jobs created indirectly by an assisted activity (i.e., "trickle-down" jobs).

2. Fifty-one percent (51%) of all jobs created by the business during the term of the project must be filled by or made available to LMI persons. This applies even if more jobs are created than were originally projected.

For projects involving the retention of jobs, the income levels should be documented for the prior year's income of the family. The verification forms should be completed no more than 30 days before submittal of the application. The application must provide clear and objective evidence that, in the absence of the CDBG-ED assistance, the jobs will be lost. The business will have to commit to filling as many new job openings from turnover and job creation as is reasonably possible with LMI persons. The full application must include a complete listing of all existing jobs by title, race, ethnicity, gender and handicapped status. The application must indicate which positions are currently held by LMI persons. The business should provide an estimate of its expected job turnover rate during the next two years, especially if job turnover will be counted toward the LMI benefit percentage.

Businesses claiming retention of jobs must submit with the full application documentation of existing employees eligible to be considered LMI by using the income verification form and job tracking form.

3. Tracking jobs for customized training grants. Businesses must track training expenses for each position assisted with CDBG-ED funds.

Chapter 8 exhibit contains a form that can be used to track individual training expenses for each trained employee. Businesses must document matching training funds 1:1 for each CDBG-ED dollar expended. For example, if a company sends an employee to a local college to take a course for related training, CDBG-ED would pay for half of the training costs. The business would pick up the other half. A completed training form or its equivalent would have to be submitted with each request for CDBG-ED funding. Businesses can request reimbursement for training expenses at the end of each employee's training or probationary period. At the end of the training period, employees must be paid a compensation package in salary and benefits that meets at least the lower of either

the county's average hourly wage, or the State's average hourly wage. Average wage rates are determined by the Montana Department of Labor. Contact CDBG-ED staff for the most currently used wage table.

4. Local governments must ensure that they maintain complete hiring records. Local governments must also ensure that the assisting agency and the assisted business maintain complete records. Federal regulations and reporting requirements require that racial, ethnic and gender characteristics information be maintained for all job applicants as well as new hires.

Making Jobs Available to LMI

The best situation, and one that MDOC highly recommends, would involve requiring that the positions considered available to LMI persons actually be filled by LMI persons. This approach is more easily documented and defensible. When this is not possible, the business must be able to document that it gave first consideration to LMI persons during the hiring process. First consideration means that a business gives objective consideration to the employment of LMI persons. "Objective consideration" must involve the business at least interviewing a sufficient number of LMI persons so as to provide the maximum opportunity for filling the position with LMI persons.

The U.S. Department of Housing and Urban Development (HUD) developed the "first consideration" approach with the expectation that, in most instances where it is applied, the outcome will be that more than 51% of the persons hired will be LMI. The business will be required to consider a sufficient number of LMI job applicants to meet the intent of this requirement. The local government must ensure that there is adequate documentation available to show what jobs were created, what process was used for "first consideration," which LMI persons were considered for such jobs, and which of those persons were hired. Consult the Business Resources Division CDBG-ED staff if uncertain whether a job to be created would be considered "made available to" low and moderate-income persons. HUD has accepted retained jobs actually held by LMI persons, considering their family income and size, as jobs made available to LMI persons.

H. Submit Requests for Drawdown of CDBG-ED Funds

After all start-up activities have been completed and all MDOC contract conditions have been released in writing, the local government can make a request for funds from MDOC. Chapter 4, Financial Management, explains the procedures that are applicable to the drawdown of funds for all CDBG-ED projects. In addition to the procedures and requirements contained in Chapter 4, the local government must submit additional information for economic development projects.

When a business requests CDBG-ED funds, the local government must obtain documentation from the business for expenses incurred and an explanation for the request. The local government must determine the propriety of the proposed use of funds before submitting a drawdown request to the CDBG-ED liaison. The disbursement of CDBG-ED funds to the local government and the business must be tied to the actual need for the funds. The local government must ensure that the CDBG-ED funds will be used for the activities and purposes described in the MDOC contract and in the assistance agreement. The local government should be sure that the budget line items are equal to or greater than the amounts requested. For example:

- If the business is requesting funds for working capital, the business must submit copies of eligible bills, vouchers, payment requests, orders, payrolls, etc., which substantiate the amount requested. Projected working capital needs may be used provided the local government or its project

administrator later reconciles the projected needs with actual working capital expenditures. Back up documentation must be maintained for all projected and actual expenditures.

- If the request for CDBG-ED funds is used for machinery or equipment, the business must submit documentation describing the machinery or equipment being purchased and the bill or order form showing the amount incurred.

The request for payment form is to be filled out and submitted, along with documentation of the requested funding, for eligible expenses to be reimbursed with CDBG-ED funds.

NOTE: Be sure that the documents supporting the costs incurred are dated after the MDOC authorization to incur costs for project activities. Copies of the supporting documentation must be submitted with the drawdown request to the CDBG-ED liaison.

I. Submit Applicable Reports

The CDBG-ED grant contract and the assistance agreement will contain minimum reporting requirements that apply to the local government and the business. The local government must obtain the necessary information from the business.

1. The local government, or its project administrator, must submit the following reports to the MDOC quarterly during the project until it is closed out:

- General progress reports must be submitted to the MDOC within 30 days of the end of the quarter. If a drawdown request for funds is during a given calendar quarter and a progress report accompanies the drawdown request (see Chapter 4, Financial Management), a separate general progress report is not required.

- Hiring and training plan progress reports should be submitted to the CDBG-ED liaison quarterly and more often if requested. For each person hired or retained during the term of the project, the business must provide the name, date of hire, job title, information indicating whether the job is full-time or part time number of hours, permanent or seasonal work, rate of pay, ethnicity and racial category, income status, and any applicable information required for direct benefit activities, see Chapter 5, Civil Rights. Part-time jobs must be converted to full time equivalents. The income survey and racial category forms for jobs assisted are found in the reporting forms found in the exhibits of this chapter.

- Evidence that the funds committed as match by the business in the original application for the CDBG-ED funds are being expended on the project (bank statements, canceled checks, deed transfers, loans forgiven by investor, new investments, etc.). Matching funds should be spent on a pro rata basis with the CDBG-ED funds.

2. The local government, or its project administrator, must submit the following reports to the MDOC during the implementation of the project until it is closed out:

- Financial status reports that include at least the balance sheet and a profit and loss statement of the business for the period, at least twice per year;

- Business plan reports that discuss the business's progress toward achieving the goals and objectives contained in the original application submitted by the local government, at least once per year;

• Hiring and training plan progress reports, quarterly – if not submitted with requests for funds;

• Annual financial reports of the business, with disclosure notes, reviewed by a certified public accountant.

3. The local government, or its project administrator, must submit the following report annually to MDOC before and after project closeout:

• Loan Portfolio Data (LPD) sheet that tracks the business's loan activities, as of December 31 each year. For previous year(s) awards, local governments must begin submitting the LPD when loan repayments start, and continue to submit the LPD to the MDOC after closeout on an annual basis. Loan activity for the entire revolving loan fund must be included in the annual report for primary and secondary loan activities.

Depending on the type of project and the number and complexity of any problems that may arise during the term of the project, the CDBG-ED liaison may require the local government to submit reports more frequently or provide additional reports. It is very important that the local government reviews the information submitted and retains all copies of reports in the project files, especially the hiring and training plan reports and the financial statements. Based on the information contained in the reports, the local government and the CDBG-ED liaison can determine how often and how closely the business should be monitored. The local government should monitor the assisted business and local development organization involved periodically during the project as the local government has the ultimate responsibility for proper management of CDBG-ED funds.

The assistance agreement and the CDBG-ED grant contract contain a penalty clause that applies to the hiring goal. If the hiring goals and timetable committed to by the business in the final hiring and training plan are not met during the term of the project, the MDOC may recover CDBG-ED funds in proportion to the shortfall in hiring. If at least 51% of the total jobs created or retained are not held by, filled by, or made available to LMI persons, the local government may be required to repay the total grant amount back to the MDOC. The local government needs to take steps to monitor the progress of the assisted business' hiring and training goals, and ensure that reporting requirements are met.

J. Review Quarterly Financial Statements

The local government should have someone who is trained and experienced in analyzing financial statements review the periodic financial reports. It is essential that any financial problems the business may experience during the term of the CDBG-ED project (and where CDBG-ED funds have been loaned, during the term of the loan) be identified as early as possible. If problems are detected, the local government can begin to negotiate with the business and help resolve them, if possible. A business cannot hire employees or retain existing employees if it cannot afford to pay them. A business obviously cannot repay a loan if it does not have sufficient cash flow available to cover the debt service.

The CDBG-ED liaison will review the financial statements at least annually and more often if conditions warrant, or if the local government requests assistance with a problem.

It is important to keep in mind that a business will often show losses during a start-up phase or when expanding. That is, of course, a common reason the business sought CDBG-ED assistance to begin with. The primary purpose of the CDBG economic development category is to provide financial or other supportive assistance to for-profit and non-profit entities. One requirement of the CDBG-ED program is that any CDBG-ED assistance to a for-profit entity must be determined to be appropriate, and that the business assisted has not been unduly enriched by CDBG investment. A for-profit

business must be able to show that the CDBG-ED funds are needed as a last resort and that the funds requested are not available from other private and public sources. The key problem, therefore, is that the for-profit entity that receives CDBG-ED assistance is often only marginally viable.

It is very difficult to determine how bad the financial condition of a business can get before serious problems arise. It is essential that the local government communicate frequently and openly with the business and to assure management that the local government is willing to help work out problems.

Listed below are indicators that can help the local government determine when financial troubles may be occurring or are likely to occur in a for-profit entity (or other business):

- Actual sales (or other revenues) do not meet projections;
- The hiring goals and schedule are not being met;
- Profits are continually low or negative;
- The business plan is not being followed by the business or goals are not being met;
- Operating cycle trends show significant changes from what were projected;
- Net equity and retained earnings decline;
- Liquidity ratios (assets in proportion to liabilities) indicate that the firm may be becoming insolvent (assets are becoming lower in proportion to liabilities and working capital declines);
- The matching funds are not being used reasonably in proportion to the CDBG-ED funds;
- Significant changes in management or in ownership occur;
- Changes in banks generally used by the entity;
- Management that may have been friendly and open becomes difficult to reach and unfriendly;
- Management that may have been unfriendly and aloof suddenly becomes friendlier;
- Payments on the loan are often late or missed;
- Large turnover in employees or labor relations problems occur;
- Changes occur in accounting methods or in accountants;
- Aging of accounts receivable and accounts payable indicate a trend toward later receipts of revenues and payments of bills by the entity;
- Large loans made from the entity to officers;
- Large loans made from officers to the entity;
- Large items purchased with CDBG-ED funds or with other funds are not available for inspection.

Financial analysis is an art, not a science, which requires that the local government pay close attention to trends and discuss them with the business as early as possible. The local government

often has a lower security position than other lenders or providers of funds that increases its oversight responsibility. The CDBG-ED liaison should be contacted whenever the local government believes that a financial problem may be evident. The local government should also work closely with persons or entities that are providing financing for the project such as banks, investors, venture capital companies, public agencies, etc.

K. Monitor the Business

It is the responsibility of the local government to monitor the business periodically during the term of the project. The local government must ensure that the business is complying with all applicable CDBG-ED requirements and with the terms and conditions contained in the assistance agreement. Following are some examples of key areas of concern that the local government should focus on during the monitoring visits:

- Construction progress, if applicable, should be compared with the contract implementation schedule and reports submitted by the business;

- If large pieces of machinery or equipment were purchased with CDBG-ED funds, the local government should view them and inspect their condition;

- The general condition of the facility, including inventory, should be considered, especially if renovation was included as an activity;

- Compare the number of employees present with the hiring and training plan progress report to see if any significant differences should be followed up;

- Verify income of employees;

- If the project involves labor standards, conduct interviews of the contracted employees and follow the monitoring procedures for labor standards contained in Chapter 6, Labor Standards.

CHAPTER 8

EXHIBITS

8-A Supplemental CDBG-ED Conditions for Loan Documents

8-B1 Sample Funding Assistance Agreement for
8-B2 Sample Funding Assistance Agreement for Infrastructure of Non-Profit Grants

8-C Sample Local Government Revolving Loan Fund Plan and Loan Application

8-D Calculation of Benefit to Low and Moderate Income Persons and Race/Ethnicity Category Form

8-E Employment Tracking & Direct Benefit Summary

8-F1 Sample Hiring and Training Plan
8-F2 Sample Customized Training Plan

8-G Loan Portfolio Data (LPD) Report Form

8-H1 Sample Sub-recipient Agreement for RLF project
8-H2 Sample Sub-recipient Agreement for non-RLF project

8-J1 Sample Management Plan for Local Government Management
8-J2 Sample Management Plan for Third Party Non-Profit Management of Loan
8-J3 Sample Management Plan for Third Party Non-Profit Management of Grant

8-K Request for Payment & Status of Funds Report

8-L Employee Training Tracking Form

EXHIBIT 8-A

MONTANA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
SUPPLEMENTAL CONDITIONS TO LOAN AGREEMENTS

Note: This set of conditions is to be used as a supplement to the loan agreement.

The following Supplemental Conditions are hereby made a part of the loan agreement to which they are appended supplementing that agreement and superseding any of its articles of which they are in conflict.

The parties to this agreement are (Name of Lender) (Lender), (Address) and (Name of Borrower) (Borrower), (Address).

1. WORKERS' COMPENSATION INSURANCE. It is understood that pursuant to section 39-71-401 MCA, the Borrower has obtained, and will maintain at its expense for the duration of the loan agreement, coverage in a workers' compensation plan for its principles and employees.

2. MAINTAIN BUSINESS LOCATION. Borrower also agrees not to remove Borrower's business facility, or the majority of the proposed jobs to be created and/or retained as a condition of the loan, from the (City or Town) and (County) for the (Number of Years) time frame contemplated by the Loan and in any event not until such time as the Loan is fully repaid. Noncompliance of this condition constitutes a default of the agreement.

3. COMPLIANCE WITH HIRING AND TRAINING PLAN. Borrower shall comply with the Final Hiring and Training Plan attached hereto as (Exhibit __). Borrower shall file quarterly employment reports with Lender showing the degree to which Borrower has complied with the hiring commitments established hereby. The conditions contained in this paragraph apply until the Montana Department of Commerce approves the Grantee's Conditional or Final Certification of Completion upon project closeout.

If the Borrower fails to enforce the low and moderate-income verification and documentation requirements and to ensure that at least (Number) of the full-time equivalent jobs created as a direct result of this project are filled by or made available to low and moderate-income persons, the loan provided hereby will terminate and the Borrower will reimburse the Lender all funds disbursed hereunder. If the projected number of jobs or percentage of low and moderate-income persons is not met during the contract period, the Borrower must be able to demonstrate a documented good faith effort on the part of the Borrower to achieve the projected goals, or the Loan provided hereby will terminate and the Borrower reimburse the Lender all funds disbursed hereunder.

4. COMPLIANCE WITH FEDERAL LAW.

a. Civil Rights Act of 1964. In the performance of this Loan Agreement Borrower shall abide by the provisions of Title VI of the Civil Rights Act of 1964 which provides that no person may, on the grounds of race, color, religion, sex, 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.

b. Section 109 of the Housing and Community Development Act of 1974, Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. In the performance of this Loan Agreement Borrower shall comply with this Federal legislation, which provides: The purpose of this part is to implement the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, 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 Federal financial assistance. Section 109 does not directly prohibit discrimination on the basis of age or disability, and the regulations in this part 6 do not apply to age or disability discrimination in Title I programs. Instead, section 109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs, apply to disability and age discrimination in Title I programs.

c. Section 3 of the Housing and Urban Development Act of 1968. The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, state and local laws and regulations, be directed to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons.

5. FEDERAL LABOR STANDARDS PROVISIONS. Borrower agrees to notify Lender prior to entering into any contracts in excess of $2,000 which will be funded, in whole or in part, with proceeds from this Loan so that Lender may make a determination whether applicable Federal labor standard laws apply to the proposed contract. If Federal labor standard provisions are determined to be applicable to the contract, Borrower shall comply with all such Federal labor standard provisions and shall cooperate with Lender in insuring that all Federal labor standard provisions are complied with by all contractors involved with the project.

6. ASSIGNMENT, TRANSFER AND SUBCONTRACTING. The Borrower shall not assign, transfer or subcontract any portion of the loan without the express written consent of the Department of Commerce, the Local Government, and the Lender (if other than the Local Government such as a local or regional development corporation).

EXHIBIT 8-B1
SAMPLE FUNDING ASSISTANCE AGREEMENT

Training Grant Assistance Agreement
Agreement Number _____
(This agreement template should be used for training grants)

A. PARTIES: The parties to this contract ***(the Contract)*** are ***(name of local government and address)*** ***(the City, Town, or County)***, and ***(name of assisted business or non-profit, and address)*** ***(the Contractor),*** tax identification number _____.

B. PURPOSE: The purpose of the Contract is for the Contractor to use ***$____*** in Community Development Block Grant – Economic Development (CDBG-ED) grant funds for Job Training, to train up to ***(number)*** employees over a ***(number)*** month period beginning ***(date)*** and ending ***(date)***. The funding will help train the aforementioned workers in ***(description of type of worker training)***.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the parties hereto agree as follows:

1. SCOPE AND DUTIES: The Contractor will engage in activities as set forth in the Contractor's Montana Department of Commerce's application, and in the Contractor's Hiring and Training Plan *(Attachment A)*, including any written modifications resulting from the review of the application by the Montana Department of Commerce for grant assistance, all of which, by this reference are made a part hereof.

The scope of the Contract is for the Contractor to use ***$____*** in CDBG-ED Job Training funds to train up to ***(number)*** employees over a ***(number)*** month period.

The ***(City, Town, or County)*** will only release funds to reimburse eligible and documented training costs for an eligible employee, if the employee is compensated at a documented rate of **$xxxxx** (required minimum amount for 2013) per hour including benefits, or *(the Contractor has been granted an exemption from the standard $xxxx hourly rate due to (reason for exemption).*

The Contractor will submit status reports on project performance at the request of, and in the format prescribed by, the ***(City, Town, or County)*** and the Montana Department of Commerce. These reports include, but are not limited to:

a) Project progress reports describing the status of the project with respect to each implementation objective, including at a minimum, the percentage complete, costs incurred, funds remaining and projected completion date. The report must also describe significant problems encountered, documented uses of matching funds and/or in-kind contributions and any necessary scope or implementation schedule modifications requested; and

b) Unless otherwise specified, by the ***(City, Town, or County)***, the Contractor will submit quarterly progress reports to the ***(City, Town, or County)*** until the goals contained in the plan have been achieved, and the Contractor receives project closeout approval from the ***(City, Town, or County)*** and the Montana Department of Commerce.

The Montana Department of Commerce and the ***(City, Town, or County)*** must pre-approve any changes to these terms and conditions.

2. COMPENSATION & CONSIDERATION: The total amount to be awarded to the Contractor under the Contract will be up to $5,000 per eligible employee for documented training costs reimbursement not to exceed a total of ***$_____*** dollars for the entire Contract. The Contractor will provide at least ***$_____*** in matching funds (cash and in-kind) consistent with the purposes expressed in the application during the period of the Contract. The Contractor may modify this budget only after having requested and received prior approval of the adjustment from the ***(City, Town, or County)***, and the Montana Department of Commerce.

The ***(City, Town or County's)*** and the Montana Department of Commerce's approval of the Request for Payment form will constitute approval of the budget adjustment. The rationale for budget adjustment must be described in the Project Progress Report and the proposed adjustments noted in the Request for Payment and Status of Funds Report submitted with draws against the Contract funding reserve.

a) The ***(City, Town, or County)*** will authorize the Contractor to draw up to ***$_____*** against the funding reserved for the Contractor by the ***(City, Town, or County)***. In drawing against the reserved amount, the Contractor will follow the instructions supplied by the ***(City, Town, or County)***.

b) If the ***(City, Town, or County)*** determines that the Contractor has failed to satisfactorily carry out the duties and responsibilities under the Contract, the ***(City, Town, or County)*** may revoke the Contractor's authority to draw against the reserved amount described herein until such time as the ***(City, Town, or County)*** and the Contractor agree on a plan to remedy the deficiency.

c) The ***(City, Town, or County)*** reserves the right to withdraw a commitment for any CDBG-ED funds which remain un-disbursed at the end of the Contract period.

d) Eligible training costs that may be reimbursable include the following:

1. Salaries of eligible employees during training activities;
2. Salaries of in-house trainers during training activities involving eligible employees;
3. Direct costs of training such as manuals, materials, supplies, tuition, prorated shares of consultant or training fees for related training; and,
4. Domestic travel for training.

e) Ineligible expenses include but are not necessarily limited to the following:

1. Foreign travel;
2. Development of training curriculum and materials;
3. Equipment, buildings or other fixed assets;
4. Sectarian activities;
5. Unionization;
6. Displacement of current employees; and
7. Relocation of any business or part of the business from another location involving loss of any employees at the original location will be considered a violation of the Contract and may, at the Department's discretion, prevent any further requests for funds.

The Contractor shall contact the ***(City, Town, or County)*** if the Contractor has any questions regarding costs eligible for reimbursement.

3. PERIOD OF CONTRACT: The Contract will be in effect for the period commencing ***(date)*** and ending ***(date)*** unless otherwise terminated by law or in compliance with the terms of the Contract.

4. LIAISON: The contact person for the ***(City, Town, or County)*** is ***(name, title, location),*** and ***(name, title, location)***, for the Contractor.

5. COMPLIANCE WITH WORKERS' COMPENSATION ACT: The Contractor is required to supply the ***(City, Town, or County)*** with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-120, 39-71-401, and 39-71-405.) Neither the Contractor nor its employees are employees of the State. The proof of insurance/exemption must be valid for the entire Contract period and must be received by the ***(City, Town, or County)*** within 5 working days of the Contractor's execution of the Contract.

CONTRACTS WILL NOT BE ISSUED TO CONTRACTORS WHO FAIL TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.

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

6. DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the ***(City, Town, or County)***.

7. FAILURE TO HONOR CONTRACT: If the Contractor refuses or fails to deliver in accordance with the Contract terms and conditions, the State Procurement Bureau may, in its discretion, suspend the Contractor for a period of time from entering into any contracts with the State of Montana.

8. ACCESS AND RETENTION OF RECORDS: The Contractor agrees to provide the ***(City, Town, or County)***, the Montana Department of Commerce, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party.

9. TERMINATION OF CONTRACT: Unless otherwise stated, the ***(City, Town, or County)*** may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the Contract.

10. UNAVAILABILITY OF FUNDING: The ***(City, Town, or County)*** may, at its sole discretion, terminate or reduce the scope of the Contract if available funding is eliminated or reduced for any reason.

11. U.S. FUNDS: All prices and payments must be in U.S. dollars.

12. SECURITY: As security for the performance of this Agreement, Contractor will guarantee to the ***County/City/Town*** that in the event that Contractor does not make jobs available to low and moderate-income persons and cooperate in the documentation of job creation and income verification that the full amount of assistance provided under this agreement will be paid back to the ***County/City/Town.***

13. 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, including but not limited to damages and specific performance.

14. CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without prior written consent of the ***(City, Town, or County)*** and the Montana Department of Commerce. Supplies delivered which do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

15. VENUE: The Contract is governed by the laws of Montana. The parties agree that any litigation concerning the Contract must be brought in the ***(First, Second, etc.)*** Judicial District in and for the ***(appropriate County)***, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

16. COMPLIANCE WITH 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. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. 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.

17. DISABILITY ACCOMMODATIONS: The ***(City, Town, or County)*** does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

18. ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The Contractor shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the ***(City, Town, or County)*** and the Montana Department of Commerce. (Mont. Code Ann. § 18-4-141.)

19. MODIFICATION: The Contract may not be enlarged, modified, amended or altered except upon written agreement signed by all parties to the Contract.

20. NOTICE: All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons either by regular mail or personal service.

21. SEPARABILITY: A declaration by any court, or any other binding legal source, 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.

22. HOLD HARMLESS AND INDEMNIFICATION: The Contractor agrees to protect, defend, and save the Montana Department of Commerce, and the ***(City, Town, or County)*** 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 Contractor'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 Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under the Contract.

23. REGISTRATION WITH SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with Mont. Code Ann. §§ 35-1-1026 and 35-8-1001. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered

transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://www.sos.mt.gov.

24. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning non-visual access standards.

25. REFERENCE TO CONTRACT: The Contract number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the Contract.

26. INTEGRATION: The 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 are valid or binding.

This Contract is made and entered into on the _____ day of _____, 2012.

_____

(name, title) Date
(name of business)

_____

(local official's name, title) Date
(City, Town or County)

EXHIBIT 8-B2
SAMPLE FUNDING ASSISTANCE AGREEMENT

Grant Assistance Agreement
Agreement Number _____
(This agreement sample should be used for infrastructure grants, or non-profit grants)

A. PARTIES: The parties to this contract ***(the Contract)*** are ***(name of local government and address) (the City, Town, or County)***, and ***(name of assisted business or non-profit, and address)*** ***(the Contractor),*** tax identification number _____.

B. PURPOSE: The purpose of the Contract is for the Contractor to

(use $ in Community Development Block Grant – Economic Development (CDBG-ED) grant funds for [name activity to be completed under agreement by the non-profit], or

(receive extension of water/sewer service [or other improvement]as a result of the CDBG-ED award to the City,Town or County).

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the parties hereto agree as follows:

1. SCOPE AND DUTIES: The Contractor will engage in activities as set forth in the Contractor's Montana Department of Commerce's application, and in the Contractor's Hiring and Training Plan *(Attachment A)*, including any written modifications resulting from the review of the application by the Montana Department of Commerce for grant assistance, all of which, by this reference are made a part hereof.

The scope of the Contract is for the Contractor to ***(describe activity).***

The Contractor will submit status reports on project performance at the request of, and in the format prescribed by, the ***(City, Town, or County)*** and the Montana Department of Commerce. These reports include, but are not limited to:

a) Project progress reports describing the status of the project with respect to each implementation objective, including at a minimum, the percentage complete, costs incurred, funds remaining and projected completion date. The report must also describe significant problems encountered, documented uses of matching funds and/or in-kind contributions and any necessary scope or implementation schedule modifications requested; and

b) Unless otherwise specified, by the ***(City, Town, or County)***, the Contractor will submit quarterly progress reports to the ***(City, Town, or County)*** until the goals contained in the plan have been achieved, and the Contractor receives project closeout approval from the ***(City, Town, or County)*** and the Montana Department of Commerce.

The Montana Department of Commerce and the ***(City, Town, or County)*** must pre-approve any changes to these terms and conditions.

2. COMPENSATION & CONSIDERATION: The total amount to be awarded to the Contractor under the Contract will be up to $_____. The Contractor will provide at least ***$_____*** in matching funds (cash and in-kind) consistent with the purposes expressed in the application during the period of the Contract. The Contractor may modify this budget only after having requested and received prior approval of the adjustment from the ***(City, Town, or County)***, and the Montana Department of Commerce.

The ***(City, Town or County's)*** and the Montana Department of Commerce's approval of the Request for Payment form will constitute approval of the budget adjustment. The rationale for budget adjustment must be described in the Project Progress Report and the proposed adjustments noted in the Request for Payment and Status of Funds Report submitted with draws against the Contract funding reserve.

a) The ***(City, Town, or County)*** will authorize the Contractor to draw up to ***$_____*** against the funding reserved for the Contractor by the ***(City, Town, or County)***. In drawing against the reserved amount, the Contractor will follow the instructions supplied by the ***(City, Town, or County)***.

b) If the ***(City, Town, or County)*** determines that the Contractor has failed to satisfactorily carry out the duties and responsibilities under the Contract, the ***(City, Town, or County)*** may revoke the Contractor's authority to draw against the reserved amount described herein until such time as the ***(City, Town, or County)*** and the Contractor agree on a plan to remedy the deficiency.

c) The ***(City, Town, or County)*** reserves the right to withdraw a commitment for any CDBG-ED funds which remain un-disbursed at the end of the Contract period.

The Contractor shall contact the ***(City, Town, or County)*** if the Contractor has any questions regarding costs eligible for reimbursement.

3. PERIOD OF CONTRACT: The Contract will be in effect for the period commencing ***(date)*** and ending ***(date)*** unless otherwise terminated by law or in compliance with the terms of the Contract.

4. LIAISON: The contact person for the ***(City, Town, or County)*** is ***(name, title,***

location), and ***(name, title, location)***, for the Contractor.

5. COMPLIANCE WITH WORKERS' COMPENSATION ACT: The Contractor is required to supply the ***(City, Town, or County)*** with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-120, 39-71-401, and 39-71-405.) Neither the Contractor nor its employees are employees of the State. The proof of insurance/exemption must be valid for the entire Contract period and must be received by the ***(City, Town, or County)*** within 5 working days of the Contractor's execution of the Contract.

CONTRACTS WILL NOT BE ISSUED TO CONTRACTORS WHO FAIL TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.

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

6. DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the ***(City, Town, or County)***.

7. FAILURE TO HONOR CONTRACT: If the Contractor refuses or fails to deliver in accordance with the Contract terms and conditions, the State Procurement Bureau may, in its discretion, suspend the Contractor for a period of time from entering into any contracts with the State of Montana.

8. ACCESS AND RETENTION OF RECORDS: The Contractor agrees to provide the ***(City, Town, or County)***, the Montana Department of Commerce, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party.

9. TERMINATION OF CONTRACT: Unless otherwise stated, the ***(City, Town, or County)*** may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the Contract.

10. UNAVAILABILITY OF FUNDING: The ***(City, Town, or County)*** may, at its sole discretion, terminate or reduce the scope of the Contract if available funding is eliminated or reduced for any reason.

11. U.S. FUNDS: All prices and payments must be in U.S. dollars.

12. SECURITY: As security for the performance of this Agreement, Contractor will guarantee to the ***County/City/Town*** that in the event that Contractor does not make jobs available to low and moderate-income persons and cooperate in the documentation of job creation and income verification that the full amount of assistance provided under this agreement will be paid back to the ***County/City/Town.***

13. 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, including but not limited to damages and specific performance.

14. CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without prior written consent of the ***(City, Town, or County)*** and the Montana Department of Commerce. Supplies delivered which do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

15. VENUE: The Contract is governed by the laws of Montana. The parties agree that any litigation concerning the Contract must be brought in the ***(First, Second, etc.)*** Judicial District in and for the ***(appropriate County)***, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

16. COMPLIANCE WITH 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. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. 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.

17. DISABILITY ACCOMMODATIONS: The ***(City, Town, or County)*** does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

18. ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The Contractor shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the ***(City, Town, or County)*** and the Montana Department of Commerce. (Mont. Code Ann. § 18-4-141.)

19. MODIFICATION: The Contract may not be enlarged, modified, amended or altered except upon written agreement signed by all parties to the Contract.

20. NOTICE: All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons either by regular mail or personal service.

21. SEPARABILITY: A declaration by any court, or any other binding legal source, 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.

22. HOLD HARMLESS AND INDEMNIFICATION: The Contractor agrees to protect, defend, and save the Montana Department of Commerce, and the ***(City, Town, or County)*** 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 Contractor'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 Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under the Contract.

23. REGISTRATION WITH SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with Mont. Code Ann. §§ 35-1-1026 and 35-8-1001. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://www.sos.mt.gov.

24. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning non-visual access standards.

25. REFERENCE TO CONTRACT: The Contract number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the Contract.

26. INTEGRATION: The 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 are valid or binding.

This Contract is made and entered into on the _____ day of _____, 2012.

_____

(name, title) Date
(name of business)

_____

(local official's name, title) Date
(City, Town or County)

EXHIBIT 8-C

NAME OF LOCAL GOVERNMENT OR NON-PROFIT ENTITY
(Whichever is managing the revolving loan fund)

SAMPLE REVOLVING LOAN FUND PLAN

The ***Local Government*** received a ***Fiscal Year xxxx*** Community Development Block Grant – Economic Development (CDBG-ED) Program grant from the Montana Department of Commerce (MDOC). The ***Local Government*** has entered into a sub-recipient agreement with ***Non-Profit Entity*** to manage loan repayments from this grant award.

The non-administrative portion of that grant was made available to a private business, ***Name of Business***, in the form of a loan. The loan proceeds were used for ***Purpose of Loan, i.e. acquisition, finance, and working capital***. The terms of the loan agreement are specified in a duly recorded loan document on record at ***Local Government,*** Montana. That document is hereby incorporated by reference into this Revolving Loan Fund Plan. The repayments on this loan will be paid into an interest-bearing Revolving Loan fund account, to be used for further relending activity.

ORGANIZATIONAL MISSION

The ***Local Government or Non-Profit Entity*** Revolving Loan Fund (RLF) is designed to stimulate economic development activity by assisting the private sector, in order to create or retain jobs for low and moderate-income persons. These funds will be used in situations where a funding gap exists and alternative sources of public and private financing are not adequate. These funds are intended to complement conventional business financing techniques by leveraging funding from other federal and state financing programs and private lending institutions.

The RLF is designed to assist businesses by making appropriate long-term, fixed rate financing available to them at reasonable interest rates, and by providing public improvements in support of economic development activities.

PROGRAM OBJECTIVE

The objective of the Revolving Loan Fund (RLF) will be to continue the activities from which the program income is being derived, specifically:

1. Create and retain employment opportunities, to benefit no less than 51% Low and Moderate Income (LMI) persons within the ***City, Town, County*** which is the designated RLF Assistance area; and

2. Assist in preventing or eliminating blight, beautification, or upgrading within the commercial/business district of the community; and

3. Contribute partial funding as match for community development projects funded with state and federal funds.

I. ELIGIBLE APPLICANTS

Eligible applicants requesting loan assistance will be restricted to ***for-profit businesses within the designated RLF Assistance Area. The RLF Assistance Area is defined as being within the (City, Town, County).***

MAXIMUM LOAN AMOUNT

Maximum loan amounts depend on the type of financing requested, as listed below.

ELIGIBLE ACTIVITIES

Typical eligible activities include: land acquisition, public facilities and other improvements in support of economic development, such as water and sewer lines, and access roads; for acquisition, construction, rehabilitation, or installation of commercial and industrial buildings, facilities, equipment, or working capital; employee training; and grants to nonprofit entities.

Use of program income must be consistent with eligible activities as determined by the U.S. Department of Housing and Urban Development (24 CFR Part 570.201 or Section 105(a) of Title I of the Housing and Community Development Act) and the Montana DOC Community Development Block Grant Program.

1. CDBG-ED Project Development

The ***Local Government or Non-Profit Entity*** may use program income to defray project development costs incurred during the development of public facility projects, housing projects or economic development projects within the .

Activities may include but will not be limited to:

- legal advertisements specific to project development
- preparation of market studies/architectural or engineering studies
- feasibility studies
- computerization/operational assistance
- accounting/legal reviews
- grant preparation

2. CDBG Project Participation

The City may use program income to participate in partial funding of public facilities projects, housing projects, or economic development projects within the ***City, Town, County***.

Activities may include but will not be limited to contributing matching funds to augment state and federal funding for ***City, Town, County*** projects

TYPES OF FINANCING AVAILABLE

a. *Business Support Loans*

Eligible applicants may apply for loan assistance to finance activities that will strengthen their business and increase the likelihood of retaining or expanding the business within the designated Business/Commercial District or ***Designated Location.***

Activities may include but will not be limited to:

- preparation of business plans
- market studies
- project feasibility studies
- computerization/operational assistance

Amounts of loan requests for Business Support Loans will not exceed ***$xxx***, or ***XX%*** of total activity cost. Loans will be amortized over a ***X-year term*** at no less than ***X%*** interest and no greater than ***X%*** interest.

b. *Business Direct Loans*

Eligible applicants may apply for assistance to finance predetermined and documented business retention and/or expansion of activities. Loan proceeds may be used for the following activities:

- building/site acquisition
- site development/new construction
- building renovation
- equipment acquisition
- working capital

Amounts of loan requests for Business Direct Loans will not exceed ***$xxx or xx%*** of total activity cost. Terms of the loans will not exceed seven (7) years for working capital loans or ten (10) years for all other building related or equipment loans. Interest rates will be no less ***than X% or greater than X%.***

c. *Interest or Principal Buy-downs*

Eligible applicants may apply for financial assistance in the form of an interest or principal buy-down of a commercial loan. The proceeds of the commercial loan must be used for program eligible activities as described herein for Business Support or Business Direct loans.

d. Eligible applicants who own or intend to purchase a building within the Business/Commercial District may make a one-time application for loan assistance to finance exterior renovation, signage, facade renovation or construction. Loan amounts will not exceed ***$XXX***, amortized at ***X%*** over a ***X-year term***.

II. APPLICATION PROCEDURES

The Revolving Loan Fund Committee will accept loan applications on an open-cycle basis. The application deadline will be 5:00 p.m. the last working day of any week. Completed loan applications may be mailed or delivered to ***Location*** on or before the application deadline. (See application form - Attachment A)

Applicants should use the application summary and attach all required information. In addition, the for-profit business or nonprofit entity should complete the Business Application Requirements section of the guidelines.

Applications that propose public improvements as assistance to businesses will be accepted by ***Name of Entity*** and reviewed with similar procedures as loans to for-profit businesses. The application must include a complete business plan and financial package for each business assisted.

Applications will be reviewed and analyzed by the committee and ***Other Entity, (if applicable)*** on a "first come, first served" basis, as determined by the date of the full application is found to be complete by ***Name of Entity***.

Applicants should also be aware that in most cases it may take two to four weeks before any funds will actually be received after the decision to award a grant has been made.

LOAN REVIEW PROCESS

Loan applications received on or before the application deadline will receive a preliminary review by the Loan Review Committee to determine completeness of each application. Only complete applications will be advanced to the formal review process.

The loan review committee is comprised of ***Name of Entity*** members who at present consist of ***two banking representatives, two business representatives, and two rural representatives. This makeup allows for replacement by appointment from (Name of Entity).***

The Committee will review each application for compliance with program objectives.

Each application will be evaluated separately on a first-come first-served basis. Should requests for funds exceed funds available, applications that are deemed to represent a likelihood of broadest impact will receive the most favorable review.

Ranking of Applications

Each Revolving Loan Fund application for assistance will be ranked in five categories, a best ranking will equal 5 points, an average ranking will equal 3 points, and a poor ranking will equal 1 point. Any application receiving less than a poor score in a category is ineligible for the benefits of this program and will be rejected.

1. Business proposal is appropriate for the city and this program.

   Best = 5 points Average = 3 points Poor = 1 point

2. Number of jobs created or retained.

Greater than 10 jobs	=	5 points
Between and including 5 and 10 jobs	=	3 points
Less than 5 jobs	=	1 point

3. Cost per job.

Less than or equal to $5,000/job	=	5 points
$5001 - 10,000 job	=	3 points
$10,000/job - $20,000/job	=	1 point

4. Business proposal is financially feasible.

5. Percent benefit to Low and Moderate Income Persons

80% - 100%	=	5 points
60% - 79%	=	3 points
51% - 59%	=	1 point

   Note: Compute by dividing the number of jobs created for and/or retained by LMI persons by the total number of jobs created and/or retained.

6. Area economic impact: Project which has the broadest potential for impact on other area businesses, or real estate values, or school enrollments, or agriculture, etc., will be given a “Best” (5 points). Other applications will be ranked against the best application, with the next best receiving an “Average” (3 points).

   Within 60 calendar days from the application deadline, the Committee will provide the City Council with a written evaluation of each loan application, accompanied with a recommendation for loan approval or rejection by the Council.

PRIORITIZING APPLICATIONS

In addition to ranking individual applications, Revolving Loan Fund expenditures will be prioritized as follows:

1. Business expansions to enhance job retention or creation;
2. New business, locating within the RLF Assistance Area, which creates jobs;
3. Start-up of business with job creation potential;
4. Revitalization of business property;
5. Demolition for blight removal.

III. ANNUAL REPORT

As required by the Montana Department of Commerce, an annual report of Revolving Loan Fund activities will be submitted to the Community Development Block Grant – Economic Development Program along with a proposed budget for the following year.

AMENDMENTS TO THE ECONOMIC DEVELOPMENT REVOLVING LOAN FUND GUIDELINES

The ***Name of Entity*** may amend these guidelines by a majority vote of the ***Name of Entity*** and approved by the Montana Department of Commerce. Amendments will be incorporated into a revised statement of the CDBG Economic Development Program Income Revolving Loan Fund Guidelines.

APPROVED:

_____ _____
Local Government Official Date

_____
Non-Profit Representative Date

ATTEST:

_____ _____
Name Date

Local Government or Non-Profit Entity

CDBG Economic Development Revolving Loan Fund

January 1, October 2013 – December 31, October 2013

BUDGET

INCOME

1. Loan payments	
Interest only, projected	$ 15,222
Principal and interest	$ 22,076
TOTAL INCOME	**$ 37,298**

EXPENSES

ADMINISTRATION	
Personnel Services	
1. Salaries, Wages, Benefits, Office Costs	$ 1,500
2. Supplies	$ 150
3. Postage/Printing	$ 150
4. Telephone	$ 100
5. Legal	$ 600
TOTAL ADMINISTRATION	**$ 2,500**
ACTIVITY	
Project Development	
6. Legal Publications	$ 250
7. Architect/Engineering Services	$ 2,500
8. Consulting Services	$ 2,500
9. Legal Documentation	$ 500
TOTAL PROJECT DEVELOPMENT	**$ 5,750**
Project Participation	
10. Land Acquisition	$ 0
11. Demolition/Clearance	$ 0
12. Architect/Engineering Services	$ 2,500
13. Construction	$ 14,800
14. Other	$ 0
TOTAL PROJECT PARTICIPATION	**$ 17,300**
TOTAL EXPENSES	**$ 25,550**

Income	$37,298
(minus) -Expenses	$25,550
Total Revolving Loan Fund	$11,748

NOTE: Budget line carryovers will be allocated to RLF.

BUDGET NARRATIVE

ADMINISTRATION

1.	Personnel Services: Calculated at $15/hr. 10 hrs./month, 10 month period	$ 1,500
2.	Supplies: estimated Program Costs (10 months)	$ 150
3.	Postage/printing: estimated Program Costs	$ 150
4.	Telephone: estimated Program Costs	$ 100
5.	Legal: estimated Program Reimb. for Co. Attorney/program time	$ 600
	Total Administration	**$ 2,500**

ACTIVITIES

6.	Legal Publications:		
	Public Hearings - Water Project	($40)	
	Prof. Procurement - Water Project	($65)	
	Public Hearings - County Jail Project	($40)	
	Public Hearings - E.D. Project	($40)	
	Procurement - E.D. Project	($65)	
	Subtotal		$ 250
7.	Architect/Engineering Services Schematic Design - Jail Project		$ 2,500
8.	Consulting Services: Grant Preparation - E.D. Project		$ 2,500
9.	Legal Documentation: Prof. Svcs Contract Prep. and/or review		$ 500
10.	Land Acquisition		$ - 0 -
11.	Demolition/Clearance		$ - 0 -
12.	Architect/Engineering Services Constr. drawings, permit plans - handicapped accessibility proj.		$ 2,500
13.	Construction - Handicapped Access Project		$ 14,800
14.	Other		$ - 0 -
	Total Activity		**$ 25,550**

ATTACHMENT A
Local Government or Non-Profit Entity

LOAN APPLICATION
Program Income Revolving Loan Fund

* *

APPLICANT INFORMATION:

Name of Business: _____
Address: _____
_____
Telephone: _____
_____ (Fax)
Tax ID Number: _____
Contact Person: _____ _____(Phone)

Number of Years in Business:_____
Form of Business: Sole Proprietorship:____ Partnership:____
Corporation: ____ Other ____

Business Description (attach additional sheet if more space is required):

TYPE OF LOAN REQUESTED:

Business Support _____
Business Direct _____
Interest Buydown _____
Business District Revitalization _____.

NOTE:

Additional information may be requested by the Committee. That information may include, but may not be limited to the following financial exhibits; most current Balance Sheet; Profit and Loss Statement; Cash Flow Statement; Reconciliation of Net Worth; Earning Projections; and/or current personal financial statement for the business owner or any individual with more than 10% ownership.

Amount of Loan requested:_____

Source and amount of matching funds (if applicable)

Source _____
Amount _____

Purpose of Loan:

Certification:

As the responsible certified agent for _____***(name of business)*** ____, I hereby submit this application for loan assistance from the ***Local Government or Non-Profit Entity*** Revolving Loan Fund. The information presented in this application is, to the best of my knowledge, true and accurate. I further acknowledge that any employment positions retained or created as the result of a loan must benefit no less than 51% low to moderate income persons.

_____ _____
Signature Name and Title

_____
Date

EXHIBIT 8-D
CALCULATION OF BENEFIT TO LOW AND MODERATE INCOME PERSONS AND RACE AND ETHNICITY CATEGORIES

Communities with a local CDBG economic development project must use the following format for job applicants and new hires for jobs created or retained to document the family income. ***Contact the CDBG-ED staff for a copy of the latest HUD Income Limits for each county in the State.*** New income figures are available each spring from the Department of Housing and Urban Development. The new income figures will be sent to current grantees as soon as they are available. The figures for income levels for the county in which the project will be located should be placed under the appropriate spaces on the form for each family size.

The income level stated for the form can be based on either the previous 12 months before the date the form is signed or on the income reported on the most recent income tax form submitted to the Internal Revenue. The method used should be consistent. It is often difficult for an individual to determine accurately the income for the previous 12 months, which would necessitate using the reported income tax statement for the most recent tax year.

Race and ethnicity categories should be collected at the same time that income surveys are given. A sample form is part of this exhibit for collection of that data.

NOTE: The form included here is the acceptable format. Other variations of the form may not meet HUD guidelines, and the Department must review other variations before they are used. The form used must have the warning that income may be verified and penalties could be imposed for false statements. Information obtained from the applicant should be sufficient to complete **Exhibit 8-F**. Copies are available from the Department.

Income Certification for Job Creation and/or Retention

The following information is necessary for purposes of documenting that you qualify as a low and moderate income (LMI) person under our community's Community Development Block Grant – Economic Development (CDBG-ED) project. The CDBG-ED Program is a federal program intended to assist "low and moderate income families." Your response will be kept confidential and will not be available to the general public.

Included in the federal definition of "annual income" are all payments from all sources received by the family head (even if temporarily absent) and each additional member of the family who is not a minor. Income includes:

1. The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses;

2. The net income from operation of a business or profession or from rental or real or personal property (this includes gross receipts, minus operating expenses, received from the operation of an unincorporated farm or ranch);

3. Interest and dividends;

4. The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;

5. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay;

6. Public assistance;

7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; and

8. All regular pay, special pay and allowances of a member of the armed forces (whether or not living in the dwelling) who is head of the family or spouse.

9. Indicate whether or not your employment status prior to being hired for this current position was “unemployed prior to hire”, or “employed elsewhere prior to hire” (**for new hires**); **or** “currently hired in this position” if you’re not a new employee.

CDBG INCOME LIMITS BY SIZE OF HOUSEHOLD

Household Size

County	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
Extremely Low								
Low Income								
Moderate Income								
My Income Exceeds The Amounts Above								

I certify that, after reviewing the definition of "annual income" above, the total gross income of all members of my family for year **2012** *(or the previous 12 months from the date the form is filled out)* is as **circled** above. I further certify that the above statement is true, accurate, and complete to the best of my knowledge and belief. I agree to provide income verification if requested by local officials.

Please check one of the following:

(FOR NEW HIRES)

_____ Unemployed prior to hire

_____ Employed elsewhere prior to hire

(OR)

_____ Currently employed at this business

_____
Applicant's Signature

_____
Applicant's Printed Name

_____
Address

_____
Date

NOTE: Section 1001 of Title 18 of the United States Code and Criminal Procedure shall apply to the foregoing certification. Title 18 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned not more than five years or both.

SAMPLE CDBG INCOME LIMITS BY SIZE OF HOUSEHOLD

Household Size

Blaine County	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
Extremely Low	9850	11250	12650	14050	15150	16300	17400	18550
Low Income	16400	18750	21100	23450	25350	27200	29100	30950
Moderate Income	26250	30000	33750	37500	40500	43500	46500	49500
My Income Exceeds The Amounts Above								

(Note to Person Preparing Form: Insert the appropriate income limits above for each size of household.)

I certify that, after reviewing the definition of "annual income" above, the total gross income of all members of my family for year **2012** *(or the previous 12 months from the date the form is filled out)* is as **circled** above. I further certify that the above statement is true, accurate, and complete to the best of my knowledge and belief. I agree to provide income verification if requested by local officials.

Please check one of the following:

(FOR NEW HIRES)

_____ Unemployed prior to hire

_____ Employed elsewhere prior to hire

(OR)

_____ Currently employed at this business

_____
Applicant's Signature

_____
Applicant's Printed Name

_____
Address

_____
Date

NOTE: Section 1001 of Title 18 of the United States Code and Criminal Procedure shall apply to the foregoing certification. Title 18 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned not more than five years or both.

* *

Federal Standards for Definition of Low and Moderate Income Status
(Income eligibility standards from the U.S. Housing Act of 1937)

Section 889.103. Determination of income for eligibility.

For purposes of determining whether a family is a lower-income family, income shall be determined in accordance with Section 889.104, except that where a family has net family assets in excess of $5,000, income shall include the actual amount of income, if any, derived from all of the net family assets or 10 percent of the value of all such assets, whichever is greater. For purposes of this section, net family assets means value of equity in real property, savings, stocks, bonds, and other forms of capital investment. The value of necessary items such as furniture and automobiles shall be excluded.

Section 889.104. Computation of annual income.

(a) Except as provided in paragraph (b) of this section, all payments from all sources received by the family head (even if temporarily absent) and each additional member of the family household who is not a minor shall be included in the annual income of a family. Income shall include, but not be limited to:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses;
(2) The net income from operation of a business or profession or from rental or real or personal property (for this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business);
(3) Interest and dividends;
(4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
(5) Payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay (see paragraph (8) (b) (3) of this section).
(6) Public Assistance. If the public assistance payment includes an amount specifically designated for shelter and utilities which is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:
    (i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus
    (ii) The maximum amount which the public assistance agency could in fact allow for the family for shelter and utilities.
(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling:
(8) All regular pay, special pay and allowances of a member of the armed forces

(whether or not living in the dwelling) who is head of the family or spouse (see paragraph (8) (b) (5) of this section).

(b) The following items shall not be considered as income:

(1) casual, sporadic or irregular gifts;

(2) amounts which are specifically for or in reimbursement of the cost of medical expenses;

(3) lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;

(4) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes of which are available for subsistence are to be included in income;

(5) The special pay to a serviceman head of a family away from home and exposed to hostile fire;

(6) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(7) foster child care payments;

(8) the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged the eligible household;

(9) payments received pursuant to participation in the following volunteer programs under the ACTION Agency;

(i) National Volunteer Antipoverty Programs which include VISTA, Service Learning Programs and Special Volunteer Programs.

(ii) National Older American Volunteer Programs for persons aged 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience, Service Corps of Retired Executive (SCORE) and Active Corps of Executives (ACE).

* *

INDIVIDUAL DIRECT BENEFIT ETHNICITY AND RACIAL CATEGORY REPORTING FORM
(To be Completed by Newly Hired Persons, or by Persons Holding a Current Job for Job Retention Projects)

(Name of local government) is required by federal regulations governing the Community Development Block Grant –Economic Development Program to request the following information in order for the Montana Department of Commerce to monitor ***(Name of local development organization's)*** compliance with federal equal opportunity and fair housing laws.

Federal law provides that an agency may not discriminate on the basis of this information, or on the basis of whether you choose to furnish the information. However, if you choose not to furnish it, this agency is required to note race, gender and/or handicap status on the basis of visual observation and/or surname.

If you do **not** wish to provide the requested information, please check the following box:
☐ **I do not wish to furnish this information.**

~~~~~~

Please select from each of the following categories:

Ethnicity: (select one of the following)
- ☐ Hispanic or Latino
- ☐ Not Hispanic or Latino

Race: (select the one that best describes your category)
- ☐ White
- ☐ Black or African American
- ☐ Asian
- ☐ American Indian or Alaskan Native
- ☐ Native Hawaiian or Other Pacific Islander
- ☐ American Indian or Alaskan Native *and* White
- ☐ Asian *and* White
- ☐ Black or African American *and* White
- ☐ American Indian or Alaskan Native *and* Black or African American

Other Needed Information: (select all that apply)
- ☐ Female
- ☐ Male
- ☐ Handicapped
- ☐ Female Head of Household

If applicable, when the person declines to furnish the information:

On the basis of sight or surname, the above information has been noted by:

Name: _____ Initialed: _____

Title: _____ Date: _____
~~~~~~

EMPLOYMENT TRACKING & DIRECT BENEFIT SUMMARY DATA

NAME OF LOCAL GOVERNMENT: _____

NAME OF ASSISTED ENTITY/BUSINESS _____

DUNS NUMBER FOR BUSINESS : _____

NAIC CODE: _____

DOES BUSINESS PROVIDE HEALTH CARE BENEFITS: _____

CDBG CONTRACT #: _____

FORM COMPLETED FOR QUARTER ENDI _____

Total FTEs Trained to Date/Toal LMI FTEs Trained to Date: _____/_____

Total FTEs Created to Date / Total LMI FTE Hires to Date: _____/_____

Total FTEs Retained to Date: _____

PAYROLL VERIFIED BY: _____

DATE: _____

EMPLOYEE NAME	EMPLOYEE POSITION DESCRIPTION/ ID NUMBER	JOB CODE (Key #1)	SKILL LEVEL (Key #2)	HIRE STATUS (Key #3)	DATE HIRED	DATE EMPLOYMENT CEASED	FT / PT (Key #4)	FTE % ie. .5, .75, 1.0 (Key #5)	P / S (Key #6)	RATE OF PAY (Hourly Rate)	INCOME LEVEL (Key #7)	RACIAL CAT. (Key #8)	ETHNIC CAT. (Key #9)	M	F	H	FHH
														(Key #10)			

EMPLOYEE NAME	EMPLOYEE POSITION DESCRIPTION/ ID NUMBER	JOB CODE (Key #1)	SKILL LEVEL (Key #2)	HIRE STATUS (Key #3)	DATE HIRED	DATE EMPLOYMENT CEASED	FT / PT (Key #4)	FTE % ie. .5, .75, 1.0 (Key #5)	P / S (Key #6)	RATE OF PAY (Hourly Rate)	INCOME LEVEL (Key #7)	RACIAL CAT. (Key #8)	ETHNIC CAT. (Key #9)	M	F	H	FHH
														(Key #10)			

K E Y :

JOB CODES (KEY #1)

A = Officials and Managers
B = Professional
C = Technicians
D = Sales
E = Office and Clerical
F = Craft Workers (Skilled)
G=- Operatives (Semi-Skilled)
H = Laborers (Unskilled)
I = Service Workers

SKILL LEVEL (KEY #2)

S=Skilled
SS=Semi-Skilled
U=Unskilled
T=Training to be provided

HIRE STATUS (KEY #3)

NHT = FTE in Training
NH = New Hire
R = Retained

FT/PT (KEY #4)

FT = Full Time
PT = Part Time

FTE % Conversion (Key #5)

Hours worked per week / 40 hours:
20 hrs/wk = 0.5 FTE (20 hrs/40 hrs) enter 0.5
30 hrs/wk - 0.75 FTE (30 hrs/40 hrs) enter .75

P /S (KEY #6)

P = Permanent
S = Seasonal

INCOME LEVELS (KEY #7)

EL = Extremely Low
L = Low
M = Moderate
NL = Non-Low/Moderate

RACIAL CATEGORY: (KEY #8)

1. American Indian or Alaska Native
2. Asian
3. Black or African American
4. Native Hawaiian or Other Pacific Islander
5. White
6. American Indian or Alaska Native and White
7. Asian and White
8. Black or Aftican American and White
9. American Indian or Alaska Native and Black or African American

E.C.-Ethnic Category (Key #9)

Y = Hispanic or Latino
N = Not Hispanic or Latino

Misc. (Key #10)

M = Male
F = Female
H = Handicapped
FHH = Female Head of Household

EXHIBIT 8-F1

SAMPLE HIRING AND TRAINING PLAN

In consideration of the financial assistance provided by (*Name of Local Government)* and the Community Development Block Grant – Economic Development (CDBG-ED) Program through the Revolving Loan Fund (RLF) administered by the (*Name of Local Development Organization)* , (*Name of Business)* ("business") agrees to participate in a hiring and training plan that is an integral part of the Loan Agreement. The business will be responsible for implementing the plan, and will be assisted by the Montana Job Service and (*Name of Local Development Organization)*.

1. **LOW AND MODERATE INCOME BENEFIT:** As a result of the loan assistance provided by the Montana CDBG-ED Program, the business will create (*Number)* full-time equivalent jobs by the end of the second year of operation. The business will make all job openings available to low and moderate-income persons, and will use the most recent low and moderate-income guidelines provided by the Montana Department of Commerce to determine eligibility for this status. The business will hire at least (*Number)* low and moderate-income persons during the two-year duration of the project.

2. **OVERALL EMPLOYMENT:** The business's place of operation will be located (*Location)*, and operations at that facility will employ a total of (*Number)* by the end of the second year of operation.

3. **HIRING AND TRAINING PRACTICES:** A personnel coordinating committee will be formed that will include representatives from the Montana Job Service and *(Name of Local Development Organization)*. The committee will assess training needs, develop application and referral procedures, and ensure that hiring practices conform to requirements of Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1974, and the Americans with Disabilities Act.

   The committee will establish coordination of services that benefit low and moderate- income persons including necessary skills, training, employment counseling, job retention skills, and supportive services when appropriate through linkages with job programs operated by Montana Job Service and *(Other Resources)*.

   In all of its hiring practices, the company will abide by the provisions of Title VI of the Civil Rights Act of 1964, which states that 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.

   The company will also comply with Section 109 of the Housing and Community Development Act of 1974, which states that:

   No persons in the U.S. may, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1974 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to such program or activity.

This Hiring and Training Plan contains the following exhibits:

Attachment A – List of jobs to be created or retained, including the percentage of full-time, skilled, semiskilled, or unskilled, job titles, rates of compensation;

Attachment B – Timetable for creating the jobs, total number of persons to be hired including number of LMI to be hired;

Attachment C – Procedures for outreach, recruitment, screening, selection, training and placement of workers - particularly LMI workers; and description of training curriculum and resources.

4. **REPORTS AND RECORD KEEPING**: (*Name of Business)* will ask each new employee to complete a household questionnaire form form, so that the designated representatives of the (*Name of Local Government)* can determine the low and moderate-income status of the company's employees prior to the date of hire. Employees will be given race and ethnicity categories form to complete for data collection to be reported to the CDBG-ED program and HUD. In addition to this documentation, the Montana Job Service will maintain an applicant pool for the company, with special codes assigned to applicants interested in working at the company. Before referral to the company, all applicants will be screened for income eligibility for job training assistance, tax credit incentives, and CDBG-ED low and moderate-income status. The company will provide a list of its employees to the (*Local Government)*'s designated representative no less than every three (3) months during the two-year duration of the project.

5. **ACCEPTANCE:** *(Name of Business)* hereby agrees to abide by the hiring and training provisions described herein.

_____ _____

Name of Business Owner
Name of Business

Chief Elected Official
Name of Local Government

_____ _____

Date

Date

_____

Local Development Organization Director
Name of Local Development Organization

_____

Date

Attachment A - Example

(Company Name)
(Address)
(Phone Number)

EXAMPLE

JOB TITLE	# OF POS.	JOB DESCRIPTION	POS. #	PROJECTED WORK TIME	FTE	PROJ. COMPEN.
1. Toolpusher	1	Oil & Gas Drilling Rig	001	1600 Hrs/Yr	0.75	$21.50/Hr
2. Driller	6	Oil & Gas Drilling Rig	002-007	1600 Hrs/Yr	0.75	$21.10/Hr
3. Floor Hand 1	6	Oil & Gas Drilling Rig	008-013	1600 Hrs/Yr	0.75	$19.00/Hr
4. Floor Hand 2	6	Oil & Gas Drilling Rig	014-019	1600 Hrs/Yr	0.75	$18.50/Hr
5. Bookkeeper	1	Basic Accounting	020	2080 Hrs/Yr	1.0	$17.50/Hr
6. Data Entry Clerk	1	Computer Data Input	021	2080 Hrs/Yr	1.0	$16.50/Hr
7. Land Secretary	1	Oil & Gas Records	022	2080 Hrs/Yr	1.0	$17.50/Hr
8. Receptionist/Sec.	1	General Secretarial	023	2080 Hrs/Yr	1.0	$16.00/Hr
9. Revenue Accountant	1	Gas Revenue Accounting	024	2080 Hrs/Yr	1.0	$18.50/Hr
10. Skilled Labor	2	Assembling Air Compressors	025-026	2080 Hrs/Yr	1.0	$18.25/Hr
11. Welder	1	General Equipment Maintenance & Fabricator	027	2080 Hrs/Yr	1.0	$22.00/Hr
12. Truck Driver	1	Moving Oil Field Equipment & Driving Water Truck	028	1600 Hrs/Yr	0.75	$18.00/Hr
Total FTE					23	

Positions will be paid every two weeks.

Position 001:	Oil field drilling and management experience necessary.
Position 002:	Oil field drilling experience preferred.
Position 003 - 019:	Oil field experience preferred.
Position 020:	Some accounting experience preferred.
Position 021:	Computer experience necessary
Position 022:	Secretarial and computer skills necessary. Knowledge of land descriptions advantageous.
Position 023:	Secretarial and computer skills necessary.
Position 024:	Accounting experience needed.
Position 025-026:	Mechanical experience necessary.
Position 027:	Two years welding experience or Technical Training necessary.
Position 028:	Current commercial driver's license and Department of Transportation physical required.

Attachment B

Timetable for Hiring and Training

Attachment C

Description of Outreach and Recruitment
Description of Training and Curriculum

EXHIBIT 8-F2

SAMPLE HIRING AND TRAINING PLAN FOR CUSTOMIZED EMPLOYEE TRAINING

In consideration of the financial assistance provided by *(Name of Local Government)* 's Community Development Block Grant – Economic Development (CDBG-ED) Program through the grant administered by the *(Name of Local Development Organization)* agree to participate in a hiring and training plan that is an integral part of the grant agreement. The *(Name of Business)* will be responsible for implementing the plan, and will be assisted by the Montana Job Service and *(Name of Local Development Organization)*.

1. **LOW AND MODERATE INCOME BENEFIT:** As a result of the **grant assistance** provided by the Montana CDBG-ED Program,*(Name of Business)* will create *(Number)* full-time equivalent (FTE) jobs by the end of the second year of operation. The company will make a minimum of *(Number)* FTE job openings available to low and moderate-income persons, and will use the most recent low and moderate-income guidelines provided by the Montana Department of Commerce to determine eligibility for this status. To ensure that the jobs created are made available to low and moderate income households, the company will use the Montana Job Service for referrals.

2. **OVERALL EMPLOYMENT:** *(Name of Business)* is located at *(Address),* and will employ a total of *(Number)* persons through its operations by the end of the second year of operation. The job breakdown is estimated to be: *(List job titles and number of positions).*

3. **HIRING PRACTICES:** *(Description of training provided).*

4. **TRAINING PRACTICES:** *(Name of Business)* will hire and train employees to: *(Description of duties to result from training).*

5. **REIMBURSEMENT FOR TRAINING ACTIVITIES:** *(Name of Business)* will pay trainees *($Amount)* per hour during the training and probationary periods. The company has determined that it will take *(Number)* hours to complete the initial training program and an additional *(Number)* hours to complete the probationary period. The total cost of training one (1) employee is *($Amount*) for *(Number)* hours at *($Amount)* per hour). Once the trainee has satisfactorily completed the training and probationary periods, *(Name of Company)* agrees to pay the trained employee *($Amount)* per hour.

   The County agrees to reimburse *(Name of Business)* *(Amount)* for each full time equivalent (FTE), up to *(Number)* FTEs, not to exceed *($Amount)*, that have successfully completed the training program and probationary period and are receiving the minimum hourly rate of *($Minimum MDOC Wage)*. An FTE is defined as an employee, or combination of employees, that works 2,080 hours per year or 40 hours per week.

6. **COMPLIANCE WITH EQUAL OPPORTUNITY AND NONDISCRIMINATION LAWS:** In all of its hiring practices, *(Name of Company)* will abide by the provisions of Title VI of the Civil Rights Act of 1964, which states that 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.

(Name of Company) will also comply with Section 109 of the Housing and Community Development Act of 1974, which states that:

No persons in the U.S. may, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1974 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to such program or activity.

7. **REPORTS AND RECORD KEEPING**: (*Name of Company)* will ask each applicant to complete a household questionnaire form, so that the designated representatives of the (*Name of Local Government)*, (*Local Development Organization)*, can determine the low and moderate-income status of the company's potential employees prior to the date of hire. In addition to this documentation, the Montana Job Service will maintain an applicant pool for the company, with special codes assigned to applicants interested in working at the company. Before referral to the company, all applicants will be screened for income eligibility for job training assistance, tax credit incentives, and CDBG-ED low and moderate -income status. The company will provide a list of its employees to the (*Local Development Corporation*)no less than every three (3) months during the two-year duration of the project. The report must document that higher wages, at least *$Minimum MDOC Wages* were paid to each employee after completion of the training program and probationary period.

8. ***(Name of Business)*** **agrees that in the event it ceases operation in (*Name of Local Government)* within the first two years—the Montana Department of Commerce (MDOC) contract period—the company will reimburse the (*Name of Local Government)* for the full amount of the MDOC labor training grant funds it has received.**

9. **ACCEPTANCE:** (*Name of Business)* hereby agrees to abide by the hiring and training provisions described herein.

Business Owner *Name of Business*	*Chief Elected Official* *Name of Local Government*
Date	Date
Director *Local Development Organization*	
Date	

EXHIBIT 8-G
LOAN PORTFOLIO DATA (LPD) FORM

Attached for your use is a copy of the CDBG-ED "Loan Portfolio Data" Form. The U.S. Department of Housing and Urban Development (HUD) requires the Montana Department of Commerce (MDOC) to track CDBG-ED assisted businesses. Due to imminent changes in the CDBG-ED program mandated by HUD, the MDOC needs to track primary and secondary loan activities generated from the above awards, in order to report program performance measurements for the CDBG-ED program. This information also enables the Department to better provide technical assistance to local governments and local development organizations with their community development objectives.

Revolving Loan Fund managers must submit the LPD form, or its equivalent, for CDBG-ED loan information on an annual basis. **The reports are due no later than January 31 for the period ending December 31.**

You may make copies of the enclosed forms for future LPD reporting. Please submit a completed form, or its equivalent, for each CDBG-ED primary and secondary loan. Send the form(s) to:

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

Please call (406) 841-2770 for additional information or assistance.

MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT
ECONOMIC DEVELOPMENT (CDBG-ED) LOAN PROGRAM
PRIMARY LOAN PORTFOLIO DATA
Please copy sheets as needed for reporting <u>each</u> primary loan.

Report as of: _____ Contract Number: _____

Grantee (Local Government) : _____

Business Name: _____

Business Location: _____

Business Contact: _____ Phone_____

Business Address: _____

Prepared by: _____ Phone_____

BALANCE OF AVAILABLE FUNDS IN RLF $_____

Interest Income Earned on RLF $_____

1) CDBG-ED Loan Information:

Original Date of Loan: _____

Total Loan Amount (CDBG-ED ONLY) **$** _____

Monthly Payment Amount: $ _____

Total Payments to Date: $ _____

(Cumulative Interest Payments: $_____)

(Cumulative Principal Payments: $_____)

Remaining Repayment Amount: $ _____

Interest Rate: _____ %

Loan Term: _____ Years

Remaining Term: _____ Years

Security: _____

2) **Current on Loan Payments**? Yes____ or No____
If not current, explain:

3) **If Bankrupt, Total Recapture Amount**: $_____

4) **Jobs:** # Created: _____ # Retained: _____
LMI Created: _____ # LMI Retained: _____

5) **Further Leverage/Spin-off Activities, directly related to this project, if known:**

6) **Any Secondary Loan Activity to Date? Yes___ or No___ (If yes, fill out next page.)**

SECONDARY LOAN ACTIVITY
This form may be used to report secondary loan activity.
For multiple source RLF's, a roll-up of loan activity is acceptable.

LOAN # _____

Original Local Government Grantee: _____

Primary Loan Contract Number: _____

Primary Loan Business Name: _____

Secondary Loan Business Name: _____

Secondary Business Address: _____

_____

Purpose of Loan: _____

CDBG-ED Eligible Activity? Yes___ or No___ **(**See CDBG-ED Program Brochure)

1) CDBG-ED Loan Information:

Date of Secondary Loan: _____ Total Loan Amount: $_____

Monthly Payment Amount: $_____ Total Payments to Date: $_____

(Cumulative Interest Payments: $_____)

(Cumulative Principal Payments: $_____)

Remaining Repayment Amount: **$_____**

(Optional) Interest Rate: _____ % Loan Term: _____ Years

Term remaining on loan: _____ Years

(Optional) Security: _____

2) Current on Loan Payments? Yes____ or No____

3) Jobs : # Created: _____ # Retained: _____ #LMI _____

Jobs are a HUD priority item and needs to be documented.

Comments:

LOAN PORTFOLIO DATA FORM INSTRUCTIONS

Report as of: *(December 31 of each year)* *Contract #* (primary loan contract #)

Grantee: (Grantee and Administering Entity, if applicable)

Business Name: *(Name of the business assisted)*

Business Location: (Town or city business is located in)

Business Contact: *(Name of contact person for the business)* Phone *(their phone #)*

Business Address: *(Self-explanatory)*

Prepared by: (*Name of person & name of organization preparing this form)* Phone *(their phone #)*

1) CDBG-ED Loan Information:

Original Date of Loan: (Contract award date)

Total CDBG Loan Amount: $ (O*riginal loan amount)*

Monthly Payment Amount: $ *(Self-explanatory)*

Total Payments to Date: $ *(Total dollar amount of payments made by the business, to date)*

(Cumulative Interest Payments: $*(Total dollar amount of interest payments made by the business, to date).*

(Cumulative Principal Payments: $*(Total dollar amount of principal payments made by the business, to date)*

Interest Income Earned: $ *(Total amount of interest earned by the locality or administering entity on loan repayments deposited into an interest earning account).*

Remaining Repayment Amount: $ (Self-explanatory)

Interest Rate: *(per the loan agreement)* %

Loan Term: *(per the loan agreement)* Years

Remaining Term: *(per the loan agreement)* Years

Security: *(Brief description of loan security*)

2) Current on Loan Payments? Yes____ or No____ *(Check "Yes" or "No")*
If not current, explain: *(If the loan is not current, explain the circumstances, number of delinquent payments, and corrective actions being taken)*

3) If Bankruptcy, Total Recapture Amount?: $ *(Self-explanatory)*

4) Jobs/Hiring Status: (Provide a brief description of the status of the jobs created or retained)

5) Further Leverage/Spin-off Activities, directly related to this project, if known:
(Provide a brief description of any known Leverage/Spin-off Activities, directly related to this project)

6) Any Secondary Loan Activity to Date? Yes___ or No___
(Check "Yes" if any secondary relending of funds has occurred and fill out information on Secondary Loan Activity – 8.1.3.)

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 Chief Elected Official)

(Name of City, Town or County):

_____
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)

EXHIBIT H2

SAMPLE SUB-RECIPIENT AGREEMENT
*(For **non-RLF agreements**)*

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, Business Resources Division herein referred to as "the Department," and

WHEREAS, the purpose of the grant is to ***(name activities)*** for the residents of ***(name of City, Town, County or region)***, and

WHEREAS, the ***(City/Town/County)***, desires to sub-grant the CDBG-ED funds to the Sub-recipient and engage the Sub-recipient to ***(name 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 non-entitlement areas)*** as defined by §105(a)(15) of Title I of the Housing and Community Development Act (the "Act"), 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 funds for ***(name of activities)*** 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. 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 project as described in the ***(City/Town/County)***'s CDBG-ED application.

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. If the Sub-recipient ceases to exist or an Event of Default occurs, all grant funding on hand and accounts or notes receivable related to this agreement, 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.

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 Sub-recipient.

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 Sub-recipients 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 Local Development Organization)***:
_____	_____
(Name of Chief Elected Official)	***(Name of Director)***
_____	_____
Date	Date
Attest:	Attest:

(ATTACH ANY EXHIBITS HERE)

For Example:

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

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

Exhibit "C" – Schedule of Fees (see example on page L2.9)

Example of "Schedule of Fees"

Local Development Organization Schedule of Fees

PERSONNEL EXPENSES

Project Manager – Anticipated work hours for 2 year project

875 hours @ $30/hour = $26,250.00

Benefits – Health insurance, annual leave, etc.

875 hours @ $3.00/hour = $ 2,625.00

TRAVEL ($.35/mile)

26 trips out to project site @ $10.78 = $ 280.28

6 trips to other office @ $47.04 = $ 282.24

SUPPLIES (10% overhead)

Office supplies =$ 2,587.48

Postage

Printing and copying

Telephone

TOTAL $32,025.00

EXHIBIT J1

SAMPLE MANAGEMENT PLAN *(Local Government Management)*

This document is only a sample. It is important that local officials create a management plan based on how things are actually done (especially in regards to the financial management) by the local government; the sample management plan should not simply be copied if it does not fit the local government's particular situation.

MONTANA DEPARTMENT OF COMMERCE

COMMUNITY DEVELOPMENT BLOCK GRANT
ECONOMIC DEVELOPMENT PROGRAM
CONTRACT NO. MT-CDBG-ED-***xx-xx***
(Name of Assisted Business)

A. Administrative Structure

The ***(Name of Local Government)*** is an incorporated ***(City/Town/County)*** with a ***(Mayor/Council, City Manager/Council or County Commission)*** form of government. The following persons will have lead responsibility for administering the ***(City/Town/County)***'s ***(FY xxxx)*** Community Development Block Grant – Economic Development (CDBG-ED) Project to ***(description of project)*** for ***(Name of Assisted Business)***:

1. ***(Name and Title of the Chief Elected Official)***, as the ***(City/Town/County)***'s chief elected official, will have responsibility for all official contacts with the Montana Department of Commerce (MDOC). The ***(Chief Elected Official)***, and ***(Council or Commissioners)*** will have the ultimate authority and responsibility for the ***(City/Town/County)***'s ***(FY xxxx)*** implementation of the CDBG-ED project to ***(description of project)*** for ***(Name of Assisted Business)***. The ***(Chief Elected Official)*** will approve and sign administrative documents, designate the Environmental Certifying Officer and approve all requests for payment from the CDBG-ED program. The ***(Council or Commissioners)*** will approve all contracts and drawdown requests. The telephone number for the ***(Chief Elected Official and Council or Commissioners)*** is (406) ***(xxx-xxxx)***. ***(Email xxxx@xxx)***

2. ***(Name)***, ***(City/Town/County)*** Fiscal Officer**,** will act as Finance Manager for the CDBG-ED project and will be responsible for management of and record keeping for CDBG-ED funds and other funds involved in the financing of the ***(description of project)*** for ***(Name of Assisted Business)***. Approximately ***(amount, i.e. one-tenth)*** of his time will be devoted to CDBG-ED administration during the term of the project. (Telephone (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

3. ***(Name)***, ***(City/Town/County)*** Clerk, will maintain all records for the project. Approximately ***(amount, i.e. one-tenth)*** of ***(his/her)*** time will be devoted to maintaining CDBG-ED records. (Telephone (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

4. ***(Name)***, ***(City/Town/County)*** Grants Administrator, will be the Project Manager. ***(He/She)*** will be the liaison between ***(Name of Assisted Business)*** and the ***(Council or Commissioners)***, ***(City/Town/County)*** Attorney, and the Montana Department of Commerce. He/she will make appropriate recommendations and route all contract documents, required administrative documents, and drawdowns. On behalf of the ***(Council or Commissioners)***, ***(he/she)*** will maintain the project files, be responsible for Federal, State and programmatic requirements and manage the administration and implementation of the CDBG-ED project to expand the business of ***(Name of Assisted Business)***. ***(He/she)*** will be responsible for assisting the applicant with all aspects of managing the project, including the completion of the environmental review, preparation of contracts, loan agreements, low-to-moderate income documentation and monitoring. Approximately ***(amount, i.e. one-third)*** of ***(his/her)*** time will be devoted to CDBG-ED administration during the term of tile project. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

5. ***(Name)***, ***(City/Town/County)*** Attorney, will review and advise the ***(Council or Commissioners)*** regarding any proposed contractual agreements associated with the CDBG-ED project and will provide any other legal guidance as requested. The ***(City/Town/County)*** Attorney will review and approve all loan agreements and related documents. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

6. ***(Name)***, Controller for ***(Name of Assisted Business)*** will serve as the project representative for ***(Name of Assisted Business)***.

7. The local Job Service will be responsible for screening and verifying income levels for all job applicants and maintaining employment files in accordance with CDBG – ED guidelines.

8. In accordance with the Single Audit Act, as amended, an independent auditing firm will review and make a report on the CDBG-ED.

B. Project Management

1. The Project Manager will be responsible for:

a. Ensuring that the Loan/Grant Agreement between ***(Name of Local Government)*** and ***(Name of Assisted Business)*** is executed.

b. Preparing the Environmental Review Record (ERR) to assure full compliance with the National and Montana Environmental Policy Acts and any other applicable environmental requirements. The Project Manager also will be responsible for preparing any required legal notices for the ERR Process and for ensuring required public hearings or informational meetings are conducted.

c. Preparing a Request for Release of Funds (RROF) for submittal to the MDOC.

d. Developing the contract with the MDOC and administering all requirements related to effective project start-up and implementation.

e. Preparation of contracts and loan agreements between the ***(City/Town/County)*** and ***(Name of Assisted Business)***.

f. Assisting ***(Name of Assisted Business)*** and the local Job Service with documentation of low-to-moderate income documentation.

g. Establishing and maintaining complete and accurate project files and preparing all documentation and reports incidental to administration of the grant.

h. Reviewing all proposed project expenditures or requests for payment to ensure their propriety and proper allocation of expenditures to the CDBG-ED project budget.

i. In cooperation with the ***(City/Town/County)*** Fiscal Officer, reviewing requests for payment to ensure compliance, processing payment requests and preparing drawdown requests for the CDBG-ED, including the *Request for Payment and Status of Funds Reports* and the *Project Progress Report*.

j. Preparing all required performance reports and closeout documents for submittal to the ***(City/Town/County)*** for review and submittal to the CDBG-ED Program.

k. Project liaison with ***(Name of Assisted Business)***, the community and ***(Council or Commissioner)*** meetings to provide project status reports and representing the project at any other public meetings, as deemed necessary by the ***(Council or Commissioners)***.

l. Project monitoring.

m. Public Relations, which includes acting as a contact person for persons interested in the project, preparing press releases, and disseminating project information.

2. The ***(City/Town/County)*** Attorney will be responsible for:

a. Reviewing all proposed contractual agreements for the CDBG-ED program.

b. Ensuring that any agreements necessary, including the Loan/Grant Agreement, between ***(Name of Assisted Business)*** and ***(Name of Local Government)*** are properly executed.

C. Financial Management

1. The Finance Manager's responsibilities will be as follows:

a. Establishing the CDBG-ED Program line item account and disbursing CDBG-ED funds from that account based on claims and supporting documents approved by the Project Manager. Since the ***(City/Town/County)*** uses a non-interest bearing compensative balance for its general disbursements, a separate CDBG-ED account is not necessary. The balance of CDBG-ED funds in the ***(City/Town/County)*** account will not exceed $5,000 for a period of more than three (3) days, and all CDBG-ED funds drawn by the grantee will be expended for eligible costs within 15 days.

b. Entering all project transactions into the ***(City/Town/County)***'s existing accounting system (BARS) and preparing checks/warrants for approved expenditures.

c. With the assistance of the Project Manager, preparing the *Request for Payment and Status of Funds Reports* to be submitted to the MDOC. All drawdown requests will be signed by two of the three following persons: two ***(Council or Commissioner)*** members and the ***(City/Town/County)*** Fiscal Officer. No expenditures will be made without the approval of the ***(Council or Commissioners)***.

d. With the assistance of the Project Manager, preparing the final financial reports for project closeout.

Original financial documents (claims with attached supporting documents) will be retained in the ***(City/Town/County)*** Clerk's office.

Monthly time sheets and daily project logs will be maintained by ***(City/Town/County)*** staff to document all time worked on the CDBG-ED project.

IN WITNESS WHEREOF, the parties hereto acknowledge that the parties named within are aware of their responsibilities and execute this Agreement on the _____ day of _____, 20__.

PROJECT ADMINISTRATOR:

_____ _____

(Name, Title) Date

(Local Development Organization (LDO))

(Name of City, Town or County):

_____ _____

(Name, Title of Elected Official) Date

(Name of Local Government)

Example of a Local Government's supporting documentation to be submitted with a Request for Reimbursement for administrative services attributable to the project.

(Submitted to the
CDBG-ED program with the Request for Reimbursement form as supporting documentation for a Local Government's Administrative Services reimbursement)

PUNXSUTAWNEY ECONOMIC DEVELOPMENT PROJECT

Local Government Staff Project Hours

June-August 2012

Staff	Hours	Activity	Date Performed
Johnson	4.0	Meet w/ city and engineer	6/8/12
Williams	2.0	Reviewed Contracts	6/20/12
Williams	3.0	Reviewed Files, Prepared progress report	7/24/12
Johnson	4.0	Meet w/ CDBG-ED rep at project site (40 travel miles)	8/4/12
Williams	2.0	Prepare drawdown #1 and progress report	8/22/12

Total Hours Williams 7.0
Johnson 8.0

Williams	7.0 hours @ $40/hour	$280.00
Johnson	8.0 hours @ $60/hour	$480.00
Travel to City and Project site (40 mi. @ $.50/mi.)		$ 20.00
	Invoice Total:	$780.00

See the attached additional documentation substantiating the charges.

EXHIBIT J2

SAMPLE MANAGEMENT PLAN *(Loan Project Managed by Third-Party Nonprofit)*

This document is only a sample. It is important that local officials create a management plan based on how things are actually done (especially in regards to the financial management) by the local government; the sample management plan should not simply be copied if it does not fit the local government's particular situation.

MONTANA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT BLOCK GRANT
ECONOMIC DEVELOPMENT PROGRAM
CONTRACT NO. MT-CDBG-ED-***xx-xx***
(Name of Assisted Business)

In Fiscal Year ***(xxxx)***, the ***(Name of Local Government)*** received a grant from the Montana CDBG-ED Program that will be loaned to ***(Name of Assisted Business)***. The loan repayments will be used to continue the development of the CDBG-ED Revolving Loan Fund, (hereinafter called "The RLF"). The RLF will be used to provide financial capital to create or expand businesses in the ***(Name of Local Government)*** in equal proportion with private financing. New and expanding businesses that borrow funds from the RLF will promise to provide jobs to low and moderate-income (LMI) families in the ***(Name of Local Government)***. The ***(City/Town/County)*** will enter into a Sub-Recipient Agreement with ***(name of Local Development Organization)*** (LDO) for administering the CDBG-ED Project and the RLF. This Management Plan is written to assure proper management of the CDBG-ED project, which includes financial management of grant funds, compliance with State and federal requirements, timely start-up and completion of project activities, and prudent administration of ongoing loan repayments.

A. ADMINISTRATIVE STRUCTURE

1. LOCAL GOVERNMENT GRANTEE

The ***(Name of Local Government)*** is an incorporated ***(City/Town/County)*** with a ***(Mayor/Council, City Manager/Council or County Commission)*** form of government. The following persons will have lead responsibility for administering the ***(City/Town/County)***'s FY ***(xxxx)*** Community Development Block Grant-Economic Development (CDBG-ED) Project on behalf of the ***(City/Town/County)*** to ***(Describe Activity Funded)*** for ***(Name of Assisted Business)***.

a. ***(Name, Local Government Elected Official)***, as the ***(City/Town/County)***'s chief elected official, will have responsibility for all official contacts with the Montana Department of Commerce (MDOC). The ***(Local Government Elected Official)*** and ***(Council or Commissioners)*** will have the ultimate authority and responsibility for the implementation of the ***(Name of Local Government)***'s FY ***(xxxx)*** CDBG-ED project for

Economic Development to facilitate an expansion of ***(Name of Assisted Business)***. The ***(Local Government Elected Official)*** will approve and sign administrative documents, designate the Environmental Certifying Officer and approve all requests for payment from the CDBG-ED program. The ***(Council or Commissioners)*** will approve all contracts and drawdown requests. The telephone number for the ***(Local Government Elected Official)*** and ***(Council or Commissioners)*** is (406) ***(xxx-xxxx)***. ***(Email xxxx@xxx)***

b. ***(Name)***, ***(City/Town/County)*** Attorney, will review any proposed contractual agreements associated with the CDBG-ED Project, advise the ***(Council or Commissioners)*** regarding the agreements, and provide any other legal guidance as requested. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

c. ***(Name)***, ***(City/Town/County)*** Clerk, will be responsible for maintaining records related to the management of the initial CDBG-ED project funds for the ***(Name of Local Government)***. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

d. ***(Name)***, ***(City/Town/County)*** ***(Position (i.e. County Development Office))***, will be the liaison between the ***(name of Local Development Organization)*** (LDO), the ***(Council or Commission)*** members and the ***(City/Town/County)*** Attorney. ***(He/She)*** will make appropriate recommendations and route all contract documents, administrative documents, and drawdowns as necessary. ***(He/She)*** will also be responsible for the Environmental Review process. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

2. ***(Name of Local Development Organization)*** (LDO)

To provide general technical assistance, coordination of funding sources, assurances of compliance with all applicable state and federal requirements for the CDBG-ED program, the ***(Name of Local Government)*** has designated the ***(name of Local Development Organization)*** (LDO) as its Project Administrator. ***(Name of Local Development Organization)*** (LDO) is a not-for-profit 501(c)(3) Local Community Development Agency located in ***(Name of Local Government)***. The following ***(name of Local Development Organization)*** (LDO) personnel will be responsible for the project:

a. ***(Name)***, Executive Director, will be responsible for all official contacts with the ***(Name of Local Government)*** on behalf of ***(name of Local Development Organization)*** (LDO), keeping the ***(name of Local Development Organization)*** (LDO) Board of Directors apprised of project status, and entering agreements on behalf of ***(name of Local Development Organization)*** (LDO). (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

b. ***(Name)***, Project Manager, will be responsible for overall coordination of the CDBG-ED Grant awarded to the ***(Name of Local Government)***. ***(He/She)*** will establish and maintain complete and accurate project files, monitor all project activities for compliance with all applicable requirements, and supervise the project outreach, intake, application and project selection process. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

c. ***(Name)***, Fiscal Officer, will be responsible for the fiscal management of the project, in coordination with the Project Manager and in accordance with the ***(name of Local Development Organization)*** (LDO) Fiscal Procedures Manual. ***(He/She)*** will assure compliance with all applicable federal, state and local requirements, keep all fiscal records and accounts for the ***(name of Local Development Organization)*** (LDO), assure coordination of all funding sources, review all project expenditures from the business, process pay requests, draft drawdown requests, and prepare all project closeout documents. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

B. PROJECT MANAGEMENT

1. ***(Name)***, ***(City/Town/County)***, ***(Position)*** will:

a. Complete the environmental review for each project to assure compliance with National and Montana Environmental Policy Acts

b. Complete the Statutory Checklist or Consolidated Environmental Assessment Form, as applicable, and any other applicable environmental requirements

c. Prepare any legal notices required to be published for the environmental review process and conduct any required public hearings or informational meetings

d. Prepare a request for release of funds to the MDOC

e. Assist in the development of a CDBG-ED contract between the ***(City/Town/County)*** and the MDOC

f. Review, approve, and submit the CDBG-ED drawdown requests, after preparation by ***(name of Local Development Organization)*** (LDO) and approval by the ***(Council or Commissioners)***, to the CDBG-ED Program, Business Resources Division, Montana Department of Commerce, and ensure disbursement of funds to the ***(name of Local Development Organization)*** (LDO) for loan closings and administrative expenses

g. Review and approve all CDBG-ED closeout documents.

2. As a subgrantee, the Project Administrator, ***(name of Local Development Organization)*** (LDO), is responsible for the following day to day project activities:

a. Coordinating with the ***(Name of Local Government)*** for completion of the environmental review process required of each CDBG-ED project considered for funding to assure full compliance with the National and Montana Environmental Policy Acts and the preparation of any legal notices required to be published for the environmental review process and conducting any required public hearings or informational meetings.

b. Assisting the ***(Name of Local Government)*** and the MDOC in developing the ***(Name of Local Government)*** contract with the MDOC that will address all requirements related to effective project start-up and implementation. This will include preparation of all management agreements between the ***(Name of Local Government)*** and the Project Administrator.

c. Establishing and maintaining complete and accurate project files and preparing all documentation and reports incidental to administration of the grant

d. Reviewing all proposed project expenditures or requests for payment from the business to ensure their propriety and proper allocation of expenditures to the CDBG-ED budget.

e. In cooperation with the ***(Name of Local Government)*** project manager, processing quarterly payment requests and preparing drawdown requests to the MDOC, including the Request for Payment and Status of Funds Report and the Project Progress Report

f. Assuring compliance with applicable civil rights requirements included in the ***(Name of Local Government)***'s adopted equal opportunity plan and fair housing resolution

g. Preparing all required performance reports and closeout documents for submittal to MDOC and assisting the ***(Name of Local Government)*** auditors with the completion of the project's audit requirements

h. Closing the CDBG-ED loan in a timely fashion in accordance with the project implementation schedule

i. Monitoring the borrower's compliance with the requirements of the loan agreement including monthly payments, implementation of the project hiring and training plan, submission of monthly financial statements, and documentation of benefit to low and moderate-income families

j. Preparing the Program Income Plan for the project and securing MDOC approval for that plan before closing the CDBG-ED loan

k. Attending ***(Council or Commissioners)*** meetings to provide project status reports and representing the CDBG-ED project at any other public meetings as deemed necessary by the ***(Council or Commissioners)***

l. Developing a means for assisting the ultimate loan recipients with fulfilling the hiring and training plan requirements, including reports to MDOC regarding progress.

C. FINANCIAL MANAGEMENT

1. The ***(Name of Local Government)*** Clerk will be responsible for:

a. Establishing a CDBG-ED bank account and transferring CDBG-ED funds from that account to the ***(Name of Local Government)*** treasury for disbursements, based on claims and supporting documents approved by the Project Manager and ***(Council or Commissioners)***. As the ***(City/Town/County)*** uses an interest bearing account for its general disbursements a separate non-interest bearing account will be used for CDBG-ED funds. Balances in that account will not exceed $5,000 for a period of three days. Funds will be transferred to the ***(name of Local Development Organization)*** (LDO) account and the ***(name of Local Development Organization)*** (LDO) will disperse funds to the borrowers.

b. Entering all project transactions into the ***(City/Town/County)***'s existing accounting system (BARS) and preparing warrants for approved expenditures.

c. With the assistance of the Project Administrator, preparing the Request for Payment and Status of Funds Reports to be submitted to MDOC. All drawdown requests will be signed by two of the three following persons: ***(i.e. Mayor, Director of the County Development Office, President of the City Council)***.

d. The ***(i.e. Project Administrator, the County Development Director and/or City Clerk)*** will review all proposed expenditures of CDBG-ED funds and will prepare drawdown requests, which will be signed by the officials cited above. All disbursements will be made in accordance with the ***(City/Town/County)*** established claim review procedures. Before submitting the claim to the ***(City/Town/County)*** Clerk, the Project Administrator will attach a certification to each claim stating that the proposed expenditure is an eligible expense of the ***(City/Town/County)*** CDBG-ED grant and consistent with the project budget.

e. With the assistance of the Project Administrator, preparing the final financial report for project closeout.

f. Financial record keeping will conform to the recommendations of the MDOC/Local Governmental Services Bureau as described in Chapter 4 of the CDBG Grant Administration Manual. The original financial documents (claims with all supporting documents attached) will be retained in the ***(Name of Local Government)*** offices.

g. With oversight and approval from ***(Name of Local Government)***, ***(name of Local Development Organization)*** (LDO) will administer the project within the framework of its financial procedures manual. These procedures are designed to ensure the efficient and effective administration of federal grants within the constraints of uniform federal compliance requirements as outlined in OMB Circular A-110 and further codified in 24 CFR 570-502 (Revised as of April 1, 1997).

h. A separate fund for the project will be set up within the general ledger accounts at ***(name of Local Development Organization)*** (LDO). All CDBG-ED activities including revenues, administrative expenditures, loans, and loan repayments will be segregated recorded, and reported in this fund and will be entitled ***"(Name of Local Government) CDBG-ED Project Fund"***. The first transaction from the fund will be a loan to ***(Name of Assisted Business)*** for ***($xxx,xxx.xx)***. In conjunction with the loan closing date, the first drawdown from project activity funds will be requested from the ***(Name of Local Government)***. ***(Name of Local Development Organization)*** (LDO) will prepare the drawdown request and forward it to the ***(City/Town/County)***. The ***(City/Town/County)*** will review the request in accordance with its normal claim review process, sign the request, and forward it to the MDOC. The loan closing date will be scheduled to coincide with receipt of funds in the ***(Name of Local Government)*** account to prevent interest earnings on cash held at either the ***(Name of Local Government)*** or ***(name of Local Development Organization)*** (LDO) before ultimate loan disbursement to ***(Name of Assisted Business)***.

i. Subsequent draw downs will consist of **administrative payments** from the ***(Name of Local Government)*** to the ***(name of Local Development Organization)*** (LDO). ***Administrative payments will consist of reimbursement for actual time and costs incurred.*** The ***(name of Local Development Organization)*** (LDO) will prepare the CDBG-ED draw down and attach a copy of a detailed invoice (*example on page M-18*). Upon review and approval, the ***(Name of Local Government)*** will forward the draw down request to the MDOC. The ***(Name of Local Government)*** will reimburse the ***(name of Local Development***

Organization) (LDO) for eligible administrative expenses upon receipt of funds from the MDOC.

j. The CDBG-ED project fund will be audited on a yearly basis in conjunction with ***(Name of Local Government)***'s audit, and the audit will be conducted according to OMB Circular A-133.

PROGRAM INCOME AND REVOLVING LOAN FUND

Repayments of principal and interest on the note to ***(Name of Assisted Business)*** will be deposited in the Revolving Loan Fund *(see RLF Plan)*. It is the intent of the ***(Name of Local Government)*** and ***(name of Local Development Organization)*** (LDO) to maintain net equity in the fund at the original project level, ***($xxx,xxx)***. Interest earnings will be used to fund administrative expenses and loan loss reserves. The fund will be managed to provide a source of ongoing funding for the ***(Name of Local Government)*** projects that impact LMI persons. Before the beginning of each year, ***(name of Local Development Organization)*** (LDO) will report the results of operations and the fund's financial position to the ***(Name of Local Government)***. At that time, an administrative budget for the following year will also be submitted for review and approval. Based upon ***(name of Local Development Organization)*** (LDO) success in program management, the ***(City/Town/County)*** will authorize administrative expenses for the next year's activity.

If ***(name of Local Development Organization)*** (LDO) ceases to exist or an event of default occurs, Program Income relating to the CDBG-ED Project, including funds on hand and accounts or notes receivable will revert to the ***(Name of Local Government)***.

IN WITNESS WHEREOF, the parties hereto acknowledge that the parties named within are aware of their responsibilities and execute this Agreement on the _____ day of _____, 20__.

PROJECT ADMINISTRATOR:

_____ _____

(Name, Title) Date

(name of Local Development Organization)

(Name of City, Town or County):

_____ _____

(Name, Title of Elected Official) Date

(Name of Local Government)

Example of a Local Development Organization's Invoice
(Submitted to the Local Government for
CDBG-ED Administrative Services Payment)

Invoice # XXXXX

PUNXSUTAWNEY ECONOMIC DEVELOPMENT PROJECT

Here-to-Help Staff Project Hours

June-August 2012

Staff	Hours	Activity	Date Performed
Johnson	4.0	Meet w/ city and engineer (200 travel miles)	6/8/12
Williams	2.0	Reviewed Contracts	6/20/12
Williams	3.0	Reviewed Files, Prepared progress report	7/24/12
Johnson	4.0	Meet w/ CDBG-ED rep at project site (200 travel miles)	8/4/12
Williams	2.0	Prepare drawdown #1 and progress report	8/22/12

Total Hours Williams 7.0
Johnson 8.0

Williams	7.0 hours @ $40/hour	$280.00
Johnson	8.0 hours @ $60/hour	$480.00
Travel to City and Project site (400 mi. @ $.50/mi.)		$200.00
	Invoice Total:	$960.00

See the attached additional documentation substantiating the charges.

EXHIBIT J3

SAMPLE MANAGEMENT PLAN *(Grant Project Managed by Third-Party Nonprofit)*

This document is only a sample. It is important that local officials create a management plan based on how things are actually done (especially in regards to the financial management) by the local government; the sample management plan should not simply be copied if it does not fit the local government's particular situation.

MONTANA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT BLOCK GRANT
ECONOMIC DEVELOPMENT PROGRAM
CONTRACT NO. MT-CDBG-ED-***xx-xx***
(Name of Assisted Business)

In Fiscal Year ***(xxxx)***, the ***(Name of Local Government)*** received a grant from the Montana CDBG-ED Program that will be given to ***(Name of Assisted Business)***. New and expanding businesses that receive funds from the CDBG-ED program promise to provide jobs to low and moderate-income (LMI) families in the ***(Name of Local Government)***. The ***(City/Town/County)*** will enter into a Sub-Recipient Agreement with name of ***(name of Local Development Organization)*** (LDO) for administering the CDBG-ED Project. This Management Plan is written to assure proper management of the CDBG-ED project, which includes financial management of grant funds, compliance with State and federal requirements, and timely start-up and completion of project activities.

A. ADMINISTRATIVE STRUCTURE

1. LOCAL GOVERNMENT GRANTEE

The ***(Name of Local Government)*** is an incorporated ***(City/Town/County)*** with a ***(Mayor/Council, City Manager/Council or County Commission)*** form of government. The following persons will have lead responsibility for administering the ***(City/Town/County)***'s FY ***(xxxx)*** Community Development Block Grant-Economic Development (CDBG-ED) Project on behalf of the ***(City/Town/County)*** to ***(Describe Activity Funded)*** for ***(Name of Assisted Business).***

a. ***(Name, Local Government Elected Official)***, as the ***(City/Town/County)***'s chief elected official, will have responsibility for all official contacts with the Montana Department of Commerce (MDOC). The ***(Local Government Elected Official)*** and ***(Council or Commissioners)*** will have the ultimate authority and responsibility for the implementation of the ***(Name of Local Government)***'s FY ***(xxxx)*** CDBG-ED project for Economic Development to facilitate an expansion of ***(Name of Assisted Business)***. The ***(Local Government Elected Official)*** will approve and sign administrative documents, designate the Environmental Certifying Officer and approve all requests for payment from the CDBG-ED program. The ***(Council or Commissioners)*** will approve all contracts and

drawdown requests. The telephone number for the ***(Local Government Elected Official)*** and ***(Council or Commissioners)*** is (406) ***(xxx-xxxx)***. ***(Email xxxx@xxx)***

b. ***(Name)***, ***(City/Town/County)*** Attorney, will review any proposed contractual agreements associated with the CDBG-ED Project, advise the ***(Council or Commissioners)*** regarding the agreements, and provide any other legal guidance as requested. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

c. ***(Name)***, ***(City/Town/County)*** Clerk, will be responsible for maintaining records related to the management of the initial CDBG-ED project funds for the ***(Name of Local Government)***. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

d. ***(Name)***, ***(City/Town/County)*** ***(Position (i.e. County Development Office))***, will be the liaison between the ***(name of Local Development Organization)*** (LDO), the ***(Council or Commission)*** members and the ***(City/Town/County)*** Attorney. ***(He/She)*** will make appropriate recommendations and route all contract documents, administrative documents, and drawdowns as necessary. ***(He/She)*** will also be responsible for the Environmental Review process. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

2. ***(Name of Local Development Organization)*** (LDO)

To provide general technical assistance, coordination of funding sources, assurances of compliance with all applicable state and federal requirements for the CDBG-ED program, the ***(Name of Local Government)*** has designated the ***(name of Local Development Organization)*** (LDO) as its Project Administrator. ***(Name of Local Development Organization)*** (LDO) is a not-for-profit 501(c)(3) Local Community Development Agency located in ***(Name of Local Government)***. The following ***(name of Local Development Organization)*** (LDO) personnel will be responsible for the project:

a. ***(Name)***, Executive Director, will be responsible for all official contacts with the ***(Name of Local Government)*** on behalf of ***(name of Local Development Organization)*** (LDO), keeping the ***(name of Local Development Organization)*** (LDO) Board of Directors apprised of project status, and entering agreements on behalf of ***(name of Local Development Organization)*** (LDO). (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

b. ***(Name)***, Project Manager, will be responsible for overall coordination of the CDBG-ED Grant awarded to the ***(Name of Local Government)***. ***(He/She)*** will establish and maintain complete and accurate project files, monitor all project activities for compliance with all applicable requirements, and supervise the project outreach, intake, application and

project selection process. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

c. ***(Name)***, Fiscal Officer, will be responsible for the fiscal management of the project, in coordination with the Project Manager and in accordance with the ***(name of Local Development Organization)*** (LDO) Fiscal Procedures Manual. ***(He/she)*** will assure compliance with all applicable federal, state and local requirements, keep all fiscal records and accounts for the ***(name of Local Development Organization)*** (LDO), assure coordination of all funding sources, review all project expenditures from the business, process pay requests, draft drawdown requests, and prepare all project closeout documents. (Telephone: (406) ***(xxx-xxxx)***.) ***(Email xxxx@xxx)***

B. PROJECT MANAGEMENT

1. ***(Name)***, ***(City/Town/County)***, ***(Position)*** will:

a. Complete the environmental review for each project to assure compliance with National and Montana Environmental Policy Acts

b. Complete the Statutory Checklist or Consolidated Environmental Assessment Form, as applicable, and any other applicable environmental requirements

c. Prepare any legal notices required to be published for the environmental review process and conduct any required public hearings or informational meetings

d. Prepare a request for release of funds to the MDOC

e. Assist in the development of a CDBG-ED contract between the ***(City/Town/County)*** and the MDOC

f. Review, approve, and submit the CDBG-ED drawdown requests, after preparation by ***(name of Local Development Organization)*** (LDO) and approval by the ***(Council or Commissioners)***, to the CDBG-ED Program, Business Resources Division, Montana Department of Commerce, and ensure disbursement of funds to the ***(name of Local Development Organization)*** (LDO) for administrative expenses

g. Review and approve all CDBG-ED closeout documents.

2. As a sub-grantee, the Project Administrator, ***(name of Local Development Organization)*** (LDO), is responsible for the following day to day project activities:

a. Coordinating with the ***(Name of Local Government)*** for completion of the environmental review process required of each CDBG-ED project considered for funding to assure full compliance with the National and Montana Environmental Policy Acts and the preparation of any legal

notices required to be published for the environmental review process and conducting any required public hearings or informational meetings.

b. Assisting the ***(Name of Local Government)*** and the MDOC in developing the ***(Name of Local Government)*** contract with the MDOC that will address all requirements related to effective project start-up and implementation. This will include preparation of all management agreements between the ***(Name of Local Government)*** and the Project Administrator.

c. Establishing and maintaining complete and accurate project files and preparing all documentation and reports incidental to administration of the grant

d. Reviewing all proposed project expenditures or requests for payment from the business to ensure their propriety and proper allocation of expenditures to the CDBG-ED budget.

e. In cooperation with the ***(Name of Local Government)*** project manager, processing quarterly payment requests and preparing drawdown requests to the MDOC, including the Request for Payment and Status of Funds Report and the Project Progress Report

f. Assuring compliance with applicable civil rights requirements included in the ***(Name of Local Government)***'s adopted equal opportunity plan and fair housing resolution

g. Preparing all required performance reports and closeout documents for submittal to MDOC and assisting the ***(Name of Local Government)*** auditors with the completion of the project's audit requirements

h. Expending the CDBG-ED funds in a timely fashion in accordance with the project implementation schedule

i. Monitoring compliance with the requirements of the grant agreement including implementation of the project hiring and training plan, submission of monthly financial statements, and documentation of benefit to low and moderate-income families

j. Attending ***(Council or Commissioners)*** meetings to provide project status reports and representing the CDBG-ED project at any other public meetings as deemed necessary by the ***(Council or Commissioners)***

k. Developing a means for assisting the ultimate grant recipient with fulfilling the hiring and training plan requirements, including reports to MDOC regarding progress.

C. FINANCIAL MANAGEMENT

1. The ***(Name of Local Government)*** Clerk will be responsible for:

a. Establishing a CDBG-ED bank account and transferring CDBG-ED funds from that account to the ***(Name of Local Government)*** treasury for disbursements, based on claims and supporting documents approved by the Project Manager and ***(Council or Commissioners)***. As the ***(City/Town/County)*** uses an interest bearing account for its general disbursements a separate non-interest bearing account will be used for CDBG-ED funds. Balances in that account will not exceed $5,000 for a period of three days. Funds will be transferred to the ***(name of Local Development Organization)*** (LDO) account and the ***(name of Local Development Organization)*** (LDO) will disperse funds for ***(describe activity funded)***.

b. Entering all project transactions into the ***(City/Town/County)***'s existing accounting system (BARS) and preparing warrants for approved expenditures.

c. With the assistance of the Project Administrator, preparing the Request for Payment and Status of Funds Reports to be submitted to MDOC. All drawdown requests will be signed by two of the three following persons: ***(i.e. Mayor, Director of the County Development Office, President of the City Council)***.

d. The ***(i.e. Project Administrator, the County Development Director and/or City Clerk)*** will review all proposed expenditures of CDBG-ED funds and will prepare drawdown requests, which will be signed by the officials cited above. All disbursements will be made in accordance with the ***(City/Town/County)*** established claim review procedures. Before submitting the claim to the ***(City/Town/County)*** Clerk, the Project Administrator will attach a certification to each claim stating that the proposed expenditure is an eligible expense of the ***(City/Town/County)*** CDBG-ED grant and consistent with the project budget.

e. With the assistance of the Project Administrator, preparing the final financial report for project closeout.

f. Financial record keeping will conform to the recommendations of the MDOC/Local Governmental Services Bureau as described in Chapter 4 of the CDBG Grant Administration Manual. The original financial documents (claims with all supporting documents attached) will be retained in the ***(Name of Local Government)*** offices.

g. With oversight and approval from ***(Name of Local Government)***, ***(name of Local Development Organization)*** (LDO) will administer the project within the framework of its financial procedures manual. These procedures are designed to ensure the efficient and effective administration of federal grants within the constraints of uniform federal compliance requirements as outlined in OMB Circular A-110 and further codified in 24 CFR 570-502 (Revised as of April 1, 1997).

h. A separate fund for the project will be set up within the general ledger accounts at ***(name of Local Development Organization)*** (LDO). All CDBG-ED activities including revenues and administrative expenditures will be segregated, recorded, and reported in this fund and will be entitled *"**(Name of Local Government)** CDBG-ED Project Fund"*.

i. Subsequent draw downs will consist of **administrative payments** from the ***(Name of Local Government)*** to the ***(name of Local Development Organization)*** (LDO). ***Administrative payments will consist of reimbursement for actual time and costs incurred.*** The ***(name of Local Development Organization)*** (LDO) will prepare the CDBG-ED draw down and attach a copy of a detailed invoice (*example on page M-18*). Upon review and approval, the ***(Name of Local Government)*** will forward the draw down request to the MDOC. The ***(Name of Local Government)*** will reimburse the ***(name of Local Development Organization)*** (LDO) for eligible administrative expenses upon receipt of funds from the MDOC.

j. The CDBG-ED project fund will be audited on a yearly basis in conjunction with ***(Name of Local Government)***'s audit, and the audit will be conducted according to OMB Circular A-133.

If ***(name of Local Development Organization)*** (LDO) ceases to exist or an event of default occurs, Program Income relating to the CDBG-ED Project, including funds on hand and accounts or notes receivable will revert to the ***(Name of Local Government)***.

IN WITNESS WHEREOF, the parties hereto acknowledge that the parties named within are aware of their responsibilities and execute this Agreement on the _____ day of _____, 20__.PROJECT ADMINISTRATOR:

_____ _____

(Name, Title) Date

(name of Local Development Organization)

(Name of City, Town or County):

_____ _____

(Name, Title of Elected Official) Date

(Name of Local Government)

Example of a Local Development Organization's Invoice
(Submitted to the Local Government for
CDBG-ED Administrative Services Payment)

Invoice # XXXXX

PUNXSUTAWNEY ECONOMIC DEVELOPMENT PROJECT

Here-to-Help Staff Project Hours

June-August 2012

Staff	Hours	Activity	Date Performed
Johnson	4.0	Meet w/ city and engineer (200 travel miles)	6/8/12
Williams	2.0	Reviewed Contracts	6/20/12
Williams	3.0	Reviewed Files, Prepared progress report	7/24/12
Johnson	4.0	Meet w/ CDBG-ED rep at project site (200 travel miles)	8/4/12
Williams	2.0	Prepare drawdown #1 and progress report	8/22/12

Total Hours Williams 7.0
Johnson 8.0

Williams	7.0 hours @ $40/hour	$280.00
Johnson	8.0 hours @ $60/hour	$480.00
Travel to City and Project site (400 mi. @ $.50/mi.)		$200.00
	Invoice Total:	$960.00

See the attached additional documentation substantiating the charges.

EXHIBIT 8-K

INSTRUCTIONS FOR "REQUEST FOR PAYMENT & STATUS OF FUNDS REPORT"

Section I – Request for Payment (CDBG-ED Recipient Information)

1. MDOC CONTRACT NUMBER: Enter the MDOC contract number as it appears on the contract between the local government and the MDOC

2. DRAWDOWN NUMBER: Number consecutively beginning with "1" for the initial request. Enter the appropriate number and the word "FINAL" for the final request

3. TOTAL AMOUNT REQUESTED: Enter the total amount of the request. *Must be the same as Line 18, Column F, Section II*.

4. NAME AND ADDRESS OF GRANTEE: Enter the name and mailing address of the LOCAL GOVERNMENT grantee (City, Town, or County). The name and address should be exactly the same as the name and address on the "Designation of Depository" form submitted to the DOC, if applicable.

5. MAKE DEPOSIT PAYABLE TO: Enter the name of the local government grantee (City, Town, or County). For cities and towns, enter the name and address of the bank as shown on the "Designation of Depository" form submitted to the MDOC. For counties, enter the address for the County Treasurer.

6. ACCOUNT NUMBER: Enter the grantee's bank account number as shown on the "Designation of Depository" form submitted to the MDOC (for cities and towns).

SECTION II -- STATUS OF FUNDS (FINANCIAL INFORMATION)

7. COLUMN B, LINES 1 THROUGH 8, ADMINISTRATION AND LINES 11 THROUGH 15, ACTIVITY BUDGET LINE ITEMS: Enter the budget line item names for each Administration and Activity item funded by the CDBG-ED Program as shown on "Attachment B, Budget Form" of the grant contract between the local government grantee and the MDOC. "Activity" line items are the items that for which the business will receive grant or loan funds (e.g., working capital, customized employee training, equipment, etc.)

8. COLUMN C, AMOUNT BUDGETED, LINES 1 THROUGH 8, ADMINISTRATION AND LINES 11 THROUGH 15, ACTIVITY AMOUNT BUDGETED: Enter the dollar amount budgeted for each line item of the Administration and Activity budget funded by the CDBG-ED Program as shown on "Attachment B, Budget Form" of the grant contract between the local government grantee and the MDOC. *Be sure to include the appropriate totals on Lines 9, 16 & 18*.

   - Note 1: If using the computerized version of this form, additional line items can be added, if necessary, adjusting the subsequent line item numbers as needed.

   - Note 2: If amending the budget, place an asterisk next to the budget line item name (column B) and type the new amount in Column C. IMPORTANT: The Total Administration Budget (line 9), Total Activity Budget (line 16), and Total Grant Budget (line 18) CANNOT be increased. Budget adjustments must receive approval from the MDOC. For adjustments of $5,000 or less between line items, MDOC approval of the Request for Payment form will constitute approval of the budget adjustment. The rationale for budget adjustment must be described in the Project Progress Report. Budget adjustments of more than $5,000 require prior formal written MDOC approval.

9. COLUMN C, LINES 10 and 17, Percent

   9.a Line 10, % of Total Grant: Total on Line 9, Column C (TOTAL ADMINISTRATION BUDGET, *divided by* total on Line 18, Column C (TOTAL GRANT BUDGET)

   9.b Line 17, % of Total Grant: Total on Line 16, Column C (TOTAL ACTIVITY BUDGET), *divided by* total on Line 18, Column C (TOTAL GRANT BUDGET)

10. COLUMN D, EXPENDED PRIOR TO THIS DRAW, LINES 1 THROUGH 8, AND LINES 11 THROUGH 15: Enter the cumulative amount drawn for each line item (the total from all the previous draws.) *Be sure to include the appropriate totals on Lines 9, 16 & 18*.

11. COLUMN D, LINES 10 and 17, Percent

   11.a Line 10, % of Column C: Total on Line 9, Column D (Total Expended Prior To This Draw), *divided by* total on Line 9, Column C (Total Administration Amount Budgeted)

   11.b Line 17, % of Column C: Total on Line 16, Column D (Total Expended Prior To This Draw), *divided by* total on Line 16, Column C (Total Activity Amount Budgeted)

12. COLUMN E, BALANCE REMAINING PRIOR TO THIS DRAW, LINES 1 THROUGH 8, AND LINES 11 THROUGH 15: Amounts for each line item in Column C (Amount Budgeted) *minus* the amounts for each line item in Column D (Expended Prior to this Draw). *Be sure to include the appropriate totals on Lines 9, 16 & 18*.

13. COLUMN F, AMOUNT REQUESTED, AND LINES 11 THROUGH 15: Amounts requested for each line item. *Be sure to include the appropriate totals on Lines 9, 16, 18, & 21*. All amounts requested must be supported by appropriate backup documentation. **Documentation for ALL requests for Activity funds must be dated (incurred) on or after the date funds are released by the MDOC.** Documentation for requests for Administration funds must be dated (incurred) on or after the date of the authorization to incur administrative costs.

14.a Line 19, CDBG CASH ON HAND: Enter the amount previously requested and received but not expended by the local government, if any

14.b Line 20, AMOUNT OF REQUESTS SUBMITTED AND NOT RECEIVED: Enter the amount previously requested by the local government but not received, if any

14.c Line 21, TOTAL PREVIOUSLY DRAWN FROM STATE: Enter the total previously drawn from the MDOC. Should be the same as the amount on Line 18, Column D

15. REMARKS: Use this space to briefly clarify any information provided

SECTION III – LOCAL CERTIFICATION

16. **TWO** ORIGINAL authorized signatures from the local government grantee are required, along with the date signed and titles of those signing. These signatures must be exactly as shown on the Signature Certification Form.

SECTION IV – DOC CERTIFICATION

17. Leave blank. For MDOC use. Note: You can use an initial copy of the form as a "master" to avoid unnecessary duplication of information that does not change on subsequent draw requests. Fill in the information for *MDOC Contract Number, Name & Address of Grantee,* and *Make Deposit Payable To* in Section I and Columns B and C, Lines 1 thru 18 in Section II, then make a photocopy of this "master". For each subsequent draw request, enter the remaining information on a **copy** of this "master" form. **Submit the**

signed "original" of the draw request, retaining a copy for your files.

SAMPLE ECONOMIC DEVELOPMENT PROJECT PROGRESS REPORT

NAME OF COMMUNITY: City of Sunrise

GRANT CONTRACT NUMBER: #MT-CDBG-ED00-01

DRAWDOWN NUMBER: 2

DATE: 03/12/12

TOTAL REQUESTED: **$127,690.00**

Administration: Total Amount Requested ..... **$ 2,690.00**

The funds requested for administrative costs in this drawdown are for the following tasks:

1. Personal services for completion of the environmental review (see attached breakdown of hours and activities performed)
   5 Hours at $20.00/hour, including fringe..... $ 100.00
2. Reimbursement for project related telephone calls, faxes, and postage (see attached breakdown of costs)..... $ 50.00
3. Reimbursement for project related supplies (see attached breakdown of costs)..... $ 40.00
4. Quarterly payment to Project Manager in accordance with the agreement between the City and the Project Manager (see attached invoice) ..... $ 2,500.00

Activity: Total Amount Requested **$125,000.00**

Construction of the new structure has been completed on schedule and AAA Industries should be relocating to the new building in two weeks. As you are aware, the loan agreement for working capital, equipment, and furniture and fixtures was approved by MDOC and entered into by the City and the company. Documentation of the costs incurred by the company for working capital ($50,000), equipment ($50,000), and furniture and fixtures ($25,000) have been attached to this report and drawdown request. Enclosed is a copy of the company's quarterly financial balance sheet and profit and loss statement. The company will begin hiring low and moderate-income persons for the new jobs being created in three weeks, after the new building is occupied and operations resume. Five new positions will be created in the next month. Those positions will require some on the job training as mentioned in the hiring and training plan.

Exhibit 8-L

CDBG-ED Employee Training Tracking Form

Employee Name	New Created Position Y/N	Position Title	Date of Start of Training	Date Training Completed	Type of Training	Cost of Training	Probationary Period Completed? Y/N	Amount of Pay At End of Training
Employee Name	New Created Position Y/N	Position Title	Date of Start of Training	Date Training Completed	Type of Training	Cost of Training	Probationary Period Completed? Y/N	Amount of Pay At End of Training
Employee Name	New Created Position Y/N	Position Title	Date of Start of Training	Date Training Completed	Type of Training	Cost of Training	Probationary Period Completed? Y/N	Amount of Pay At End of Training
Employee Name	New Created Position Y/N	Position Title	Date of Start of Training	Date Training Completed	Type of Training	Cost of Training	Probationary Period Completed? Y/N	Amount of Pay At End of Training
Employee Name	New Created Position Y/N	Position Title	Date of Start of Training	Date Training Completed	Type of Training	Cost of Training	Probationary Period Completed? Y/N	Amount of Pay At End of Training
Employee Name	New Created Position Y/N	Position Title	Date of Start of Training	Date Training Completed	Type of Training	Cost of Training	Probationary Period Completed? Y/N	Amount of Pay At End of Training

CHAPTER 9 -- CONSTRUCTION MANAGEMENT: PUBLIC FACILITIES AND HOUSING

I. OVERVIEW 9-2
II. REQUIREMENTS FOR SELECTING/AWARDING CONSTRUCTION CONTRACTS 9-3
A. FEDERAL REQUIREMENTS (HUD Administrative Requirements) 9-4
1. Bonding and Insurance 9-4
2. Procurement Standards 9-4
B. STATE REQUIREMENTS 9-5
1. Bid Security 9-5
2. Contractor Licensing Fee (1% Tax on Gross Contractor Receipts) 9-5
3. Municipal Contracts and Franchises 9-5
4. County Contracts 9-6
5. Performance, Labor and Material Bonds 9-6
6. Construction Contractor Registration is Required for All Bidders 9-6
Montana Contractor Preference -- NOT applicable to CDBG Construction 9-8
Grants for Projects Within Indian Reservations 9-8
III. RESPONSIBILITIES OF CDBG GRANT RECIPIENTS 9-9
STEP 1 - SELECT ENGINEERING &/OR ARCHITECTURAL SERVICES 9-10
STEP 2 - PREPARE A BID PACKAGE 9-10
STEP 3 - OBTAIN BID DOCUMENT REVIEW AND APPROVAL 9-13
STEP 4 - ADVERTISE A BID SOLICITATION 9-13
STEP 5 - LOG EACH BID RECEIVED 9-16
STEP 6 - CONDUCT THE BID OPENING 9-16
STEP 7 - REVIEW THE LOW BID 9-18
STEP 8 - OBTAIN DEBARMENT REVIEW OF THE LOW BIDDER 9-18
STEP 9 - AWARD THE CONTRACT 9-19
STEP 10 - HOLD A PRE-CONSTRUCTION CONFERENCE 9-20
STEP 11 - ISSUE NOTICE TO PROCEED 9-20
STEP 12 - MONITOR CONTRACTOR(S) ACTIVITIES 9-21
Monitoring of the Contractor(s) by the Grant Recipient 9-21
Contractor Retainage in the CDBG Program 9-22
STEP 13 - CONDUCT FINAL INSPECTION 9-23
STEP 14 - MAINTAIN RECORDS 9-24
IV. SPECIAL CONCERNS/REQUIREMENTS FOR PUBLIC FACILITIES PROJECTS 9-25
1. Water, Sewer, or Solid Waste Districts 9-25
2. Non-Profit Organizations or For-Profit Organizations as Subgrantees 9-26
3. Paying System Assessments or Hook-up Costs for LMI Rental Families 9-26
4. Construction of (or Modification to) Structures 9-27
5. Other Special Conditions and Circumstances 9-28
EXHIBITS 9-30

CHAPTER 9

CONSTRUCTION MANAGEMENT: PUBLIC FACILITIES AND HOUSING

I. OVERVIEW

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

- Provide for fair and competitive awards of all contracts and subcontracts for
  - construction of public facilities projects,
  - construction of new housing, and
  - housing projects involving the rehabilitation of existing multi-family housing apartment buildings.

- Assure the selection of qualified, experienced contractors at a reasonable cost;

- Ensure that contractors and subcontractors comply with the applicable federal and state requirements such as labor standards, civil rights, and procurement;

- Assure that the construction phase of CDBG funded public facility projects is managed effectively;

- Help CDBG grant recipients provide information about construction contract opportunities;

- Ensure equal treatment of all potential contractors; and

- Help grant recipients meet their responsibility for informing potential contractors of their responsibilities when they accept a contract funded in whole or in part by CDBG dollars.

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

- Ensure the selection of qualified, experienced contractors (for public facilities construction projects and new housing construction projects) at reasonable cost; and

- Assist CDBG grant recipients to achieve compliance with applicable federal and state requirements such as procurement, civil rights, and labor standards which are the responsibility of CDBG grant recipients.

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

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

2. **Preparing design plans and specifications and bid document items** -- including the required federal and state construction contract provisions -- and **receiving all necessary reviews and approvals from CDBG** (Steps 2 and 3**).**

3. **Providing for the appropriate advertisement of bid solicitation and bid security procedures** (Steps 4 and 5).

4. **Conducting the bid opening in a proper manner and giving appropriate attention to bid review procedures** (Steps 6, 7 and 8).

5. **Awarding construction contracts to the lowest responsible bidder** within the required time (Step 9).

6. **Holding a pre-construction conference** -- to inform the prime contractor and all subcontractors performing contract construction work of their labor standards and civil rights obligations (Step 10).

7. **Providing the required notices when initiating construction activities** (Step 11).\

8. **Monitoring contractor activities throughout the construction period** -- to ensure that performance is in accord with the technical specifications and that compliance is maintained with all federal, state, and local standards and the terms of the contract (Step 12); and.

9. **Conducting the final inspection** and **filing the required notices and reports with the appropriate agencies** (Step 13).

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

Building It Right: A Public Facilities Construction Administration Manual (Second Edition, March, 2004, on-line at http://comdev.mt.gov/content/Publications/docs/BuildItRightManual.pdf) published by MDOC's Community Development Division, Community Development Bureau in cooperation with the Montana Water, Wastewater and Solid Waste Action Coordinating Team (*W_2ASACT);* and

The Treasure State Endowment Program (TSEP) Project Administration Manual (http://comdev.mt.gov/TSEP

II. REQUIREMENTS FOR SELECTION AND AWARDING OF CONSTRUCTION CONTRACTS

The state and federal requirements that follow describe the principles for selection and awarding of construction contracts (public facilities projects and **new housing construction projects and apartment complex rehabilitation pr0jects**). In addition to complying with the following requirements for selecting and awarding contracts, grant recipients must comply with

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

A. <u>FEDERAL REQUIREMENTS FOR SELECTION AND AWARDING OF CONSTRUCTION CONTRACTS</u>: HUD (U.S. Department of Housing and Urban Development) Administrative Requirements for Grant Recipients.

1. <u>BONDING AND INSURANCE REQUIREMENTS</u> – established by HUD for grant recipients

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

☞ **However, since this is less restrictive than Montana law, this HUD requirement is *<u>superseded by Montana law</u>*, which requires a *<u>bid guarantee of ten (10) percent</u>*.**

- **For <u>contracts exceeding $100,000</u>** HUD also requires:

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

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

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

2. <u>PROCUREMENT STANDARDS</u> – established by HUD for grant recipients

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

a) avoid unnecessary or duplicate purchases,

b) obtain favorable prices for goods and services without sacrificing quality,

c) ensure maximum open and free competition, and

d) promote national HUD/CDBG goals related to equal employment opportunity and affirmative action.

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

1. Bid Security

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

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

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

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

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

3. *MUNICIPAL* Contracts and Franchises

Section 7-5-4302, MCA, https://leg.mt.gov/bills/mca/title_0070/chapter_0050/part_0430/section_0020/0070-0050-0430-0020.html , requires:

(a) **competitive bidding** by cities and towns of **construction contracts in excess of $50,000;**

(b) **advertising or posting** of such contracts before bids are opened; and

(c) award of contracts to **the lowest responsible bidder**.

4. *COUNTY* Contracts

Section 7-5-2301, MCA, https://leg.mt.gov/bills/mca/title_0070/chapter_0050/part_0230/section_0010/0070-0050-0230-0010.html requires:

a) **competitive bidding** by counties **for construction contracts in excess of $50,000**;

b) **advertising or posting** of such contracts before bids are opened; and

c) award of contracts to **the lowest responsible bidder**.

5. Performance, Labor and Material Bonds

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

a) faithfully perform all of the provisions of such contract;

b) pay all laborers, mechanics, subcontractors, and material men; and

c) pay all persons who shall supply . . . provisions, material, or supplies for the carrying on of such work.

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

6. Construction Contractor Registration is Required for All Bidders

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

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

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

- If the contractor is registered, the community (the CDBG grant recipient) can ensure that the contractor has workers' compensation coverage, and therefore, it has protected itself from upward migration of liability.

- If the construction contractor is registered and in good standing on the date the contract begins, the liability for workers' compensation accidents will not be the responsibility of the general contractor or the community (the CDBG grantee).

- While the law exempts construction "independent contractors" without employees from registering, many general contractors will hire only registered contractors to protect themselves from upward migration of liability.

- If a contractor hires an unregistered independent contractor -- even if that person has a workers' compensation exemption -- the contractor still risks the consequences of liability for workers' compensation should an individual be hurt on the job.

- If the contractor from another state is only bidding on a job in Montana, it may ask for **a "Bid Only" registration**. **Out-of-state contractors bidding jobs in Montana may get a "Bid Only" registration from the Montana Department of Labor.** Construction companies with "Bid only" certificates must upgrade their registration to "Employer" status before they can have employees working in Montana.

- When the contractor actually comes to work in Montana, **the contractor must obtain a workers' compensation policy specific to Montana,** since Montana's workers' compensation law does not allow coverage from other states' workers' compensation plans in the construction industry.

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

The Montana Department of Labor and Industry Contractor Registration Information
http://erd.dli.mt.gov/work-comp-regulations/montana-contractor

For additional information about contractor registration, see:

☐ **Exibits in this chapter;** and

☐ **the Montana Department of Labor website listed above.**

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

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

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

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

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

1) **The local county government needs to ensure that they have legal authority to carry out activities on a reservation.**

2) **Indian Preference hiring rules apply only to the Indian CDBG Program. It would violate civil rights laws for State CDBG funds to assist an activity where one must be Native American to participate.**

- Under federal law, eligible applicants for Montana Department of Commerce's **State CDBG Program** funding are limited to general-purpose local governments -- i.e., counties, incorporated cities and towns, and consolidated city-county governments.

- Among Montana municipalities, only Billings, Great Falls, and Missoula are ineligible to apply to the State CDBG Program because they receive CDBG funds from a separate HUD allocation for communities with populations over 50,000 (the **CDBG Entitlement Communities Program)**. You can get information about the Entitlements CDBG Program at: https://www.hudexchange.info/programs/cdbg-entitlement/

- Tribal governments are not eligible under federal law to receive CDBG grants from a state CDBG Program. While Tribal governments cannot apply directly for State CDBG Program funds, counties can apply for projects to assist unincorporated communities or tribal utility authorities within a reservation boundary. On October 25, 2005, at Montana's request, HUD clarified that it is permissible, under federal law, for a county CDBG recipient to assist projects principally benefiting county residents who are members of an Indian Tribe. When members of an Indian Tribe are also residents of a county, that county can use CDBG funds to assist public facilities or services predominantly used by Indians, including those who live on Indian

reservations or on allotted Indian land.

  - Therefore, the Montana State CDBG Program now allows State CDBG funds to be awarded to counties that apply on behalf of tribal utility authorities to assist tribal communities, providing all other federal and state CDBG requirements are met. All such applications will be considered during the regular grant competition for public facilities applicants.

- Since 1982, Montana's CDBG Program has been providing infrastructure, affordable housing, and economic development assistance to Montana incorporated cities, towns, and counties. This assistance has included funding for incorporated communities located within Montana's tribal reservations, such as Browning, Lodge Grass, and Poplar. The CDBG program has also assisted county water and sewer districts located on reservations, such as the Ashland Water and Sewer District where Rosebud County agreed to sponsor the project.

  - Montana's Indian tribes also receive CDBG funds from a separate HUD CDBG Program, the **Indian CDBG (ICDBG) Program**, and are not eligible to apply directly to the State program. The ICDBG Program provides eligible grantees with direct grants for use in developing viable Indian and Alaska Native Communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low and moderate income persons.
  - **For more information regarding the Indian CDBG program**, please contact the Office of Native American Programs at the HUD – Denver, Colorado regional office -- (303) 672-5465.

  https://www.hud.gov/program_offices/public_indian_housing/ih/grants/icdbg

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III. RESPONSIBILITIES OF CDBG GRANT RECIPIENTS

- The following steps are provided as a guide to implementation of public facilities (and new housing construction) projects. They should be followed along with applicable requirements in preceding chapters.

- CDBG public facilities construction project area also encouraged to consult the March, 2004 second edition of ***Building It Right: A Public Facilities Construction Administration Manual***.

STEP 1 - SELECT ENGINEERING AND/OR ARCHITECTURAL SERVICES

- The CDBG grant recipient should follow the instructions in Chapter 3, *Procurement Standards*, for **selecting an engineer or architect** to prepare the final project plans, including drawings and material specifications.

- Those instructions include compliance with Section 18-8-201 to 212, MCA (Architectural, Engineering, and Land Surveying Services) which **exempts architects, engineers, and surveyors from price bidding in response to Requests for Proposals (described in Chapter 3).**

- **Use instead a Request for Qualifications (RFQ) process for procuring the services of architects, engineers, and surveyors estimated to cost more than $20,000.**

- **Compensation for these professional services is to be negotiated after the firm is selected.**

- **This law establishes a qualifications-based selection procedure for architectural, engineering and surveying services costing more than $20,000 which are funded by state and local public agencies** (state agencies, local governments, school districts, special districts or authorities of local governments).

- Upon tentatively selecting an architect or engineer, the grant recipient must contact their assigned state CDBG liaison to determine whether the individual or firm is eligible to receive federal and/or state funds.

    - The CDBG liaison will check the General Services Administration's "System of Awards Management" (at https://sam.gov/SAM/in federally-assisted projects as a result of past failures to comply with federal program requirements -- and whether or not the individual or firm is on the State of Montana list of debarred/suspended vendors, http://emacs.mt.gov/DebarredSuspendedVendors

- Please see Chapter 6, *Labor Standards* (Section III, Step 5,) for instructions on verifying a contractor's eligibility (or possible debarment) status.

STEP 2 - PREPARE A BID PACKAGE

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

The following initial steps should be taken:

- The architect or engineer should provide to the CDBG grantee a draft set of plans and specifications for the construction project including an accurate and clear description of the technical requirements of the project.

- When construction of a public building is involved, a certification that the design takes into account requirements of *the Architectural Barriers Act* related to *accessibility by handicapped*

persons must also be provided. The certification (**see exhibits**) must be co-signed by a local official and placed in the Public Facilities or Housing contract file.

- Additionally, the plans and drawings must be stamped by an architect or engineer registered or licensed by MDOC.

- Have plans and specifications reviewed and approved by the Department of Environmental Quality, if applicable.

- Acquire any property, easements, or rights-of-way that might be required for construction of the public facility. (See Chapter 7, *Acquisition and Relocation*).

- Obtain information from local public utilities regarding underground installations. Utilities locations should be identified on a map of the project site, which will be included in the bid package. The contractor should be required to verify these locations prior to actual construction and then be held liable for any subsequent damages to underground facilities.

- Be sure to consult with other funding agencies that may be involved in the project regarding their bid format requirements, if any.

- Determine the cost and pricing format. "Cost plus" contracts are **not** allowed (see Chapter 3, *Procurement*). **Contracts may be either lump sum or unit priced. One method is to use deductive alternatives (as described below).**

CONSIDER USE OF THE "DEDUCTIVE ALTERNATES" APPROACH

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

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

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

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

See CDBG's Exhibits (Checklist for CDBG Review of Construction Bid Documents) for a more detailed list of requirements.

√	*ITEM TO BE INCLUDED IN THE BID PACKAGE*

	Advertisement for bids
	Information on the method of bidding, process by which the bids will be evaluated, and the method of contract award
	Bid schedule
	Bid bond requirements and bid bond form
	Information on performance and payment bond requirements and performance and payment bond forms
	Notice of award form
	Notice to proceed form
	Change order form
	Current copy of federal prevailing wages (Davis-Bacon wage rates and zone hourly rates), as applicable
	General conditions
	CDBG's required supplemental conditions as identified in *the exhibits* (or in WASACT's Section 00900 document, *Funding Agency Special Provisions for Montana Public Facilities Projects*) – on-line at http://dnrc.mt.gov/divisions/cardd/docs/resource-development/w2asact-docs/copy2_of_2015UniformApplicationBookFORM.pdf
	See exhibits (Federal Labor Standards Provisions, which is the *HUD 4010 Form*)
	Any required conditions of other funding agencies; and
	In addition to the relevant information needed to prepare a complete bid package, **all construction contracts must contain provisions for compliance with federal labor standards and equal opportunity requirements**.

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

The ***Montana Public Works Standard Specifications*** document is now available on computer diskette, in addition to the traditional books format. The document can be ordered from the Montana Contractors Association https://www.mtagc.org/

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

STEP 3 - OBTAIN BID DOCUMENT REVIEW AND APPROVAL FROM CDBG

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

- **complete Letter of Transmittal of Construction Contract Checklist and Proposed Bid**

Document, and

- **A copy of the draft bid document** to the project's assigned CDBG Program Specialist **for CDBG review and approval (**see exhibits).

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

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

STEP 4 – ADVERTISE A BID SOLICITATION

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

OVERVIEW OF MONTANA PUBLIC NOTICE REQUIREMENTS

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

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

- Requirements for publication of notices for ***counties*** are set forth in Section 7-1-2121, MCA, Publication and content of notice.

- Because section 18-8-203, MCA does not establish a specific time frame or method of publication, this section of the MCA should be read in conjunction with sections 7-1-4127, MCA, Publication of notice (for municipalities); for municipalities); and 7-1-2121, MCA, Publication and content of notice for counties.

- **In addition to the minimum legal advertising, MDOC strongly recommends** that CDBG recipients **also advertise at least once in a newspaper with regional distribution in their area of the state.**

- The bid solicitation can also be submitted to plan exchanges and bid clearinghouses such as those administered by the Montana Contractors Association. **The more exposure the bid solicitation receives, the more qualified contractors will be aware of it, hopefully resulting in lower and better bid proposals.**

- **Any amendments to the bid package must be mailed as an addendum to each bidder**, and every bidder must be given an appropriate period of time to review and respond.

- **You may wish to have a pre-bid conference and project walk-through.** The place and location of the pre-bid conference should be included in your advertisement for bids.

- **Your bid solicitation process must comply with *Disadvantaged Business Enterprise Requirements*.**

DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

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

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

The DBE/WBE Directory can be accessed via the *MDT's Internet website*: https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml -- or by contacting **MDT's Office of Civil Rights: https://www.mdt.mt.gov/business/contracting/civil/**

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

- **A copy of the current federal wage rate determinations provided by the project's CDBG Program Specialist must be included in any solicitation for bids.**
  - CDBG staff will provide the current Davis-Bacon Wage Rate Determinations to you upon request. (See **Labor Standards exhibits**).

- **Current federal Davis-Bacon wage rate determinations for each county in Montana** can be found at https://www.wdol.gov/dba.aspx , the U.S. Department of Labor's Davis-Bacon website.

- **CDBG grant recipients need to verify (via contact with CDBG) that the wage rate determination is the most current available.** Weekly advance notice of upcoming changes are posted every Friday at https://www.wdol.gov/currentdba.aspx

  - Therefore, **not less than fifteen work days prior to the bid opening** your project's CDBG Program Specialist must be **contacted by telephone or in writing to find out if the wage rate decisions included in the bids solicitation are still current**.

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

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

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

DOCUMENTING ON-GOING DAVIS-BACON COMPLIANCE

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

a) **copies of the required labor compliance interviews of contractors' employees**, and
b) **certification (see Chapter 6 exhibits) that you have completed and maintained documentation of the completion of your weekly reviews of weekly payroll documents.**
   - See Chapter 6 and exhibits .

STEP 5 - LOG EACH BID RECEIVED

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

STEP 6 - CONDUCT THE BID OPENING

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

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

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

Examples of IRREGULARITIES CALLING FOR REJECTION OF A BID include:

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

Examples of MINOR BID IRREGULARITIES THAT MAY BE WAIVED include:

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

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

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

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

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

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

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

FINALIZING THE CDBG PROJECT BUDGET:

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

STEP 7 - REVIEW THE LOW BID

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

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

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

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

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

- The CDBG liaison conduct a federal and state debarment check.
- DUNS numbers for all selected contractors must be provided to CDBG as well so that CDBG can conduct the required federal debarment check. This new requirement, effective January 1, 2009, was listed in Appendix Q of the 2009 CDBG Housing and Public Facilities Grant Application Guidelines, on line at http://comdev.mt.gov/CDBG/requiredappforms.mcpx
    - The requirement that the local government's DUNS (Data Universal Numbering System) Number must be provided by all applicants is a compliance requirement of the Federal Funding Accountability and Transparency Act of 2006 which went into effect January 1, 2009. **You can get a DUNS number from the Dun & Bradstreet (D&B) Government Customer Response Center,** https://fedgov.dnb.com/webform
    - Getting a DUNS number can be done on the Web at the address above, and it can also be obtained over the phone (call 1-866-705-5711).

- CDBG staff will provide the CDBG grant recipient with a notice of the contractor's eligibility or ineligibility.
    - **CDBG funds will be withdrawn from any contract entered into with a listed or otherwise ineligible contractor.**
    - Contractor eligibility reviews are discussed in greater detail in Chapter 6, *Labor Standards*.
    - After a successful debarment review by CDBG staff, no further MDOC approval of the contractor is required.

STEP 9 - AWARD THE CONTRACT(S) FOR CONSTRUCTION

- The CDBG grant recipient should make the contract award within 30 days of the bid opening unless special circumstances exist.

- A sample "Notice of Award" is included in the ***Montana Public Works Standard Specifications*** document cited above.

- Generally, a bid is valid beyond sixty days only with the agreement of the low bidder (but other possible options for the length of bid validity are possible and can be included in the bid solicitation document).

- As discussed in Chapter 6, *Labor Standards*, **there are also time limitations on Davis-Bacon prevailing wage determinations.** If a delay of longer than 60 days is anticipated (in getting the contract signed), CDBG grant recipients should contact their project's CDBG Program Specialist for guidance.

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

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

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

STEP 10 - HOLD A PRE-CONSTRUCTION CONFERENCE

- The pre-construction conference should be held soon after the contract award. The CDBG grant recipient and prime contractor should include all subcontractors in the discussions to ensure that the subcontractors are aware that they must also comply with federal labor standards and civil rights provisions.

- The CDBG liaison for your project should be invited.

- The conference represents a key opportunity prior to beginning project construction for the CDBG grant recipient to give instructions to the contractor. These instructions should include a review of:

  - the project and timetable;

  - method for payment; and

  - contractor responsibilities related to civil rights, labor standards, and other federal, state, and local requirements.

- **At this pre-construction conference, the contractor should be provided a summary of the basic CDBG requirements as listed in the Labor Standards exhibits.** *Labor Standards*, provides additional information on pre-construction conferences).

- Minutes of the pre-construction conference, including a list of those persons attending, should be placed in the construction contract file and copy should be sent to your CDBG project liaison. See the CDBG Pre-construction Conference Planning Guide, **see Labor Standards exhibits**.

STEP 11 - ISSUE NOTICE TO PROCEED

- Upon execution of the contract and holding the pre-construction conference, the CDBG grant recipient may then provide the prime contractor(s) with a **Notice to Proceed**.

  - This notice establishes the construction starting date and the estimated date of completion.
  - A sample "Notice to Proceed" is included in the *Montana Public Works Standards Specification* document cited previously.
  - **A copy of the Notice to Proceed must also be sent to your project's CDBG liaison when it is issued to the contractor.**
  - **Additionally, the CDBG grant recipient must send CDBG a Notice of Contract Award and Pre-construction Conference, including the date on which construction will start.** (Please see **exhibits in this chapter**.)

- **In the event a contractor is unable to complete a construction project, the CDBG grant recipient may assess the contractor for the costs the CDBG grant recipient must incur in order to complete the project.**

  - This assessment generally takes into account the work actually performed by the original contractor and the total amount of any contracts needed to satisfactorily complete the construction. These provisions must be consistent with the corresponding elements of the contract.

STEP 12 - THE LOCAL GRANTEE MONITORS CONTRACTORS' ACTIVITIES

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

- Throughout the construction period, **the CDBG grant recipient is responsible for monitoring the contractor(s) for performance regarding the project's technical specifications and for compliance with all federal, state, and local standards and the terms ands conditions of the contract(s)**.

- **The grant recipient's local grant administrator/project manager must conduct regular compliance monitoring for civil rights, labor and other requirements on an ongoing basis.** See Chapter 5, *Civil Rights*, and Chapter 6, *Labor Standards*, for guidance.

- **There are specific reporting requirements of contractors to demonstrate compliance with civil rights regulations.** These include the Contract Reporting Form, **see Chapter 5 exhibits**, which must be completed by the CDBG grant recipient from information supplied by the contractor.

- In addition -- in coordination with the project manager/grant administrator -- the CDBG grant recipient's architect or engineer should **conduct performance monitoring of the construction contractor(s) that would include the following elements:**

  - **General supervision**, including identifying the need for any construction adjustments and preparation of contract amendments.

  - **Change orders that** (1) **affect the approved scope of work as described in the CDBG contract with the CDBG grant recipient** and/or (2) **exceed $5,000 require prior CDBG review and approval before such change orders are signed.** This also involves reviews of major changes to the estimated construction schedule.

  - **Quality control** -- to ensure compliance with technical specifications and conformance with codes and standards.

  - **Quality control** -- to ensure that the contractor is providing materials and products consistent with the quantities identified in the design and specifications; and

  - **Certification of pay estimates** -- to be used by the grant recipient's financial officer to verify estimated costs for partial payments to the contractors.

  - **Labor standards monitoring and documentation. As part of the documentation you submit to CDBG with all your requests for drawdown of Activity budget funds, during the construction period**, include:
    1. copies of the required labor compliance interviews of contractors' employees;
    2. certification (see Chapter 6 exhibits) of your completion of weekly reviews of weekly payroll; and

3. documentation of weekly payroll reviews that you have conducted (maintaining copies in the local project records as well). See Chapter 6 exhibits and Chapter 4, page 4-5.

- **Maintain in your local project files documentation that you have assured that all during the project that the proper federal Davis-Bacon wages (and hourly zone rates, if applicable) are being paid.** See Chapter 6 and exhibits. .

- **The architect or engineer should also obtain evidence that the contractor has made partial payments to any subcontractor or suppliers**.

- **Where the project was awarded based on a fixed-price bid**, the contractor should prepare a cost breakdown showing the amount of funding associated with each element of the construction contract.
    - This information can be then be used by the architect or engineer for performance monitoring and for determining the accuracy of requests for payments.

    - A copy of this information, which is usually incorporated into the contractor's payment request form, should be included in each of the CDBG grant recipient's draw requests to facilitate MDOC's financial review requirements.

RETAINAGE: Questions Concerning Contractor Retainage in the CDBG Program

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

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

1. **Retainage cannot be drawn from CDBG funds until the local government is ready to disburse the retainage after the project has been satisfactorily completed.**

2. **To hold a retainage in any kind of local bank account would violate the HUD and CDBG "$5,000 / 3-day" rule.**

3. **To hold retainage in an interest-bearing account would also violate the prohibition against earning interest on HUD funds**.

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

- **the local government is ready to release the retainage to the contractor**.

For other federal or state programs, their own individual, specific retainage rules would apply,

but this clarifies the use of CDBG funds in relation to retainage.

- Partial payments by local project authorities to contractors may generally be made **up to 95 percent** of the total amount of compensation in the contract.

    - **Payment of the remaining five percent (or retainage amount) is to be held pending the final Inspection and acceptance of work.**
    - The actual amounts retained may vary, depending on the amount of the contract, progress of construction, and other specific instructions in the contract.

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

STEP 13 - CONDUCT FINAL INSPECTION

- Upon completion of the construction activities, **the architect or engineer must provide the grant recipient and/or sub-recipient with a set of "as-built" plans** with the request for final payment.

- Before making the final payment less the retainage, the grant recipient must conduct a final inspection of the construction work.

- **Additionally, there should be a determination of whether all federal and state requirements (e.g., civil rights and labor standards) have been satisfied, and that all contract files are complete.**

- A written acceptance of work can then be issued and final payment made less the retainage. After 45 days and upon submission of a lien release from all contractors and suppliers, the retainage may be released.

    - If after 45 days there remain claims or liens against the contract, appropriate action must be taken which includes making payments from the retainage and/or the performance and payment bonds as prescribed by the laws of the State of Montana.

    - Within 90 days after completion of construction activities (and prior to release of any retainage) the Montana Department of Environmental Quality requires "as-built" plans to be submitted by your engineer for all water and sewer projects. Your engineer also must certify that these activities were completed in accordance with the initially approved plans and specifications.

- **Decision concerning final acceptance:** A CDBG recipient that enters into a contract after October 1, 1999, for the construction of a building (as described in 18-2-101, MCA) must -- unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance -- **decide whether or not to make final acceptance**, 18-2-306, MCA.

- **Final acceptance** means that the building has been certified by the project engineer that it has been constructed in accordance with the terms and conditions of the contract documents.

    - **Within 30 days after final acceptance by the CDBG recipient, the CDBG recipient must make the final payment of the contract price specified in the contract to the other party to the contract.** (Chapter 439, Session Laws 1999)

STEP 14 – MAINTAIN RECORDS: Labor Standards and Construction

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

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

- ❑ design and cost estimates
- ❑ evidence of easements and acquisition
- ❑ bid documents, including required civil rights, labor, and other provisions
- ❑ evidence of bid advertising
- ❑ minutes of bid opening including tabulation of bids
- ❑ evidence of low bid review
- ❑ letter of request for contractor eligibility **(*)**
- ❑ MDOC notice of contractor eligibility **(*)**
- ❑ copy of Notice of Contract Award
- ❑ executed contracted documents with attachments
- ❑ Notice of Contract Award and Pre-construction Conference (**see exhibits in this chapter**) (*)
- ❑ minutes of pre-construction conference **(*)**
- ❑ copy of Notice to Proceed
- ❑ monitoring and inspection reports
- ❑ contract reporting form **(see chapter 5 exhibits**) **(*)**
- ❑ contractors' weekly payrolls and signed Statements of Compliance **(*)**
- ❑ evidence of weekly review of payrolls by the grantee's designated reviewer (as listed in the approved Project Management Plan; See Chapter 6, page 6-17 and 6-18) **(*)**
- ❑ records of construction worker interviews **(*)**
- ❑ evidence of any violations and resolutions of violations **(*)**
- ❑ evidence of the final inspection
- ❑ notice of acceptance of work
- ❑ lien releases from all contractors and suppliers; and

- evidence of disposition of outstanding claims.

IV. SPECIAL CONCERNS AND REQUIREMENTS REGARDING PUBLIC FACILITIES PROJECTS

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

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

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

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

   a. **Formation of a County Water, Sewer, or Solid Waste District, so that legal authority can be established for the long-term operation and maintenance needs of an unincorporated community's water and/or sewer system.** Water or sewer users associations, because they are private, nongovernmental entities must first be established as county water or sewer districts (pursuant to Title 7, Chapter 13, Parts 22 and 23, MCA) **before** making an application for CDBG funds through a county government.

   b. Proposed improvements to stand-alone independent rural water or sewer systems that are to be entirely operated and maintained through **an RSID** must first be legally created as a county water and sewer district **before** an application to CDBG may be submitted.

   c. **Adoption of an Interlocal Agreement** ("sub-recipient agreement") between a County and a Water and Sewer District, where the County is the CDBG grant recipient. (See the Sample Interlocal Agreement, **see exhibits**).

   - **Thus, CDBG Public Facilities Application Guidelines require the formation of the County Water, Sewer, or Solid Waste District prior to applying for grant funds in order to avoid any delays** in project start up and project construction, except under the special circumstances described here:

     - **In limited circumstances, counties can apply for funding without the proposed project area being established as a county water and sewer district.** To be eligible, the proposed area where the project would take place would be required to be connected to an existing or proposed system owned and operated by an incorporated municipality or a county water and sewer district. In addition, the municipality or county water and sewer

district must provide a written commitment that it will assume responsibility for the long-term operation and maintenance of the proposed improvements upon completion of the project.

- **Incorporated municipalities can apply for funding for an area outside a city or town without the proposed project area being established as a county water and sewer district, provided the applicant municipality states its intent to annex the proposed area to be connected to the municipality's system by a specified future date.** The municipality must provide a written commitment stating its intent to assume responsibility for the long-term operation and maintenance of the proposed improvements.

    - An example of this situation would be where a proposed project area is adjacent to a municipality or a county water and sewer district, and the proposed project area is not prepared or could not be annexed or included within the boundaries of the municipality or a county water and sewer district during the term of the CDBG project.

    - In this example, a rural special improvement district (RSID) would be created to assist with the financing of the project, so that those properties benefited by the improvements are paying for the improvements. Since a RSID is not eligible to apply for funding, the city would apply on its behalf.

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

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

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

- If a project utilizes CDBG funds to defray system upgrade assessments (or hookup costs) for landlords who agree to rent to LMI families at or below the Fair Market Rents established by HUD, **a mechanism must be put in place to recapture CDBG funds, if a landlord fails to meet the obligations set out under a Landlord Deferred Repayment Assistance Agreement**. (See **exhibits**). This Agreement will need to be secured with a lien on the property to insure compliance with the agreement. (See **exhibits).**
- **For more information and details about paying assessments and hookups for LMI households in CDBG public facilities projects), see:**

    - the <u>CDBG Public Facilities Application Guidelines</u> (Chapter V, Section C,); and

- CDBG's handbook, Documenting Benefit to Low and Moderate Income Persons for Economic Development, Housing, and Public Facilities Projects: (see exhibits) (Targeting LMI Benefits for CDBG Public Facility Projects), and(Sample CDBG Public Facilities Targeting Plan for A Project with Direct Benefit to LMI)

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

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

a. ***Building Code Requirements.*** Structures modified or constructed with CDBG funds must meet or exceed requirements contained in current editions of the following:

- National Electrical Code, as amended;
- Uniform Plumbing Code, as amended;
- International Mechanical Code; and
- International Building Code

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

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

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

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

c. ***Federal Flood Insurance.*** The purchase of federal floodplain insurance is required if a structure assisted in part with CDBG funds is constructed within a designated floodplain. For the assistance of CDBG recipients, a publication titled Further Advice on Executive Order 11988, Floodplain Management, is available from MDOC.

d. ***Permits are needed if a project involves construction of structures or improvements below the low water mark of navigable water bodies.*** The placement and construction of structures or improvements, such as bridges, below the low water mark of navigable water bodies requires a permit from the Montana Department of Natural Resources and Conservation. This requirement applies to any lake or streambed that has a history of commercial use or navigation.

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

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

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

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

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

- ***Adoption of an LMI Targeting Plan*** – a plan document which provides the details and specifics concerning how and under what conditions assistance to low and moderate income (LMI) households within a designated project where assessments or hookup charges would be paid directly for qualifying LMI households.

- ***Adoption of a subrecipient agreement*** between the CDBG grant recipient and a private nonprofit corporation (e.g., senior citizens organization) or a for-profit organization -- where the sub-grant recipient will own and/or operate the completed facility area.

- ***Publication of the Section 3 Public Notice: Economic Opportunities for Low-Income and Moderate Persons (see Chapter 5 exhibits).*** In order to inform the community of employment and business opportunities and to demonstrate compliance with Section 3 requirements, Exhibit 5-B should be published when an advertisement of the bid is published. To document the Section 3 requirements , Section 3 Summary Report, must be completed by the CDBG grant recipient and submitted to the CDBG program (see Chapter 9 exhibits). Further discussion of the Section 3 requirement is discussed in Chapter 5, Civil Rights.

- **Capital Improvements Plan:** The CDBG program in FY 2007 dropped the requirement (in effect from FY1998-FY2006) that grantees without a (CIP) must prepare a CIP during the course of their project.

    - In the FY1998 -FY2006 period the CDBG program required that grant applicants that were awarded CDBG public facility that did not have a capital improvements plant had to develop during a CIP that covered at least a 5-year period.

        - A stated above that requirement has been dropped. **However, CDBG public facilities grants applicants are still encouraged to complete a comprehensive CIP to encourage more effective long-term planning for the construction, maintenance, and financing of local public facility projects.**

        - In some circumstances creation of an updated Comprehensive Capital Improvements Plan might be set forth as a requirement in the CDBG contract with the grantee.

        - **Local governments, if they wish, can still use CDBG funds to pay for the preparation of the comprehensive CIP as part of the CDBG-funded project and can include funds for the CIP in the proposed project budget.** Funds reserved for the preparation of a comprehensive CIP (up to $25,000) would not be included in the scoring of benefit to low and moderate income persons.

        - An applicant to CDBG's public facilities grant competition will continue to typically receive more points during the ranking process if a comprehensive CIP has been adopted -- especially if the criteria used by CDBG in ranking Public Facilities applications as set forth in Chapter V of the *CDBG Grant Application Guidelines,* http://comdev.mt.gov/CDBG/requiredappforms.mcpx

CHAPTER 9

EXHIBITS

9-A **Architect's Certification: Compliance with Minimum Standards for Accessibility by the Physically Handicapped**

9-B **CDBG Supplemental General Conditions (Exhibit 9-B) *and* Federal Labor Standards Provisions (See Exhibit 6-A, the HUD 4010 Form)**

9-C **Transmittal of Construction Contract Checklist and Proposed Bid Document, Checklist of Required Clauses for CDBG Construction Contracts, and Executive Order 11246 Clause**

9-D **Notice of Contract Award and Pre-construction Conference**

9-E **Contract Award Report and 1% Gross Receipts Withholding Report (Miscellaneous Tax Division, Montana Department of Revenue)**

9-F **Sample Sub-Recipient Agreement for an Affordable Housing Project with Multiple Funding Sources**

9-G **Sample Interlocal Agreement for a County and Rural Water and Sewer District**

9-H **Construction Contractor Registration Law**

9-I **Sample Sub-Recipient Agreement**

9-J **Checklist for CDBG Review of Construction Bid Documents**

9-K **Contractor Reporting Form**

9-L **Section 3 Summary Report (Economic Opportunities for LMI Persons)**

9-M **Public Facility Construction (and New Housing Construction) Management Checklist**

9-N **Sample Agreement (Concerning LMI Assessment Payments) For Owners of Low and Moderate– Income Occupied Residential Property**

9-O **Notice of Security Interest in Real Property to Secure Repayment of A Wastewater Upgrade Assessment Assistance**

EXHIBIT 9-A

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

Contract No. _____

Project Name _____

Address _____

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

Architect for the Project: _____

Legal Name and Address: _____

_____

_____

Registration Number: _____

Signature: _____

_____
Print Name

Official Signature for the CDBG Grantee:

_____

_____
Print or Type Name

Date: _____

To be returned to:

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

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

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

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

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

1. MONTANA CONTRACTOR REGISTRATION REQUIREMENT

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

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

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

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

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

3. PRE-CONSTRUCTION CONFERENCE

After the contract(s) have been awarded, but before the start of construction, a conference will be held for the purpose of discussion requirements on such matters as project supervision, coordination with city or county officials, on-site inspections, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety and other items pertinent to the project. The contractor shall arrange to have all supervisory personnel connected with the project on hand to meet with representatives of the engineer and owner to discuss any problems anticipated.

4. REPORTS AND INFORMATION

The contractor, at such times and in such forms as the owner may require, shall furnish the owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

5. ACCESS TO RECORDS

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

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

6. CONTRACT PRICING

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

7. FEDERAL LABOR STANDARDS PROVISIONS, HUD-4010

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

8. SCHEDULE OF MINIMUM HOURLY WAGE RATES

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

9. EQUAL OPPORTUNITY PROVISIONS

(a) Equal Employment Opportunity (Executive Order 11246). During the performance of this contract, the Contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's noncompliance with the non- discrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that each provision will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

(b) Title VII of the Civil Rights Act of 1964. Provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(c) Section 109 of the Housing and Community Development Act of 1974. "No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity."

(d) Section 3 of the Housing and Urban Development Act of 1968. The contractor will ensure that to the greatest extent feasible opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to project area residents. Further, the contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.

(e) Minority Business Enterprise. Under the provisions of Executive Order 11246 contractors on federally-funded projects are required to take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the contractor must document all affirmative steps taken to solicit minority businesses and forward this documentation along with the names of the minority subcontractors and suppliers to the owner upon request.

(f) Nondiscrimination Provision in all Public Contracts Pursuant to Section 49-3-207, MCA. The Contractor certifies that all hiring will be on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

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

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

11. **CERTIFICATION OF COMPLIANCE WITH FEDERAL CLEAN AIR AND WATER ACTS**
(Applicable to federally assisted construction contracts and related sub-contracts exceeding $100,000.)

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

12. **CONTRACTOR ELIGIBILITY**

The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension" (24 CFR 24.505).

13. **WORKERS' COMPENSATION INSURANCE**

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

EXHIBIT 9-C

LETTER OF TRANSMITTAL OF CONSTRUCTION CONTRACT CHECKLIST AND PROPOSED BID DOCUMENT

(*Date*)

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

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

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

Sincerely,

(_____signature_____)
Project Manager (or Project Engineer or Project Architect)

CHECKLIST OF REQUIRED CLAUSES FOR CDBG CONSTRUCTION CONTRACTS

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

IN ALL CASES:

_____ MDOC Access to Contractor's Records

_____ Title VII of the Civil Rights Act of 1964

_____ Contractor Eligibility

_____ Nondiscrimination Provision in all Public Contracts

IF OVER $2,000:

_____ Federal Labor Standards Provisions *(HUD-4010 form – CDBG Manual Exhibit 6-A) (Includes: Davis-Bacon Act, Copeland Act, and Contract Work Hours and Safety Standards Act)*

_____ Davis-Bacon Wage Rate Determination #_____, [1]
Modification # (if any): _____

IF OVER $5,000:

_____ Bid Bond

_____ Payment Bond

_____ Performance Bond

IF UNDER $10,000:

_____ Executive Order 11246[2] *(3 paragraph EEO Statement)*

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

[2] See page 9-C.4 of this Exhibit.

IF OVER $10,000:

_____ Executive Order 11246 *(Paragraph 8, EEO Statement)*

_____ Section 109 of the Housing and Community Development Act of 1974

_____ Section 3 of the Housing and Urban Development Act of 1968

IF OVER $100,000:

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

***IF A PUBLIC BUILDING*:**

_____ Uniform Federal Accessibility Standards

Executive Order 11246 Clause[3]

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

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City/County setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor shall incorporate the foregoing requirements in all subcontracts.

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

EXHIBIT 9-D

NOTICE OF CONTRACT AWARD
AND PRE-CONSTRUCTION CONFERENCE

(Date)

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

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

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

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

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

Sincerely,

(Signature)
(Typed name)

Project Manager (or Project Engineer or Project Architect)
_____ CDBG Project, Contract MT-CDBG-0_PF-__ [*or* MT-CDBG-0HR-0_].
_____, MT *Zip code*

EXHIBIT 9-E

Contract Award Registration Report (Form CGR-1)

and

Gross Receipts Withholding Return Report (Form CGR-2)

- **"1% Contractor's Gross Receipts Contract Award Registration" -- Form CGR-1, Rev 01-10**

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

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

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

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

Updated 7-12-2010

EXHIBIT 9-F

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

CITY OF _____
_____, INC.
_____ _____ PROJECT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.0 ENGAGEMENT OF SUB-RECIPIENT, INC.

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

2.0 SCOPE OF SERVICES.

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

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

3.0 TIME OF PERFORMANCE.

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

4.0 PAYMENT.

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

5.0 SURVIVAL OF CERTAIN CONTRACT TERMS

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

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

6.0 CONDITIONAL AGREEMENT.

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

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

(a) Termination due to loss of funding. This Agreement will terminate, in whole or in part, at the discretion of the City in the event that the MDOC reduces or terminates payments under the NSP Program so as to prevent the City from paying for the project with NSP funds. In this event, the City will give Sub-recipient, Inc. advance written notice which sets forth the effective date of the termination and explains that the termination is due to a loss or reduction of the NSP grant.

(b) Termination for cause.

(i) If at any time before the date of completion, one of the parties determines that the other party has failed to comply with any of the terms and conditions of this Agreement,

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

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

8.0 DOCUMENTS INCORPORATED BY REFERENCE.

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

(a) The City application to the Department of Commerce for NSP funding, dated _____, 200__ and _____, 200__ respectively

(b) Attachment A -- NSP Grant Contract #MT-NSP-_ _ _-_ _-_ _ _.

(c) Attachment B – NSP Management Plan, dated _____.

(d) All applicable federal and state statutes and regulations are incorporated into this Agreement by this reference and are binding upon Sub-recipient, Inc.

9.0 RESPONSIBILITIES DELEGATED TO SUB-RECIPIENT, INC.

(a) Sub-recipient, Inc. agrees to carry out the responsibilities assigned to it as stated in the project Management Plan.

(b) Following the completion of the facility, Sub-recipient, Inc. will submit annual reports to the City, on a date to or agreement. These annual reports will include:

1) Sub-recipient, Inc. shall timely submit to the City performance reports according to the prescribed State form. The performance reports will be due on the same dates as required under the Grant Contracts between MDOC and the City. Failure to submit these reports by the specified time may be considered a breach of contract and action may be taken based on clause 7b of this contract. Reports will be submitted to: _____, City of _____ Community Development Office, _____, _____, MT 59____.

2) During the Contract period, the retention period and for as long thereafter as the records are maintained, at any time during normal business hours, the City, the State, or their authorized representatives, shall have the right of access to any books, documents,

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

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

10.0 PERSONNEL

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

11.0 PROCUREMENT

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

12.0 CONFLICT OF INTEREST

(a) In the Case of Procurement. In the procurement of supplies, equipment, construction and services by Sub-recipient, Inc. and its subcontractors, no employee, officer or agent of Sub-recipient, Inc. or its subcontractors shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the party or firm selected for award. Officers, employees or agents of Sub-recipient, Inc. and its subcontractors shall neither solicit nor accept gratuities, favors or anything of monetary value from parties or potential parties to contracts. Unsolicited items provided as gifts are not prohibited if the intrinsic value of such items is nominal.

(b) In All Cases Other Than Procurement. In all cases other than procurement (including the provision of housing assistance to individuals, the provision of assistance to businesses, and the acquisition and disposition of real property), no persons described in subparagraph i) below who exercise or have exercised any functions or responsibilities with respect to NSP activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with

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

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

13.0 COMPLIANCE WITH APPLICABLE LAWS

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

14.0 MONITORING AND EVALUATION

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

15.0 SEVERABILITY

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

16.0 BINDING ON SUCCESSORS

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

17.0 EFFECTIVE DATE OF THE AGREEMENT

This Agreement takes effect when the following conditions are satisfied:

(a) The Montana Department of Commerce and the City have executed the NSP Grant Contract;

(b) The Montana Department of Commerce has approved the City's "Request for Release of Funds and Certification" from NSP;

(c) The attorney for the City and the attorney for Sub-recipient, Inc. have approved this Agreement as to form and content; and

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

18.0 DISPOSITION OF REAL PROPERTY, SITE IMPROVEMENTS AND EQUIPMENT.

(a) Sub-recipient, Inc., as the controlling general partner of the limited partnership, will retain title, control and manage the NSP assisted property after the completion of the project. The limited partnership will maintain the real property assisted under this Agreement for the sole purpose of providing safe, decent, and sanitary housing for low and very low-income senior households for a period of 30 years from the date of substantial completion of the apartment building.

(b) Reversion of assets. Upon the expiration of this Agreement, Sub-recipient, Inc., as the controlling general partner of the limited partnership, will transfer to the City any NSP funds on hand at the time of expiration and any accounts receivable attributable to the use of NSP funds. With respect to any real property or equipment under the limited partnership's control that was acquired or improved in whole or in part with NSP funds in excess of $25,000 the limited partnership will either:

i. use the property to meet one of the national objectives contained in 24 CFR Part 570.901 for 30 years from the date of substantial completion of the apartment building; or

ii. dispose of the property in a manner that results in the City's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-NSP funds for acquisition of, or improvements to, the property. Reimbursement is not required after the period of time specified in paragraph (a) of this section. The proceeds form such disposition will be subject to the applicable provisions of 24 CFR Part 570-504 (Program Income), 24 CFR Part 85.25 (Program Income), Part 85.31 (Real Property), and Part 85.32 (Equipment).

19.0 Program Income

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

20.0 CIVIL RIGHTS ACT OF 1964.

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

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

Sub-recipient, Inc. will comply with the following provision in that no person in the United States may on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination on the basis of age

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

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

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

23.0 MINORITY BUSINESS ENTERPRISE.

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

24.0 NONDISCRIMINATION.

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

25.0 REPORTS AND INFORMATION.

Sub-recipient, Inc. will maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City, its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Agreement unless permission to destroy them is granted by the City.

26.0 ACCESS TO RECORDS.

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

27.0 PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE.

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

28.0 INDEMNIFICATION.

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

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

CITY OF _____

APPROVED AS TO CONTENT & FORM:

By_____ ***Type Name*** _____,
City Manager

_____
Date

By_____

Type Name _____,
City Attorney

_____
Date

(***TYPE NAME OF SUB-RECIPIENT***), *INC.*

By_____

Type Name _____,
Executive Director

_____
Date

EXHIBIT 9-G

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

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

_____ COUNTY AND
_____ WATER & SEWER DISTRICT
INTERLOCAL AGREEMENT

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

WITNESSETH THAT:

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

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

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

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

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

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

I. Responsibilities Delegated to the District

A. The District will, subject to prior approval by the Board of County Commissioners, retain the services of a consulting engineering firm to design and supervise the construction of the Project.

B. The District will be responsible for all facets of the design and construction phases of the facilities, including but not limited to the following:

1. Design engineering; including the development of design criteria, preparation of approvable plans and specifications and assistance with Project bidding and award;

2. Construction engineering; including full-time resident construction inspection, Project close-out, preparation of an Operation & Maintenance manual, as-built drawings, and post-construction activities;

3. Except as provided by Section V (Administration), compliance with all applicable state and federal requirements contained in the Certifications for Application submitted to the MDOC with the County's application for CDBG assistance, dated May 26, 2006;

4. Except as provided by Section V (Administration), compliance with all other state and federal requirements as described in the most recent version of the Montana CDBG Program Grant Administration Manual;

5. Preparation of construction bid documents; and

6. Supervision of the bid process, the awarding of construction contracts, and construction of the facilities. The selection of the Project contractor will be subject to the ratification of the County Board of Commissioners and bid solicitation documents will reflect this requirement.

C. The District and its consulting engineer will receive, review, approve and pay all requests for payment for the items contained in paragraph I(B), above, and will prepare a summary of expenditures (Uniform Status of Funds Spreadsheet and Uniform Invoice Tracking Spreadsheet) to keep the County abreast of Project status.

D. The District agrees to provide the MDOC, the United States Department of Housing and Urban Development, the Comptroller General of the United States, the Montana Legislative Auditor, or their authorized agents, access to any records necessary to determine Agreement compliance. The District agrees to create and retain records supporting the services rendered or supplies delivered for a period of four (4) years after either the completion date of this Agreement or the conclusion of any claim, litigation, or exception relating to this Agreement taken by the County, the District, the State of Montana, or a third party, whichever is later. These records will be kept in the Grantee's offices in _____, Montana.

E. The District will provide documentation that all non-County CDBG funds for the Project have been appropriated and allocated for use prior to the time of construction bid award.

F. The District will withhold one percent (1%) of the amount of any claim submitted by the contractor (gross receipts) and will forward this amount to the Montana Department of Revenue pursuant to section 15-50-206(2), MCA.

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

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

B. Administrative costs shall be paid as specified in Attachment B (Project Budget) and any modifications thereto approved by MDOC and the County in accordance with the provisions of the CDBG Contract.

III. Payment of LMI Assessments by the County

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

IV. Duration of the Agreement

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

1. The MDOC and County Board of Commissioners have executed the CDBG Contract;

2. The MDOC has approved the County's "Request for Release of Funds and Certification";

3. The _____County attorney and the attorney for the District have approved this Agreement as to form and content; and

4. The County Board of Commissioners and the District's governing body have each reviewed this Agreement and agreed fully to its terms and conditions.

B. This Agreement will terminate when the MDOC approves final closeout of the CDBG Contract, unless terminated earlier in accordance with the terms of this Agreement.

V. Administration

A. For purposes of implementing the joint undertaking established by this Agreement, the County's Board of Commissioners and the District's Board of Directors hereby agree that a representative of the _____County Commission may attend the District's regularly scheduled board meetings (typically held on the first and third Monday of each month) and any other necessary meetings in order to assess Project status and funding status.

B. The District will comply with all requirements applicable to subrecipient entities as set forth in the CDBG Contract, attached hereto and specifically incorporated herein by this reference.

C. The District will carry out each activity under this Agreement in compliance with all federal laws and regulations described in 24 CFR Part 570.

D. The District does not assume the County's environmental responsibilities described at 24 CFR Part 58, and

E. The District does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

F. The County will monitor housing units and lots with LMI households served by the Project as of the time of execution of this Agreement to ensure that the landlord continues to rent the properties to LMI tenants and maintains HUD Fair Market Rents affordable to the tenants for a 5-year period, commencing with the signing of the LMI Owner/Renter/Landlord Agreement (the Agreement) and accompanying Notice of Security Interest in Real Property to Secure Repayment of a Wastewater and Water System Assessment Assistance Form (the Notice). Furthermore, the County will ensure that lot rents for assisted LMI households are maintained for a 5-year period commencing with the signing of the Agreement and accompanying Notice, unless the County approves rent increases to reflect legitimate cost increases to the owner, such as increased property tax or utility costs.

G. The District shall comply with all terms and provisions of the Management Plan for the Project.

VI. Disposition of Real Property or Equipment Acquired

A. The primary purpose of this Agreement is to define the procedures by which the County will disburse CDBG funds to pay the assessments incurred by LMI households within the Project area to pay for construction of the Project. The District's facilities will be constructed or improved as described in the CDBG Contract and the District or its assign will continue to own and operate those facilities subject to the limitations contained in subparagraph B of this Section.

B. Upon the expiration of this Agreement, the District will transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. With respect to any real property or equipment under the District's control that was acquired or improved in whole or in part with CDBG funds in excess of $25,000 the District will either:

1. use the property to meet one of the national objectives contained in 24 CFR section 570.901 for five years after expiration of the agreement (or for such longer period of time as is determined to be appropriate by the County) or;

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

VII. Indemnification

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

VIII. Suspension and Termination

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

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

_____ WATER AND SEWER DISTRICT

BY: _____ DATE: _____
[NAME, TITLE]

ATTEST

BY: _____ DATE: _____
[NAME/TITLE]

BOARD OF COUNTY COMMISSIONERS, _____ COUNTY, MONTANA

BY: _____ DATE: _____
[NAME, TITLE]

ATTEST

BY: _____ DATE: _____
[NAME/TITLE]

EXHIBIT 9-H

CONSTRUCTION CONTRACTOR REGISTRATION LAW

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

Links to the following Montana Contractor Registration Agencies can be found at:
http://mtcontractor.com/

~ Construction Contractor Registration Unit

~ Independent Contractor Central Unit

Registration Documents are available for download at:

http://mtcontractor.com

~ Approved Contractor Registration List

~ Construction Contractor Registration Requirements

~ Construction Contractors Registration Application

~ Corporate Officer Coverage Requirements

~ Independent Contractor Application Instructions and Affidavit Form

CONSTRUCTION CONTRACTOR REGISTRATION

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

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

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

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

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

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

CONSTRUCTION CONTRACTOR REGISTRATION REQUIREMENTS

http://mtcontractor.com

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

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

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

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

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

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

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

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

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

writing.

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

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

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

If you have questions, please call or write:

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

For your convenience, Job Service Offices have application forms.

EXHIBIT 9-I

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

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

~ ~ ~ ~ ~ ~ ~

<u>SUB RECIPIENT INTERLOCAL AGREEMENT</u>

CITY / COUNTY OF _____
AND _____

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

WITNESSETH THAT

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

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

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

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

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

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

I. Responsibilities Delegated to the Center

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

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

II. Duration of the Agreement

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

1. The MDOC and the City/County have executed the CDBG Grant Contract;

2. The MDOC has approved the City/County's "Request for Release of Funds and Certification";

3. The attorney for the City/County and the attorney for the Center have approved this Agreement as to form and content; and

4. The City/County's Council/Commission and the Center's Board of Directors have each reviewed this Agreement, agreed fully to its terms and conditions, and executed the same.

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

III. Administration

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

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

C. The Center will carry out each activity under this Agreement in compliance with all federal laws and regulations described in 24 CFR Part 570.

D. The Center does not assume the City/County's environmental responsibilities described at 24 CFR Part 58.

E. The Center does not assume the City/County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

IV. Disposition of Real Property or Acquired Equipment

A. The Center will retain title, control, and manage the Project after final closeout of the CDBG Grant #MT-CDBG-_____ in accordance with the terms set forth herein.

B. With respect to any real property or any equipment under the Center's control that was acquired or improved in whole or in part with funds from CDBG Grant #MT-CDBG-_____ in excess of $25,000, the Center will either:

1. use the property to meet one of the national objectives contained in 24 CFR 570.208 for five (5) years after MDOC final closeout of CDBG Grant #MT-CDBG-_____, or for such longer period of time as is determined to be appropriate by the City/County or;

2. dispose of the property or equipment in a manner that reimburses the City/County in the amount of the current fair market value of the property or equipment, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property or equipment. Reimbursement is not required after the period of time specified in subparagraph (B)(1) of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR 570.504 (Program Income), 24 CFR sections 84.24

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

C. Upon the expiration of this Agreement, the Center will transfer to the City/County any CDBG funds on hand at the time of expiration of this Agreement and any accounts receivable attributable to the use of CDBG funds.

D. The parties agree that concurrent with execution of this Agreement, as security for the performance of the obligations set forth herein, an abstract of the lien against the Property created by this Agreement will be duly recorded with the _____ County Clerk and Recorder's office.

V. Indemnification

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

VI. Suspension or Termination

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

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

CITY/COUNTY OF _____

BY: _____ DATE:_____

[NAME, TITLE]

ATTEST:

_____

[NAME], [TITLE]

APPROVED AS TO FORM:

_____

[NAME], City/County Attorney

STATE OF MONTANA)
:
County of _____)

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

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

[NAME OF ORGANIZATION]

BY: _____ DATE:_____
[NAME, TITLE]

STATE OF MONTANA)
:
County of _____)

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

_____

PRINTED NAME: _____

(NOTARY SEAL)

Notary Public for the State of Montana

Residing at _____

My Commission expires _____

EXHIBIT 9-J
Checklist for CDBG Review of Construction Bid Documents
For Public Facilities Projects, New Housing Construction Projects and
Projects for the Rehabilitation of Multi-Family Apartment Buildings

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

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

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

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

Montana Department of Commerce / CDBG Program

CONTRACT REPORTING FORM – CONTRACT AND SUBCONTRACT ACTIVITY

For contract and subcontract activities of $10,000 or more

Grantee Name		**Date Submitted:**
Contact Person	**Phone**	

(A) Contractor's Montana Registration Number	(B) Amount of Contract	(C) Type of Trade (See codes below)	(D) Business Ethnicity, Racial Category and Gender (See codes below)	(E) Contractor ID Number	(F) Sub-contractor ID Number	(G) Contractor/Subcontractor -- Name and Address				
						Name	Street	City	State	Zip

Trade Codes
1 Construction
2 Education / Training
3 Other

ETHNICITY CODES: HL (Hispanic or Latino), NHL (Not Hispanic or Latino).

***RACIAL CODES*:** 1. White, 2. Black or African American, 3. Asian, 4. American Indian or Alaskan Native, 5. Native Hawaiian or Other Pacific Islander, 6. American Indian or Alaskan Native *and* White, 7. Asian *and* White, 8. Black or African American *and* White, 9. American Indian or Alaskan Native *and* Black or African American, 10. Other Multi-racial

GENDER CODES: WBE (Woman-owned).

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

CONTRACT REPORTING FORM
-- INSTRUCTIONS --

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

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

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

1. **Grantee Name.** Enter the name of the unit of government submitting report of contract/subcontract activity.

2. **Contact Person.** Enter name and phone number of person responsible for maintaining and submitting contract data at respective unit of government.

3. **Date Report Submitted.** Enter date the report is submitted to DOC.

4. **Contractor's Montana Registration Number [Column A].** Enter the contractor's license number.

5. **Amount of Contract [Column B].** Enter the dollar amount of the contract or subcontract. Round the figures to the nearest thousand dollars. If subcontractor ID Number is provided, the dollar figure would be for the subcontract only - not the prime contract.

6. **Type of Trade [Column C].** Enter the numeric code *(1 thru 3)* which best indicates the contractor's/subcontractor's service. If Subcontractor ID Number is provided, the type of trade code would be for the subcontractor only - not the prime contractor. The other category includes supply, professional services and all other activities except construction and education/training activities.

7. **Business Racial/Ethnicity/Gender Code [Column D].** Enter all the appropriate racial, ethnicity and gender codes (listed at the bottom of the form on page 1) that indicate the racial, ethnic and gender background of the contractor/subcontractor. If the Subcontractor ID Number is provided, the code would apply to the Subcontractor - not the Prime Contractor.

8. **Prime Contractor ID Number [Column E].** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of CDBG funds. Note that the Employer's Number must be provided for each contract or subcontract awarded.

9. **Subcontractor ID Number [Column F].** Enter the Employer (IRS) Number of the Subcontractor as the unique identifier for each subcontract awarded from CDBG funds. (When the Subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.)

10. **Contractor/Subcontractor Name and Address [Column G].** Enter the name and address information for each firm receiving contract / subcontract activity. This information needs to be provided only one time on each report for each firm.

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

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

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

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

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

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

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

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

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

Part II: Contracts Awarded

1. Construction Contracts:

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

2. Non-Construction Contracts:

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

Part III: Summary

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

_____ Attempted to recruit low-income residents through methods such as: ~ Local advertising media, ~ signs prominently displayed at the project site, ~ contacts with community organizations and public or private agencies operating within the metropolitan area (or non metropolitan county) in which the Section 3 covered program or project is located, or ~ similar methods.

_____ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.

_____ Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet definition of Section 3 business concerns.

_____ Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.

_____ Other: Describe below.

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

Form HUD-60002

EXHIBIT 9-M -- Construction Management Checklist

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

EXHIBIT 9-N

MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

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

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

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

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

NOW THEREFORE, the parties agree as follows:

I. USE OF FUNDS

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

II. OWNER'S DUTIES AND RESPONSIBILITIES

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

1. The Owner agrees that if the Owner rents the real property described in this Agreement within five years of signing this Agreement, the Owner, as landlord, will:

   A. for five years from the date of this Agreement, maintain rents for the unit at or below the Fair Market Rents established by HUD and subject to review for compliance by the County.

   B. allow the County to annually review the rents charged for the unit to ensure compliance with the rent cap. The Owner agrees to provide the County with any information necessary to perform this review.

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

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

III. COUNTY DUTIES AND RESPONSIBILITIES

1. The County agrees to pay the initial special sewer assessment for the Owner's property for which there is a qualified LMI renter, using CDBG grant funds.

2. The County will assess and collect any sanitary sewer grant fund monies that the Owner owes to the County because of the Owner violation of or failure to comply with the Owner's obligation under to this Agreement.

3. If the Owner fails to meet the conditions described in Section II of this Agreement, the County will place a lien on the property described herein, and the County may levy a tax against the property for the amount owed the County.

IV. REAL PROPERTY TO BE BENEFITED

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

_____
Lot _____
Block _____

The street address for this property is:

_____,_____, Montana 59xxx

V. SECURITY

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

VI. LEVEL OF ASSISTANCE

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

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

VII. FAIR MARKET RENTS

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

VIII. NO DISCRIMINATION IN RENTAL OF PROPERTY

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

IX. BINDING ON SUCCESSORS IN INTEREST

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

X. LIAISON AND AUTHORIZED REPRESENTATIVE OF COUNTY

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

XI. NOTICES

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

_____/COUNTY WATER
AND SEWER DISTRICT

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

Owner _____

_____

_____

_____

XI. ENTIRE AGREEMENT

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

XIII. MODIFICATIONS TO AGREEMENT MUST BE IN WRITING

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

XIV. DURATION OF AGREEMENT

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

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

_____ COUNTY, MONTANA

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

OWNER(S)

_____
Owner's Signature

_____
Print Owner's Name

_____
Owner's Signature (if second owner)

_____
Print Owner's Name

STATE OF MONTANA)
)ss.
County of _____)

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

(NOTARIAL SEAL)

Printed Name:_____
NOTARY PUBLIC FOR STATE OF
MONTANA

Residing at_____
My Commission expires_____

Exhibit 9-O

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

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

[INSERT LEGAL DESCRIPTION]

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

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

_____ _____

Owner Owner

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____ known to me to be the person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

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

(SEAL)

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

CHAPTER 10 -- CDBG Non-competitive Housing Rehabilitation

OVERVIEW 10-2
A. Chapter 1 Project Start-Up 10-2
B. Chapter 2 Environmental Review 10-3
C. Chapter 3 Procurement Standards 10-3
D. Chapter 4 Financial Management 10-3
E. Chapter 5 Civil Rights 10-3
F. Chapter 6 Labor Standards 10-3
G. Chapter 7 Acquisition & Relocation 10-4
H. Chapter 8 Economic Development 10-6
I. Chapter 9 Construction Management 10-6
J. Chapter 10 Housing 10-6
K. Chapter 11 Involving the Public 10-9
L. Chapter 12 Project Monitoring 10-9
M. Chapter 13 Project Closeout 10-9
N. Chapter 14 Project Audits 10-9
EXHIBITS 10-9

CHAPTER 10

CDBG Housing Rehabilitation

OVERVIEW

For those grantees working specifically on housing rehabilitation projects, please note that the entire CDBG / NSP *Grant Administration Manual* (GAM) is for the use of the rehabilitation program. Because most CDBG requirements are addressed in other chapters, housing rehabilitation projects should use all the other GAM chapters to meet the requirements of the project. However, this chapter specifically focuses on housing rehabilitation requirements that may not be addressed in another chapter.

This chapter has been designed with the user in mind. Each GAM chapter will be discussed to clearly outline where there are updates specific to the housing rehabilitation. Additionally, following the narrative of this chapter, there are a number of specific exhibits that are solely for the administration of housing rehabilitation project.

A. Chapter 1 Project Start-Up

Please use Chapter 1 of the Grant Administration Manual regarding the project start up steps that may not be addressed below for the housing rehab project.

Process to secure firm commitment of housing rehab funds

Once the grantee has received certification approving access to CDBG housing rehabilitation funds, the grantee can begin working toward securing funding on individual units. In order to receive a firm, fixed amount of funds, the grantee should submit a Project Request Form (exhibit found at end of chapter). The grantee must follow the rehab property specific checklist provided in the exhibit at the end of this chapter. This checklist provides a general guide for specific items that must be submitted in order to firmly award funds and carryout project activities. Also once the individual project has been identified, a general and detailed project budget must be submitted as part of securing firm commitment of funds through the Project Request Form. The general budget is an overview of the use of funds impacting the entire project, while the detailed budget identifies specific health and safety items associated with rehabilitation activities (exhibits found at the end of this chapter).

To further assist CDBG Rehab grantees with the collection of necessary documentation requested by staff before funds are secured on site-specific units involving acquisition, staff will use the pre-acquisition property specific checklist to guide the firm commitment of funds. Additional forms, as required on the checklist, are also included in the exhibits at the end of this chapter.

To reduce the risk of recipients obligating funds, without the firm commitment of funds from MDOC, applicants should communicate that all award of bids or assistance that is provided is contingent upon an individual property contract executed with MDOC. Please note that it is very important that any individual or property that is being considered receive the URA General Information Notice, which is more thoroughly discussed in Chapter 7, but is also provided as an exhibit at the end of this chapter.

For proposed new construction, infill development projects, Commerce may require the grantee to

commission a Preliminary Architectural Report (PAR). The PAR needs to be submitted and reviewed before the Project Request Form.

B. Chapter 2 Environmental Review

The housing rehab program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no updated housing rehabilitation guidance.

C. Chapter 3 Procurement Standards

The housing rehab program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no updated housing rehabilitation guidance.

D. Chapter 4 Financial Management

The housing rehab program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance along with the two specific notes below.

Program Income Plan

The Program Income plan must be approved prior to contracting any individual units under the housing rehab program.

Affordability and Income Eligibility Reporting

Because the housing rehab funds require affordability periods on all assisted housing units, MDOC requires annual reporting on the use of funds until the expiration of the affordability periods, which can be completed in conjunction with the program income report.

E. Chapter 5 Civil Rights

The housing rehab program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no updated housing rehabilitation guidance.

F. Chapter 6 Labor Standards

The housing rehab program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no updated housing rehabilitation guidance.

G. Chapter 7 Acquisition & Relocation

The following guidance should be used in addition to Chapter 7 of this Grant Administration Manual.

I. Guidance on Rehabilitation work – Voluntary Agreements

Owner-occupied units are eligible for housing rehab funding, however, no construction activities are allowed to take place until voluntary agreements regarding the proposed work activities are signed by the homeowner (exhibits found at the end of this chapter). CDBG grant funds are subject to the Uniform Relocation Act (URA). The implementing regulations are more fully discussed in chapter 7. These regulations and exhibits are intended to help clearly communicate the agreed upon actions taken with housing rehab funds between the grantee and beneficiary.

1. The grantee must ensure that the owner/beneficiary is fully informed that their participation in this program is completely voluntary but will result in a lien on their property. If the owner chooses not to participate in the program, they will not be provided assistance. Exhibits are provided at the end of this chapter to clearly communicate the voluntary participation in the program and the voluntary agreement with potential construction work items.

2. If CDBG Rehab funds are used to acquire a home or residential property (other than through donation), the grantee must ensure that the purchase price is established by an appraisal that meets the following requirements:

    a. The appraisal must be completed within 60 days of the offer made for the property (we advise that an initial offer can be made, subject to the completion of the appraisal within 60 days of a final offer).

    b. The appraisal must meet the URA definition of an appraisal and the five following requirements:

        i. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

        ii. All relevant and reliable approaches to value. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.

        iii. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

        iv. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

v. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

c. The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

d. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(a)(24)) of the retained improvement.

3. The grantee has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem. HUD's guide to preparing an appraisal scope of work under the URA is available in HUD Handbook 1378- Appendix 19 or through the following link:

https://www.hudexchange.info/resource/310/hud-handbook-1378-tenant-assistance-relocation-and-real-property-acquisition/

4. The grantee shall establish criteria for determining the minimum qualifications and competency of appraisers. Qualifications shall be consistent with the scope of work for the assignment. The grantee shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and use only those determined by the grantee to be qualified.

II. Uniform Relocation Act (URA) Notices

Voluntary Acquisition

The grantee is required to provide written notice to the owner (Real Estate Owned (REO) title holder) that the terms of the acquisition comply with the URA voluntary acquisition requirements. These requirements apply to anyone who uses CDBG funds (or any Federal financial assistance) to acquire property including any Agency, non-profit, or individual homebuyer who uses federally-funded down-payment or other financial assistance. To convey voluntary acquisition in accordance with the URA, the owner of record must be notified in writing that Federal financial assistance will be used in the transaction and that if agreement cannot be reached through negotiation, the acquisition will not take place; and be informed of the estimated market value of the property. Agencies with the power of eminent domain must also document that the property is not a necessary part of a proposed project and is not part of an intended, planned, or designated project area where substantially all of the property within the area is to be acquired.

There are URA exception criteria, referred to as voluntary acquisition, to be used to demonstrate that the purchase will be conducted through terms of negotiation with no threat of eminent domain. Specific URA voluntary acquisition requirements that must be met, depending on whether or not the buyer has the power of eminent domain and will not use it or if the buyer does not have the power of eminent domain. Any acquisition under possible threat of eminent domain, cannot be considered a "voluntary acquisition" (even if the seller is willing to negotiate). MDOC has stated that as a state agency it will not exercise its power of eminent domain, nor will any funds be contracted with a local government who intends to exercise its power of eminent domain.

To assist grantees with the written notice HUD has developed a number of sample guide forms to assist grantees in meeting these requirements. MDOC requires that one of the following notice(s) be sent to the REO holder for each property acquired (staff will provide guidance as to which notice is appropriate):

- Voluntary Acquisition Notice of Foreclosed Property, Agencies/Persons Without Eminent Domain Authority

- Voluntary Acquisition Notice of Foreclosed Property, Agencies/Persons With Eminent Domain Authority

General Information Notice

To assist grantees with the written General Information Notice (GIN) (discussed in further detail in chapter 7 of this GAM), there is an exhibit at the end of this chapter that can be specifically used for housing rehab and must be sent to all residents of an occupied structure. Please use the GIN notice. Documentation of the date and confirmed delivery of this notice must be placed in the grantees project files and sent to MDOC.

H. Chapter 8 Economic Development

This chapter does not apply to the CDBG Rehab projects.

I. Chapter 9 Construction Management

The housing rehab program does not necessitate any procedural changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no updated housing rehabilitation guidance.

Please note the updated sub-recipient agreement exhibit from chapter 9 has been modified for the housing rehab program. This exhibit is included at the end of this chapter.

J. Chapter 10 Housing

I. Eligible Households

a. Income Certification

All households assisted with housing rehab funds or who become occupants or owners of a CDBG-assisted housing unit must be determined as eligible according the HUD income guidelines. All projects must provide documentation of eligibility as outlined in the income verification checklist (exhibit found at the end of this chapter).

Grantee project files must contain documentation that certification of the residents income occurred prior to rehab work beginning or at the initial purchase or occupancy (if the assisted property is sold). These files must be kept throughout the period of affordability and at least 3 years after the expiration of the period of affordability.

b. Homebuyer Counseling Courses

New Homeowners or owners of occupied housing will need to complete and provide a certificate, from a HUD-approved housing counseling agency, that they have attended the homeowner counseling course. Grantees will be expected to maintain copies of these certificates to demonstrate compliance with this requirement.

c. Continued Affordability

MDOC is requiring that CHDO's provide assistance to all beneficiaries to ensure that all financial requirements, necessary to clearly place recapture restrictions on individual properties for the period of affordability, are carried out. Each grantee must identify the type of affordability restrictions for the entire program, including recapture processes and procedures. Individual recapture agreements must be reviewed and approved prior to execution with the beneficiary. At a minimum, all CDBG assisted rehabilitation projects must adhere to the affordability requirements listed below.

Homebuyer Long-Term Affordability

All homebuyer units assisted with CDBG Rehab funds must include provisions for long-term affordability restrictions meeting at least the following requirements:

Subsidy Amount *(amount of CDBG Rehab assistance provided to a homebuyer)*	**Minimum Affordability Period**	**Minimum Restriction**
Under $15,000	5 years	Subsidy recapture, 20% forgiveness each year
$15,000 – $40,000	10 years	Subsidy recapture, 10% forgiveness each year
Over $40,000	15 years	Subsidy recapture, 6.6% forgiveness each year
New Construction or Acquisition of Newly Constructed Single Family Housing (any $ amount)	20 years	Subsidy recapture, 5% forgiveness each year

While these are minimum requirements, the applicant may choose to implement more stringent affordability requirements than the minimum listed here to ensure that the properties remain affordable for as long as possible.

An abstract of the agreement must be recorded on each property assisted with housing rehab funds. A sample abstract agreement is available at the end of this chapter. Documentation of recorded agreement must be provided.

II. Rehabilitation Standards

MDOC has established the following Rehabilitation Standards for the CDBG rehabilitation program. "Rehabilitation" includes using funds to make improvements to substandard residential structures. Housing rehabilitation or related redevelopment projects focus on bringing housing units up to basic code

standards by addressing structural deficiencies, improving electrical systems, plumbing and roofing, and incorporating energy conservation measures.

Such improvements must meet or exceed requirements contained in current editions of the HUD Section 8 Housing Quality Standards (or FHA equivalent standards) and the following most current codes adopted by the Building Codes Bureau of the Montana Department of Labor and Industry (MDLI):

- International Building Code,
- International Residential Code, (one and two-family dwellings and townhouses up to three stories in height)
- International Existing Building Code,
- Uniform Plumbing Code,
- International Mechanical Code,
- International Fuel Gas Code,
- National Electrical Code,
- International Energy Conservation Code; and
- American Society of Engineers, Boiler and Pressure Vessel Code.

Note on Energy Conservation: Communities proposing rehabilitation or new construction of residential housing units should pay particular attention to the most current edition of the International Energy Conservation Code. This code was adopted by the Building Codes Bureau of the Montana Department of Labor and Industry. The code establishes energy conservation standards for improvements to existing residential structure or construction of new residential housing units, as well as standards for other types of construction.

For all areas permits must be obtained from the MDLI, Building Codes Bureau for electrical and/or plumbing work unless the grant recipient has been certified by the Bureau to enforce the codes cited above. In such cases, some permits will be obtained locally. The Building Codes Bureau maintains a listing of Montana counties and incorporated municipalities, which are certified to enforce building, electrical, mechanical, and plumbing codes. In those cases where the Building Codes Bureau has not certified the grant recipient, permits must be obtained from the Bureau when rehabilitation involves structures with five or more units, or any commercial or public buildings.

Grantees will be responsible for assuring that proper authorities inspect such work and an inspection report is provided to the beneficiary and MDOC once completed. Options to provide code inspection may include agreements with governments that have existing building departments, arrangements with MDLI's Building Codes Bureau, or by contracting with qualified, private sector persons. Where possible, to preserve independence, local governments are encouraged to utilize the services of a separate individual to perform inspection services. All electrical and/or plumbing work must be done only by electricians and/or plumbers licensed by the State of Montana.

For further information, please contact:

Montana Dept of Labor & Industry
301 South Park, Room 430 -- P.O. Box 200517
Helena, MT 59620-0517
Phone: (406) 841-2300
Website: http://bsd.dli.mt.gov/building-codes-permits

K. Chapter 11 Project Monitoring

The housing rehab program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no updated housing rehabilitation guidance.

L. Chapter 12 Project Closeout

The housing rehab program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no updated housing rehabilitation guidance.

CHAPTER 10

EXHIBITS

10-A **Sample Abstract of Sub Recipient Agreement**

10-B **CDBG PAR Guidance**

10-C **CDBG Pre-Acquisition Checklist**

10-D **CDBG Property Specific Rehab Checklist**

10-E **Sample CDBG Rehab Project Request**

10-F **CDBG Rehab Income Verification Form**

10-G **Sample CDBG Rehab Sub Recipient Agreement**

10-H **Sample CDBG Rehab Detailed Site Budget**

10-I **Sample CDBG Rehab Preliminary General Site Budget**

10-J **Sample CDBG Rehab Property Specific Implementation Schedule**

10-K **Sample CDBG Rehab URA GIN Notice**

10-L **Sample Voluntary Construction Statement for Rehab by Homeowner**

10-M **Sample Voluntary Rehab Participation Form**

10-N **Sample CDBG Rehab Owner Notice of Voluntary Acquisition – No Eminent Domain**

10-O **Sample CDBG Rehab Owner Notice of Voluntary Acquisition – with Eminent Domain Authority**

Exhibit 10-A

Return to:
[NAME, TITLE]
City of _____
[ADDRESS, CITY, MT, ZIP]

ABSTRACT OF AGREEMENT

THIS ABSTRACT is made this _____ day of _____, 20xx, by and between by and between the [City/Town/County] of _____, Montana, hereinafter referred to as "the [City/Town/County]" and the _____, a private, non-profit corporation incorporated under the laws of Montana, hereinafter referred to as "the Center."

WITNESSETH:

This is an abstract of a written agreement between the City and the Center, whereby the Center, on the_____day of _____, 20xx, agreed to encumber the real property situated in _____ County, Montana, to-wit:

[INSERT LEGAL DESCRIPTION]

The Agreement requires the performance of certain grant obligations; namely, that said property shall be used for specific purposes for the period of affordability, which may be up to twenty (20) years from the date of completion, of said grant from the Montana Department of Commerce, or, in the alternative, that certain market value will be made by the Center to the City in release of such obligations. These obligations and the terms and conditions are more specifically set forth in the Agreement. The Center will provide a full and complete copy of the Agreement, without cost, upon request of any person.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year hereinabove written.

CITY OF _____

_____, 20xx BY: _____
[NAME, TITLE]

ATTEST:

_____
[NAME], [TITLE]

APPROVED AS TO FORM:

_____
[NAME], City Attorney

STATE OF MONTANA)
:
County of _____)

On this _____ day of _____, 20xx, before me _____, a Notary Public for the State of Montana, personally appeared _____, known to me to be the [TITLE] and [NAME], known to me to be the [TITLE] of the City of _____, a Montana municipal corporation duly organized and incorporated and existing under the laws of the State of Montana, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said municipal corporation and acknowledged to me that such municipal corporation executed the same.

_____
PRINTED NAME: _____
(NOTARY SEAL) Notary Public for the State of Montana

Residing at _____
My Commission expires _____

<Name of non profit organization>

_____, 20xx BY: _____
[NAME, TITLE]

STATE OF MONTANA)
:
County of _____)

On this _____ day of _____, 20xx, before me _____, a Notary Public for the State of Montana, personally appeared, [NAME, TITLE] of the _____ in _____, Montana, and acknowledged to me that he/she executed the written instrument on behalf of said Organization.

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

Exhibit 10-B

PRELIMINARY ARCHITECTURAL REPORT REQUIREMENTS
MONTANA CDBG Rehabilitation Program

A. A PAR MUST:

- be prepared by a professional architect licensed to practice in the State of Montana;
- adequately describe existing building conditions (if applicable to the proposed project) and problems and propose a specific course of action for solving the identified problems or meet other identified needs;
- provide sufficient information to adequately assess the need for, feasibility, and general, estimated cost of the proposed project; and
- thoroughly address all of the other issues identified in this PAR outline.

The PAR outline presented here is by no means all-inclusive. The architect should use his or her professional judgment to present sufficient information during preparation of the PAR, taking into account that different projects require varying levels of detail (rehabilitation of an existing building versus construction of a new building) and consideration of the specific course of action for solving the identified problems or meeting identified needs.

- The architect should provide appropriate documentation, wherever possible, to support the analysis of the condition of the property and the final proposal submitted.
- The public should be involved in the selection of the specific course of action for solving the identified problems or needs, especially representatives or members of any groups that are expected to be the principal users of the proposed structure or facility.
- Architects and project representatives can call staff (406/841-2770) to request clarification and guidance regarding this PAR outline.

B. ENVIRONMENTAL CONSIDERATIONS RELATED TO THE PAR

All Montana state and CDBG funded projects are subject to the **Montana Environmental Policy Act (MEPA)** and the **National Environmental Policy Act of 1969 (NEPA)**.

Both laws seek to avoid adverse impacts on the environment by mandating careful consideration of the potential impacts of any development assisted with federal funds or approved by a Montana state agency.

- **NEPA** establishes national policy, goals, and procedures for protecting, restoring, and enhancing environmental quality within the United States as a whole;
- **MEPA** seeks to avoid or mitigate adverse impacts on the natural and human environment by mandating careful consideration of the potential impacts of any development assisted with state funds or approved by a Montana state agency;
- Architects and project representatives should consult the Environmental Checklist, Environmental Assessment, and/or Environmental Review Record that has been completed by the sponsoring unit of general local government.

- In order to avoid delays, all applicants to state or federal infrastructure or housing funding programs should consider potential environmental impacts during project planning. As a result, local officials may be able to avoid or mitigate potential environmental impacts through project design or location decisions by carefully considering potential, adverse environmental consequences of projects and the actions that could be required to mitigate any identified adverse consequences.

- Various funding agencies have different requirements related to the environmental review process, the selection of the preferred alternative, and adoption of the preliminary architectural report. Applicants should contact those agencies that they are considering applying to so that each agency's specific requirements can be met concurrently and avoid any unnecessary delays in project completion.

C. PRELIMINARY ARCHITECTURAL REPORT OUTLINE

I. PROBLEM AND/OR NEED DEFINITION - DESCRIBE AND DOCUMENT THE PROBLEM(S) TO BE SOLVED OR NEED(S) IDENTIFIED.

A. IDENTIFY THE PLANNING AND SERVICE AREA OF THE FACILITY.

Using narrative and drawings, describe the planning and service area. The description should include the following information:

1. **LOCATION** - Indicate legal and natural boundaries, major obstacles, environmental constraints (such as floodplains), etc., using maps, photographs, and sketches of the planning and service area for the structure or facility.

2. **GROWTH AREAS AND PROJECTED POPULATION TRENDS** - Identify specific areas of projected, concentrated population growth and relate these to the forecasted growth in the clientele to be served by the proposed NSP project.

   Provide population projections for the project's planning and service area (and for the persons and/or groups the facility will serve) for the projected design period (i.e., the anticipated useful life of the proposed facility).

   Base projections for the clientele to be served upon historical records, Census data, or economic projections, citing recognized sources.

B. EVALUATE THE CONDITION OF THE EXISTING FACILITY OR STRUCTURE (IF APPLICABLE TO THE PROPOSED NSP PROJECT). Describe the existing facility or structure, including at least the following information:

1. **HISTORY** - Provide a brief history of the facility or structure, including when the unit was constructed, major improvements implemented in the past, and any past problems.

2. **CONDITION OF FACILITIES** - Describe the present condition and any problems such as code deficiencies, general structural decay, presence of asbestos, mold or moisture, lead based paint, subsidence issues, overcrowding, or handicapped accessibility. Describe the adequacy or capacity of the existing facility(ies) or structure(s) to meet existing and long-term needs.

3. **HEALTH AND SAFETY** - Describe concerns and deficiencies, compliance issues, and relevant regulations such as the International Building Code, (and other codes as listed in "Special Requirements Concerning Code and Standards Enforcement" in Chapter V of the

Application Guidelines), asbestos, lead-based paint, handicapped accessibility, zoning ordinances, and other federal, state, local, or tribal requirements concerning the existing facility.

Attach pertinent correspondence to or from appropriate federal, state, and local regulatory agencies, especially information that provides documentation of health and safety concerns and deficiencies.

II. FINAL PROPOSAL

A. DESCRIPTION OF SELECTED SITE

1. **IF PROPOSING REHABILITATION OF EXISTING BUILDINGS** - Describe existing buildings within the selected site that could be modified or rehabilitated to accommodate the proposed facility or structure.

   Describe the potential benefits and possible deficiencies with the proposed design, building or site, including code compliance issues, floor space, handicapped accessibility, and potential for long-term expansion, as applicable.

2. **IF PROPOSING NEW CONSTRUCTION** - If proposing new construction, describe the selected building site for new construction, any existing structures on the site(s), potential for long-term expansion, proximity to other services, environmental constraints, etc.

B. REGULATORY COMPLIANCE AND PERMITS. Describe issues that must be addressed regarding compliance (for either a new building or a rehabilitated building) with appropriate regulations such as the International Building Code and other relevant codes, zoning, asbestos, lead-based paint, special permits, handicapped accessibility (American Disabilities Act and HUD 504 regulations), designated 100-year floodplains, and any other applicable federal, state, local or tribal requirements.

C. LAND ACQUISITION ISSUES. Identify sites to be purchased or leased and any easements needed, if applicable.

D. CONSTRUCTION SITE PROBLEMS OR ISSUES. Discuss potential concerns such as geological constraints, limited access, underground storage tanks, floodplains, high water table, asbestos, lead-based paint, contaminated soil, noise, odors, or other conditions that may affect cost of construction or long-term operation of the (new or rehabilitated) facility or structure.

E. COST ESTIMATES FOR THE SELECTED SITE.

1. **PROJECT COSTS** administrative, financial, engineering, architecture, and anticipated construction costs and

2. **PROJECTED ANNUAL OPERATION AND MAINTENANCE COSTS.** In responding to items 1 and 2 for Housing projects, consult Section C (Financial Analysis, Parts I-VI) of the Uniform Application for Montana Housing Loan, Grant & Tax Credit Programs previously submitted with the NSP application.

3. **OPERATIONAL REQUIREMENTS.** Discuss the expertise required to operate the facility or structure and any unique operational requirements or benefits of the proposed NSP activity and project.

Exhibit 10-C

PRE-ACQUISITION PROPERTY SPECIFIC CHECKLIST

Prior to Acquisition –Environmental

Property Location:_____ Census Tract: _____

Property Type: Foreclosure / Abandoned / Vacant

1. _____ Environmental Statutory Checklist _____ Date completed
   a. _____ Site Specific Checklist _____ Reviewed/Approved

2. _____ Documentation that property is vacant/occupied (3rd party (appraiser) statement, utility bills, photos, etc.. (combination of two items)(See Vacancy Verification Form))
   a. _____ Is the property occupied (Uniform Relocation Act – General Information Notice)

Project Request

3. _____ Project Request draft form (unsigned, approximate budget amount)

4. _____ Copy of Buy / Sell Agreement

5._____ Project Request Form (signed, final budget amount)

6. _____ Project Budget and Uniform Status of Funds Spreadsheet (accumulative)
   a. Use of Funds -- Purchase ____ Financing ____ Rehab ____ 10% contingency ____ Other_____

7. _____ Implementation Schedule included

8._____ Listing of details for planned rehabilitation work (rehab limited to necessary items to meet HQS minimums) (if applicable)

9. _____ Contract Amendment Executed
   i. _____ Correct Contract Number ii._____ Correct Amendment number

10. _____ Appraisal completed (within 60 days prior to offer to acquire property)
    a. _____ Date of appraisal (must be provided before purchase)

11. _____ Purchase Price $_____

12. _____ Uniform Relocation Act acquisition notice (with or without eminent domain)

13. _____Trustee Deed (proof of foreclosure, must be provided before purchase)

14. _____ Title Insurance Commitment or Title Insurance Binder (must be provided to NSP staff before the closing of any foreclosed purchase)

Immediately following Closing

15. _____ Settlement statement

16. _____ Recorded Abstract of Sub-Recipient or Developer Agreement

Near end of rehabilitation work

17. _____ Certification of prospective occupant as:
    a. _____ Income eligible at 80% AMI or less
    b. _____ Completed HUD Certified Home Ownership Counseling

Exhibit 10-D

REHAB PROPERTY SPECIFIC CHECKLIST

This list is a guide to identify major items to be completed, but does not include a full list of tasks that are needed to be completed in order to secure funds.

Prior to Project Request Form Property Location:_____

1. _____ Eligibility of Unit determined
    a. _____Previous projects are 50% complete
    b. _____ Previous projects over 50% complete are no more than 30 days over the implementation schedule
2. _____ Eligibility of beneficiary determined
3. _____ Voluntary Participation form executed
4. _____ Uniform Relocation Act – General Information Notice provided to beneficiary
5. _____ Environmental Statutory Checklist _____ Date completed
    a. _____ Site Specific Checklist _____ Reviewed/Approved
6. _____ DRAFT Project Request draft form (unsigned, approximate budget amount – to reserve funds)

Project Request Approval Process

7. _____ Documentation of inspection establishing necessary health and safety work items
    a._____ this an include ADA accessible improvement
        b. _____ scope of work is defined
            i. Use of Funds: _____ Purchase _____ Demolition _____ Rehab
8. _____ General budget, includes
    _____ includes 10% project contingency___ Admin doesn't exceed 10% ___ Other_____
9._____ Listing of details for planned rehabilitation work (detailed rehab budget)
10. _____ Implementation Schedule included
11. _____ Activities include temporary relocation costs
    a. _____URA temporary relocation documents completed
12._____ Project Request Form (signed, final budget amount)
13. _____ Contract Executed

Rehab Activity Items

14._____ Documentation of housing counseling course being completed by eligible beneficiary
15. _____Voluntary acknowledgment of construction work to be completed
16._____ Abstract Filed
17. _____ Procurement of contractor
18. _____ Certificate of Occupancy completed
19. _____ Inspection post-construction completed
    a._____documentation provided to Commerce
    b._____documentation provided to beneficiary
20. _____ Appraisal or Broker's Price Opinion (BPO) completed (within 60 days after rehab)

Exhibit 10-E

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) REHABILITATION PROGRAM

PROJECT REQUEST FORM
[Name of Local Government]
[Date of Certification]

This project request from _____ is intended to obligate funds from Montana Department of Commerce CDBG Rehabilitation Program in the amount of $_____ to complete activities at (property location) described as:

(please list the major components of the activity for this specific property location)

- _____
- _____
- _____

This project request confirms that the purchase price of the property will be at least 1% less than the current market appraisal price as required by NSP regulations. The appraised price is _____ and the anticipated purchase price is _____.

The site specific checklist has been completed by _____ for the property address listed above.

_____ confirms that this property is vacant and will supply the appropriate documentation to CDBG.

_____ confirms that this property is occupied and will supply the appropriate documentation to CDBG.

_____confirms rehabilitation work will not exceed the median housing price in the area as supported by documentation supplied to CDBG.

Anticipated project completion date: _____

Notes:

Signature _____Date _____

Exhibit 10-F

INCOME VERIFICATION FOR DIRECT BENEFICIARIES OF CDBG REHAB FUNDS

The following information is necessary to be eligible for assistance under the Community Development Block Grant (CDBG) Non-competitive housing rehabilitation program. CDBG is a federal program intended to assist households at or below 80% of Area Median Income or low and moderate income households. All information collected will be kept confidential and will not be available to the general public. Providing false information is a serious matter and may constitute fraud under federal law.

It is important to understand the **federal definition of "annual income"** which are all payments from all sources received by the family head (even if temporarily absent) and each additional member of the family household who is not a minor (a minor is defined as a person under age 18). Further information is found in the Income Eligibility Standards from the U.S. Housing Act of 1937 (pages 4 & 5). Income includes:

1. The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses;

2. The net income from operation of a business or profession or from rental or real or personal property (this includes gross receipts, minus operating expenses, received from the operation of an unincorporated farm or ranch);

3. Interest and dividends;

4. The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;

5. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay;

6. Public assistance;

7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; and

8. All regular pay, special pay and allowances of a member of the armed forces (whether or not living in the dwelling) who is head of the family or spouse.

Please complete the following information to verify income and eligibility of the potential CDBG beneficiary. The following information is broken into four parts and must be completed by the sub-recipient/developer and the CDBG beneficiary.

Additionally, all income must be verified by comparing the beneficiary's income with the most current HUD approved income limit tables for the appropriate county. These tables are

available on the CDBG website: http://comdev.mt.gov or by contacting the program at DOCCDBG@mt.gov or 406.841.2770.

FOUR PART INCOME AND ELIGIBILITY VERIFICATION PROCESS & CHECKLIST

PART 1. INCOME TYPE

Please select the income type used to determine income eligibility of the beneficiary:
(completed by sub-recipient or developer)

1. ____ Adjusted Gross Income
2. ____ Gross Income

PART 2. INCOME DOCUMENTATION

Please select the income documentation used to determine income eligibility:
(completed by sub-recipient or developer)

1. ____ Copy of past year taxes
2. ____ Copy of past three months of wage stubs
3. ____ Other forms of income documentation
   a. Narrative describing what other forms of income documentation was used to determine income eligibility:
      _____
      _____
      _____
      _____.

PART 3. ELIGIBILITY VERIFICATION OF BENEFICIARY

Please mark items that have been received and verified
(completed by sub-recipient or developer)

1. ____ Signature of Certification provided (Part 4: completed by beneficiary)
2. ____ Copy of Beneficiary(s) Driver's License
   (copy retained by sub-recipient or developer)
3. ____ Documentation of Income (Part 2: completed by sub-recipient or developer)
4. ____ Verification of Income and Eligibility (completed by sub-recipient or developer)

   a. County: _____
   b. Number in Household _____
   c. Total Household Annual Income _____
   d. Percent of Median Income _____
   e. Income Calculation Notes:

      _____
      _____
      _____
      _____
      _____
      _____
      _____.

PART 4. SIGNATURE OF CERTIFICATION BY CDBG BENEFICIARY
(completed by beneficiary)

I / we, _____, have received a copy of the definition of income. Additionally I / we, as a CDBG-assisted beneficiary certify that my/our family's annual income of $_____ is correct and complete to the best of my/our knowledge. Documentation of my family's income was provided to _____(sub-recipient/developer) for the purposes of determining income eligibility for the CDBG Non-competitive housing rehabilitation program.

_____
Beneficiary #1 Signature

_____
Beneficiary #2 Signature (if applicable)

_____
Date

NOTE: Anyone who knowingly provides false or incomplete income information may be subject to penalties for fraud under federal law.

INCOME ELIGIBILITY STANDARDS FROM THE U.S. HOUSING ACT OF 1937
for CDBG Beneficiaries

Section 889.103 Determination of income for eligibility.

For purposes of determining whether a family is income eligible, income shall be determined in accordance with Section 889.104, except that where a family has net family assets in excess of $5,000, income shall include the actual amount of income, if any, derived from all of the net family assets or 10 percent of the value of all such assets, whichever is greater. For purposes of this section, net family assets means value of equity in real property, savings, stocks, bonds, and other forms of capital investment. The value of necessary items such as furniture and automobiles shall be excluded.

Section 889.104 Computation of annual income.

(a) Except as provided in paragraph (b) of this section, all payments from all sources received by the family head (even if temporarily absent) and each additional member of the family household who is not a minor shall be included in the annual income of a family. Income shall include, but not be limited to:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses;

(2) The net income from operation of a business or profession or from rental or real or personal property (for this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business);

(3) Interest and dividends;

(4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay (see paragraph (b) (3) of this section).

(6) Public Assistance. If the public assistance payment includes an amount specifically designated for shelter and utilities which is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities, plus

(ii) The maximum amount that the public assistance agency could in fact allow for the family for shelter and utilities.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling:

(8) All regular pay, special pay and allowances of a member of the armed forces (whether or not living in the dwelling) who is head of the family or spouse (see paragraph (b) (5) of this section).

(b) The following items shall not be considered as income:

(1) casual, sporadic or irregular gifts;

(2) amounts that are specifically for or in reimbursement of the cost of medical expenses;

(3) lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;

(4) amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes of which are available for subsistence are to be included in income;

(5) the special pay to a serviceman head of a family away from home and exposed to hostile fire;

(6) payments received pursuant to participation in the following volunteer programs under the ACTION Agency:

(i) National Volunteer Antipoverty Programs that include VISTA, Service Learning Programs and Special Volunteer Programs.

(ii) National Older American Volunteer Programs for persons aged 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, and National Volunteer Program to Assist Small Business Experience, Service Corps of Retired Executive (SCORE) and Active Corps of Executives (ACE).

Exhibit 10-G

SUB-RECIPIENT HOUSING REHABILITATION AGREEMENT

[LOCAL GOVERNMENT]
AND [SUB-RECEPIENT/NON-PROFIT]

THIS AGREEMENT is entered into on the ___ day of _____, 20XX, by and between the [Local Government], hereinafter referred to as "the City/County" and [Sub-recipient/non-profit], a private, non-profit corporation incorporated under the laws of Montana, hereinafter referred to as "the Center."

WITNESSETH THAT

WHEREAS, the Center desires to contract with the City/County to carry out Community Development Block Grant (CDBG) Housing Rehabilitation activities to _____ _____ [please list activities identified in the CDBG Contract under Scope of Work] (the "Grantee's CDBG Program"); and

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

WHEREAS, the City/County has applied for and been awarded a grant under Montana's CDBG Program; and

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

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

I. Responsibilities Delegated to the Center

A. The Grantee agrees to carry out its CDBG Program in accordance with the terms and conditions of Contract #MT-CDBG-_ _ _-_ _-_ _ _ between the Montana Department of Commerce (MDOC) and the City/County, attached hereto and specifically incorporated herein by this reference; the MDOC Community Development Block Grant (CDBG) / Neighborhood Stabilization Program (NSP) Grant Administration Manual; all applicable sections of 24 C.F.R. Parts 85 and 570; and any other requirements for CDBG as set forth by HUD, including but not limited to OMB Circular A-110, OMB Circular A-122, and any revisions thereto.

B. The Center agrees to carry out the duties and responsibilities assigned to it in the Project Management Plan, approved by the MDOC on _____, 20xx, attached hereto and specifically incorporated herein by this reference.

C. Following the completion of the Project, the Center will submit annual reports to the City/County, on a date to be specified by the City/County, unless later excused by new regulation or agreement. These annual reports shall include:

(1) a copy of the Center's annual IRS 990 tax form; and
(2) a copy of the Center's annual Treasurer's report; and
(3) proof of adequate insurance on each facility acquired in whole or in part with Grantee's CDBG Program funds.

D. The Center will comply with the applicable procurement requirements set forth 24 CFR §85.36. The Center will provide copies of all quotes and any other construction documents as requested by the City/County and MDOC. The Grantee shall procure all materials, property, or services in accordance with the requirements of Attachment O of OMB Circular A-110, Procurement Standards.

II. Duration of the Agreement

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

1. The MDOC and the City/County have executed the CDBG Grant Contract;

2. The MDOC has approved the City's/County's "Request for Release of Funds and Certification";

3. The attorney for the City/County and the attorney for the Center have approved this Agreement as to form and content; and

4. The City/County Manager and the Center's Executive Director have each reviewed this Agreement, agreed fully to its terms and conditions, and executed the same.

B. This Agreement will be in effect for the period of affordability for activity, which may be up to twenty (20) years from the date of completion of the City's/County's CDBG Program, depending on the amount of assistance provided, as referenced in CDBG Housing Rehabilitation application and guidelines.

III. Administration

A. The Center does not assume the City's/County's environmental responsibilities described at 24 CFR Part 58.

B. The Center does not assume the City's/County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

IV. Disposition of Real Property or Acquired Equipment

A. The Center will manage the Project during the term of this Agreement in accordance with the terms set forth herein.

B. With respect to any real property or any equipment under the Center's control that was acquired or improved in whole or in part with funds from CDBG Grant #MT-CDBG-_ _ _-_ _ -_ _ _ in excess of $50,000, the Center will either:

1. use the property to meet one of the national objectives contained in 24 CFR 570.208 during the period of affordability;

2. dispose of the property or equipment in a manner that reimburses the City/County in the amount of the current fair market value of the property or equipment, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property or equipment, subject to all CDBG program income requirements. Reimbursement is not required after the period of time specified in subparagraph (B)(1) of this section.

C. With respect to any real property or any equipment under the Center's control that was acquired or improved in whole or in part with funds from CDBG Grant #MT-CDBG-_ _ _-_ _-_ _ _ totaling less than $50,000, the City/County may require the Center, with approval of MDOC, to payback Grantee's CDBG Program funds to MDOC, up to the total amount of the grant award.

D. Upon the expiration of this Agreement, the Center will transfer to the City/County any of the Grantee's CDBG Program funds on hand at the time of expiration of this Agreement and any accounts receivable attributable to the use of CDBG funds.

E. The parties agree that concurrent with execution of this Agreement, as security for the performance of the obligations set forth herein, an abstract of this Agreement will be duly recorded with the [Insert specific county] County Clerk and Recorder's office against each property acquired in whole or in part with Grantee's CDBG Program funds.

V. Indemnification

The Grantee shall indemnify and hold harmless the City/County, the City/County Community Development Department, and their agents and employees from and against all claims, damages, losses and expenses, including attorney fees arising out of, or resulting from, the performance of the work, provided that any such claim, damage, loss, or expense which is:

1. attributable to bodily injury, sickness, disease or death or to damage or destruction of tangible property, other than the work itself, including the loss and use resulting there from; and,

2. is caused in whole or in part by any negligent act or omission of the contractor(s), and subcontractor(s), or anyone directly or indirectly employed by any one of them or anyone else, for whose acts any of them may be liable, regardless whether or not it is caused in part or by party indemnified hereunder.

VI. Debarment

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

VII. Access to and Retention of Records

A. In accordance with the requirements of 24 C.F.R. § 85.37, the Center shall create and retain records supporting the services covered by this Agreement, including but not limited to financial records, supporting documents, and such other records as are required by law or other authority, for a period of four (4) years after either the completion date of this Agreement or the conclusion of any claim, litigation, or exception relating to this Agreement taken by the State of Montana, the City/County, or third party, whichever is later. These records will be kept in the Center's offices in _____, Montana.

B. In accordance with the requirements of 24 C.F.R. § 85.37, the Center shall provide the Department, HUD, Comptroller General of the United States, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine compliance with the Agreement and to make audits, examinations, excerpts, and transcripts.

VIII. Progress Reports

The Center shall submit regular Progress Reports to the City/County in the form, content, and frequency as required by the City/County and the MDOC.

IX. Assignment, Transfer, and Subcontracting

The Center may not assign, transfer, or subcontract any portion of this Agreement without prior written approval by the City/County and MDOC. If such approval is granted, the Center accepts responsibility for the adherence to the terms of this Agreement 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 Agreement.

X. Payment Procedures

The City/County will pay to the Center funds made available under the City's/County's CDBG Program based upon information submitted by the Center and consistent with any approved budget and MDOC policy concerning payments. Payments will be made for eligible expenses actually incurred by the Center, and not to exceed actual cash requirements. In addition, the City/County reserves the right to liquidate funds available under this Agreement for costs incurred by the City/County on behalf of the Center.

XI. Suspension or Termination

In accordance with 24 CFR 84.61, the City/County may suspend or terminate this Agreement if the Center materially fails to comply with the terms and conditions of this Agreement, or if

CDBG Grant #MT-CDBG-_ _ _-_ _-_ _ _ is terminated by the MDOC in accordance with the terms of the City's/County CDBG contract with MDOC, attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 20xx.

CITY/COUNTY

BY: _____ DATE:_____

_____, City/County Manager

ATTEST:

_____

_____, City/County Clerk

APPROVED AS TO FORM:

_____

_____, City/County Attorney

[SUB-RECIPIENT/NON-PROFIT]

BY: _____ DATE:_____
_____, Executive Director

STATE OF MONTANA)
:
County of _____)

On this _____ day of _____, 20xx, before me _____, a Notary Public for the State of Montana, personally appeared, _____ of the _____ in Montana, and acknowledged to me that he/she executed the written instrument on behalf of said Business.

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

		Exhibit 10-H					
		Sample Detailed CDBG Rehab Site Budget					
		Project Name: CDBG Rehab					
		Project Address:					
			Example				
		PROPERTY ACQUISITION	84,000				
		CLOSING COSTS	2,000				
		PRE-CONSTRUCTION	86,000				
01	020	Site clearing	400				
01	030	Permits					
01	041	Demolition-Labor					
01	045	Demolition-Subcontractor					
		demo kitchen	320.00	1 MD			
		demo bathroom	320.00	1 MD			
01	050	Asbestos evaluation	350.00				
		LBP evaluation	300.00				
		Camera sewer line	275.00				
01	063	Architect/Engineering fees					
01	073	Water hookup					
01	083	Sewer hookup					
01	093	Gas Service					
01	103	Temp power					
01	113	Portopotty					
01	123	Waste removal	400.00				
01	135	House lifting/moving					
01	140	Equipment/tool rental					
01	999	Miscellaneous					
		Subtotals	2,365.00				
		FOUNDATION					
02	001	Foundation- Labor					
02	010	Foundation-Materials					
02	015	Foundation-Subcontractor					
02	020	Excavation-Materials					
02	022	Excavation-Equipment					
02	025	Excavation-Subcontractor					
02	035	Utilities-Subcontractor					
02	999	Miscellaneous					
		Subtotals					
		FRAMING					
03	001	Framing- Labor					
03	002	Framing- Equipment					
03	010	Floors-Materials					
03	015	Framing-Subcontractor					
03	020	Framing Materials					
03	040	Fasteners-Materials					
03	999	Miscellaneous					
		Subtotals					
		EXTERIOR					
04	001	Exterior Finish- Labor					
04	005	Exterior Finish-Subcontractor	4,240.00				
		Paint exterior house/garage (LBP)		3,600.00	estimate		
		Install and repair windows		320.00	1 MD		

		Project Name: CDBG Rehab					
		Project Address:					
			Example				
		PROPERTY ACQUISITION	84,000				
		CLOSING COSTS	2,000				
		Install exterior doors		320.00	1 MD		
04	010	Windows-Materials	1,000.00				
04	020	Exterior doors-Materials	400.00				
04	030	Roofing-Materials					
04	035	Roofing-Subcontractor (House)	2,600.00		estimate		
04	040	Exterior trim-Materials					
04	050	Soffit/facia-Materials					
04	060	Siding-Materials					
04	070	Replace Gutters	400.00				
	080	Steps/Deck-Materials					
	999	Miscellaneous					
		Subtotals	8,640.00				
05		**INTERIOR FINISH**					
05	001	Interior Finish- Labor					
	005	Interior Finish-Subcontractor	2,240.00				
		Install new kitchen/bath cabinets		640.00	2 MD		
		install interior doors		320.00	1 MD		
		frame mechanical room/door		320.00	1 MD		
		frame BR closet/bathroom		320.00	1 MD		
		frame laundry closet		320.00	1 MD		
		dry wall repairs/finish		320.00	1 MD		
05	015	Electrical-Subcontractor	1,200.00				
		install smoke alarm circuit		1,200.00			
05	025	HVAC-Subcontractor	3,600.00				
		install new furnace/change ducts		3,600.00			
	035	Plumbing-Subcontractor	4,800.00				
		pressure test plumbing and repair					
		install water heater					
		install kitchen sink					
		install bathroom fixtures					
		replumb laundry closet					
		repair handyman plumbing					
05		Insulation-Materials					
05	040	Insulation-Subcontractor	1,200.00				
		blow in additional ceiling R-38		600.00			
		insulate crawl space and rim joists		600.00			
05	045	Drywall-Materials	120.00				
05	050	Drywall-Subcontractor					
05	055	Tape/Texture-Materials					
05	060	Tape/Texture-Subcontractor					
05	065	Paint-Materials					
05	070	Paint-Subcontractor	2,400.00				
05	075	Flooring-Materials	200.00				
		kitchen sub flooring		200.00			
05	080	Flooring-Subcontractor					
05	085	refinish 765 sqft hardwood floors	2,100.00				
		vinyl 235 sqft kitchen, bathroom	600.00				
05	090	Interior trim-Materials					
		7 interior doors	420.00				
05	100	Bathroom Access-Materials	200.00				
05	110	Cabinets/Counter tops-Materials	2,800.00				

		Project Name: CDBG Rehab					
		Project Address:					
			Example				
		PROPERTY ACQUISITION	84,000				
		CLOSING COSTS	2,000				
05	120	Light fixtures-Materials	300.00				
05	130	Appliances-Materials	1,500.00				
05	140	Miscellaneous (Chimney clean/insp)					
	999	**Subtotals**	23,680.00				
		SITE WORK					
06		Site Work- Labor					
		Site Work-Subcontractor	1,350.00				
		replace 105 sqft sidewalk in back		750.00			
		remove side walk way		300.00			
		repair fence		300.00			
06	005	Flatwork-Materials					
06	010	Flatwork-Subcontractor					
06	015	Sidewalks-Materials					
06	020	Landscaping-Materials					
06	030	Garage-Materials					
06	040	Miscellaneous					
	999	**Subtotals**	1,350.00				
		SUPERVISION					
07		Supervision-Labor					
	001	**Subtotals**					
		TOTAL CONSTR/REHAB COSTS	36,035.00				
		CONSTRUCTION CONTINGENCY	5,405.25				

Exhibit 10-I

CDBG Non-Competitive Rehabilitation Project Budget Property Address:	
PROJECT ADMINISTRATION	
Personnel	
Professional Services	
Accounting/Auditing	
Travel	
Training	
TOTAL PROJECT ADMINISTRATION COSTS	
PROPERTY ACQUISITION	
Purchase Existing Structure	
Inspections for acquisition	
TOTAL ACQUISITION COSTS	
CONSTRUCTION/REHAB	
New Construction	
Demolition (only eligible in conjunction with new construction)	
Rehabilitation	
Inspections: pre-construction and post-construction	
Contingency	
Homeowner Counseling Costs	
TOTAL CONSTRUCTION/REHAB	
TOTAL ACTIVITY COSTS	
GRAND TOTAL PROJECT COSTS	

CDBG Non-Competitive Rehabilitation Project Budget project	
PROJECT ADMINISTRATION	
Personnel	
Professional Services	
Accounting/Auditing	
Travel	-
Training	
Total Project Administration Costs	
Property Acquisition	
Property Purchase	
Inspections for acquisition	
Total Acquisition Costs	
Construction/Rehab	
New Construction	-
Demolition (only eligible in conjuntion with new construction)	-
Rehabilitation	
Inspections: pre-construction and post-construction	
Contingency	
Homeowner Counseling Costs	
TOTAL ACTIVITY COSTS	-
GRAND TOTAL PROJECT COSTS	-
	-

-

Exhibit 10-J

Community Development Block Grant (CDBG) Non-competitive Housing Rehab Program

PROJECT IMPLEMENTATION SCHEDULE <property address>

Please complete the following chart as it applies to your project activity

TASK	
PROJECT IDENTIFICATION AND ASSESSMENT	
Documentation of eligibility of unit	**Month/year**
Income verification completed	**Month/year**
Voluntary agreement of participation in the program executed with owner	**Month/year**
Uniform General Information Notice sent	**Month/year**
Environmental Site Specific Checklist	**Month/year**
Receive environmental release and notice to reserve funds	**Month/year**
All Start Up conditions (civil rights, program income plan & all Chapter 1 requirements)	**Month/year**
Submit Project Request form	**Month/year**
PROJECT IMPLEMENTATION	
Property Inspection completed	**Month/year**
Voluntary agreement for construction executed with owner	**Month/year**
Procurement for Rehab to be completed	**Month/year**
Debarment of contractor(s)	**Month/year**
Confirm Davis-Bacon wage rates (when applicable)	**Month/year**
Begin rehab work	**Month/year**
Labor Standards reporting (when applicable)	**Month/year**
Rehab work completed	**Month/year**
Inspection of final work completed	**Month/year**

Submit draw down requests for eligible expenses	**Month/year**
Submit necessary project reports	**Month/year**
PROJECT CLOSEOUT	
Submit closeout reports / final draw	**Month/year**
Submit program income report(s)	**Month/year**

Exhibit 10-K

GUIDEFORM GENERAL INFORMATION NOTICE
RESIDENTIAL TENANT WHO MAY BE DISPLACED **(NSP)**

Grantee or Agency Letterhead

(date)

Dear _____:

_____(City, County, State, Public Housing Authority (PHA), other)_____, is interested in _____(acquiring, rehabilitating, demolishing)_____ the property you currently occupy at ____(address)___ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Community Development Block Grant (CDBG) Program.

The purpose of this notice is to inform you that you may be displaced as a result of the proposed project. This notice also serves to inform you of your potential rights as a displaced person under federal laws known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and section 104(d) of the Housing and Community Development Act of 1974, as amended. You may be eligible for relocation assistance and payments under either the URA or section 104(d), if the proposed project receives HUD funding and if you are displaced as a result of acquisition, rehabilitation, demolition or conversion for the project.

- **This is not a notice to vacate the premises.**
- **This is not a notice of relocation eligibility.**

If you are determined to be eligible for relocation assistance in the future, you may be eligible for: 1) Relocation advisory services including help to find another place to live; 2) At least 90 days advance written notice of the date you will be required to move; 3) Payment for your moving expenses; and 4) Replacement housing payments to enable you to rent or purchase a comparable replacement home. You will also have the right to appeal the agency's determination, if you feel that your application for assistance was not properly considered. The enclosed HUD brochures, "Relocation Assistance To Tenants Displaced From Their Homes" and "Relocation Assistance to Persons Displaced from Their Homes (section 104(d))" provide an explanation of this assistance and other helpful information.

(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance under the URA, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)

Please be advised that you should continue to pay your rent and meet any other obligations as specified in your lease agreement. Failure to do so may be cause for eviction. If you choose to move for reasons unrelated to the proposed project or if you are evicted for cause prior to receiving a formal notice of relocation eligibility, you will not be eligible to receive relocation assistance. It is important for you to contact us before making any moving plans.

Again, this is not a notice to vacate the premises and does not establish your eligibility for relocation payments or assistance at this time. If you are determined to be displaced and are required to vacate the premises in the future, you will be informed in writing. In the event the proposed project does not proceed or if you are determined not to be displaced, you will also be notified in writing.

If you have any questions about this notice or the proposed project, please contact (name)_____, (title)_____, (address)_____, (phone)_____.

==========

NOTES to Guideform General Information Notice

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3 J of Handbook 1378)

2. This is a guideform. It should be revised to reflect the circumstances.

Exhibit 10-L

[business letterhead]

VOLUNTARY REHABILITATION AGREEMENT
(to be used for homebuyer rehabilitation construction)

I/We, the undersigned, (*printed name of owner/s)* of the following property:

(*description by general location and address*)

do hereby voluntarily agree to allow rehabilitation activities to be completed at (address) according to the rehabilitation work listed below. All rehabilitation work listed will be paid for by the Community Development Block Grant (CDBG) through the (*name of Grantee's program*). The estimate amount of ($) will be require a lien to be placed on my property for (#) number of years according to the period of affordability.

With the signing of this agreement by the owner, I/We (*printed name of owner/s)* acknowledge that the following rehabilitation work items are anticipated be completed by approximately (date) and inspected by a professional; however may be subject to amount of available program funds:

- Ex: Five window replaced with energy efficient windows

I/We understand that I/We will be temporarily relocated while rehabilitation work is being completed at no cost to my household. *(GRANTEE MUST CONTACT CDBG STAFF PRIOR TO EXECUTING)*

Owner(s)		CHDO	
Signature	**Date**	Signature	Date
Signature	**Date**	Signature	Date

***(**Note:** This form is **required** for all beneficiaries; may be hand delivered or mailed with return receipt; MUST be signed and dated by owner(s) and CHDO PRIOR TO construction.)*

Exhibit 10-M

[business letterhead]

VOLUNTARY AGREEMENT
(to be used for homebuyer rehabilitation assistance)

I/We, the undersigned, (*printed name of owner/s)* of the following property:

(*description by general location and address*)

do hereby voluntarily agree to participate in the housing rehabilitation program, and is being assisted by the Community Development Block Grant (CDBG) through the *(name of Grantee's program*). These CDBG funds will be used to complete rehabilitation activities beginning on (*date of construction estimated to begin*), and acknowledge that the program will place a lien on my/our property at (address) for (#) number of years according to the period of affordability.

With the signing of this agreement by the owner, I/We (*printed name of owner/s)* acknowledge that:

- Housing counseling is required to receive assistance under this program and a certificate of completion will be required prior to construction work beginning,
- All rehabilitation work will be carried out through the CDBG program processes and grant administrator,
- An inspection will be completed and report provided to the owner prior to any construction work beginning,
- A detailed list of items that will be rehabilitated will be provided and signed prior any construction work beginning,
- An inspection will be completed and report provided to the owner to ensure that all rehabilitation work is completed according to national and international building codes,
- Signature of acknowledgement of inspection report must be provided to grant administrator,
- Once the inspection has been completed, any further maintenance or upgrades on the property remains the sole responsibility of the owner.

I/We understand that I/We cannot be required to sell the (*property description*) to *(printed buyer's name*) for less than the appraised Fair Market Value.

Owner(s) CHDO

Signature	**Date**	Signature	Date
Signature	**Date**	Signature	Date

***(**Note:** This form is **required** for <u>all</u> beneficiaries; may be hand delivered or mailed with return receipt; <u>MUST</u> be signed and dated by owner(s) and CHDO <u>PRIOR TO construction</u>.)*

Exhibit 10-N

GUIDEFORM
- CDBG VOLUNTARY ACQUISITION OF VACANT PROPERTY -
- Informational Notice -
(Agencies/Persons **Without** Eminent Domain Authority)

Grantee or Agency Letterhead

(date)

Dear _____:

(Name of Agency/Person) _____, is interested in acquiring property you own at (address) _____ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Community Development Block Grant Program (CDBG).

Please be advised that (Name of Agency/Person) _____ does not have authority to acquire your property by eminent domain. In the event we cannot reach an amicable agreement for the purchase of your property, we will not pursue this proposed acquisition.

Under the CDBG progrma, we are required to purchase the property at fair market value. Our appraisal indicates the property's market value is $_____. We are prepared to offer you $_____ to purchase your property. Please contact us at your convenience if you are interested in selling your property.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. A tenant-occupant who moves as a result of a voluntary acquisition for a federally-assisted project may be eligible for relocation assistance. Such displaced persons may include not only current lawful occupants, but also former tenants required to move for any reason other than an eviction for cause in accordance with applicable federal, state, and local law. If your property is currently tenant-occupied or a tenant lawfully occupied your property within the past 3 months prior to our offer, we need to know immediately. Further, you should not order current occupant(s) to move, or fail to renew a lease, in order to sell the property to us as vacant.

If you have any questions about this notice or the proposed project, please contact (name)_____, (title)_____,
(address)_____, (phone)_____.

NOTES to Voluntary Acquisition Notice (Agency/person without Eminent Domain authority).

1. The case file must indicate the manner in which this notice was delivered (e.g., certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3 J of Handbook 1378)

2. Tenant-occupants displaced as a result of a voluntary acquisition may be entitled to URA relocation assistance and must be so informed per 49 CFR 24.2(a)(15)(iv) – Initiation of negotiations, and 49 CFR 24 Appendix A - 24.2(a)(15)(iv).

3. See 49 CFR 24.206 regarding eviction for cause.

4. This guideform may only be used if all of the requirements of 49 CFR 24.101(b)(2)(i)and (ii) or 49 CFR 24.101(b)(3) are met.

5. This is a guideform. It should be revised to reflect the circumstances.

Exhibit 10-O

GUIDEFORM
- VOLUNTARY ACQUISITION OF FORECLOSED PROPERTY -
- Informational Notice -
(Agencies With Eminent Domain Authority)

Grantee or Agency Letterhead

(date)

Dear _____:

(City, County, State, other) _____, is interested in acquiring property you own at (address) _____ for a project receiving funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Community Development Block Grant Program (CDBG).

Please be advised that, (City, County, State, other) _____ possesses eminent domain authority to acquire property, however, in the event you are not interested in selling your property, or if we cannot reach an amicable agreement for the purchase of your property, we will not pursue its acquisition under eminent domain. Your property is not a necessary part of the proposed project and is not part of an intended, planned, or designated project area where substantially all of the property within the area is to be acquired.

Under the CDBG, we are required to purchase the property at fair market value. Our appraisal indicates the property's market value is $_____. We are prepared to offer you $_____ to purchase your property. Please contact us at your convenience if you are interested in selling your property.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. A tenant-occupant who moves as a result of a voluntary acquisition for a federally-assisted project may be eligible for relocation assistance. Such displaced persons may include not only current lawful occupants, but also former tenants required to move for any reason other than an eviction for cause in accordance with applicable federal, state, and local law. If your property is currently tenant-occupied or a tenant lawfully occupied your property within the past 3 months prior to our offer, we need to know immediately. Further, you should not order current occupant(s) to move, or fail to renew a lease, in order to sell the property to us as vacant.

If you have any questions about this notice or the proposed project, please contact (name)_____, (title)_____,
(address)_____, (phone)_____.

NOTES to Voluntary Acquisition of Foreclosed Property Informational Notice

1. The case file must indicate the manner in which this notice was delivered (e.g., certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3 J of Handbook 1378)

2. Tenant-occupants displaced as a result of a voluntary acquisition may be entitled to URA relocation assistance and must be so informed per 49 CFR 24.2(a)(15)(iv) – Initiations of negotiations, and 49 CFR 24 Appendix A - 24.2(a)(15)(iv).

3. See 49 CFR 24.206 regarding eviction for cause.

4. This guideform may only be used if <u>all</u> of the requirements of 49 CFR 24.101(b)(1)(i)-(iv) are met.

5. This is a guideform. It should be revised to reflect the circumstances.

CHAPTER 11 -- PROJECT MONITORING

I. OVERVIEW 11-2
II. PURPOSE OF PROJECT MONITORING 11-2
III. MONITORING PROCEDURES 11-3
IV. ON-SITE PROJECT MONITORING 11-4
V. MONITORING COMMENTS -- MONITORING LETTER / REPORT 11-5
EXHIBITS 11-7

CHAPTER 11

PROJECT MONITORING

I. OVERVIEW:

- Recipients of CDBG financial assistance are responsible for administering their CDBG projects in accordance with all applicable state, federal, and program requirements. The Department has the responsibility to ensure that CDBG recipients are carrying out their projects in accordance with these requirements.

II. PURPOSE OF PROJECT MONITORING:

- **Project monitoring is the Department's primary method for determining whether a project is in compliance with the state, federal, and CDBG requirements**.
- **It is the Department's overall goal to assist and support CDBG recipients in complying with these requirements and in successfully implementing their project activities from start-up through closeout of the project.**

Montana CDBG staff do this by giving assistance and support to each local project by means of:

- providing training during the CDBG grant administration workshop required of all grantees;
- on-going assistance in response to requests from local projects;
- project monitoring through regular, frequent contacts with each CDBG-funded project; and
- conducting on-site project monitoring visits during the course of a project to review the work done by local projects.

During the course of the CDBG project, the Department will monitor each local CDBG project and grant recipient through regular contacts (phone, e-mail and mail) with the local Project Manager and through written progress reports. Local Project Managers are required to submit:

- **a Project Progress Report (see Exhibit 4-F)** -- with each request for drawdown of funds;
- **a Quarterly Update Report (see Exhibit 4-K)** -- 15 days before the close of each quarter; and
- **occasional special reports or project documentation** – when questions arise that require additional information.

These required reports are designed to provide CDBG with information and updates concerning project activities, progress on objectives and upcoming activities related to:

- all items in the scope of work as listed in Section 5 of the CDBG contract
- items in the approved project Management Plan;

- milestones in the approved project Quarterly Implementation Schedule (as found in contract Attachment A);
- any problems the project may be encountering, especially in local project activities related to completing key CDBG requirements that are highlighted in the "requirements checklists" that are included as Exhibits in most of the chapters of this CDBG Grant Administration Manual.

In addition to reviewing the written reports from local projects, CDBG staff will also make periodic on-site visits to local projects and will call local Project Managers at least once a month -- so that any problems that might occur can be resolved as soon and as easily as possible.

Additional objectives of CDBG's project monitoring process are to assure that CDBG grant recipients are:

- complying with CDBG specific requirements and other state/federal laws and regulations;
- carrying out their CDBG project activities as described in their applications and contracts;
- carrying out their project activities in a timely manner, in accordance with adopted project implementation schedules;
- charging only those costs to the projects which are eligible uses of CDBG funds and consistent with the approved project budget; and
- conducting the program in a manner that minimizes the opportunity for fraud, waste, and mismanagement.

As stated in Chapter 1 (Project Start-Up), CDBG recipients are required to:

- maintain complete financial and project activity files;
- comply with CDBG reporting requirements, and
- make their records available to authorized agents of state government:
    - Representatives of the Department must be provided reasonable access, during normal business hours, to all books, accounts, records, reports and files pertaining to CDBG-funded activities.
    - Under Montana law, CDBG recipients must also provide all citizens with reasonable access to records regarding the use of CDBG funds.

III. MONITORING PROCEDURES

In addition to reviewing information submitted with Quarterly Update Reports (Exhibit 4-K), Progress Reports (Exhibit 4-F) submitted along with each request for CDBG funds, **the CDBG liaison for your project will also schedule at least one on-site monitoring visit for each CDBG recipient.** MDOC will attempt to monitor projects in person and on-site twice if possible:

- once during project start-up (usually in conjunction with the pre-construction conference or other start-up meetings), and
- a second time, during the early phase of construction activities.

IV. ON-SITE PROJECT MONITORING

This is a structured review conducted on-site at the location(s) where project activities are being carried out and/or where project records are maintained. CDBG staff use a formal monitoring checklist, *CDBG Project Monitoring Guide (see exhibits).* Essential supplements to the *Monitoring Guide* are the requirements checklists that are included as exhibits at the end of several of the chapters of the CDBG Grant Administration Manual (see exhibits).

Prior to a monitoring visit, the CDBG liaison will contact the project manager concerning the timing and scope of the monitoring visit. Each on-site project monitoring visit usually involves a one or two-day visit to the community to:

- provide assistance and answer questions;
- review records;
- inspect the community's progress in completing the project activities; and
- meet with the Project Manager and local officials and with citizens involved in the project.

The *CDBG Project Monitoring Guide* covers the key requirements discussed in this manual and serves as the format for the CDBG staff's review of local projects.

Whenever possible, each on-site monitoring visit normally concludes with an "exit conference." The exit conference provides an opportunity to meet with local officials and staff to review and discuss any outstanding issues identified during the site visit, both positive and negative. As part of that exit conference discussion, the CDBG liaison will describe his or her tentative conclusions and indicate the level of concern (if any) that will be assigned to a particular issue and why. In particular, the CDBG liaison will discuss those issues that he or she intends to address in written monitoring comments.

In many cases, by thoroughly discussing a potential or actual problem, CDBG staff is able to determine that there is a reasonable explanation for a particular circumstance or question and will be able to help find a reasonable solution. Since the overall goal of the CDBG liaison is to assist CDBG recipients in achieving timely and effective grant management, every effort will be made to informally resolve or clarify minor monitoring concerns during the exit conference.

V. MONITORING REVIEW COMMENTS -- MONITORING LETTER / REPORT:

Within 30 days following the monitoring visit, the CDBG liaison will provide written monitoring review comments to the grant recipient in the form of a monitoring letter/report. At all times, the CDBG staff will offer any necessary technical assistance to CDBG recipients to avoid or resolve any monitoring findings. Copies of the letter/report will be sent to both the chief elected official and the project manager. The monitoring letter will contain the following general elements:

1. A description of each major area that the monitoring visit covered, files reviewed, CDBG staff person who conducted the review, and the date(s) on that which the on-site review occurred.

2. A brief description of any statutory or regulatory requirement at issue and an explanation of the documentation examined pertinent to the requirement.

3. The conclusions the reviewer has reached -- i.e., ***Satisfactory Performance***, a ***Concern*****,** a ***Question of Performance***, or a ***Finding.*** (An explanation of these terms is given below).

4. A statement that describes the basis for the conclusion(s).

CDBG's monitoring letter and report will recognize and credit you for the satisfactory work and more than satisfactory work your project is doing. However, if the CDBG recipient's performance is found, during an on-site monitoring visit, to be less than satisfactory in some respects, there are potentially three levels that may be assigned to a particular issue:

Concern: When the CDBG liaison raises an issue that does not involve a statutory or regulatory requirement but may involve recommending a management or program improvement, it is considered a *concern*. (Concern: A modification of an administrative procedure or policy is suggested but is not required. No response by local officials is required.)

Question of Performance: If the monitoring review raises a question regarding whether a violation of a statutory or regulatory requirement has occurred, the CDBG liaison will first informally discuss the review results with local officials to determine if a violation has occurred. (Question of Performance: If a determination cannot be made during the exit conference, the CDBG staff may conclude that there is still a *question of performance* and request that additional information be provided within a 30 day time period in order for MOC to determine whether a violation has, in fact, occurred. A final determination regarding the issue under question will be made within 30 days of the grant recipient's response.)

Finding: When a monitoring review of a CDBG recipient's performance reveals a specific, identifiable violation of a statutory or regulatory requirement about which there is no question, the CDBG liaison will identify and state a *finding*. (Finding: A written response regarding the CDBG recipient's proposed actions to correct the situation identified in a finding is required within 30 days of the date of the CDBG liaison's monitoring letter.) Corrective actions should be designed to:

1. Prevent a continuance of the violation;

2. Mitigate any adverse effects or consequences of the violation to the extent possible under the circumstances; and

3. Prevent a recurrence of the same or similar violation.

At all times, the CDBG staff will offer any necessary technical assistance to CDBG recipients to avoid or resolve any monitoring findings. There may be a number of acceptable solutions for resolving a violation. The CDBG recipient is allowed to respond to each problem with any reasonable and adequate solution of its choice. The Department will determine the adequacy of a corrective action.

CHAPTER 11

EXHIBITS

11-A CDBG Project Monitoring Guide

RELATED CHECKLISTS FOUND IN OTHER CHAPTERS:

1-G Project Start-Up Requirements Checklist

2-B.1 Environmental Review Requirements Checklist

3-H Checklist of Required Contract Clauses for Engineering, Architectural, and Grant Administration Services Contracts

3-I Procurement Checklist

4-C Instructions for "Request For Funds Form"

5-U Civil Rights Responsibilities Checklist

CH-6 Grantee Labor Standards Responsibilities (pages 6-9 to 6-19)

9-J Checklist for CDBG Review of Construction Bid Documents

9-M Construction Management Checklist -- Public Facility Construction and New Housing

13-A Project Completion Report: Instructions

EXHIBIT 11-A

MONTANA DEPARTMENT OF COMMERCE

CDBG PROGRAM PROJECT MONITORING GUIDE

Name of Grant Recipient	
Contract #	

Type of Project

- ☐ **Economic Development**
- ☐ **Housing**
- ☐ **Public Facilities**

Date(s) Monitored		**Monitored By:**	

Local Project Manager	
Address	
Phone Number:	
Persons Interviewed:	

Compliance Areas		**Check Areas Reviewed**
A.	**Project Management**	☐
B.	**Environmental Review**	☐
C.	**Procurement**	☐
D.	**Financial Management**	☐
E.	**Civil Rights Compliance**	☐
F.	**Labor Standards Compliance**	☐
G.	**Acquisition**	☐
H.	**Relocation**	☐
I.	**Construction Management**	☐
J.	**Individual Housing Rehabilitation File Review**	☐
K.	**Economic Development Project Administration. CDBG-Economic Development (ED) Program**	☐
L.	**Project Closeout and Audit Review**	☐

A. PROJECT MANAGEMENT			
1. PROJECT DOCUMENTATION			
YES	**NO**	**NA**	
			a. Do the CDBG recipient's files contain a copy of the original CDBG application and all relevant supplementary materials (income or housing condition surveys map of project area, etc.)?
			b. 1) What was the benefit to low and moderate income (LMI) persons claimed in the original application? 2) What is the actual LMI benefit in the project?
			Comments:
			c. If LMI benefit claims were based on a local survey, are the original survey responses on file?
			Comments:
			d. Review the survey file. 1) Does the Grantee's survey data appear verifiable? 2) Is the documentation consistent with the CDBG guidelines, *Documenting Benefit to Low and Moderate Income Persons*? 3) Does the survey data match up with the project area?
			Comments:
			e. Did the grantee's reports (Exhibit 4-F/Progress Reports and Exhibit 4-K/ Quarterly Update Reports) and communications to CDBG keep the CDBG Program staff informed of all important project activities and issues?
			Comments:
			f. Review CDBG's requirements checklists: Exhibit 1-G, Exhibit 2-B.1, Exhibit 3-I, Exhibit 5-U, Chapter 6 (page 6-7 and following/Labor Standards), Exhibit 9-M, and Exhibit 13-A. Identify (1) required documentation provided to CDBG and (2) additional documentation needed. NOTE: All CDBG-related records must be retained for four (4) years after final project closeout by MDOC, consistent with 24 CFR 570.502(a)(16).
			Comments:
2. PROJECT MANAGEMENT			
YES	**NO**	**NA**	
			a. Does the Grantee's record keeping system contain files for the topics suggested by CDBG (page 1-17 and following, CDBG Manual)?
			Comments:
			b. If so, is the system being used effectively and does the record keeping system appear adequate?
			Comments:

YES	NO	NA	
			c. Do the CDBG recipient's files contain a copy of the signed MDOC-Grantee contract, all subsequent contract amendments and all relevant contract correspondence?
			Comments:
			d. Does the Grantee have a copy of the approved, current Project Management Plan and Project Implementation Schedule (= contract Attachment A) on file? Were they amended as necessary? Does the project manager have a copy of the applicable edition of the Montana CDBG Grant Administration Manual?
			Comments:
			e. Are project activities being carried out in the same (scope, schedule, and budget) as proposed in the original CDBG application -- or as subsequently approved by MDOC?
			Comments :
			f. How well were the Plan and Schedule followed?
			Comments:
			g. Based upon the on-site review, does the level of project implementation appear consistent with Project Progress Reports and Quarterly Update Reports?
			Comments:
			h. Based upon the on-site review, does it appear that the project will be completed in conformance with the approved implementation schedule in the grant contract? (If not, please explain how the situation will be resolved.)
			Comments:
			i. Review the *Citizen Participation* file. Note any public comments, inquiries, or complaints regarding the project. **Were any problems identified or complaints received? If "yes" --** Did they receive responses within a reasonable time period (no later 15 days from receipt of the complaint, per Chapter 11)? -- Were the problems or complaints resolved promptly and satisfactorily? **Comments:**
			j. Is there documentation of compliance with Section 25 of the contract re Montana Workers' Compensation coverage? The Grantee accepts responsibility for requiring all contractors, subcontractors, and subrecipient entities to supply the Department with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. 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 and must be kept current for the entire term of the contract. **Comments:**

B.	ENVIRONMENTAL REVIEW		
YES	**NO**	**NA**	
			1. a) Does the Grantee maintain a copy of the project's Environmental Review Record in its offices, available for public review? b) Is all documentation pertinent to the ERR submitted to MDOC/CDBG as part of the Request for Release of Funds (e.g., FONSI, proof of publication, Statutory Checklist, letters to agencies requesting comment) in the Grantee's local files?
			Comments:
			2. Does the local project file include a copy of the Environmental Release of Funds (EROF) letter issued by CDBG?
			3. Is there any additional pertinent environmental information in the Grantee's local project files (e.g., correspondence related to queries or challenges)? If yes, list and describe.
			Comments:
			4. a) Have any environmentally related complaints been received by the Grantee or CDBG as a result of project activities (such as site-specific environmental reviews for housing rehabilitation sites)? b) Are there any concerns regarding environmental review procedures used?
			5. Are project activities being carried out in the same geographic area as proposed in the original CDBG application or as subsequently approved by DOC?
			6. Does on-site monitoring of the project area reveal the existence of any hazardous sites or other environmental concerns that would question the validity of the Grantee's Environmental Review or that may require mitigating measures during project implementation?
			Comments:
			7. Were there any substantial changes in the circumstances, magnitude or extent of the project that did or would necessitate further environmental review, a revised assessment, or a change in the level of finding of the review? ***If yes to 7:*** In the event that substantial changes have occurred in the project, is all necessary documentation, such as a revised assessment, change in finding, and new public notices, contained in the Grantee's updated ERR and in the project files?

YES	NO	NA	
			8. Does on-site monitoring of the project area reveal the existence of any environmental concerns that may require (or did require) mitigating measures during project implementation?
			Comments:
			9. Does on-site monitoring of the project indicate any non-compliance with state or federal environmental laws or regulations?
			Comments:

C. PROCUREMENT (of Non-Construction Services)

1. MONITORING QUESTIONS FOR SAMPLED PROCUREMENT TRANSACTIONS

YES	NO	NA	
			Check <u>non-construction</u> contracts entered into by the Grantee. **Sample the documentation of at least one non-construction procurement**. a) Did the Grantee's procurement files contain adequate written documentation of the procedures followed for the sampled procurement transactions? b) Did the procurement comply with current MDOC procedures? *(See CDBG Administration Manual, Chapter 3, <u>Procurement.</u>)*
			Comments:

2. REVIEW OF GENERAL PROCUREMENT PROCEDURES

YES	NO	NA	
			a. Has the Grantee ensured that no <u>conflict of interest</u>, real or apparent, exists with respect to any contract supported by grant funds?
			Comments:
			b. Have any apparent conflicts of interest occurred in contractor selection?
			If yes, describe the situation.
			c. Has the Grantee established procedures to assure ongoing review of contractor performance and contract expenditures during the term of any CDBG-funded contracts? **Comments:**

3. PROCUREMENT REVIEW CHECKLIST – for NON-CONSTRUCTION SERVICES

This checklist may be used either for in-office or on-site reviews of procurement procedures.
…Skip this section if this was already reviewed in-office by CDBG staff prior to the on-site monitoring visit. Include documents from earlier review in the monitoring file…

Note: **Photocopy this checklist and complete it for each non-construction contract reviewed, including CDBG-funded professional services contracts such as grant management *services*** *(to be procured via RFPs)* **and architectural or engineering services** *(to be procured via RFQs).*

… Did the Grantee place the required appropriate contract language regarding civil rights in bid or RFP/RFQ documents and in all contracts? See Chapter 3, Procurement, Exhibit 3-F and Exhibit 3-G.

a. Name of Firm/Contractor	
b. Purpose of Contract	
c. Date of Contract	
d. Amount	

What type of procurement process was used? (Reference: Manual Chapter 3)

(1) __ ***HUD's Small Purchase Procedure*** (2) __ ***Competitive Sealed Bid***

(3) __ *Competitive Proposals (RFPs or RFQs)* (4) __*Non-competitive Negotiation (Sole Source)*

YES	NO	NA	(1) HUD'S SMALL PURCHASE PROCEDURE: (Page 3-12 ff, CDBG Manual)
			a) Was the small purchase procedure appropriate for the good or service being procured?
			b) Was the cost $100,000 or less?
			c) Were price quotes obtained from more than one qualified source?
			d) Was adequate documentation of the procurement available?
YES	**NO**	**NA**	
			2) COMPETITIVE SEALED BID: Competitive sealed bidding is the standard procurement process followed for **construction** activities involved in CDBG public facility projects – not for non-construction services. (CDBG Manual, page 3-13 and following.) **Go to *Section I* of this Guide: Review the bid and selection procedures for competitive sealed bids for all major construction contracts – as part of the monitoring review in *Section I* below.**

YES	NO	NA	
			3) COMPETITIVE PROPOSALS: ___ RFP ___ RFQ
			a) Were competitive proposals appropriate for the goods or services being procured? ___ RFP ___ RFQ
			Comments:
			b) How many proposals were received from qualified sources?
			Comments:
			c) Did the Grantee adequately publicize the RFP or RFQ and honor reasonable requests to submit responses to the RFP or RFQ?
			Comments:
			d) Did the Grantee contact Disadvantaged Business Enterprises (DBEs) for proposals? e) If not, why not?
			Comments:
			f) Did the RFP or RFQ clearly identify all the major factors that were used to evaluate the responses and their relative weight in the selection?
			Comments:
			g) Were all the responses evaluated according to the written criteria established in advance?
			Comments:
			h) Did the grant recipient have a method for conducting technical valuations of the proposals received and for selecting the awardee?
			Comments:
			i) Did the grant recipient check references for the awardee?
			Comments:
			j) Did the grantee thoroughly document its selection process? Does the process used qualify as open and free competition?
			4) NONCOMPETITIVE NEGOTIATION (SOLE SOURCE): **Page 3-14 ff, CDBG Manual**
			Did DOC authorize sole source procurement as required? Date:_____
			… Did at least one of the following conditions apply?

YES	NO	NA	
			a) After solicitation from a number of sources, competition was determined to be inadequate?
			Comments:
			b) The items or services required were available only from one source?
			Comments:
			c) A public emergency existed such that the urgency would not permit a delay to use one of the other methods of procurement?
4. QUESTIONS CONCERNING THE GRANTEE'S PROCUREMENT TRANSACTIONS			
			a. Was/were the procurement transaction(s) conducted in a manner that provided maximum open and free competition (so that the procedures and description of technical requirements did not restrict or eliminate competition)?
			Comments:
			b. Were the methods used to advertise or solicit competition appropriate?
			Comments:
			c. Did the Grantee take affirmative steps to assure that small and minority businesses and women's business enterprises were solicited as a potential source of supplies, equipment, construction, or services? If so, please describe. If not, why not?
			Comments:
			d. **Did the Grantee submit the contract for MDOC/CDBG's review, prior to entering into the contract?**
			Comments: **Date of review:** **Reviewed by:**
			e. **Do the contracts reviewed contain the clauses required by MDOC?** (Use *Exhibit 3-F,* "Sample Format for a Professional Services Contract, of the CDBG Grant Administration Manual, for examples of the CDBG-required clauses for professional services agreements.) Also see Exhibits 3-H and 3-G
			Comments:

YES	NO	NA	
			f. If the contract was not reviewed previously by Montana CDBG staff, complete the checklist shown in the CDBG Administration Manual.
			g. **Debarment checks:** Did the CDBG grant recipient contact Montana CDBG prior to entering into contracts, to determine whether the contractors and subcontractors selected were listed by the state or federal government as "debarred contractors"?
			Date debarment checks were performed:
			h. Was a cost reimbursable and specified "not to exceed" compensation used? *NOTE: Cost plus a percentage of cost and percentage of construction cost are prohibited.*

D. FINANCIAL MANAGEMENT

1. GENERAL ISSUES

YES	NO	NA	
			a. Did the Grantee receive assistance from the Department of Commerce or the Department of Administration (DOA) in establishing a financial management and record keeping system to account for all CDBG money in accord with Chapter 4 of the CDBG manual? Did the MDOC or DOA identify any concerns regarding the Grantee's financial management system? If yes, Have these concerns been satisfactorily addressed by the Grantee?
			Comments / date of visits:
			b. Is the grantee in compliance with the auditing and annual financial reporting requirements provided for in the Montana Single Audit Act, 2-7-501 to 522, MCA? (CDBG staff: Check with the Department of Administration's Local Government Assistance Bureau for information about the grantee's compliance with audit requirements.) c. Has the grantee established a financial accounting system that can properly account for grant funds according to generally accepted accounting principles? (Subgrantee Tribal governments must comply with auditing and reporting requirements provided for in OMB Circular A-133.)
			Comments:
			d. Have any entity-wide audits or CDBG/MDOC on-site monitorings been conducted to date during the term of the CDBG project? If yes: … date of CDBG monitorings: __/__/__ and/or or dates of audits: __/__/__ … If yes (audit), what firm or agency conducted the audit?
			Comments:

YES	NO	NA	
			e. If an audit or audits were conducted, are there any findings in the audits? Are there any CDBG monitoring findings or issues concerning the financial management of CDBG funds?
			Comments:
			f. If yes to e. has the Grantee satisfactorily resolved all findings noted in CDBG monitoring letters or any previous audits conducted during the term of the project?
			Comments:
			g. Is the grant within the direct control of the city, town, or county, and included in their financial statements?
			Comments:
			h. What financial system does the Grantee use?
			BARS TAS Other **If Other, describe**
			i. Has the Grantee officially adopted a budget for expenditure of the CDBG grant by resolution (see Exhibit 4-A) and in accordance with the CDBG contract? ~ Were all changes in budget expenditures and project activities approved by MDOC in advance?
			Comments:
			j. Are the budget line items within the local accounting records recorded by the Grantee consistent with the budget line items in the CDBG contract?
			Comments:
			k. Has the Grantee established a separate special revenue fund for CDBG grant funds (unless the grant was a contribution to the enterprise fund)?
			Comments:
			l. Has the Grantee developed adequate procedures to assure expenditure of all CDBG funds in excess of $5,000 within 3 days of receipt, as required by HUD and CDBG? (See Chapter 4.)
			Comments:
			m. Are CDBG grant funds drawn down and CDBG Program Income *receipted for* in the same manner as other Grantee revenue -- or are there special procedures used for CDBG funds? If so, please describe. (*Program Income*: defined in the CDBG Manual, Chapter 4, Exhibit 4-H.)
			Comments:

YES	NO	NA	
			n. Are CDBG funds deposited into:
			1. the Grantee's central bank account? OR 2. a separate bank account for CDBG funds?
			o. Is the account interest-bearing?
			Comments:
			p. Are CDBG expenditures processed in the same manner as other Grantee expenditures?
			q. Does someone compare expenditures against budgeted line items in order to control overspending on the authorized budget? Who?
			Comments:
			r. Which individuals validate/authorize claims for payment for the Grantee?
			Insert Names/Titles:
			s. Which individuals prepare warrants for the Grantee?
			Insert Names/Titles:
			t. Is there sufficient separation of duties to ensure adequate internal control? (Note: Check grantee audits for any findings concerning internal fiscal control.)
			Comments:
			u. Are the public officials and employees involved in managing CDBG funds bonded as required by Montana law (2-9-701 and 2-9-801, MCA)? (Under A-87, any losses due to failure to bond local officials and employees are ineligible CDBG expenses.)
			Comments:

2. EXPENDITURE REVIEW

a. Total amount of funds drawn to date **per CDBG records**:	
… through CDBG Draw #: ____ (Date: ___/___/____)	
Total amount of funds expended **per Grantee's records**:	
Balance remaining **per CDBG records**:	
Balance remaining **per Grantee's records:**	
Amount of cash on hand, if applicable:	

b. Do Montana CDBG's financial records and the CDBG recipient's records for the amount of CDBG funds drawn down and received agree? _____

Comments:

c. Date of CDBG's authorization to incur administrative costs: (These are "environmentally-exempt" administrative costs – i.e., those not requiring a CDBG environmental release of funds. CDBG Manual, Chapter 1, page 26)	
Date of CDBG environmental release of funds letter:	
Effective date – for costs that can be incurred:	

Note: **Using the Project Expenditure Sampling Form (page 12A-17, below) of this monitoring guide, sample a reasonable number of expenditures from both Administrative and Activity budget categories.** For administrative expenses incurred by local government staff, in particular, review staff payroll timesheets, telephone bills, and travel expenses to assure reasonable relationship to CDBG activities.

For the expenditures sampled:

YES	NO	NA	
			d. Were any ineligible expenditures charged against the grant for the period prior to the authorization to incur administrative costs?
			Comments:
			e. Were any ineligible expenditures charged against the grant for the period between the authorization to incur administrative costs and the release of funds?
			Comments:
			f. Were any ineligible expenditures charged against the grant during the period following MDOC's release of funds?
			Comments:
			g. Does a review of the following project expenditures (items 1-5, below) verify 1) that they are necessary and reasonable for administration of the CDBG project and 2) that they are eligible pursuant to OMB Circular A-87?
			1. Administrative service contracts (e.g., legal, accounting, audit, consulting)
			Comments:
			2. Salaries and related costs
			Comments:
			3. Travel and training expenditures;
			Comments:
			4. Communications (e.g. telephone, postage);
			Comments:

YES	NO	NA	
			5. Other administrative costs (supplies, printing, equipment)?
			Comments:
			h. Were all sampled claims reviewed and approved by authorized individuals (Department Head, Council, etc.)?
			Comments:
			i. Were sampled expenditures supported by adequate source documentation (invoices, contracts, purchase orders, etc.)?
			j. Were sampled expenditures in accordance with the CDBG budget line items?
			Comments:
			k. Were any of the following ineligible expenditures noted: 1) Interest and other financing costs?
			Comments:
			2) Contributions and donations?
			Comments:
			3) Bad debts?
			Comments:
			4) Contingencies? [NOTE: <u>Unallowable</u> contingencies are contributions to a contingency reserve held long-term for unforeseen events.] **Comments:**
			5) Entertainment?
			Comments:
			6) Fines and penalties?
			Comments:
			7) Legislative expenditures?
			Comments:
			l. Were all the expenditures sampled eligible and appropriate uses of CDBG funds?
			Comments:
			m. Were all sampled expenditures adequately documented? If "no," describe.
			Comments:

YES	NO	NA	
			n. Based upon review of receipt and disbursements of CDBG funds, were there any instances of violation of HUD's $5,000 / 3-day policy?
			Date(s): **Comments:**
			o. If yes to "n" -- can the Grantee justify each instance of violation of the HUD $5,000 / 3-day policy?
			Describe circumstances: **Comments:**
			p. Were salaries and wages of local government staff charged against the grant, if any, supported by adequate payroll records (timesheets)?
			Comments:
			q. Are costs being prorated on a reasonable basis for local staff (if any) that are working partially on CDBG project activities?
			r. If work is performed by city or county staff, are there adequate records to document the use of public employees? **Comments:**
			s. Does a review of the payroll forms reveal any instances of personnel being paid from, but not working on, program activities?
			Comments:
3. PROPERTY MANAGEMENT			
YES	**NO**	**NA**	a. Does the Grantee maintain property records documenting the acquisition of all property purchased with CDBG funds?
			Comments:
			b. Was the property acquired in compliance with HUD procurement regulations?
			Comments:
			c. Do these items appear on the Grantee's property records?
			Description: **Cost: $**

4. PROGRAM INCOME				
YES	**NO**	**NA**		
			a. Has any *CDBG Program Income* been generated through CDBG project activities? (*Program Income* -- as defined in the CDBG Manual, Chapter 4, Exhibit 4-H.)	
			Source(s):	
			Amount To date:	
			b. Has the Grantee established policies and procedures for the use of Program Income that will be generated, if any?	
			Comments:	
			c. Has the Grantee expended Program Income (other than Program Income deposited in an approved revolving fund) in payment of program costs prior to making further cash draws from the DOC?	
			Comments:	
			d. Has the Grantee established revenue accounts to account for all Program Income receipts and disbursements?	
			e. If a Program Income Fund has been established, were the procedures for receipt and disbursement of CDBG funds reviewed by DOC?	

ADMIN (A) OR **NON-ADMIN** (N) **EXPENDITURE**	**CLAIM NO.**	**DATE**	**VENDOR/ SOURCE NO.**	**AMOUNT**	**WARRANT NO.**	**APPROVED BY**	**COMMENTS**

E. CIVIL RIGHTS			
1. MONTANA HUMAN RIGHTS COMMISSION			
YES	**NO**	**NA**	
			a. Did the Montana Human Rights Commission notify MDOC/CDBG of any prior or current allegations of discrimination against the Grantee?
			Comments:
			b. Were there any complaints of discrimination associated with CDBG-funded activities, for which affirmative action was required to overcome the effects?
			If yes, describe situation:
2. RECIPIENT EMPLOYMENT			
YES	**NO**	**NA**	
			a. Does the Grantee have an adopted nondiscrimination policy (Equal Employment Opportunity)? (Exhibit 5-A)
			Comments: **Date adopted:**
			b. Has the Grantee made its Equal Employment Opportunity (EEO) policy clearly known to all staff involved in hiring, promotion, and salary decisions?
			Comments:
			c. Does the Grantee display Equal Employment Opportunity (EEO) posters in conspicuous places? (Exhibit 5-M, CDBG Admin. Manual)
			Comments: **Location(s) posted:**
			d. Has an individual been designated to oversee civil rights compliance for the local government, (not just for this project)?
			Comments: **If "yes," whom?**

YES	NO	NA	
			e. Has the Grantee hired any staff using CDBG funds for work on CDBG-related activities?
			Comments: **If YES, list name(s) and position(s):**
			f. Were EEO guidelines followed in hiring? (Exhibits 5-H, I, and J, CDBG Administrative Manual)
			Comments: **Describe:**
			g. Did job announcements include a statement that *"(Name of Grantee) is an equal opportunity employer"*?
			Comments:
			h. Did the Grantee notify target agencies for EEO employment recruitment? (Exhibit 5-G)
			Comments:
			i. Were positions advertised in any minority newspapers published in the area? **Comments:**
			j. Did the Grantee publish Exhibit 5-B (*Section 3 Public Notice: Economic Opportunities for Low-Income and Very Low-Income Persons*) or its equivalent at the time of going to bid?
			Comments:
			k. Has the Grantee been acting in compliance with the (December 2002) EEOC Compliance Manual Section on the Prohibition of National Origin Discrimination (See Chapter 5 CDBG Manual, page 5-12)? **Comments:**
			l. Do the Grantee's records include a summary of the number of applicants for each position, the number that are minorities, women and handicapped persons, and the reasons for the hiring decisions?
			Comments:

YES	NO	NA	
			m. Number of CDBG-funded staff persons (previous plus new hires) employed by the Grantee: **Number of staff:** **Number and percentage of minority staff:** **Name(s) and position(s) of minority staff:**
			n. Based on data, does minority representation appear reasonable? **Comments:**
2. PROJECT BENEFITS			
YES	**NO**	**NA**	a. Does the Grantee follow policies and procedures to ensure nondiscrimination in the provision of grants, loans, or other CDBG assistance to beneficiaries? **Comments:**
			b. What is the minority population percentage in the project area? **% =**
			c. Is this based on: **Census Data --OR-- Local Survey**
			d. Does the Grantee keep **direct benefit** data? *See Exhibit 5-E*. **ATTACH *EXHIBIT 5-E* OR EQUIVALENT HERE** for projects involving rehabilitation, acquisition, relocation, economic development hiring, public facilities targeting, or other **direct benefits**. **Comments:**
			e. Based on available data, does there appear to be any deficiency in providing benefits to any group? **Comments:** **If yes, describe.**

3. FAIR HOUSING			
YES	**NO**	**NA**	a. Describe Grantee efforts to *affirmatively further fair housing*. For example:
			1. Does the Grantee have a fair housing resolution? (Exhibit 5-N)
			Comments: **Date adopted:**
			2. Does the Grantee display fair housing posters (Exhibit 5-0 or equivalent)? Does the Grantee use the "Equal Housing Opportunity" statement and symbol on its local government/agency letterhead?
			Comments:
			3. What actions were taken by the Grantee to affirmatively further fair housing ? (See CDBG Manual, page 5-10 and following).
			Comments:
4. POLITICAL ACTIVITY			
YES	**NO**	**NA**	a. Does the Grantee have an adopted policy regarding compliance with the *federal Hatch Act*? *Note:* The Hatch Act restricts the political activities of individuals principally employed by a local government in connection with a program financed in whole or in part with federal funds. (For sample policy, see Exhibit 5-Q, CDBG Administration Manual)
			Comments: **Date adopted:**
			b. Has an individual been designated to oversee Hatch Act compliance?
			Comments: **If "yes," whom?**
			c. Have the Grantee's employees been furnished with appropriate information regarding restrictions on political activity? (For example, posting its Hatch Act policy.)
			Comments:

5. AMERICAN DISABILITIES ACT AND SECTION 504 REQUIREMENTS			
YES	**NO**	**NA**	1. Has the Grantee prepared an Analysis of Impediments for Handicapped Accessibility in accordance with the requirements of the American Disabilities Act (ADA) and Section 504 in the following ways:
			Comments:
			a. Did the Grantee conduct a *Self-Evaluation Inventory of facilities and programs* to determine the extent of local compliance with ADA requirements?
			Comments:
			b. How has the Grantee addressed each of the following areas of ADA compliance: (describe)
			1) Communications?
			2) Public Meetings?
			3) Employment Opportunities?
			4) Program Benefits?
			5) Physically Accessible Housing?
			Comments:
			c. Did the Grantee, based on the Self-Evaluation Inventory, develop an *ADA Transition Plan* to outline steps to correct any deficiencies identified by the Self-evaluation Inventory?
			Comments:

F. ***LABOR REQUIREMENTS***			
1. DAVIS-BACON PREVAILING WAGES			
YES	**NO**	**NA**	a. Do the construction contract (s) contain a copy of the correct Davis-Bacon prevailing wage decision for the project?
			Comments / Wage Decision Date(s):
			b. Are the appropriate wage decisions in use?
			Comments:
2. PAYROLL REVIEW			
			a. Is Form WH347 (Exhibit 6-I), U.S. DOL Payroll Form or its equivalent being used by the Contractor and sub-contractors?
			Comments:

YES	NO	NA	
			b. Are payrolls submitted weekly?
			c. **Is there evidence of weekly payroll review by the grantee's representative?** d. **Is there evidence that all weekly payrolls have been compared to the applicable Davis-Bacon wage rates?** e. **As required, are payrolls reviewed clearly initialed by the reviewer, annotated as needed, and dated to indicate completion of a weekly review?** *(See the CDBG Manual, Chapter 6, pages 6-6 and 6-12 and CDBG Exhibit 6-P.)* f. *(From Chapter 9, CDBG Manual, pp. 9-20/9-21*): "**Labor standards monitoring and documentation.** As part of the documentation you submit to CDBG with all your requests for drawdown of Activity budget funds, during the construction period, include **(1)** copies of the required labor compliance interviews of contractors' employees and **(2)** certification (on Exhibit 6-P) of your completion of weekly reviews of weekly payroll. **Maintain in your local project files documentation that you have assured that all during the project that the proper federal Davis-Bacon wages (and hourly zone rates, if applicable) are being paid.** **Also see Chapter 6 (pages 6-14/6-15) and Exhibits 6-K and 6-P.** During periods of construction, drawdown requests to CDBG must be accompanied by Exhibit 6-K. (See Chapter 4, pages 4-5 and following.) Exhibit 6-P should be sent to CDBG with every project draw that involves construction contractor payments for workers' wages – not just CDBG draws. **What sort of evidence of payroll reviews exists in the grantees' files?** (For example, initialed and dated by reviewer, notes, calculations, etc.?)
			g. Are the weekly payrolls numbered sequentially?
			h. Are payrolls signed by the employer or an authorized representative?
			i If applicable, are **apprentice/trainee** records on file?
			j. Has overtime been paid? At correct rates? **Note: "Zone pay" increases a construction worker's hourly rate. Fringe benefits can be paid in cash or to a fund. When a construction worker receives zone pay, overtime is calculated this way: [hourly rate plus zone pay rate multiplied by 1.5] plus fringe.**
			k. Was the appropriate Davis-Bacon prevailing wage rate determination posted at the job site and reasonably accessible to employees for their review? l. Were the proper ***zone hourly rates*** , if applicable, used to **determine the adjusted base hourly pay** at work locations where the work site's distance from the county seat exceeds the specified distances listed in the applicable Davis-Bacon wage rate determination)?

REVIEW OF EMPLOYEE INTERVIEWS CONDUCTED BY LOCAL PROJECT REPRESENTATIVES			
YES	**NO**	**NA**	**1.** Is there adequate documentation of employee interviews of a representative sample of trades and job classifications? **2.** Are completed, signed copies of interview forms in the file? (HUD Form 11, updated 8/1/2004; Exhibit 6-K; available on-line at: http://www.hud.gov/offices/adm/hudclips/forms/files/11.doc **3.** For employee interviews conducted, is there evidence that the wages rates of employees interviewed were compared to the federal Davis-Bacon wage rates applicable to the project? **4.** *See OVERVIEW OF LABOR INTERVIEWS CONDUCTED, next page.*

EMPLOYEE INTERVIEW SAMPLE A				
Name of individual interviewed:				
Contractor:				
Job Classification: (if applicable)				
Group:			Zone: _____	Zone hourly rate: _____
Actual Wage: (+ Fringe)				
Required Wage: (+ Fringe)				
YES	**NO**	**NA**		
			Was the wage correct?	
			Comment:	

EMPLOYEE INTERVIEW SAMPLE B				
Name of individual interviewed:				
Contractor:				
Job Classification: (if applicable)				
Group:			Zone: _____	Zone hourly rate: _____
Actual Wage: (+ Fringe) $				
Required Wage: (+ Fringe) $				
YES	**NO**	**NA**		
			Was the wage correct?	
			Comment:	

EMPLOYEE INTERVIEW SAMPLE C					
Name of individual interviewed:					
Contractor:					
Job Classification: (if applicable)					
Group:			Zone: _____	Zone hourly rate: _____	
Actual Wage: (+ Fringe) $					
Required Wage: (+ Fringe) $					
YES	**NO**	**NA**	Was the wage correct?		
			Comment:		
			OVERVIEW OF LABOR INTERVIEWS CONDUCTED		
			1. Were all required labor interviews sufficiently documented?		
			Comment:		
			2. Was a representative number of trades covered?		
			Comment:		
			3. Are interviews compared against payrolls?		
			Comment:		
			4. Are there instances of incorrect wage payments or labor standards violations?		
			Comment: **If "yes," describe:**		
			5. Were investigations of noted violations conducted in a timely manner?		
			Comment: **If not, describe:**		
			6. Has restitution been made to the affected workers?		
			Comment:		
			7. Were records and documentation sufficient to support the findings and the resolution of violations?		
			Comment:		

YES	NO	NA	
			8. If labor requirements compliance deficiencies have occurred, have follow-up procedures been agreed on to correct or improve performance?
			Comment:
			9. Were the required labor standards posters posted at the job site: a. Exhibit 6-F-U.S. Department of Labor Notice to Employees?
			Comment:
			b. Appropriate U.S. Department of Labor Davis-Bacon Wage Rates?
			Comment:
			c. Exhibit 6-G, DOC Equal Employment Opportunity Poster?
			Comment:

G. ACQUISITION (If Applicable)

Total number of acquisitions proposed:	
Number of acquisitions made to date:	

GENERAL INFORMATION REGARDING ACQUISITIONS:
Complete For Each Acquisition Sampled

1. Name of property owner:				
2. Telephone Number:				
3. Address of acquired property:				
4. Property Use: _____	Single Fam. Res.	Agriculture	Business	Nonprofit
			YES	**NO**
5. Occupants?				
6. Tenants?				

NOTE: **Persons or businesses displaced by acquisition are entitled to relocation assistance** (see Chapter 7 of the CDBG Manual)

For such cases, complete Section H (Relocation) of this Monitoring Guide to document payments to owners or tenants.

Complete Only For VOLUNTARY Acquisition (Not Governed By the Uniform Relocation Act)

1. Does the Grantee's file include the following documentation:

YES	NO	NA	DOCUMENTATION IN FILE	DATE:	Amount
			Public Invitation for Acquisition of Real Property (Exhibit 7-A)	**Meeting**	
			Voluntary Agreement Between Grantee and Individual Seller (Exhibit 7-B)		
			Appraisal		
			Contract signed/Proof of payment		
			Recording of property deed		
			Record of settlement costs		
			Filing of complaint or appeal (if applicable)		
			Resolution of complaint or appeal (if applicable)		
			Acknowledgment by Grantee that acquisition was voluntary, exempt from procedures required under the Uniform Act, Title III, and that dislocation of tenants must be done pursuant to Title II		

H. RELOCATION (If Applicable)

		Proposed	To Date
Number of relocations:			
Owner			
Tenant			
Business			
Total:			

Method of relocation:
[ ] governed by Uniform Act; **Section 104 (d) of the Housing & Community Development Act** ;
[ ] optional relocation

Attach Exhibit 5-E, Direct Benefits Summary Form, showing civil rights-related info all relocatees.

YES	NO	
		Were any complaints or appeals filed?
		If yes, describe the issues and how they were resolved.

YES	NO	
		Approximately 60 days after the relocation payment has been made and the relocation has taken place, does the Grantee follow-up to determine whether the replacement housing is satisfactory?

THIS SECTION: COMPLETE ONLY FOR OPTIONAL RELOCATIONS (NOT covered by the UNIFORM RELOCATION ACT)

Select some individual optional relocation cases for review.
Complete the checklist on the following pages for each, and attach.

YES	NO	Complete For **Optional Relocations**
		1. Did optional relocation project receive prior approval from DOC?
__/__/____		2. Date of adoption of local policy governing optional relocation.
__/__/____		3. Date of DOC approval of local policy.
		4. Generally describe project and system for providing benefits to affected individuals:
		5. Select several individual cases for review, complete the attached form for each, and attach.

RELOCATIONS COVERED BY THE UNIFORM ACT (RESIDENTIAL OR BUSINESS)					
Name					
Former Address					
New Address					
Project Name					
Acquisition No.					
Relocation No.					
	Continued, next page				
Owner		Tenant		Business	

Dates	**Applies to Residential (R) or Business (B)**	**NOTE: All items preceded by an asterisk (*) require documentation in the Relocation file.** Handbook 1378 (HUD's Real Estate Acquisition and Relocation Policy and Guidance) is currently being updated (July, 2007). **For the most current version of these checklist items, see HUD Relocation Handbook 1378 (Appendices) at** http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm This section of the monitoring checklist will be updated when the HUD 1378 Handbook revision is complete.
	R & B	MDOC Authorization to incur cost
	R & B	When 1st occupied old unit
	R & B	Initiation of Negotiations to Acquire Property
	R & B	Property Acquired
	R & B	(*) General Information Notice (8-A)
	R & B	(*) Notice of Relocation Eligibility (8-B). Must include referral to comparable housing in this notice.
	R & B	Moved to replacement dwelling or business
	R	(*) Confidential Family Survey Guide (8-C) X
	R	(*) Identified comparable replacement dwelling
	R & B	(*) 90-Day Notice delivered (8-D)

	R & B	(*) 30-Day Notice delivered (8-E if applicable)
	R	(*) Housing Inspection Form (8-F)
	R	(*) Letter to Relocatee in Substandard Unit (if applicable) (8-G)
	R	(*) Applicable claim form (8-H, 8-I, 8-J, or 8-K)
	R	(*) Applicable claim form (8-L or 8-M)
	R & B	(*) Letter of Acknowledgment for Services and Payments Rendered (8-N)
	R & B	Follow-up contact
NOTES:		

FOR RESIDENTIAL RELOCATIONS COVERED BY THE UNIFORM RELOCATION ACT			
Monthly Housing Costs for : Acquired Dwelling **[ ]** Replacement **[ ]**			
TYPE OF PAYMENT Moving Expenses	**(*) AMOUNT CLAIMED**	**(*) APPROVED**	**(*) DATE PAID**
Actual			
Fixed			
Replacement Housing Payment			
Homeowner (180-day)			
Rental Assistance (90-day)			
Down Payment (90-day)			

HOUSEHOLD CHARACTERISTICS: (Use the revised ethnic and racial categories required by HUD See Chapter 5, CDBG Manual and Exhibit 5-E.)

6. Household Characteristics: (The new HUD/OMB data collection requirements that were announced December, 2002 were incorporated into CDBG Manual's revised *Exhibit 5-E*, Direct Benefits Data, and also into CDBG Project Monitoring Guide.)

a. **Family size**: _____

b. **Ethnicity:** (select only one)
- **[ ]** Hispanic or Latino
- **[ ]** Not Hispanic or Latino

c. **Race:** (select one or more)
1. White
2. Black or African American
3. Asian
4. American Indian or Alaskan Native
5. Native Hawaiian or Other Pacific Islander
6. American Indian or Alaskan Native *and* White
7. Asian *and* White
8. Black or African American *and* White
9. American Indian or Alaskan Native *and* Black or African American
10. Other Multi-racial (balance of individuals reporting more than one race)

d. **Other:**
- **[ ]** Female head of household
- **[ ]** Elderly (over 62)
- **[ ]** Handicapped (nature of handicap): _____

e. **Income Data:**
Gross annual income of household: $_____

FOR BUSINESS RELOCATIONS COVERED BY THE UNIFORM RELOCATION ACT

NOTE: All items preceded by an asterisk (*) require documentation in the relocation file.

TYPE OF PAYMENT Moving Expenses	**(*)** AMOUNT CLAIMED	**(*)** APPROVED	**(*)** DATE PAID
Actual			
Fixed			

RELOCATION CASE REVIEW -- Handbook 1378 (HUD's Real Estate Acquisition and Relocation Policy and Guidance) is currently being updated (July, 2007). For the most current version of these checklist items, see HUD Relocation Handbook 1378 http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm

This section of the monitoring checklist will be updated when the HUD 1378 Handbook revision is complete.

Owner **[ ]** Tenant **[ ]**		**YES**	**NO**	**DATE**	**AMOUNT**
Name:					
Address:					

Date of verification of property ownership				
	YES	**NO**	**DATE**	**AMOUNT**
Did owner apply for rehabilitation funds?				
Date property was identified as unsuitable for rehab				
Reasons:				
Was photo documentation of condition retained?				
Monthly housing cost, including mortgage, taxes and insurance, or rent, plus utilities				
Was property acquired by Grantee:				
Date of temporary relocation of residents				
Date of SHPO clearance of demolition				
Date of demolition of structure:				
Date household moved into replacement dwellings				
Address, if different from above				
Did Grantee certify replacement dwelling as suitable				
Describe replacement dwelling.				
Monthly cost of replacement housing, including mortgage, taxes and insurance, or rent, plus utilities:				
Amount of payment for replacement housing:				
Amount of temporary relocation or other expenses paid:				
Is proof of receipt of payment in file?				
Describe method of securing the improvements to prevent sale or moving of replacement dwelling:				

I. CONSTRUCTION MANAGEMENT

1. CONSTRUCTION CONTRACT PROCUREMENT PROCESS

… For construction contracts not already reviewed by MDOC/CDBG staff, use Exhibit 9-C, Checklist of Required Clause for CDBG Construction Contracts, in the CDBG Administration Manual.

a. Project location (County and nearest town):	
b. Description of work:	

c. Names of newspapers used for bid advertising and dates of publication (or attach copies)			
d. Bid opening date:			
YES	**NO**	**NA**	
			e. Were competitive bids obtained through formal advertising for all publicly contracted construction in compliance with 7-5-2301 and 7-5-4302, MCA ? (Required by Montana law for all contracts in excess of $20,000 for the purchase of vehicles, machinery, appliances, equipment or materials of any kind, or $25,000 for construction, repair, or maintenance, in the aggregate.) **Comments:**
			f. Did the Grantee assure contractor affirmative action responsibilities concerning contracting with Disadvantaged Business Enterprises (see Chapter 5, page 5-16 and following)?. **Comments:**

g. List of Bidders (or attach copy of bid tabulation sent to CDBG)		Bid Amount:

h. Were only *registered contractors*' bids reviewed?	Yes [ ] No [}
i. Date contract was awarded:	
j. Name of Contractor(s):	
k. Date of Pre-construction Conference:	

YES	**NO**	**NA**	
			l. Is a copy of the conference minutes on file? **m.** Did the Grantee complete Exhibit 5-J, *Contract Reporting Form*, at the time that this contract was awarded? **n.** (Was 5-J completed for all contracts and subcontracts, including contractors and subcontractors that are not minority owned, exceeding $10,000?) **Comments:**

o. Date of Contractor's Notice to Proceed:	

2. BONDING AND INSURANCE			
YES	**NO**	**NA**	
			a. Is the prime contractor registered as required by 37-71-201, MCA?
			Comments:
			b. For construction contracts over $100,000, did the contractor(s) meet the requirements for: 1) Bid bond equal to 10% of bid price?
			Comments:
			2) Performance bond equal to 100% of contract price? **Comments:**
			3) Payment bond equal to 100% of contract price?
			Comments:
3. CONTRACT DOCUMENTS			
			1. Was the contract bid document reviewed by MDOC/CDBG to verify that all proposed construction work was appropriate and eligible for CDBG funding?
			Date of Review: **Reviewed By:** **Comments:**
			2. Was firm fixed-price or lump sum compensation used? **Comments:**
4. CHANGE ORDERS			
			a. Have any change orders been issued for the project?
			Comments:
			b. If yes, sample and describe representative change orders.
			Comments:
			c. Did any of the change orders affect the CDBG project budget, scope of work or construction schedule?
			Comments:
			d. If yes, did the change order(s) receive prior review and approval by appropriate agency?
			Comments:

CHANGE ORDER SAMPLE NUMBER ONE	
a) Date:	
b) Amount:	
c) Purpose:	
d) Contractor:	
e) Who approved the change order?	
f) Does it appear that the cost and purpose of the change order were reasonable?	
g) How was the change order funded?	

CHANGE ORDER SAMPLE NUMBER TWO		
a) Date:		
b) Amount:		
c) Purpose:		
d) Contractor:		
e) Who approved the change order?		
f) Does it appear that the cost and purpose of the change order were reasonable?		
g) How was the change order funded?		

J. INDIVIDUAL HOUSING REHABILITATION FILE REVIEW (IF APPLICABLE)

Copy this section and review a sample of the individual housing rehabilitation files.

1. Name of property owner:

2. Address of property rehabilitated:

3. Address of owner, if different:

4. Date of application for assistance:

5. Type of housing unit assisted:

Owner-occupied **[ ]** Tenant-occupied **[ ]**

Single family unit **[ ]** Mobile home **[ ]** Multiple family units **[ ]**

(# for each type): ___

6. **Household Characteristics**: See CDBG Manual Exhibit 5-E and Chapter 5 of the CDBG Manual. New HUD/OMB data collection requirements were announced December, 2002 and were incorporated into CDBG Manual's Exhibit 5-E (Direct Benefits Data) and also into this CDBG Project Monitoring Guide.

Grantees are required to request this information, but cannot require it if the request is refused. If the information is not provided by the household being assisted, the Grantee is asked to provide an estimate

a. **Family size**: _____

b. **Ethnicity:** (select only one)
- **[ ]** Hispanic or Latino
- **[ ]** Not Hispanic or Latino

c. **Race:** (select one or more)
1. White
2. Black or African American
3. Asian
4. American Indian or Alaskan Native
5. Native Hawaiian or Other Pacific Islander
6. American Indian or Alaskan Native *and* White
7. Asian *and* White
8. Black or African American *and* White
9. American Indian or Alaskan Native *and* Black or African American
10. Other Multi-racial (balance of individuals reporting more than one race)

d. **Other:**
- **[ ]** Female head of household
- **[ ]** Elderly (over 62)
- **[ ]** Handicapped (nature of handicap): _____

7.			**Income Data** **a.** Gross annual income of household: $_____
YES	**NO**	**NA**	
			b. Does this meet LMI eligibility requirements? **Comments:**
			c. Was the income verified? Describe how the income was verified: **Comments:**
			d. Was this housing unit eligible? **Comments:**
			1. Is this housing unit located within project area? **Comments:**
			2. Was the property ownership verified? **Comments:**
			3. Was the property value determined? Value of property: $ _____ **Comments:**
			4. Was a credit check conducted? **Comments:**
			5. Was a title search conducted? **Comments:**
			6. Did the grantee confirm that taxes were paid and current? **Comments:**
			8. Property Work Write-Up and Bidding
			a. Was the property determined to be substandard and suitable for rehab? **Comments:**
			b. Was a work write-up prepared? Date: _____ **Comments:**
			c. Was a cost estimate included in the work write-up? Amount: $ _____ **Comments:**
			d. Is this a self-help rehab? _____ **Comments:**
			e. If not, how was the work advertised, calling for bids? **Comments:**

YES	NO	NA	
			f. Was an inspection walk through provided for contractors/potential bidders? Date: _____ **Comments:**
			g. List of Bidders: $ Amount Bid: **Comments:**
			h. Is there an official letter of award of the rehab contract? Award date(s): _____ **Comments:**
			i. Name of Contractor(s) selected: _____ **Comments:**
			j. Were the lowest responsible bids awarded? **Comments:**
			10. Securing the Grant or Loan
			a. Type of assistance and amount provided to this household: …Grant **[ ]** Amount: …Low-interest Loan **[ ]** Terms: Amount: …Deferred Loan **[ ]** Terms: Amount: …Other **[ ]** Describe: **Comments:**
			b. Parties to the housing rehab contract? Owner **[ ]** Contractor **[ ]** Grantee as Third Party **[ ]** **Comments:**
			c. Was a property lien filed? When? _____ **Comments:**
			11. Rehabilitation Contractor(s) selected for this rehabilitation work on this housing unit
			a. Name(s) of contractor(s) **Comments:**

YES	NO	NA	
			b. Did the Grantee verify the eligibility of contractor with MDOC? (to assure that the contractor was not debarred and on the Excluded Parties List) **Comments:**
			c. Did the Grantee verify that the contractor was registered? **Comments:**
			d. Is there evidence in the file that the contractor has: 1. liability insurance? **Comments:**
			2. property damage insurance? **Comments:**
			3. Worker's Comp. insurance? **Comments:**
			e. Does the contract list specific work or include the work write-up? **Comments:**
			f. Were all costs reasonable? **Comments:**
			g. Are all required CDBG contract clauses included? **Comments:**
			h. Compliance with Title VII of Civil Rights Act of 1964? **Comments:**
			i. Section 109 compliance? **Comments:**
			j. If lead-based paint (LBP) remediation was involved, were lead-safe work practices followed?
			k. Were the HUD/EPA LBP rules followed (per CDBG Manual Exhibits 2-V, W, X, Y and Z? **Comments:**
			l. Termination clause in the contract? **Comments:**
			m. 1 year guarantee on work in the contract? **Comments:**
			n. Equal Employment Opportunity (Exec. Order 11246 for over $10,000) clause in the contract? **Comments:**

YES	NO	NA	
			o. Are required property standards followed in the contract based on work-write up?: **Comments:**
			p. Section 8? **Comments:**
			q. National Electrical Code? **Comments:**
			r. Uniform Building Code -- for 5 or more units? **Comments:**
			s. Were MDOC mobile home standards followed? **Comments:**
			12. <u>Permits</u>
			a. Are required permits on file? 1. State electrical permit? (NA if Grantee certified) **Comments:**
			2. State plumbing permit? (NA if Grantee certified) **Comments:**
			3. State mechanical permit? (NA if Grantee certified) **Comments:**
			b. Name of electrician: _____ Is electrician licensed? **Comments:**
			c. Name of plumber: _____ Is plumber licensed? **Comments:**
			13. Change Orders
			a. Were any change orders issued? **Comments:**
			b. If change orders were issued, select a sample and describe each:
			<u>Change Order -- Sample Number 1</u>: Amount: Purpose: Does it appear cost and purpose of the change order are reasonable? (Attach further explanation in notes if necessary.) **Comments:**

			Change Order – Sample Number 2: Amount: Purpose: Does it appear cost and purpose of the change order are reasonable? (Attach further explanation in notes if necessary.) **Comments:**

14. Inspections prior to Disbursements

a. Are inspections made prior to disbursements?

	Local inspection dates	Electrical/plumbing inspection dates	Disbursements Amounts	Disbursements Dates
b. Initial	_____	_____	_____	_____
c. Interim	_____	_____	_____	_____
d. Final	_____	_____	_____	_____

Comments:

YES	NO	NA	
			e. Were all lien waivers obtained? **Comments:**
			f. Does the Grantee do a follow-up contact with homeowner and/or tenant(s) after completion of work to determine the homeowner's satisfaction with the work? **Comments:**
			15. Affordability
			a. For **owner-occupied, single family units**, how was the **affordability of the rehab assistance** determined? **Comments:**
			b. For **tenant-occupied single family housing**: -- 1. Describe the contract clause for assuring initial LMI occupancy: -- 2. Will rent be increased after rehab? (Period of affordability clause? See "d" below.)

YES	NO	NA	
			c. For **multiple family rehab**: -- proposed monthly rents: _____ -- total # units: ____. # occupied by LMI households: _____ -- local definition of "affordable rent"? _____ _____ _____ _____
			d. Describe the contract clause for requiring **affordable rents**.
			e. Who will be responsible for monitoring for compliance with the "affordable rents" contract clause over the long-term?
			f. How will this be assured?
			g. Describe the contract clause for **assuring initial occupancy by LMI residents:**
			h. If this involves a loan, describe any special terms of the loan.
YES	**NO**	**NA**	**16. Financial Management**
			a. Date rehab contract was signed: _____ Amount: $ _____ b. Date that any escrow funds were drawn from DOC: Amount $ _____ c. Was an escrow account established (CDBG funds drawn) after the rehab contract was signed? **Comments:**
			d. Was the rehab work completed and accepted within 180 days of the signing of the rehab contract? **Comments:**
			e. If the escrow account is interest bearing, is the interest, less any service charges, remitted to HUD? **Comments:**

YES	NO	NA	
			f. If a loan, who is responsible for periodically reviewing the file to ensure compliance with the loan agreement? **Comments:**
			g. Has a monthly amortization table been established? **Comments:**
			h. Has the contract been reviewed or scheduled for review at a later date to determine whether the recipient of a loan is current with the repayment schedule? **Comments:**
			i. Is the recipient current with the repayment schedule? **Comments:**
			j. If not, how will the delinquency be resolved?
			17. Inspection of Property. Review Inspection Report. If possible, site visit and interview of beneficiary householders.
			a. Does rehab work conform to contract, including change orders? **Comments:**
			b. Do costs and work items appear reasonable and eligible? **Comments:**
			c. Is construction quality acceptable? **Comments:**
			d. Is beneficiary satisfied? **Comments:**

K. ECONOMIC DEVELOPMENT ADMINISTRATION (CDBG-ED PROGRAM)

See Chapter 8 of the CDBG Grant Administration Manual

YES	NO	NA	
			1. Does the Grantee have a system in place to periodically review the assistance agreement(s) between the local government and the assisted entity to ensure compliance with conditions contained in the agreement? **Comments:**
			2. Is the system being used effectively? **Comments:**
			3. Were changes to the assistance agreement between the local government and the assisted entity authorized by DOC? (Compare the agreement approved by DOC with the one in the Grantee files.) **Comments:**

YES	NO	NA	
			4. Has an account been established to record loan repayments? **Comments:**
			5. When is the first payment due? _____
			6. Have there been any delinquent payments? **Comments:**
			7. Is the Grantee maintaining records to document that the entity(ies) being assisted is substantially achieving the hiring goal for retention or creation of full-time equivalent jobs for low and moderate income persons that was proposed in the Grantee's final hiring and training plan approved by DOC? (Documentation must include the number and description of the jobs created or retained and income data for the persons filling those positions.) **Comments:**
			8. Did the Grantee establish hiring guidelines that contain the following elements: a. Current section 8 income guidelines? **Comments:**
			b. Recipient eligibility verification? **Comments:**
			c. Job application procedures? **Comments:**
			9. What other sources and amounts of financing are involved in the project? **Comments:**
			10. Are CDBG funds being matched by the sources and the amounts proposed in the applications? **Comments:**

YES	NO	NA	
			11. **Are Davis-Bacon wage rates involved in the project?** Describe the project components that involve Davis-Bacon wage rates: If the Grantee is constructing public facilities in support of the economic development project with publicly contracted labor, complete the Construction Management and Construction Contract Review portions of this monitoring guide in *Section I*. Complete the Labor Standards Compliance Section under Section F of this monitoring guide if Davis-Bacon is involved in private contracts for the project. **Comments:**
			12. On-site visit of assisted entity: a. Does the project and project area appear to be the same as proposed in the application? **Comments:**
			b. Does the visible progress match that represented in the progress report submitted with the most recent drawdown? (For example: construction, equipment installation, relocation, rehabilitation, etc.) **Comments:**
			c. Are major items purchased with CDBG funds available for visible inspection? **Comments:**
			List major items checked: Do they appear to be the same as proposed? **Comments:**

YES	NO	NA	
			d. Does the business appear to be active and conducting business as would be expected? (For example: are shipments coming or going, are workers on-site, inventory stockpiled, etc.) **Comments:**
			e. Does the inventory on-site compare in quantity, quality, age, etc. to that described in the business plan? **Comments:**
			f. Has the Grantee been monitoring the project effectively? (For example, is there evidence on file that on-site visits have been conducted or review of hiring and financial reports has occurred.) **Comments:**

L. Project Closeout and Audit Review

1. PROJECT CLOSEOUT (See Chapter 13, CDBG Manual)

YES	NO	NA	
			1) Has the project been monitored? ▸ Check the monitoring letter (date: _____) for any unresolved issues such as findings or compliance issues. (They should be resolved before proceeding.) **Comments:**
			Date Monitored:
			2) Is there any pending litigation or disputes involving this project? ▸ If there is a lawsuit or ongoing dispute involving the Grantee, contractor(s) or professional(s) in conjunction with this project, a project closeout cannot be completed -- check with the CDBG Program Manager before proceeding any further with closeout work. **Comments:**
			3) Grant recipients must follow the directions in Chapter 13, Project Closeout, for the project completion report instructions.
			Date MDOC/CDBG Received Project Closeout Report: **Comments:**

YES	NO	NA	
			4) Are the following forms and required narrative completed: a) ■ **Exhibit 13-A, Step 5** ▸ Narrative responses and/or documentation given to address each sub-point under Step 5 as applicable, including: ▸ Program Income Plan; ▸ Any labor standards compliance actions; ▸ Inventory of property costing $5,000 or more acquired with CDBG funds; ▸ Copy of engineer or architect's substantial or final completion report; ▸ Narrative describing relationship of project to CDBG objectives; ▸ Narrative of citizen comments regarding the project and actions to address them; ▸ Any comments or suggestions on CDBG policies and procedures. **Comments:**
			b) ■ **EXHIBIT 13-B *Final Performance Report*** ▸ Check Proposed Accomplishments against Actual Accomplishments & Compare this to Scope of Work in Grantee's Application. **Comments:**
			c) ■ **EXHIBIT 13-C.1 *Certification of Completion, Final Status of Funds Report*** ▸ This should reflect the Grantee's last expenditures. ▸ Call Management Services to check account balance. ▸ Check grant amounts expended to balance remaining against the last drawdown. ▸ Compare balance to the most current contract budget. **Comments:**
			d) ■ **EXHIBIT 13-C.2 *Conditional Closeout Certification*** ▸ Make sure these have been signed by the Chief Elected Official. **Comments:**
			e) ■ **EXHIBIT 13-C.3 *Final Closeout Certification*** ▸ Make sure these have been signed by the Chief Elected Official. **Comments:**
			f) ■ **EXHIBIT 13-E *Contract Reporting Form*** ▸ Make sure contractors and subcontractors are listed. **Comments:**
			g) ■ **EXHIBIT 13-F *Indirect Benefits Reporting Form*** ▸ Check this against Benefit to LMI information in original application. **Comments:**

YES	NO	NA	
			h) **EXHIBIT 13-G *Calculation of Funds Benefiting LMI*** ▸ Check this against Benefit to LMI Table in the original application. The amount in the closeout report should be the same as or greater than what was proposed in the application. ▸ Check occupancy requirements if project was for new housing. **Comments:**
			5) <u>Are there any issues of concern with the above requirements</u>?
			6) Are there are any remaining unexpended funds at the time of final closeout? ▸ If "yes", what is the amount to be reallocated? **Comments:**
			AMOUNT REALLOCATED:
			7) Amount to be reserved for audit? ▸ This amount will usually be requested with the Grantee's final draw. **Comments:**
			AMOUNT FOR AUDIT:
			8) Are there any funds not authorized for expenditure that need to be recaptured? **Comments:**
			AMOUNT NEEDED TO BE RECAPTURED:

2. AUDIT REVIEW (*See Chapter 14, CDBG Manual*)

If there is no copy of the audit in the project file, obtain one from Local Government Services Bureau of the Montana Department of Administration (Phone: 841-2907).

1) List the state fiscal years in which CDBG funds have been expended and the total amount drawn down by the Grantee for each fiscal year, according to MDOC records:

<u>Fiscal Year</u>	<u>Amount</u>
TOTAL:	

YES	NO	NA	
			2) Has an audit been performed for the project (or is one scheduled)?
			3) List the fiscal years covered or to be covered by an audit:

	Audit Date:	Fiscal Year(s) Covered:
1.		
2.		
3.		

YES	NO	NA	
			4) At the time of closeout, have all funds been audited, and has the CDBG Program Specialist reviewed all audits for this project?
			5) Based on audit information, if the project still requires an audit, then prepare a *conditional closeout* until a final audit on all expended CDBG funds has been received.
			Projected Date of Final Audit:
			6) Are there any unresolved findings or noncompliance issues with applicable laws and regulations remaining from the last audit completed for this project?
			7) Are there any issues of concern concerning the project's audits?

* For Findings, check (1) Auditor's Schedule of Federal Financial Assistance and (2) Report on Compliance with Laws & Regulations related to federal financial assistance problems.
* NOTE: Ignore any references to drug free workplace -- this is not a HUD requirement.
* If the Grantee receives less than $25,000 of combined federal financial assistance in a fiscal year during the term of the project, the CDBG funds do not have to be audited according to A-128.

3. Program Income			
YES	**NO**	**NA**	
			1) Will program income be received after closeout? If "yes," the Grantee should has to adopt a program income plan and set up acceptable procedures for the accounting and administration of the program income before the project can be closed out by MDOC. **Be sure program income plan has been approved by MDOC.**

			2) Are there any unexpended program income funds remaining at closeout? If "yes," inform the Grantee in the closeout letter about Title 1 requirements applicable to unexpended program income received before and after closeout.
			3) Does the Grantee have any other open CDBG projects? If "yes," program income should be used from this project for the other open project, unless there is a dedicated RLF.

PROGRAM INCOME PLAN/REVOLVING LOAN FUND CHECKLIST			
FOR PROJECT CLOSEOUT			
The Department of Commerce's decision to permit the retaining of Program Income or the development of an RLF will be determined on the adequacy of the proposed program income plan (P.I.P.) For the use and administration of The program. See pages 2-8 of MDOC's Program Income/RLF Manual and Chapter 4 of the CDBG Grant Administration Manual for P.I.P. requirements. The following elements should be included or addressed in the Program Income Plan			
1. FOR CDBG PROJECTS FUNDED 1992 AND PRIOR, AFTER PROJECT CLOSEOUT			
YES	**NO**	**NA**	a. Provisions of Title I will not apply, but a minimum of 51% of the funds must be used for activities that benefit low and moderate income (LMI) persons. Program income must be used for CDBG eligible activities.
2. FOR CDBG PROJECTS FUNDED 1993 AND LATER, AFTER PROJECT CLOSEOUT			
			a. Maximum 18% for administration and 82% for activity per year
			b. 70% of the activity expenditure in any year would have to benefit 51% LMI. The remaining 30% could be used for any CDBG eligible activity.
YES	**NO**	**NA**	c. For any project funded with program income or RLF money, Title I regulations apply. If less than $25,000 of program income is received in any year, these funds are exempt from Title I requirements. However, the funds must benefit 51% LMI and be eligible for funding under the CDBG program.
3. FOR ALL PROJECTS (FUNDED BEFORE AND AFTER 1992)			
YES	**NO**	**NA**	a. Eligible activities as listed under Title I of the Housing and Community Development Act as amended. See the appendix of the Program Income/RLF Manual, or Section 105(a) of Title I of the Housing and Community Development Act of 1974, as amended through October 28, 1992.
			b. Description of activities to be funded by program income.
			c. Eligible types of loans.
			d. Loan financing policies: minimum and maximum dollar amounts, terms, rates of interest, policies for restructuring loans.
			e. Description of the goals and objectives of the plan.

YES	NO	NA	
			f. Description of eligible applicants for the funds.
			g. Loan review committee.
			h. How projects are to be evaluated/Project Selection and Approval Process. Establish criteria and procedures for reviewing and approving loans, including how needs are justified and prioritized, who the beneficiaries are, etc., the type of credit and financial analysis for evaluation.
			i. How loans will be secured and serviced.
			j. Description of the accounting and reporting procedures for the funds.
			k. Evidence that the governing body has approved the Program Income Plan

***CDBG's Program Income Plan approval language**:*

We have approved the Program Income Plan which allows the local government to retain program income. All program income received after closeout of a CDBG project must be distributed to an appropriate revolving loan fund or program income account. Because the DOC has ultimate responsibility for the program income retained and used at the local level, it is required to ensure that such program income is used in a manner consistent with CDBG requirements. The DOC has instituted a Grantee reporting process. This will require that the Grantee prepare a special report for RLF and individual loan funds. These reports must be filed with the DOC twice a year, at the end of each December and June. The first report is due no later than January 31 and the second no later than July 30. If you have a system in place please send that. Otherwise, see MDOC's Program Income/RLF Manual, use the form enclosed, or call the CDBG program for guidance.

Project activities funded from program income generated from projects funded after 1992, will be subject to Title I regulations under the Housing and Community Development Act as amended. Title I regulations will not apply where less than $25,000 of program income is retained in any year.

NOTE: Unless program income is dedicated to an ED RLF, all program income received prior to a CDBG project closeout must be distributed back to the corresponding open project fund. Such program income must be added to the funds committed to the project and used for these activities before a Grantee can request an additional drawdown of funds from its project account. The program income will be accounted for and reported on as part of the financial transactions of the CDBG project.

4. CDBG's Project /Contract Closeout Letter			
YES	**NO**	**NA**	
			1) Prepare a closeout letter. The closeout letter will either be a conditional or final closeout.
			a) Conditional Closeout Letter ▸ All required CDBG closeout forms and narrative completed. ▸ Certificate of completion from engineer or architect. ▸ Reference the date of monitoring in the closeout letter. ▸ Final audit scheduled.
			b) Final Closeout Letter ▸ The project can be finally closed-out if all expended CDBG funds have been audited and the project has been monitored. ▸ Final status of funds report and ▸ Include a statement that all CDBG-related records must be retained for four (4) years after final project closeout. 24 CFR 570.502(a)(16) – on the web at http://edocket.access.gpo.gov/cfr_2004/aprqtr/pdf/24cfr570.502.pdf)
			2) Are there any concerns regarding completing a conditional or final closeout for this project?

5. Closeout Follow-up			
YES	**NO**	**NA**	
			1) Update MDOC's in-house records: a. Project closeout tracking sheet (WORD) b. Project draws tracking sheet (Excel) c. Program Specialist's project tracking sheet (WORD) d. Consolidated project tracking sheet (Excel)
			2) Notify MDOC's Management Services Division that the project has been closed out. (Give a copy of the closeout letter sent to Grantee to Management Services.)

CHAPTER 12 -- PROJECT CLOSEOUT

I. OVERVIEW 12-2
II. GRANTEE PROJECT CLOSEOUT RESPONSIBILITIES 12-2
1. PREPARE A PROJECT COMPLETION REPORT 12-2
2. DETERMINE FINAL AUDIT REQUIREMENTS 12-3
3. COMPLETE CLOSEOUT FORMS AND CERTIFICATIONS 12-3
A. Procedure if Organization-Wide Audits Are Required 12-3
B. Procedure if Separate Project Audits Are Required 12-4
C. Program Income 12-5
D. Closeout Exhibits 12-6
EXHIBITS 12-7

CHAPTER 12

PROJECT CLOSEOUT

I. OVERVIEW

This chapter describes the three steps required to closeout a CDBG project funded through the State CDBG Program:

A. Completing a **Project Completion Report**.

B. Determining and meeting the **Project Audit Requirements**.

C. Completing the **Closeout Forms and Certifications**.

"Project Closeout" is the process by which MDOC determines that all applicable administrative actions and all work required by the grant have been completed in accordance with the terms and conditions of the CDBG contract.

All of the information needed to complete the closeout requirements should exist within the project files. The ease with which grant recipients can complete the closeout requirements usually depends on the extent to which the grantee has maintained accurate and up-to-date records and files.

- **Quarterly reports are not required after the Project Completion Report has been submitted to MDOC.**

II. GRANTEE CLOSEOUT RESPONSIBILITIES

1. PREPARE A PROJECT COMPLETION REPORT

A. <u>Projects Other Than Planning Grants</u>

Within 60 days following the completion of the CDBG-funded project activities and after all funds except for the final closeout audit are expended, grant recipients must submit a Project Completion Report to their CDBG Program Specialist**.**

The instructions for completing the report are provided in **the exhibits**.

The Project Completion Report should consist of a narrative with charts and tables (where possible) to summarize information and it must provide all of the information required, including (see exhibits):

- progress on each funded activity described in the grant contract;
- the extent to which the completed activity served to accomplish the state and national program objectives cited in the application;
- the extent to which program benefits were provided to low and moderate income persons and members of protected groups;

- local efforts to encourage fair housing, equal employment, and/or business opportunities (Section 3 compliance) through the expenditure of CDBG dollars;

- compliance with Davis-Bacon labor provisions; and

- any other evidence of program performance, including letters from assisted recipients or other citizen comments.

MDOC's CDBG staff will review the Project Completion Report and respond within 90 days.

MDOC may conduct a final on-site monitoring visit prior to project closeout. This visit may be waived if the project had been previously monitored and found to be in substantial compliance.

B. CDBG-ED Planning Grants

Within 60 days following the completion of the CDBG-ED funded planning grant-related activity and after all funds are expended, grant recipients must submit **one** copy of the CDBG-ED funded activity (as outlined in the MDOC contract) and a narrative which includes descriptions of the following: **how planning grant activity was completed, how funds were spent and how planning grant objectives were met.**

C. CDBG Public Facilities and Housing Planning Grants

Within 60 days following the completion of the CDBG funded planning grant-related activity, grant recipients must submit the final request for reimbursement. One copy of the final CDBG funded product (as outlined in the MDOC contract) must be submitted with the draw accompanied by appropriate documentation, including invoices.

2. DETERMINE FINAL AUDIT REQUIREMENTS

When the project reaches the closeout stage, the grantee must determine which audit option for the project -- either an organization-wide audit or separate audit -- applies to their project. This is done by compiling data on the total amounts and types of federal financial assistance funds received by the governmental entity during the term of the CDBG project). **For a detailed explanation of audit thresholds and requirements, allowing you to determine which type of audit you must complete, please see Chapter 4, Financial Management .**

3. COMPLETE CLOSEOUT FORMS AND CERTIFICATIONS

A. Procedure for Projects Required to Have Organization-Wide Audits

Those CDBG projects which find that they must comply with the Single Audit Act and the provisions contained in OMB Uniform Guidance (2.CFR.200) and compliance supplements (and conduct an organization-wide audit) must:

1) request conditional closeout approval from MDOC;

2) submit Certification of Completion and Final Status of Funds Report for CDBG funds **and** Certification of Completion and Final Status of Funds Report for all other project funding (see exhbits); and

3) provide MDOC the date of the next organization-wide audit.

4) **All audits must comply with the audit requirements referenced above in 2 (Determine Final Audit Requirements) and explained in the Financial Management Chapter**

A reasonable amount of the unexpended CDBG funds will be reserved by MDOC from the balance remaining after all activities are completed in order to pay the percentage of the total audit cost of the next organization-wide audit that is applicable to the CDBG project.

After the required project is audited, the Final Closeout Certification must be resubmitted (with a corrective action plan in response to the audit, if applicable).

MDOC will review this certification report and **will approve a final closeout if all documents are acceptable and all adverse findings in the audit report are resolved.** The grantee must provide information necessary to determine the cost of the audit that was conducted.

If final closeout has been approved, MDOC will release funds equal to the audit cost to the grantee. Any remaining CDBG funds will be retained by MDOC. If insufficient funds exist to cover the final audit cost, the grantee must pay the difference.

If the computation of the grant balance indicates that drawdowns exceeded actual program expenditures, MDOC will require the grantee to reimburse the State the excess amount.

For any unsettled third party claims against CDBG funds, the grantee must resolve the claims and submit a revised 13-C certification report.

- **Records retention after final closeout is approved by MDOC:** All records related to grant activities are to be available on request and need to be kept by the CDBG grantee for four years after the date of final closeout approval by MDOC. See ***Final Closeout Certification in the exhibits.***

B. Procedures for Projects Required to Have Separate Project Audits

Grantees which are found to be **exempt** from the Single Audit Act and from the provisions contained in OMB Uniform Guidance (2.CFR.200) (by means of a review by the grantee of the total amounts and types of federal financial assistance funds received by the governmental entity during the term of the CDBG project) can arrange for a separate audit through the MDOC Local Government Services Bureau.

All audits must comply with the audit requirements referenced above in 2 (Determine Final Audit Requirements) and explained in the Financial Management Chapter.

After the required separate project audit is completed, the grantee can submit the Certification of Completion and Final Status of Funds Report **(see exhibits)** and can include the audit cost in the total funds expended. This report must be submitted with original signatures to the project's CDBG Program Specialist for approval. After review and approval, the MDOC will then release remaining funds equal to the audit cost to the grantee. Any remaining balance

will be retained by MDOC. If insufficient funds exist to cover the final audit cost, the grantee must pay the difference.

If the computation of the grant balance indicates that the project's drawdowns exceeded actual program expenditures, the MDOC CDBG program officer will require the grantee to reimburse the State the excess amount.

For any unsettled third party claims against CDBG funds, the grantee must resolve the claims and submit a revised certificate.

C. Program Income

The **CDBG Program Income and Revolving Loan Fund Manual** (Montana Department of Commerce, January 1996) outlines the standards for accounting for program income related to projects financed in whole or in part with federal grant funds.

"*Program income*" is defined as any income earned by a grantee from CDBG-supported activities, such as repayments of principal and interest to a local revolving loan program for housing rehabilitation.

These program income funds are often received after a project has been completed and closed out and may be retained at the local level (if authorized by the MDOC), to be used for community development activities eligible under the CDBG program. A grantee proposing to retain program income must submit with its application (or with its project management plan), a proposed plan for the ongoing use and financial administration of program income. The Department's decision to permit a grantee to retain program income after closeout will be determined based upon the final plan for the use and administration of program income submitted at project closeout.

If the Department of Commerce authorizes a grantee to retain program income, any program income received after project completion may be treated by the grantee as miscellaneous non-CDBG revenue. *There is one exception to this rule:* In the event that a community is a recipient of CDBG funds at a later date, HUD regulations require that program income from an earlier CDBG project be expended on activities under the new CDBG project before the community can request funds from its new grant.

Because the MDOC has ultimate responsibility for the program income retained and used at the local level, it is required to ensure that such program income is used in a manner consistent with CDBG requirements. To meet this responsibility, **the MDOC has instituted a grantee reporting process concerning program income, as follows:**

> **MDOC requires that each local government which is a CDBG grantee report the total program income fund's activity for the fiscal year July 1 to June 30.**
>
> **This applies to projects funded with 1993 and later CDBG program funds that have been closed out and/or are receiving loan repayments on a project that is not open. The report is due on August 15 of each year.**
>
> **HUD requires that states continue to report a local government's program income balance after a project has been closed out.**

For local government grantees that have economic development CDBG projects, an additional report, the Loan Portfolio Data sheet, must be filed twice a year as of June 30

and December 31 with the Community Development Division. This applies to any project, whenever it may have been funded, that continues to make loan repayments to the local government over the term of the loan.

Communities planning to utilize program income for future CDBG eligible activities must prepare and adopt a **Program Income Plan** and maintain the following records:

- sources of program income, including interest earned;
- dates and amounts of program income deposits and disbursements; and
- the activities funded with program income.

These records must be available for review in the event that the community is selected as a recipient of CDBG funds at a later date.

Chapter 4 of this manual, ***Financial Management***, contains additional information concerning program income and property management. The Montana CDBG Application Guidelines also include a discussion of CDBG program income requirements.

Upon project closeout, using the particular project's name, a separate Special Revenue Fund should be established for loan repayments, #2390 BARS System and #229 Town. A separate fund is established so that at project completion the CDBG fund can be closed, but the loan repayment fund will continue until all loans are repaid.

D. Closeout Exhibits

To get the "area-wide" / "indirect" benefits data from the Census**,** consult the Census and Economic Information Center of the Montana Department of Commerce at http://ceic.mt.gov/:

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CHAPTER 12

EXHIBITS

12-A Project Completion Report Instructions

12-B Final Performance Report

12-C Certification of Completion and Final Status of Funds Report;
Conditional Closeout Certification;
Final Closeout Certification

12-D Direct Benefit Summary Data

12-E Contract Reporting Form

12-F Indirect Benefits Reporting Form

12-G Calculation of CDBG Funds Used to Benefit Low and Moderate Income (LMI) Households and Citation of National Objectives

12-H Section 3 Summary Report Form

EXHIBIT 12-A
PROJECT COMPLETION REPORT: INSTRUCTIONS

Please consult with CDBG staff as you work on completing this report.

STEP 1: COMPLETE EXHIBIT 12-C ("Final Status of Funds Report" and the appropriate Certification Form – either Conditional or Final).

Go to **Exhibit 12-C**. Complete:

1) **Part A,** "Statement of Cost" (page 12-C.1) of the Certification of Completion and Final Status of Funds Report;
2) **Part B,** "Unpaid Costs and Unsettled Third Party Claims" (page 12-C.2); and
3) **Part C,** "Grantee Certification" -- page 12-C.3 (Conditional) or 12-C.4 (Final).

The grantee's Chief Elected Official or Executive Officer must sign all certifications. Attach the appropriate forms to the front of the Project Completion Report.

STEP 2: COMPLETE THE "FINAL PERFORMANCE REPORT" -- EXHIBIT 12-B.

For each activity (on the list labeled "Activity Key") in **Exhibit 12-B** that pertain to your project provide the information requested in columns A through G, as explained below.

2.A -- Column A -- ACTIVITY -- Use the **"Activity Codes**" listed at the bottom of **Exhibit 12-B**. In order for MDOC to prepare annual performance reports in compliance with HUD requirements, it is necessary that grantees provide performance-reporting information using the activity types specified by HUD. Grantees must group project activities from the project budget form into the activity types specified by HUD.

2.B -- Column B -- AMOUNT -- Enter the amount, including program income, if any, used for each activity.

2.C -- Column C -- PURPOSE -- List the general purpose for which the activity was funded, using the "**Purpose Codes**" listed at the bottom of **Exhibit 12-B**. (Note: Information on Administrative Activity needs to be entered only in columns A, B, and C.)

2.D -- Column D -- NATIONAL OBJECTIVE -- Check the appropriate column for each activity. Choose only one national objective for each activity. Use the "**National Objectives Codes**" listed at the bottom of **Exhibit 12-B**. The National Objectives code selected reflect the same national objectives as those cited in the original application for CDBG assistance. The National Objectives codes are also listed below. Consult with your CDBG liaison to select a code.

LMA: Low/Moderate Income Area
LMC: Low/Moderate Income Limited Clientele
LMH: Low/Moderate Income Housing
LMJ: Low/Moderate Income Job Creation/Retention
LMJFI: Low/Moderate Income Job Creation/Retention, Public Facilities
SBA: Slum / Blight Area Benefit
SBS: Slum / Blight Spot Basis

2.E -- Column E -- PROPOSED ACCOMPLISHMENTS

For each activity, **describe the accomplishments proposed in the grant application and CDBG contract in quantifiable terms, where applicable**. Wherever possible, include the number of persons or households served. For example:

- 15 houses rehabilitated (49 people served);
- 1,050 feet of water pipe installed (150 people in 45 households served);
- 19 full-time equivalent jobs created and 25 retained (120 people in 50 households served).

For those proposed accomplishments which are not easily quantifiable (e.g., achieved compliance with federal standards, or eliminated serious threats to public health), attach a separate narrative sheet and describe what was proposed.

2.F -- Column F -- ACTUAL ACCOMPLISHMENTS

For each activity, **describe the actual accomplishments achieved in quantifiable terms, where applicable, and include the number of persons and households served, where possible.** The terms in Column F should be the same as in Column E (although actual accomplishments may differ). For example:

- 14 houses rehabilitated (45 people in 14 households served);
- 1,050 feet of water pipe installed (150 people in 45 households served);
- 20 full-time equivalent jobs created and 25 retained (125 people in 51 households served).

For those accomplishments which are not easily quantifiable (e.g., achieved compliance with federal standards, or eliminated serious threats to public health), attach a separate narrative sheet and provide a description of what was accomplished and (as needed) a narrative explanation for any differences between the original proposed accomplishments (in E) and the final accomplishments (in F).

2.G -- Column G -- AMOUNTS USED FOR NATIONAL OBJECTIVES -- Enter the total amounts, (including program income but excluding administration) expended for each national objective.

STEP 3:

COMPLETE CIVIL RIGHTS REPORTING FORMS
and
PROVIDE NARRATIVE SUMMARIES

3.A. DIRECT BENEFIT ACTIVITIES (Exhibit 12-D, Direct Benefit Summary Data)

For direct benefit activities such as housing rehabilitation, payment of special improvement district or water meter assessments, relocation, and job creation, attach a completed **Exhibit 12-D (**Direct Benefit Summary Data) to show benefits received by each assisted household. (Computer files for 12-D are available for your use.)

Where more than one page must be filled out in **Exhibit 12-D** to provide the direct benefit information, the grant recipient must provide a tabular summary including numbers and percentages of the total beneficiaries according to the categories included in the exhibit: racial/ethnic category, male, female, handicapped, elderly, etc.
For economic development projects, a reporting form has been included as **Exhibit 8-F** in Chapter 8 (Economic Development) to track and record employment creation and retention and direct benefits data. (Exhibit 8-F may be used by grantees instead of **Exhibit 12-D** *to record direct benefits data for economic development projects.*

3. B. INDIRECT BENEFIT (AREA-WIDE BENEFIT) ACTIVITIES (Exhibit 12-F)

Complete **Exhibit 12-F** (Indirect Benefits Reporting Form).

3.C. CONTRACT REPORTING (Exhibit 12-E)

For all projects with construction contracts of $10,000 or more, attach a completed **Exhibit 12-E** (Contract Reporting Form).

D. "SECTION 3" COMPLIANCE EFFORTS (Exhibit 9-L and Exhibit 12-H)

Complete a summary of **Section 3** results achieved. (Refer to results reported in **Exhibit 9-L**. and then complete **Exhibit 12-H** as a summary report). See Chapters 5 and 9 for information about "Section 3."

STEP 4:

CALCULATE CDBG FUNDS USED TO BENEFIT LOW AND MODERATE INCOME (LMI) HOUSEHOLDS
and
CITE APPLICABLE NATIONAL OBJECTIVES

For each applicable activity listed in the Activity Key in **Exhibit 12-B**, provide a summary of benefits for low and moderate income (LMI) households by following the instructions in **Exhibit 12-G**.

STEP 5: ALSO PROVIDE THE FOLLOWING INFORMATION:

5.A **A copy of the final plan for the use of CDBG Program Income**, if applicable.

5.B **For economic development grants**, provide **documentation of actual accomplishments compared to the hiring goals and timetables specified in the project contract and hiring and training plan**.

5.C **Describe any Labor Standards compliance actions taken** to insure that there are no open-ended action items requiring restitution, escrow of funds or liquidated damages requirements.

5.D **An inventory of property** costing $5,000 or more acquired with CDBG funds, or directly involved with the project if acquired with other funds, and the CDBBG amounts expended for the property.

5.E **A copy of the project engineer's final inspection report** or **letter giving final acceptance of the project completed, if applicable**.

5.F **An assessment of the relationship of the use of the CDBG funds to one of the state objectives** (Appendix C in the CDBG Application Guidelines) contained in your original application for this project.

5.G **A summary of each citizen comment regarding the CDBG project received by the local governing body or the local CDBG project manager should be attached to the Project Completion Report.** The summary should **include the grantee's assessment of the citizen comment and a description of any action taken in response to the comment.**

5.H **Any comments or suggestions you may have that, in your opinion, based on your CDBG project administration experiences, may improve the State CDBG program or project administration for other similar CDBG projects.** Your local perspective on the Montana CDBG Program's policies and procedures would be very helpful for improving the program for future recipients.

Please consult with CDBG staff as you work on completing this report.

EXHIBIT 12-B
FINAL PERFORMANCE REPORT

GRANTEE _____

CONTRACT #MT-CDBG-_____

A	B	C	D	E	F
ACTIVITY (*)	**AMOUNT**	**PURPOSE (**)**	**NATIONAL OBJECTIVE (***)**	**PROPOSED ACCOMPLISHMENTS**	**ACTUAL ACCOMPLISHMENTS**

G. AMOUNTS USED FOR NATIONAL OBJECTIVES

Benefit Low and Moderate Income Persons	
Prevent of Eliminate Slums and Blight	
Meet Urgent Community Development Needs	
TOTAL	

(**) *PURPOSE* CODES

- **ED** -- Economic Development
- **H** ---- Housing/Neighborhood Renewal
- **PF**--- Public Facilities

***** *NATIONAL OBJECTIVE* CODES**

- **LMA**----- Low / Mod Area
- **LMC**----- Low / Mod Limited Clientele
- **LMH**----- Low / Mod Housing
- **LMJ -----** Low / Mod Job Creation / Retention
- **LMJFI** -- Low / Mod Job Creation / Retention, Public Facility
- **SBA**----- Slum / Blight Area Benefit
- **SBS**----- Slum / Blight Spot Basis

(*) *ACTIVITY* CODES

- **01** ----- Acquisition of Real Property
- **03** ----- Public Facilities & Improvements not covered in other 03 codes
- **03E** --- Neighborhood Centers
- **03I** ---- Flood Drainage Improvements
- **03J**---- Water/Sewer Improvements
- **03K** --- Streets
- **04A** --- Clean-up of Contaminated Sites
- **05** ----- Public Services
- **08** ----- Relocation
- **10** ----- Removal of Architectural Barriers
- **14A** --- Rehab Single Unit Residential
- **14C** --- Rehab Public Housing Modernization
- **17** ----- Homeownership Assistance
- **17C** --- Commercial / Industrial Building Acquisition / Construction / Rehab by Grantee / Nonprofit
- **18A** --- Economic Development-Direct Financial Assistance to For-Profit
- **20** ----- Planning
- **21A**- -- General Program Administration

NOTE: ***Contact your CDBG contract liaison to learn which activity codes or category you need to list in reporting on your project.***

CONDITIONAL CLOSEOUT CERTIFICATION

UNPAID COSTS AND UNSETTLED THIRD PARTY CLAIMS

1. Are there any unpaid costs and unsettled third-party claims against the CDBG grant? Yes_____ No_____

   If yes, describe circumstances and amount involved on separate sheets and attach.

2. Estimate the amount of the CDBG portion of the audit cost required for final closeout. $_____

GRANTEE CERTIFICATION

It is hereby certified that all activities undertaken by the Grantee with funds provided under contract #MT-CDBG-_____ have been carried out in accordance with said contract and that:

A. Proper provision has been made by the Grantee for payment of all unpaid costs and unsettled third party claims identified above, all labor standards applicable to this contract have been complied with, and there are, to the grantee's knowledge, no outstanding labor claims;

B. The statements and information contained in this Project Completion Report are true and correct;

C. All records related to grant activities are available on request and will be retained for four years after the date of final closeout approval by MDOC consistent with the requirements set out 24 CFR 570.502(a)(16);

D. CDBG funds were not used to reduce the level of local financial support for housing and community development activities;

E. The project will be or has been audited in accordance with CDBG program requirements in the next audit of the Grantee;

F. It is acknowledged that MDOC retains the right to recover funds for disallowed costs resulting from the final audit;

G. Program income, if any, will be managed and expended according to the adopted program income plan attached to this report and all applicable requirements set out in 24 CFR 85.25 and 24 CFR 570.504;

H. Any real property or equipment acquired with CDBG funds, in whole or in part, during the term of the project, will be managed and disposed of if necessary, according to the applicable provisions 24 CFR 85.31 and 85.32 and 24 CFR 570.505; and

I. The status of funds report represents the correct total CDBG expenditures and budget balances as of this date.

_____	_____	_____
(Date)	(Typed Name and Title of Chief Elected Official or Executive Officer)	(Signature of Chief Elected Official or Executive Officer)

FINAL CLOSEOUT CERTIFICATION

CERTIFICATION OF GRANTEE

It is hereby certified that all activities under taken by the Grantee with funds provided under contract #MT-CDBG-_____ have been carried out in accordance with said contract; and that

A. There are no unpaid costs or third party claims remaining against the CDBG grant, all labor standards applicable to this contract have been complied with, and there are, to the grantee's knowledge, no outstanding labor claims;

B. The statements and information contained in this Project Completion Report are true and correct;

C. All records related to grant activities are available on request and will be kept for four years after the date of final closeout approval by MDOC consistent with the requirements set out 24 CFR 570.502(a)(16).

D. CDBG funds were not used to reduce the level of local financial support for housing and community development activities;

E. A final audit has been conducted on at least 90% of the CDBG funds in accordance with CDBG program requirements and all findings, if any, have been resolved;

F. The status of funds report represents the amounts identified in the audit as being the correct total CDBG expenditures accepted for the project;

G. It is hereby acknowledged that any remaining unexpended balance of funds for the CDBG project under this contract will be retained or recovered by DOC;

H. Program income, if any, will be managed and expended according to the adopted program income plan attached to this report and that all applicable requirements set out in 24 CFR 85.25 and 24 CFR 570.504; and

I. Any real property or equipment acquired with CDBG funds, in whole or in part, during the term of the project, will be managed and disposed of, if necessary, according to the applicable provisions of 24 CFR 85.31 and 85.32 and 24 CFR 570.505.

_____	_____	_____
(Date)	(Typed Name and Title of Chief Elected Official or Executive Officer)	(Signature of Chief Elected Official or Executive Officer)

EXHIBIT 12-C (Part A)
CERTIFICATION OF COMPLETION
FINAL STATUS OF FUNDS REPORT [1]

CHECK APPLICABLE STATUS:	**Name and Address of Grantee**
_____ *Conditional* Approval Request	_____
_____ *Final* Approval Request	_____
MDOC CONTRACT # MT-CDBG- _____-____	_____

Part A. STATEMENT OF COST

Budget Line Item	**Grant Amount Budgeted**	**Grant Expended to Date** [1]	**Balance Remaining**	**Program Income**
Administration:				
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10. **Total Administration Budget**				
Activity Budget:				
11.				
12.				
13.				
14.				
15.				
16. **Total Activity Budget**				
17. **Total Grant Budget**				

Program Income Summary	
Received to Date:	
Expended:	
Program Income Balance	

[1] ***All*** funds except those for the final closeout audit must have been drawn and expended.

EXHIBIT 12-C (Part B)

(Instructions: Include a separate copy of PART B for each non-CDBG funding source involved in the project.)

PART B. STATEMENT OF COSTS: _____ FUNDS

Budget Line Item	Final Amount Budgeted	Expended to Date	Balance Remaining
ADMINISTRATION			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
TOTAL ADMINISTRATION BUDGET			
ACTIVITY BUDGET			
9.			
10.			
11.			
12.			
13.			
TOTAL ACTIVITY BUDGET			
TOTAL BUDGET			

EXHIBIT 12-D: DIRECT BENEFIT SUMMARY

BENEFICIARY NAME AND ADDRESS	ETHNIC CATEGORY (*)	RACIAL CATEGORY (**)	M	F	H	E	FHH	EXTREMELY LOW INCOME, LOW INCOME, OR MODERATE INCOME	# IN HOUSE-HOLD	HOUSEHOLD INCOME	AMOUNT OF ASSIST-ANCE	TYPE OF ASSIST-ANCE
TOTALS												

***(**) RACIAL CATEGORY CODES*:** **1.** White **2.** Black or African American **3.** Asian **4.** American Indian or Alaskan Native **5.** Native Hawaiian or Other Pacific Islander **6.** American Indian or Alaskan Native *and* White **7.** Asian *and* White **8.** Black or African American *and* White **9.** American Indian or Alaskan Native *and* Black or African American **10.** Other Multi-racial (balance of individuals reporting more than one race)

***(*) ETHNIC CATEGORY CODES*:**
HL: Hispanic or Latino **NHL:** Not Hispanic or Latino

***OTHER CODES*:** **M** – Male **F** – Female
H – Handicapped **E** – Elderly (62 and over)
FHH - Female Head of Household

EXHIBIT 12-E

(Exhibit 12-E is the same as Exhibit 9-K and Exhibit 5-J.)

Montana Department of Commerce / CDBG Program – Updated October, 2003

CONTRACT REPORTING FORM – CONTRACT AND SUBCONTRACT ACTIVITY

For contract and subcontract activities of $10,000 or more

Grantee Name			**Date Submitted:**
Contact Person	**Phone**		

(A) Contractor's Montana Registration Number	(B) Amount of Contract	(C) Type of Trade (See codes below)	(D) Business Ethnicity, Racial Category and Gender (See codes below)	(E) Contractor ID Number	(F) Sub-contractor ID Number	(G) Contractor/Subcontractor -- Name and Address				
						Name	Street	City	State	Zip

Trade Codes
1 Construction
2 Education / Training
3 Other

ETHNICITY CODES: HL (Hispanic or Latino), NHL (Not Hispanic or Latino).

***RACIAL CODES*:** 1. White, 2. Black or African American, 3. Asian, 4. American Indian or Alaskan Native, 5. Native Hawaiian or Other Pacific Islander, 6. American Indian or Alaskan Native *and* White, 7. Asian *and* White, 8. Black or African American *and* White, 9. American Indian or Alaskan Native *and* Black or African American, 10. Other Multi-racial

GENDER CODES: WBE (Woman-owned).

EXHIBIT 12-E (Exhibit 12-E is the same as Exhibit 9-K and Exhibit 5-J.)
CONTRACT REPORTING FORM
-- INSTRUCTIONS --

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

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

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

1. **Grantee Name.** Enter the name of the unit of government submitting report of contract/subcontract activity.

2. **Contact Person.** Enter name and phone number of person responsible for maintaining and submitting contract data at respective unit of government.

3. **Date Report Submitted.** Enter date the report is submitted to DOC.

4. **Contractor's Montana Registration Number [Column A].** Enter the contractor's license number.

5. **Amount of Contract [Column B].** Enter the dollar amount of the contract or subcontract. Round the figures to the nearest thousand dollars. If subcontractor ID Number is provided, the dollar figure would be for the subcontract only - not the prime contract.

6. **Type of Trade [Column C].** Enter the numeric code *(1 thru 3)* which best indicates the contractor's/subcontractor's service. If Subcontractor ID Number is provided, the type of trade code would be for the subcontractor only - not the prime contractor. The other category includes supply, professional services and all other activities except construction and education/training activities.

7. **Business Racial/Ethnicity/Gender Code [Column D].** Enter all the appropriate racial, ethnicity and gender codes (listed at the bottom of the form on page 1) that indicate the racial, ethnic and gender background of the contractor/subcontractor. If the Subcontractor ID Number is provided, the code would apply to the Subcontractor - not the Prime Contractor.

8. **Prime Contractor ID Number [Column E].** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of CDBG funds. Note that the Employer's Number must be provided for each contract or subcontract awarded.

9. **Subcontractor ID Number [Column F].** Enter the Employer (IRS) Number of the Subcontractor as the unique identifier for each subcontract awarded from CDBG funds. (When the Subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.)

10. **Contractor/Subcontractor Name and Address [Column G].** Enter the name and address information for each firm receiving contract / subcontract activity. This information needs to be provided only one time on each report for each firm.

EXHIBIT 12-F

INDIRECT BENEFITS (AREA-WIDE BENEFITS) REPORTING FORM

For each applicable activity (of the "Activities" listed in *Exhibit 12-B)*, **which provided *area-wide indirect* benefits,** show the extent to which protected groups (listed in chapter 5 and below) have benefited from the activity by identifying the percent of beneficiaries in the project area and in the grantee's jurisdiction who are in the following categories:

IN THE PROJECT AREA

Ethnic category:

_____% Hispanic or Latino

_____% Not Hispanic or Latino

Racial category:

_____% White

_____% Black or African American

_____% Asian

_____% American Indian or Alaskan Native

_____% Native Hawaiian or Other Pacific Islander

_____% American Indian or Alaskan Native *and* White

_____% Asian *and* White

_____% Black or African American *and* White

_____% American Indian or Alaskan Native *and* Black or African American

_____% Other Multi-racial (balance of individuals reporting more than one race)

Other/Special Status category:

_____% Handicapped

_____% Female Heads of Household

_____% Elderly (Over 62)

_____% Low and Moderate Income

_____% Extremely Low Income (30% and below)

_____% Low Income (50%-31%)

_____% Moderate Income (80%-51%)

IN THE GRANTEE'S JURISDICTION

Ethnic category:

_____% Hispanic or Latino

_____% Not Hispanic or Latino

Racial category:

_____% White

_____% Black or African American

_____% Asian

_____% American Indian or Alaskan Native

_____% Native Hawaiian or Other Pacific Islander

_____% American Indian or Alaskan Native *and* White

_____% Asian *and* White

_____% Black or African American *and* White

_____% American Indian or Alaskan Native *and* Black or African American

_____% Other Multi-racial (balance of individuals reporting more than one race)

Other/Special Status category:

_____% Handicapped

_____% Female Heads of Household

_____% Elderly (Over 62)

_____% Low and Moderate Income

_____% Extremely Low Income (30% and below)

_____% Low Income (50%-31%)

_____% Moderate Income (80%-51%)

EXHIBIT 12-G

CALCULATION OF CDBG FUNDS USED TO BENEFIT LOW AND MODERATE INCOME (LMI) HOUSEHOLDS **AND** *CITATION OF NATIONAL CDBG OBJECTIVES*

Grantees should use the attached form (page12-G.3) to document compliance with two important CDBG requirements:

(a) benefit to low and moderate income persons; and
(b) national objectives.

A. Benefit to Low and Moderate Income Persons

The calculation of benefit to low and moderate income households or persons is a two-stage process.

First, the percentage of benefit to low and moderate income households or persons must be calculated for each activity.

Second, these percentages must be applied to the CDBG funds expended for each activity to get the total number of dollars that benefited low and moderate income households or persons.

Each step in the calculation is described below. Applicants should use the form on page 13-G.3 to describe the total CDBG dollar and percentage benefit that resulted from their projects. ***Households***, ***persons*** **or** ***jobs*** may be used as the basis for the calculation -- *as long as the method selected is* ***consistent*** *throughout*.

1. In Column *A*, *describe the activity by name*, for example, "Housing Rehabilitation." (Do *not* include *administrative* activities -- the activities should be the same as those shown on the appropriate category of the *Activity Key* on *Exhibit 13-B*.)

2. In Column *B*, show *the total number of households (or persons) that the activity served* **or** *the total number of fulltime equivalent (FTE) jobs created or retained*.

3. In Column *C*, show *the number of low and moderate income households (or persons) served by the activity* **or** *the number of jobs created or retained*.

4. In Column *D*, show *the percentage of low and moderate income households (or persons) served by the activity*. (This is derived by dividing the number in Column *C* by the number in Column *B* for that activity.)

5. In Column *E*, show *the total amount of CDBG funds expended for the activity*.

6. In Column *F*, show *the total amount of those funds that were used to benefit low and moderate income households (or persons)*. (This is derived by multiplying Column *E* by the percentage in Column *D*.)

7. At the *bottom of Column E*, show *the total amount of **non**-administrative CDBG funds used* (by adding up the CDBG funds expended for each activity).

8. At the *bottom of Column F*, show *the total amount of funds that were used to benefit low and moderate income households (or persons)* -- by adding up the amount of funds that benefited low and moderate income households for each activity.

9. Determine the *Overall Percent Benefit to Low and Moderate Income Households (or Persons)* -- by dividing the *total of Column F* by the *total of Column E* -- in order to get the total CDBG project benefit to low and moderate income households or persons expressed as a percentage. *Include the percentage at the bottom of the form -- at line H*.

B. National Objectives

The Housing and Community Development Act of 1974 requires all CDBG grantees to declare which of the three national objectives for the CDBG program was served by each activity proposed. *In Column G* ("NATIONAL OBJECTIVE SERVED") on the attached form, please enter, for each one of the following (***L/M, S/B*** *or* ***URG***):

*Enter **"L/M"*** **if the activity principally benefited persons of low and moderate income.** ***L/M*** includes:

LMA: *Low/mod area benefit* -- the service area identified for activities is

primarily made up of low and moderate income households; *or*

LMC: *Low/mod limited clientele benefit* -- activities benefit a limited clientele, at least 51% of which are low and moderate income; *or*

LMH: *Low/mod housing benefit* -- activities that are carried out for the purpose of providing or improving permanent residential structures which will be occupied by low and moderate income households; *or*

LMJ : *Low/mod job creation/retention*: activities designed to create or retain permanent jobs, at least 51% of which will involve the employment of low and moderate income persons; *or*

LMJFI: *Low/mod job creation/retention, public facility/improvement benefit* – activities where a public facility/improvement is undertaken principally for the benefit of one or more businesses that will result in the creation/retention of jobs.

*Enter **"S/B"*** if **the activity principally eliminated slum and blight**. ***S/B*** includes:

SBA: *Slum/blight area benefit*: activities that address the prevention or elimination of slum and blight in a designated area; *or*

SBS: *Slum/blight spot basis*: activities that address condition of blight or physical decay on a spot basis not located in a slum/blight area.

*Enter **"URG"*** **for *Urgent Need***: activities that are designed to alleviate existing conditions of recent origin that pose a serious/immediate threat to the health/welfare of the community, and the grantee is unable to finance the activity on its own nor are other funds available.

CALCULATION OF CDBG FUNDS BENEFITING LOW AND MODERATE (LMI) INCOME HOUSEHOLDS AND CITATION OF NATIONAL OBJECTIVES

A	B	C	D	E	F	G
ACTIVITY DESCRIPTION (Do not include Administrative Activities)	**# OF JOBS CREATED OR RETAINED** *--- Or ---* **# OF HOUSEHOLDS (or PERSONS) THIS ACTIVITY SERVED**	**# OF JOBS CREATED OR RETAINED** *--- Or ---* **# OF *LMI* HOUSEHOLDS (or PERSONS) THIS ACTIVITY SERVED**	**% OF LMI HOUSEHOLDS (or PERSONS) THIS ACTIVITY SERVED**	**AMOUNT OF CDBG FUNDS FOR THIS ACTIVITY**	**AMOUNT OF CDBG FUNDS BENEFITING LMI HOUSELHOLDS (or PERSONS)**	**NATIONAL CDBG OBJECTIVE SERVED**
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
				TOTAL $	***TOTAL $***	

H.
OVERALL PERCENT BENEFIT TO LOW AND MODERATE INCOME HOUSEHOLDS/PERSONS = Total, Column F = _____%

Total, Column E

EXHIBIT 12-H
(identical form is Exhibit 9-J)

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

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

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

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

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

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

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

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

Part II: Contracts Awarded

1. Construction Contracts:

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

2. Non-Construction Contracts:

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

Part III: Summary

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

_____ Attempted to recruit low-income residents through methods such as: ~ Local advertising media, ~ signs prominently displayed at the project site, ~ contacts with community organizations and public or private agencies operating within the metropolitan area (or non metropolitan county) in which the Section 3 covered program or project is located, or ~ similar methods.

_____ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.

_____ Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet definition of Section 3 business concerns.

_____ Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.

_____ Other: Describe below.

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

Form HUD-60002

CHAPTER 13 -- NEIGHBORHOOD STABILIZATION PROGRAM

OVERVIEW 13-2
A. Chapter 1 Project Start-Up 13-3
B. Chapter 2 Environmental Review 13-4
C. Chapter 3 Procurement Standards 13-4
D. Chapter 4 Financial Management 13-4
E. Chapter 5 Civil Rights 13-5
F. Chapter 6 Labor Standards 13-5
G. Chapter 7 Acquisition & Relocation 13-6
H. Chapter 8 Economic Development 13-9
I. Chapter 9 Construction Management 13-9
J. Chapter 10 Housing 13-9
K.
L. Chapter 12 Project Monitoring 13-13
M. Chapter 12 Project Closeout 13-13

EXHIBITS 13-14

CHAPTER 13

NEIGHBORHOOD STABILIZATION PROGRAM

NSP OVERVIEW

For those grantees working specifically on NSP projects, please note that the entire CDBG / NSP *Grant Administration Manual* (GAM) is for the use of the NSP program as well as CDBG. Because most CDBG requirements pertain to NSP, NSP grantees should also be using all the other GAM chapters. All narrative information and exhibits in this manual may be used for the NSP program. However, NSP rules or regulations -- including but not limited to the Housing Economic Recovery Act of 2008 (HERA), implementing HUD regulations, or other rules adopted by the program -- may supersede any of the CDBG rules or regulations set forth herein as narrative or exhibits.

All activities assisted under the NSP program must benefit low, moderate, and middle income households (LMMH). These income levels include those at 120% of the adjusted median income or below. NSP activities can be direct benefit activities in which the individual or household income must qualify (LMMH) or be carried out in an area in which at least 51% of the population meets the 120% (LMMA) limits.

While the GAM contains CDBG specific narrative and exhibits, grantees are encouraged to access the GAM online where nearly all of the GAM exhibits have been modified to specifically reference the NSP program. Your NSP program specialist will provide assistance with any additional modification or question in regard to the applicability of the manual and its exhibits concerning the NSP program.
This chapter of the CDBG / NSP Grant Administration Manual summarizes the key considerations for implementing and carrying out your NSP project, any requirements that apply to both CDBG and NSP will be addressed in the previous chapters of the manual. In other words, please use the GAM chapter's narrative guidance for carrying out the NSP project but use the newly created NSP specific exhibits for the projects documentation.

This NSP chapter has been designed with the user in mind. Each GAM chapter will be discussed to clearly outline where there are updates specific to the NSP. Additionally, following the narrative of this NSP chapter, there are a number of newly created NSP specific exhibits that are solely for the administration of NSP projects.

Please don't hesitate to contact any of the NSP staff for assistance with your NSP grant and this grant administration manual.

A. Chapter 1 Project Start-Up (Updated NSP Guidance)

Please use Chapter 1 of the GAM regarding the key project start up steps for the NSP project. In addition to the steps outlined in chapter 1 NSP has incorporated the following guidance specific to your NSP project. Also, additional chapter 1 start-up exhibits solely for the use of NSP projects are contained after the narrative of this chapter.

I. Definitions

The HUD Notice of October 6, 2008 included the two following definitions.

1. Abandoned. A home is abandoned when mortgage or tax foreclosure proceedings have been initiated for that property, no mortgage or tax payments have been made by the property owner for at least 90 days, AND the property has been vacant for at least 90 days.

2. Foreclosed. A property has been foreclosed upon at the point that under state or local law the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state law or regulations.

The Department's NSP Action Plan has defined vacant property and blighted structure as follows:

1. Blighted Structure.

- Structures that would follow the definition under MCA 7-15-4206 part (a):
  - "Blighted Structure" means a structure that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, that substantially impairs or arrests the sound growth of the city or its environs, that retards the provision of housing accommodations, or that constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare and morals in its present conditions and use by reason of substantial physical dilapidation, deterioration, age, obsolescence, or defective construction, material, and arrangement of buildings or improvements, whether residential or non-residential.
- Units identified as "substantially substandard" or "severely substandard" according to the Point Detraction Guideline utilized in the Montana CDBG Program, Application Guidelines for Housing and Neighborhood Renewal Projects, Appendix L, as follows:
  - Substantially Substandard – Unit appears to need substantial repair. (Rehabilitation may not be cost-effective. Alternative forms of assistance may be more appropriate.)
  - Severely Substandard – Unit appears dilapidated. Demolition and housing replacement should be considered.
  - The definition of "substandard buildings" contained in the latest authorized edition of the International Property Maintenance Code published by the International Code Council. This information is available from the Montana Department of Labor and Industry (MDLI), Building Codes Bureau.
  - Any structure determined to be seriously deteriorated or dilapidated according to a locally adopted Code for the Abatement of Dangerous Buildings or similar ordinance to address the debilitating effects of blight within communities.

2. Vacant Property – Any property that is an unoccupied structure or unoccupied parcel of land upon which no structure(s) are present.

II. Contractual Process

NSP grantees will not receive a grant award for a firm, fixed amount of funds. The obligation-based grant approach will allow projects to be approved in concept; however, the commitment of funds for

project components will only be finalized as the eligible recipients are ready to firmly obligate funds for project activities through a contractual process.

The following is an outline of the contractual process that will be followed for the NSP grants. First the standard NSP contract (Exhibit 15-1-A.NSP) is drafted and sent to the local government for review and signature. Once MDOC has signed and executed the contract this provides contractual approval for all project activities listed in the scope of work. Once the grantee has found a project location (foreclosed, abandoned, blighted or vacant property) then the Project Request Form (Exhibit 15-1-B.NSP) is submitted to MDOC by the NSP grantee or sub-grantee along with the project specific budget, implementation schedule, and other necessary information such as verification of foreclosure. The submission of the Project Request Form initiates the draft of the NSP contract amendment (Exhibit 15-1-C.NSP). The amendment is sent to the local government for review and signature. Once MDOC has signed and executed the amendment this firmly obligates funds to the specific project.

To further assist NSP grantees with the collection of necessary documentation that will be requested by NSP staff before funds are obligated to site-specific units, NSP staff has developed a pre-acquisition property specific checklist (Exhibit 15-1-D.NSP). Additionally HUD has provided a NSP table (Exhibit 15-1-E.NSP) to help guide grantees through the acquisition and rehabilitation process from start to finish ensuring that NSP funds are obligated appropriate to HUD regulations. This table is provided in this chapter as a reference tool.

*Please note many of the timeframes listed in the GAM generally do not apply to NSP. NSP timeframes follow the guidance provided in the October 6, 2008 Federal Register Notice and the June 19, 2009 Federal Register 'Bridge' Notice. As a reminder all grant funds must be obligated by September 2010 and expended by March 2013.

B. Chapter 2 Environmental Review

The NSP program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no update NSP specific guidance, however all exhibits were updated to reflect NSP.

C. Chapter 3 Procurement Standards

The NSP program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no update NSP specific guidance, however all exhibits were updated to reflect NSP.

D. Chapter 4 Financial Management (Updated NSP Guidance)

I. Update Reporting Requirements

NSP grant recipients are required to submit an Update Report (Exhibit 15-4-A.NSP) each calendar year quarter (March, June, September and December). This Update Report must describe the status of the project with respect to project activities, as applicable, including the percentage of the project which has been completed, costs incurred, funds remaining and anticipated completion date. The report must also describe any significant issues or problems encountered and any necessary modifications of the project scope or implementation schedule that are being requested**.**

The Update Report must be submitted no later than fifteen (15) days prior to the close of each quarter

(Refer to Exhibit 15-4-A.NSP for the Update Report). However MDOC is requiring monthly reporting during the following timeframes:

Months 13 through Month 19
April 20XX through October 20XX

Months 40 through Month 48
July October 20XX through March 20XX

II. Program Income

The NSP1 Bridge Notice was published in the Federal Register on June 19, 2009. This Bridge Notice provided NSP grantees with guidance on the changes made to the original Federal Register Notice published October 6, 2008. One significant change discussed was the program income requirements for the NSP program. Listed below are the primary ways that program income requirements are impacted:

- revenue generated from NSP funds and received by a private individual or developers that is NOT a subrecipient is NOT required to be returned to the grantee,
- substantially all program income must be disbursed for eligible NSP activities before additional draw requests are made,
- revenue (i.e., gross income) received by a state, unit of general local government, or subrecipient that is directly generated from NSP funds is program income,
- program income received after July 30, 2013 is not required to be returned to HUD and may continue to be used for NSP-eligible activities.

Due to these changes NSP has established the following guidance in Exhibit 15-4-B.NSP. Within this exhibit there is guidance regarding NSP program income. The NSP program income report (Exhibit 15-4-C.NSP) should be used by grantees to submit program income reports for all NSP funds received before or after project closeout.

III. Affordability and Income Eligibility Reporting

Because the NSP funds require affordability periods on all homebuyer and rental units that are rehabilitated, sold, or built for affordable housing under this program, MDOC requires annual reporting on the use of funds until the expiration of the affordability periods. Reporting forms for the affordability periods will be developed in the following months and provided to all NSP grantees.

E. Chapter 5 Civil Rights

The NSP program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no updated NSP specific guidance, however all exhibits were updated to reflect NSP.

F. Chapter 6 Labor Standards

The NSP program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no update NSP specific guidance, however all exhibits were updated to reflect NSP.

G. Chapter 7 Acquisition & Relocation (Updated NSP Guidance)

The following guidance should be used in addition to the previously listed Chapter 7 of this GAM. If there are contradictions between the existing

I. Limitations to the Purchase Price of a Foreclosed Residential Property

The Housing Economic Recovery Act placed limitations on the purchase price of a foreclosed home or residential property by requiring the property to be purchased at a discount from the current market appraised value. The minimum individual discount from the current market appraised value of the home or property must be at least one (1) percent. Grantees are encouraged to negotiate with lenders to obtain price reductions commensurate with the avoided costs of holding, marketing, and selling the homes.

Grantees will be required to provide verifiable documentation that each foreclosed-upon home or residential property shall be purchased at a discount of at least one (1) percent from the current market-appraised value (so long as the appraisal was completed within 60 days of the final offer). More specifically, the following information must be kept in the grantees files for each foreclosed property acquired with NSP funds: the address, vacancy (if applicable), appraised value, purchase offer amount, and discount amount.

II. Guidance on NSP Appraisals – Voluntary Acquisitions

Acquisitions financed with NSP grant funds are subject to the URA, and its implementing regulations, and the requirements set forth in the NSP Notice that was published in the Federal Register on October 6, 2008. HUD anticipates that most of these transactions will qualify as voluntary acquisitions under the applicable regulations. The URA regulations do not specifically require appraisals in connection with voluntary acquisitions under. However, the NSP Notice requires appraisals to be performed with respect to the NSP funded acquisition of foreclosed upon homes and residential properties, even though they may be considered voluntary under the URA. In those cases, the URA appraisal requirements of must be met. The following guidance on appraisals pertains to acquisitions of foreclosed upon homes and residential properties which meet the applicable voluntary acquisition requirements of and reflects applicable URA requirements and the NSP requirements, including the URA appraisal requirements of

1. The NSP grantee must ensure that the owner is informed in writing of what the grantee believes to be the market value of the property; and that the NSP grantee will not acquire the property if negotiations fail to result in a an amicable agreement.
2. If NSP funds are to be used to acquire a foreclosed upon home or residential property (other than through donation), the grantee must ensure that the purchase price includes a discount from the value established by an appraisal that meets the following requirements:

    a. The appraisal must have been completed within 60 days of the offer made for the property (we have advised that an initial offer can be made, subject to the completion of the appraisal within 60 days of a final offer).

    b. The appraisal must meet the URA definition of an appraisal and the five following requirements:

        i. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a

statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

ii. All relevant and reliable approaches to value. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.

iii. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

iv. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

v. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

c. The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

d. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(a)(24)) of the retained improvement.

3. The NSP grantee has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem. HUD's guide to preparing an appraisal scope of work under the URA is available in HUD Handbook 1378- Appendix 19 or through the following link:

https://www.hudexchange.info/resource/310/hud-handbook-1378-tenant-assistance-relocation-and-real-property-acquisition/

4. The NSP grantee shall establish criteria for determining the minimum qualifications and competency of appraisers. Qualifications shall be consistent with the scope of work for the assignment. The NSP grantee shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and use only those determined by the NSP grantee to be qualified.

5. If the NSP grantee uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*).

Considerations:

1. The lender's appraisal can be used if it is reviewed for compliance with the URA requirements so long as it meets the requirements in 2-5 above.

2. Appraisals for the voluntary acquisition of NSP funded foreclosed upon homes and residential properties do not need to have a review appraisal performed. Although the URA criteria for appraisals refer to qualifications for review appraisers, the NSP grantee is not required to have a review appraisal performed in connection with voluntary acquisitions.

3. A scope of work be developed must be developed if the NSP grantee is procuring the services of an appraiser (or requires someone else to procure those services) or is relying on a lender's (the owner of the foreclosed upon property) appraisal that is determined by the NSP grantee to meet above requirements. However, if the appraisal is performed by otherwise qualified in-house appraisal staff, a scope of work does not need to be developed, although it is still advisable in such cases.

III. Uniform Relocation Act (URA) Notices

Voluntary Acquisition

The NSP grantee is required to provide written notice to the owner (Real Estate Owned (REO) title holder) that the terms of the acquisition comply with the URA voluntary acquisition requirements.. These requirements apply to anyone who uses NSP funds (or any Federal financial assistance) to acquire property including any Agency, non-profit, or individual homebuyers who use federally-funded down-payment or other financial assistance. To convey voluntary acquisition in accordance with the URA, the owner of record must be notified in writing that Federal financial assistance will be used in the transaction and that if agreement cannot be reached through negotiation, the acquisition will not take place; and be informed of the estimated market value of the property. Agencies with the power of eminent domain must also document that the property is not a necessary part of a proposed project and is not part of an intended, planned, or designated project area where substantially all of the property within the area is to be acquired.

There are URA exception criteria, referred to as voluntary acquisition, to be used to demonstrate that the purchase will be conducted through terms of negotiation with no threat of eminent domain. Specific URA voluntary acquisition requirements that must be met depending on whether or not the buyer has the power of eminent domain and will not use it or if the buyer does not have the power of eminent domain. Any acquisition under possible threat of eminent domain, cannot be considered a "voluntary acquisition" (even if the seller is willing to negotiate). MDOC has stated that as a state agency it will not exercise its power of eminent domain, nor will any NSP funds be granted to a local government who intends to exercise its power of eminent domain.

To assist grantees with the written notice HUD has developed a number of NSP sample guide forms to assist NSP grantees in meeting these requirements. MDOC requires that one of the following notice(s) be sent to the REO holder for each property acquired (NSP staff will provide guidance as to which notice is appropriate):

- NSP Voluntary Acquisition Notice of Foreclosed Property, Agencies/Persons Without Eminent Domain Authority (Exhibit 15-7-A.NSP)

- NSP Voluntary Acquisition Notice of Foreclosed Property, Agencies/Persons With Eminent Domain Authority (Exhibit 15-7-B.NSP)

General Information Notice

To assist grantees with the written General Information Notice (GIN) (discussed in further detail in chapter 7 of this GAM), HUD has provided a NSP specific GIN notice that must be sent to all residents of an occupied structure. Please use the NSP GIN notice (Exhibit 15-7-C.NSP). Documentation of the date and confirmed delivery of this notice must be placed in the grantees project files.

One-for-One replacement

The one-for-one replacement requirements are waived for low, moderate, and middle income dwelling units demolished or converted in connection with an activity assisted with NSP funds.

H. Chapter 8 Economic Development

This chapter does not apply to the NSP.

I. Chapter 9 Construction Management

The NSP program does not necessitate any changes to this chapter of the Grant Administration Manual. Please use the existing chapter for relevant guidance as there is no update NSP specific guidance, however all exhibits were updated to reflect NSP. The sub-recipient agreement exhibit from chapter 9 has been modified to include specific NSP references. Please use the modified sub-recipient agreement found in the exhibits in this chapter.

J. Chapter 10 Housing (Updated NSP Guidance)

I. Eligible Households

a. Income Certification

All households assisted with NSP funds or become occupants or owners of an NSP-assisted home or rental unit must be determined to be eligible according the HUD income guidelines.

HUD has determined that tenant incomes must be certified as meeting the applicable income limits at initial occupancy and at any time a new tenant occupies a unit. Existing tenants are not required to recertify their incomes annually but new tenants must meet the prevailing income limits when taking occupancy of an NSP-assisted unit throughout the period of affordability.

Homeowners will have their income certified under the resale provision at initial occupancy and when a new owner purchases the home. Under the recapture provision, the new purchaser does not certify his or her income, but the funds are returned and a new purchaser certifies that they meet the income limits.

These requirements apply both to tenants below 50% of Area Median Income and those below 120% of median.

Grantee project files must contain documentation that certification of the residents

income occurred at the initial purchase or occupancy (depending on if it is homeownership or rental) and also when the new tenants or homebuyers upon occupancy. These files must be kept throughout the period of affordability and at least 3 years after the expiration of the period of affordability.

b. Homebuyer Counseling Courses

Homeowners will need a certificate from a HUD-approved housing counseling agency and NSP grantees will be expected to maintain copies of these certificates to demonstrate compliance with this requirement.

II. Affordability

a. Affordable Rents

NSP-assisted units will carry rent and occupancy restriction requirements. The rents will be set in order that individuals pay no more than 35 percent of their gross income for rent, including utilities, or the applicable fair market rents for the area, as established annually by HUD, less any utility costs paid by the tenants, whichever is lower. Gross income will be defined according to the federal standards for the HUD Section 8 rent assistance program. **NOTE:** If the NSP-assisted unit is also assisted by funding from the HOME Program and/or the Low Income Housing Tax Credit (LIHTC) Program, the rent requirements for those programs will supersede the requirements noted here.

b. Continued Affordability

MDOC is requiring that grantees ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental or redevelopment of abandoned and foreclosed upon homes and residential properties remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income (AMI). All homebuyer and rental units assisted must include provisions for long-term affordability restrictions. MDOC NSP staff are currently drafting a resale / recapture provision to further assist grantees to help meet this requirement and will provide this document in the coming months.

Homebuyer Long-Term Affordability

All homebuyer units assisted with NSP funds must include provisions for long-term affordability restrictions meeting at least the following requirements:

Subsidy Amount *(amount of NSP assistance provided to a homebuyer)*	**Minimum Affordability Period**	**Minimum Restriction**
Under $15,000	5 years	Subsidy recapture, 20% forgiveness each year
$15,000 – $40,000	10 years	Subsidy recapture, 10% forgiveness each year
Over $40,000	15 years	Subsidy recapture, 6.6% forgiveness each year

Subsidy Amount *(amount of NSP assistance provided to a homebuyer)*	**Minimum Affordability Period**	**Minimum Restriction**
New Construction or Acquisition of Newly Constructed Single Family Housing (any $ amount)	20 years	Subsidy recapture, 5% forgiveness each year

While these are minimum requirements, the applicant may choose to implement more stringent affordability requirements than the minimum listed here to ensure that the properties remain affordable for as long as possible.

Proceeds from resale where subsidy recapture provision is used can be reinvested in eligible NSP activities. Proceeds from resale must follow both the grantees approved program income plan and also the resale restriction.

Rental

Current HUD regulations state that all rental income above that needed for operations, maintenance and reserves is considered program income. These program income funds must be used in accordance with the grantees approved program income plan. To further provide long-term affordability, MDOC encourages applicants to consider the long term feasibility of assisting rental housing using these funds.

Subsidy Amount *(amount of NSP assistance provided for rentals)*	**Minimum Affordability Period**	**Minimum Restriction**
Under $15,000 per rental unit	5 years	Subsidy recapture, 20% forgiveness each year
$15,000 – $40,000 per rental unit	10 years	Subsidy recapture, 10% forgiveness each year
Over $40,000 per rental unit	15 years	Subsidy recapture, 6.6% forgiveness each year
New Construction or Acquisition of Newly Constructed Rental Housing (any $ amount)	20 years	Subsidy recapture, 5% forgiveness each year

Rent, occupancy, and affordability requirements for homebuyer and rental units will be enforced with covenants, mortgages, or deed restrictions running with the property.

III. Rehabilitation Standards

MDOC has established the following Rehabilitation Standards in the NSP Action Plan. "Rehabilitation" includes using NSP funds to make improvements to substandard residential structures. NSP housing rehabilitation or related redevelopment projects would focus on bringing housing units up to basic code standards by addressing structural deficiencies, improving electrical systems, plumbing and roofing, and incorporating energy conservation measures.

Such improvements must meet or exceed requirements contained in current editions of the HUD Section 8 Housing Quality Standards (or FHA equivalent standards) and the following most current

codes adopted by the Building Codes Bureau of the Montana Department of Labor and Industry (MDLI):

- International Building Code,
- International Residential Code, (one and two-family dwellings and townhouses up to three stories in height)
- International Existing Building Code,
- Uniform Plumbing Code,
- International Mechanical Code,
- International Fuel Gas Code,
- National Electrical Code,
- International Energy Conservation Code; and
- American Society of Engineers, Boiler and Pressure Vessel Code.

Note on Energy Conservation: Communities proposing rehabilitation or new construction of residential housing units should pay particular attention to the most current edition of the International Energy Conservation Code. This code was adopted in 2004 by the Building Codes Bureau of the Montana Department of Labor and Industry. The code establishes energy conservation standards for improvements to existing residential structure or construction of new residential housing units, as well as standards for other types of construction.

For all areas outside the boundaries of Montana's tribal reservations permits must be obtained from the MDLI, Building Codes Bureau for all electrical and/or plumbing work (where a licensed plumber is performing the work) undertaken with NSP funds unless the grant recipient has been certified by the Bureau to enforce the codes cited above. In such cases, some permits will be obtained locally. The Building Codes Bureau maintains a listing of Montana counties and incorporated municipalities, which are certified to enforce building, electrical, mechanical, and plumbing codes. In those cases where the Building Codes Bureau has not certified the grant recipient, permits must be obtained from the Bureau when rehabilitation involves structures with five or more units, or any commercial or public buildings. For those structures falling within Montana's tribal reservations, tribal ordinances and related requirements apply.

Grantees will be responsible for assuring that proper authorities inspect such work. Options to provide code inspection may include interlocal agreements with governments that have existing building departments, arrangements with MDLI's Building Codes Bureau, or by contracting with qualified, private sector persons. Where possible, to preserve independence, local governments are encouraged to utilize the services of a separate individual to perform inspection services. All electrical and/or plumbing work not done by the owner of a single-family structure must be done only by electricians and/or plumbers licensed by the State of Montana.

For further information, please contact:

Montana Dept of Labor & Industry
http://bsd.dli.mt.gov/building-codes-permits

K. Chapter 11 Project Monitoring

Because the NSP program is still a newly created program, NSP staff have not yet developed a project monitoring guide. During the coming months NSP staff will be modify the CDBG Program Project Monitoring Guide to reflect the more specific NSP requirements in addition to the existing CDBG program requirements. Monitoring Guides will be provided to grantees prior to any onsite monitoring.

L. Chapter 12 Project Closeout

Because the NSP program is still a newly created program, NSP staff have not yet developed a project guidance for project closeouts. During the coming months NSP staff will be modify the CDBG Program project closeout documents to reflect the more specific NSP requirements in addition to the existing CDBG program requirements. The modified documents and guidance will be provided to grantees prior to any project closeouts.

.

CHAPTER 13

EXHIBITS

13-1-A NSP Sample Neighborhood Stabilization Program Contract

13-1-B NSP Sample NSP Contract Amendment

13-1-C NSP Sample NSP Project Request Form

13-1-D NSP Pre-Acquisition Property Specific Checklist

13-1-E NSP Recommended Sequence of Events for NSP Acquisition and Rehabilitation

13-2-A NSP NSP Environmental Site Specific Checklist

13-4-A NSP Quarterly Update Report

13-4-B NSP Program Income Guidance

13-4-C NSP Montana NSP Program Income Reporting Form – After Project Closeout

13-4-D NSP Montana NSP Program Income Reporting Form – Before Project Closeout

13-7-A NSP NSP Voluntary Acquisition of Foreclosed Property – Agencies/Persons Without Eminent Domain Authority

13-7-B NSP NSP Voluntary Acquisition of Foreclosed Property – Agencies With Eminent Domain Authority

13-7-C NSP Guideform General Information Notice

13-7-D NSP Qualified Homebuyer Closing Checklist for NSP Projects

13-9-A NSP (Sample) Sub-Recipient Agreement (Interlocal Agreement)

13-9-B NSP NSP Developer Agreement

13-15-A NSP Preliminary Architectural Report Requirements Montana Neighborhood Stabilization Program (NSP)

Exhibit 13-1-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 Year2008 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, it 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:

(1) 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) Date
(Local Government)

ATTEST: _____
(Name), Clerk and Recorder

APPROVED AS TO FORM: _____
(Name), (Local Government) Attorney

Department of Commerce:

Anthony J. Preite, Director Date
Montana Department of Commerce

COMMERCE CONTRACT # _____

EXHIBIT 13-1-B NSP
SAMPLE NSP CONTRACT AMENDMENT

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

NEIGHBORHOOD STABILIZATION PROGRAM
CONTRACT #MT-NSP-___(3 digit County code) - __(two digit local government code) - ___(three digit project code)
AMENDMENT

This Contract Amendment is entered into by and between _____(the Grantee), IRS#_____ located at _____, and the Montana Department of Commerce (the Department), and located at 301 South Park, Helena, Montana.

The Grantee and the Department mutually agree to amend Contract # **MT-NSP-___(3 digit County code) - __(two digit local government code) - ___(three digit project code)**_____, executed on _____ (date of original contract) as follows:

1. **Section 6, SCOPE OF ACTIVITIES** is amended to read as follows:

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 grantee will engage in the project activities set forth in the Grantee's project request dated , 2009 including any written modifications resulting from the review of that request by the Department (collectively, "Grantee's Project No. 1"), as set forth in Exhibit A-1, attached hereto and specifically incorporated herein by this reference. The major components of Grantee's Project No. 1 include the following work for the _____ _____(County/City)_____.

• [Insert Project description]; and

• the 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.

Grantee's Project No. 1 will be completed according to the implementation schedule attached hereto as Exhibit B-1 and specifically incorporated herein by this reference. Any modification to Exhibit B-1 must be submitted in writing to the Department, and will not take affect until the Department has made written approval of such adjustment.

2. **Section 7, BUDGET** is amended to read as follows:

Section 7. BUDGET

(a) The total amount of NSP funds accessible to the Grantee for Grantee's Project No. 1 shall not exceed $_____.

(b) The Department will not disburse funds to the Grantee for any other project in Grantee's Program until the Grantee has submitted and the Department has approve a Project Request, Implementation Schedule, and Budget for that project.

(c) The Grantee must provide the purchase price or after-rehabilitation value of each assisted unit. The total amount of NSP funds accessible to the Grantee for Grantee's Project No. 1 will be firmly committed by the Department upon receipt of verified documentation.

(d) All projects require a separate budget for entry into the Disaster Recovery Grant Reporting system (DRGR).

(e) A copy of the preliminary budget for Grantee's Project No. 1 is attached hereto as Exhibit C-1 and specifically incorporated herein by this reference. After construction bids are awarded or other major activity cost elements of Grantee's Project No. 1 are determined, the Grantee may, or if requested by the Department, shall provide the Department with a final budget for Grantee's Project No. 1, which, upon receipt and approval by the Department, will supersede the preliminary budget in Exhibit C-1 and thereby be incorporated as part of this Contract.

(f) Budget adjustments must be approved in advance by the Department. For budget adjustments of $5,000 or less between line items of the NSP portion of Exhibit C-1, 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 18, 2010, or expenditure of funds beyond March 19, 2013.

(g) 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.

(h) Any authorized funds not expended by March 19, 2013 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.

3. Exhibits A-1, B-1, and C-1 – New Exhibits A-1, B-1, and C-1 are attached to the Contract and specifically incorporated therein by reference.

4. All other provisions of the Contract remain in full force and effect.

_____

(Name), (Mayor or County Commissioner) Date
(Local Government)

ATTEST: _____
(Name), Clerk and Recorder

APPROVED AS TO FORM: _____
(Name), (Local Government) Attorney

Department of Commerce:

Anthony J. Preite, Director Date
Montana Department of Commerce

COMMERCE CONTRACT # _____

NSP Attachment A-1 Project Request Form

COMMERCE CONTRACT # _____

NSP Attachment B-1 Implementation Schedule

COMMERCE CONTRACT # _____

NSP Attachment C-1 Project Budget

Exhibit 13-1-C NSP

SAMPLE NSP PROJECT REQUEST FORM

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

NEIGHBORHOOD STABILIZATION PROGRAM
PROJECT REQUEST
CONTRACT #MT-NSP-___(3 digit County code) - __(two digit local government code) - ___(three digit project code)

This project request from _____ is intended to obligate funds from Montana Department of Commerce Neighborhood Stabilization Program in the amount of $_____ to complete activities at (property location(s)) described as:

(please list the major components of the activity for this specific property location)

- _____
- _____
- _____

This project request confirms that the purchase price of the property will be at least 1% less than the current market appraisal price as required by NSP regulations. The appraised price is _____ and the anticipated purchase price is _____.

The site specific checklist has been completed by _____ for the property address listed above.

_____ confirms that this property is vacant and will supply the appropriate documentation to MDOC NSP.

_____ confirms that this property is foreclosed and will supply the appropriate documentation to MDOC NSP.

Anticipated project completion (resale/rent) date: _____

Notes:

Signature _____Date _____

Exhibit 13-1-D NSP

PRE-ACQUISITION PROPERTY SPECIFIC CHECKLIST FOR NSP PROJECTS

Prior to Acquisition –Environmental Property Location:_____

1. _____ Environmental Statutory Checklist _____ Date completed
   a. _____ Site Specific Checklist _____ Reviewed/Approved

2. _____ Documentation that property is vacant/occupied (3rd party (appraiser) statement, utility bills, photos, etc.. (combination of two items))
   a. _____ Is the property occupied (Uniform Relocation Act – General Information Notice)

Project Request

3. _____ Project Request draft form (unsigned, approximate budget amount)

4. _____ Copy of Buy / Sell Agreement

5._____ Project Request Form (signed, final budget amount)

6. _____ Project Budget and Uniform Status of Funds Spreadsheet (accumulative)
   a. Use of Funds -- Purchase _____ Financing _____ Rehab _____ 10% contingency _____ Other_____

7. _____ Implementation Schedule included

8._____ Listing of details for planned rehabilitation work (rehab limited to necessary items to meet HQS minimums) (if applicable)

9. _____ Contract Amendment Executed
   i. _____ Correct Contract Number ii._____ Correct Amendment number

10. _____ Appraisal completed (within 60 days prior to offer to acquire property)
    a. _____ Date of appraisal (must be provided before purchase)

11. _____ Purchase Price discount _____ Amount of discount (at least 1%)

12. _____ Uniform Relocation Act acquisition notice (with or without eminent domain)

13. _____Trustee Deed (proof of foreclosure, must be provided before purchase)

14. _____ Title Insurance Commitment or Title Insurance Binder (must be provided to NSP staff before the closing of any foreclosed purchase)

Immediately following Closing

15. _____ Settlement statement

16. _____ Recorded Abstract of Sub-Recipient or Developer Agreement

Near end of rehabilitation work

17. _____ Certification of prospective occupant as:
    a. _____ Income eligible at 120% AMI or less Target AMI category _____
    b. _____ Completed HUD Certified Home Ownership Counseling

18. _____ Meets Section 504 requirements (Multifamily projects only)

EXHIBIT 13-2-A NSP

NSP ENVIRONMENTAL SITE SPECIFIC CHECKLIST

NSP Project # _____ Address: _____

Grantee Contract # _____ Owner: _____

Date of Construction of proposed home:_____

The Montana NSP Program is subject to the National Environmental Policy Act (NEPA) and the Montana Environmental Policy Act (MEPA). Together these laws and associated regulations require that NSP grant recipients must evaluate any possible effects a specific project site could have on the environment and consider mitigating actions where adverse effect could be present.

Source or Documentation may be cited from Statutory Checklist as applicable.

1. Site Suitability
   Is the Project site or area generally physically suitable for the proposed NSP activity in terms of slope, erosion, or soils?

   YES _____ NO _____

   Compliance Source and/or Documentation: _____

2. Floodplain
   Is the project area within or adjacent to an identified 100-year floodplain, similar flood-prone area, or area of storm water drainage discharge?

   NO _____ YES _____ Based on FEMA Map # _____

   If yes, the NSP owner must have proof of flood insurance throughout the period of affordability.

3. Surface Water and Aquifers
   Would the proposed project have a potential adverse impact on either surface water quality or an identified underground aquifer (water bearing zone)?

   NO _____ YES _____

   Compliance Source and/or Documentation: _____

4. Wildlife Habitat/Endangered Species
   Would the project in general have a potential adverse impact on existing wildlife or fish habitat? Would the proposed project have a potential adverse impact on either an endangered animal or plant species?

   NO _____ YES _____

Compliance Source and/or Documentation: _____

5. Wetlands
Would the proposed project alter or disturb wetlands? "Wetlands" generally include swamps, marshes, bogs or similar areas such as sloughs, wet meadows, river overflows, mud flats, and natural ponds.

NO _____ YES _____

Compliance Source and/or Documentation: _____

6. Air Quality
Would the proposed project have an adverse effect on existing area air quality?

NO _____ YES _____

Compliance Source and/or Documentation: _____

7. Historic Properties and Archeological Resources
Is the house associated with the proposed project older than 50 years or located within an identified Historic District?

NO _____ YES _____

Would the proposed project have any effect on historic structures, properties, or archeological resources?

NO _____ YES _____

Compliance Source and/or Documentation: _____

8. Farmlands
Would the proposed project impact prime, unique, or statewide designated or locally important farmland?

NO _____ YES _____

Compliance Source and/or Documentation: _____

9. Noise
a. Is the proposed project located within the noise contours of an airport?

NO _____ YES _____ (Noise level must be under 65DNL (Day Night Level))

b. Is the proposed project located within 1000 feet from a major highway?

NO _____ YES _____

c. Is the proposed project located within 3000 feet from nearest railroad?

NO _____ YES _____

d. Would aircraft, highway, or railroad noise adversely affect the proposed project?

NO _____ YES _____

Compliance Source and/or Documentation: _____

10. Hazardous Facilities

Is there a facility that produces or stores flammable material that is visible from the project site? Hazardous facilities could consist of chemical or petrochemical gas or liquid storage facilities, including propane gas storage tanks.

NO _____ YES _____

If yes, please refer to the *HUD Explosive and Flammable Material Handbook* or call your NSP Program Officer.

Compliance Source and/or Documentation: _____

11. Airport Clear Zones

Is the proposed project located within the crash zone (2500 feet) of an airport?

NO _____ YES _____

Compliance Source and/or Documentation: _____

12. Lead-Based Paint Inspection

Beginning April 2010, contractors performing renovation, repair and painting projects that disturb lead based paint in homes, childcare facilities and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. Lead-hazard information for renovation, repair and painting activities is found in the EPA lead hazard information pamphlet: *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools.* The pamphlet is available online at: http://www.epa.gov/lead/pubs/renovaterightbrochure.pdf

Homes built prior to 1978 must be inspected for Lead-Based Paint:

LBP Found: No _____ Yes _____ N/A_____

Name of Lead based paint inspector _____ Date: _____

Attach copy of Lead Based Paint Inspector Certification

13. Asbestos Inspection

OSHA asbestos standard (29 CFR 1926.1101) and EPA asbestos sections of NESHAP (National Emission Standard for Hazardous Air Pollutants), administered by Montana Department of Environmental Quality's Asbestos Control Program

Do Clean Air Act asbestos requirements apply to this site? _____ No _____ Yes
If yes, explain how Clean Air Act will be complied with:_____
_____
_____

If yes, Attach inspection and testing documents

14. Do any specifically local environmental concerns exist not already addressed? Please Describe:
_____
_____
_____

I certify that the findings listed above accurately reflect the status of compliance with applicable laws and regulations for the identified property.

Signature:_____ Title: _____

Date: _____

EXHIBIT 13-4-A NSP

QUARTERLY UPDATE REPORT
Montana NSP Program

NAME OF GRANTEE: _____

DATE OF ANNOUNCEMENT: _____
OF GRANT AWARD

GRANT CONTRACT: #MT-NSP-_ _ _-_ _-_ _ _ GRANT AMENDMENT: #MT-NSP-_ _ _-_ _-_ _ _

QUARTER REPORTING: MARCH JUNE SEPTEMBER DECEMBER
(Please circle one.)

PERCENT COMPLETED: _____ DATE REPORT COMPLETED: _____
(refer to implementation schedule)

NSP CONSTRUCTION PROJECTS:
Please complete the table for each construction project, including the project location, scope of work, and anticipated or actual completion date. (Please adds rows as needed)

Address	Scope of Work	Anticipated/Actual Completion Date
Ex. 1: 123 Any Street Your Town, MT	Rehab	July 1, 2009
Ex. 2: 123 Any Street Your Town, MT	Demolition	September 1, 2009

START-UP CONDITIONS
Include comments on the items in the Project Start-up Checklist in Exhibit 1-G.NSP, CDBG/NSP Grant Administration Manual and on the items in Section 17 (Special Project Start-Up Conditions) of the NSP contract for your project.

Milestones Completed: _____
_____
_____

Issues / Problems Encountered: _____
_____
_____

ENVIRONMENTAL REVIEW

Include comments on the items in the Environmental Review Checklist in Exhibit 2-B.NSP, CDBG/NSP Grant Administration Manual and in Section 17(a)(i) of the NSP contract for your project.

Milestones Completed: _____

_____

_____

Issues / Problems Encountered: _____

_____

_____

PROCUREMENT & BIDDING STANDARDS (refer to Chapters 3 and 9 of Admin Manual)

Include comments on the items in the Procurement Checklist in Exhibit 3-I.NSP, CDBG/NSP Grant Administration Manual and on relevant procurement issues from Chapter 9 (bid solicitation).

Milestones Completed: _____

_____

_____

Issues / Problems Encountered: _____

_____

_____

PROGRAM INCOME

Property location: _____ Income earned on property:$_____

Income amount reinvested:$_____ Eligible use of Reinvestment:_____

Reinvestment property location:_____

CLOSEOUT

Address	# of Homes Secured	# of Households Assisted	Income Level
Ex. 1: 123 Any Street Your Town, MT	2	1	50% AMI or below
		1	51% AMI or above
			50% AMI or below
			51 % AMI or above
			50% AMI or below
			50% AMI or above

Name of Preparer:	Email Address:	Phone:
		Dated:

EXHIBIT 13-4-B NSP

PROGRAM INCOME GUIDANCE

Program income means gross income that is received by either a recipient or sub-recipient and has been directly generated from the use of NSP funds. When program income is generated by an activity that is only partially assisted with NSP funds, the income shall be prorated to reflect the percentage of NSP funds used. The definition of program income at 24 CFR 570.500(a) shall be applied to amounts received by units of general local government, and subrecipients.

A. EXAMPLES OF PROGRAM INCOME

1. Program income examples include, but are not limited to, the following:

    - Proceeds from the disposition by sale or long-term lease of real property purchased or improved with NSP funds;
    - Proceeds from the disposition of equipment purchased with NSP funds;
    - Gross income from the use of rental of real or personal property acquired by the grantee with NSP funds, less costs incidental to generation of the income;
    - Gross income from the use or rental of real property, owned by the grantee that was constructed or improved with NSP funds, less costs incidental to generation of the income;
    - Payments of principal and interest on loans made using NSP funds;
    - Proceeds from the sale of loans made with NSP funds;
    - Proceeds from sale of obligations secured by loans made with NSP funds;
    - Interest earned on funds held in a revolving fund account;
    - Interest earned on program income pending its disposition; and
    - Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the NSP portion of public improvement.

2. Program income does **not** include, but is not limited to, the following:

   - Interest earned on grant advances from the U.S. Treasury. Any interest earned on grant advances is required to be returned to the U.S. Treasury;

   - Proceeds from fund-raising activities carried out by sub-recipients that are receiving NSP assistance to implement eligible activities;

   - Funds collected through special assessments that have been made to recover the non-NSP portion of a public improvement;

   - Proceeds from the disposition by the grantee of real property that has been acquired or improved with NSP funds when the disposition occurs after grant close-out for entitlement grantees;

   - Proceeds from the disposition of real property that has been acquired or improved with NSP funds, where the disposition occurs within a five-year period after expiration of the agreement between the grantee and sub-recipient.

B. PROGRAM INCOME PLAN

MDOC will allow local government grantees to retain program income after or after project closeout. To do so, a grantee must submit a plan for the proposed use of the program income. (Preferably, a local government would do so within its project application or management plan.) The decision to permit a local government grantee to retain program income will be based upon the grantee's final plan for use and administration of such program income. This plan must be in compliance with the most recent versions of the Department's Program Income Manual for Revolving Loan Funds and must be developed and submitted for review and approval by the Department before a closeout agreement is executed.

C. PROGRAM INCOME CONTRACTUAL REQUIREMENTS

If MDOC determines that program income is to be retained by a grantee, the program income plan will specify the activities that will be undertaken with the program income and that all provisions of the program income plan shall apply to the specified activities. Accordingly, the contract will contain the following provisions that will be modified during contract negotiations to fit the specific program income situations that exist.

The grantee will be permitted to retain program income generated by the activities described in the contract under Section 6, Scope of Activities. Program income received before the project is closed out by MDOC must be expended on project

activities before additional NSP funds are requested by the grantee. MDOC will deduct the amount of program income on hand as shown on the drawdown form from the amount requested by the grantee. The receipt and expenditure of program income shall be treated as additional NSP funds, subject to all applicable requirements governing the use of NSP funds. The receipt and expenditure of program income shall be recorded as part of the financial transactions of the grant program. At the time of closeout, MDOC will specify the conditions and requirements that will apply to program income received after closeout by the grantee.

The NSP Program Officer preparing the contract will insert specific program income requirements that relate directly to the project, based on the application, other open or closed NSP projects, current MDOC policy for program income, the existence and purpose of revolving loan funds, and the source of program income that is expected to be generated from project activities.

D. USES OF PROGRAM INCOME

1. Before Project Closeout

- Substantially all program income must be disbursed for eligible NSP activities before additional draw requests are made.

- Program income received by a grantee before closeout must be used in accordance with the provisions of Title I. As such, all the regulations and requirements that applied during the term of the project will apply to the program income received before closeout. For the most part, this means that program income must be used for eligible NSP activities, and that a minimum of 51% of the funds must be used for activities that are clearly designated to meet identified needs of persons of low, moderate, or middle income.

2. After Project Closeout

MDOC has developed the following proposed policy for expenditure of NSP program income after close-out which will meet the federal national objective of benefiting low, moderate and middle income persons (LMMI) and allow local governments some flexibility with their program income:

- As program income is received, the following applies:
  For NSP activities a maximum of 10% would be allocated to an administration fund and a minimum of 90% allocated to an activity fund for each state fiscal year;

- All program income received by a grantee after closeout must continue to be used in accordance with the provisions of Title I (Davis Bacon wage rates, environmental review, etc.). As such, all regulations and requirements that applied during the term of the project will apply to the program income received after closeout.

- Exception: Federal Title I requirements do not apply to funds which are less than $25,000 received and retained in a single year by a grantee. A grantee may use this amount for any eligible NSP activity that benefits at least 51% low, moderate and middle income persons.

E. USE OF PROGRAM INCOME IN LIEU OF GRANT DRAWDOWNS

If at the time of closeout or before September 2010 the grantee has another on-going NSP grant from MDOC, the funds received after closeout will be treated as program income of the on-going grant program, unless MDOC specifies otherwise in the grant agreement or there is a Revolving Loan Fund set-up. MDOC may specify in the grant agreement or in a future grant agreement that program income from an earlier NSP project will be used for a NSP project awarded at a later date.

The receipt and expenditure of program income shall be recorded as part of the financial transactions of the grant program in the grantee's financial records. Program income received before grant closeout may be retained by the grantee, with MDOC approval, if the income is treated as additional NSP funds. If the grantee chooses to retain program income, that income shall affect withdraws of grant funds from the U.S. Treasury as follows:

- Program income in the form of repayments to, or interest earned on, a revolving fund, as defined above, shall be substantially disbursed from the fund before additional cash withdraws are made from the U.S. Treasury for the same activity.

- Substantially all other program income shall be disbursed for eligible activities before additional cash withdraws are made from the U.S. Treasury.

This requirement could lower the total amount of NSP funds received from MDOC that are actually expended (as opposed to requested and budgeted) for the project. MDOC will decide whether to allow the remaining NSP funds to be used for further project activities, such as additional housing rehabilitation or to reallocate the remaining funds to other NSP projects.

F. USING PROGRAM INCOME FOR FOR-PROFIT ENTITIES

A grantee proposing to use NSP program income, regardless of source, for NSP eligible activities must determine that assistance to for-profit entities is appropriate, as defined in the current Montana NSP Application Guidelines and HUD policy.

The grantee will have to retain records to document compliance with this requirement, including the financial analysis conducted to determine whether the financial assistance to the for-profit was "necessary and appropriate."

G. REVOLVING LOAN FUND(S)

1. Definition and Purpose

HUD defines a revolving fund as a separate fund with a set of accounts independent of other program accounts, established for the purpose of carrying out a specific activity that, in turn, generates payments to the fund for use in carrying out such an activity. An example is a revolving fund set up for financing housing rehabilitation loans. Loan repayments are paid into the fund and used to finance other rehabilitation loans.

2. Establishment

Typically, a revolving fund will be established at the time the specific activity begins to generate program income, e.g., principal and interest received by the grantee from payments on rehabilitation loans.

3. Mandatory Fund Requirements

The grantee will be required to maintain a separate NSP revolving fund for NSP eligible housing activities from all other previously established revolving fund(s).

4. Rules Applying To A Revolving Fund

Revolving fund activities are subject to the same rules as other NSP grant activities. They must be eligible activities that meet a national objective and must be carried out in compliance with all applicable program requirements as listed in the grantees contract with MDOC.

H. REVOLVING LOANS

1. Loan Management

The making of real estate loans by the grantee parallels in importance the function of a financial institution, such as bank or savings and loan association. Consequently, proper management of these loans is paramount to the success of the NSP.

The guidelines that follow, while not all inclusive, should help the grantee in the management of real estate and business loan activities.

a. Applicable loan committees should be established to provide citizen involvement and guidance;

b. All amortized loans made should be supported by amortization schedules and they should be kept current. The loan amortization schedule(s) will serve as the subsidiary loan receivable records;

c. All loan repayments of principal and interest should be collected directly by the grantee (unless a sub-recipient agreement has been executed between the grantee (local government) and a non-profit community development organization to manage the funds through a revolving loan fund plan;

d. The person who receives the loan repayments should not be the same person who keeps the records;

e. All loans made and resulting transactions should become a part of the general accounting records;

f. A system should be established to monitor all loans outstanding;

g. A formal policy for dealing with delinquent loans should be established and enforced;

h. Delinquent loan reports should be issued periodically and used for follow-up;

i. All loans should be secured by trust indentures;

j. All borrowers should protect the grantee against insurable risks (where applicable) and the policies underwritten should be on file with the grantee;

k. Any grants made that provide a contingency for repayment should be appropriately accounted for and secured by the filing of liens.

2. Accounting And Reporting Treatment for Revolving Loans

Authoritative literature on accounting for loans, often referred to as revolving loans, is skimpy at best. The December, 1989 GAAFR Review, published by the Government Finance Officers Association, discusses the pros and cons of several possible treatments - each having some theoretical defect. However, the most favored, and recommended, treatment is to report the loan receivable on the balance sheet with a corresponding amount of deferred revenue.

I. RECORDKEEPING REQUIREMENTS

Communities planning to utilize program income must maintain, at a minimum, the following records:

- Sources of program income, including interest earned;
- A schedule of anticipated program income receipts;
- Designated persons(s) or entity(ies) responsible for tracking loan payments and servicing the loan(s);
- Policies and procedures for determining how the program income funds will be expended and for what activities;
- Names of the person(s) or board(s) responsible for implementing the program income plan and for ensuring compliance with applicable requirements;
- Dates and amounts of program income deposits and disbursements; and
- The activities funded with program income.

These records must be available for review. The grantee must retain such records for at least three years from the end of the fiscal year in which the last receipt of program income occurs.

J. MDOC OVERSIGHT AND MONITORING OF PROGRAM INCOME

Because MDOC has ultimate responsibility for the program income retained and used at the local level, it must ensure that such program income is used in a manner consistent with NSP requirements. To do so, MDOC has instituted a reporting process that will require a Semi-Annual Program Income Report from each grantee.

To meet reporting requirements, NSP has designed a Semi-Annual Program Income Report (Exhibit 15-4-C.NSP). Included with the exhibit are directions to assist the grantee when completing this form.

1. Reporting Period And Filing Deadline

For NSP activities: The Program Income Report(s) will cover the following reporting periods:

- October 1 through March 30
  - This report is due to MDOC NSP by April 30

- April 1 through September 30
  - This report is due to MDOC NSP by October 31

PROGRAM INCOME - TITLE I CERTIFICATION

Amendments to Title I of the Housing and Community Development Act require that local governments continue to spend all program income for eligible Neighborhood Stabilization Program (NSP) grant activities according to all Title I requirements, even after close out of the NSP project. The following certification is to be executed by the chief local government official to certify in its annual program income report to the Department of Commerce that these requirements have been met.

Certification

I hereby certify that all program income expenditures generated by NSP activities for the local government of _____, were expended for eligible NSP activities, according to requirements of Title I of the Housing and Community Development Act of 1974, as required by amendments to the Act dated October, 1992.

_____
Chief Local Government Official

_____
Date

EXHIBIT 13-4-C.NSP

Montana NSP Program Income Reporting Form

AFTER PROJECT CLOSEOUT

Grantee	Contract #	Date Program Income Report submitted __/__/____
Prepared By	Reporting Period ___ Oct 1 – March 30 ___ April 1 – Sept 30	
Description of activities which generated Program Income (PI):		
Description of activities funded by Program Income (PI):		

PROGRAM INCOME CASH STATUS REPORT	
1. Date(s) Program Income Earned for this transaction(s) (i.e. 3/15/2013, 3/16/2013)	
2. Available Balance of Program Income	
3. Total Amount of Program Income Earned during this transaction(s)	
4. Amount of PI Reinvested into NSP eligible use (if applicable)	
5. Balance of PI (not reinvested) (line 2 plus line 3 less line 4)	
ADMINISTRATIVE FUND STATUS REPORT	
6. Is there Administrative Funds charged against any amount of Program Income? **___ Yes OR ___ No** *If yes*, what is the amount of Administrative Funds reinvested into the NSP Project.	
7. Net Total Balance of Program Income (line 5 less line 6)	

8. Amount Reported by Address

Address	Amount PI Earned	Amount PI Reinvested

Approval by NSP Program Specialist	**Certification of Preparer**
_____ NSP Authorized Signature Date	To the best of my knowledge, the data on this form is correct and all disbursements were made in accordance with grant regulations. I certify that all NSP program income is maintained in a separate NSP fund/account.
	Signature of Preparer
	Street Address

FOR NSP USE ONLY	**Yes**	**No**
PI eligible for reuse		

PI over 10% admin		
PI over NSP $25,000 threshold		
Date Program Income Plan approved		
Date Program Income Report Processed		

Phone Number
Email Address

INSTRUCTIONS FOR COMPLETING "PROGRAM INCOME REPORTING FORM AFTER CLOSEOUT"

*NOTE**

This program income report must be completed every 6 months. The report is due to MDOC staff April 30 and October 30. Program income must be reported to HUD, by MDOC staff, to ensure that program income funds are being used by the grantee or sub-grantee for eligible uses. If there is a significant balance of program income funds which are not being used by the grantee, HUD may require MDOC to recapture the funds.

Grantee – same as "Grantee" as shown on Contract or Contract Amendment.

Contract # - begins with #MT-NSP-_ _ _-_ _-_ _ _.

Date Program Income Report submitted – please input date submitted to MDOC NSP.

Prepared by *– name of individual preparing Income Reporting Form.*

Reporting Period – period when program income was received.

Description of activities which generated Program Income (PI) - list the general activities that generated the program income. For example: rental income or sale of NSP assisted house.

Description of activities funded by Program Income (PI) – eligible use and description must be carried out in compliance with the approved program income plan and all applicable program requirements.

PROGRAM INCOME CASH STATUS REPORT

1. Date program income was earned for this transaction(s) - (i.e. date of sale of house)

2. Available Balance of Program Income - this is the balance of PI from previously reported information.
3. Total amount of program income earned during the transaction(s) – this is the dollar amount that was generated as program income.
4. Total Amount of program income reinvested into NSP eligible use or project(s) for this transaction (if applicable) – this is the dollar amount that has been reinvested into a project that is approved as part of the MDOC program income plan.
5. Balance of Program Income remaining (line 2 plus line 3 less line 4) - The new balance of program income would be determined by calculating the balance of previously available program income plus the amount of program income received in this reporting period minus the amount reinvested into another project activity such as down payment assistance. This balance of program income does NOT include any reporting of administrative funds to be reinvested. Reporting of administrative funds occurs in the following cell.

ADMINISTRATIVE FUND STATUS REPORT

6. Is there Administrative Funds charged against any amount of Program Income? Grantees MUST select an appropriate answer to clearly identify if Administrative Funds will be budgeted for a project which uses program income.

   If yes, what is the amount of Administrative Funds reinvested into the NSP Project. – Grantees must identify what amount of Administrative Funds will be reinvested. The amount of Administrative Funds cannot be greater than 10%.

7. Net Total Balance of Program Income (line 5 less line 6). This number represents the remaining balance of funds available for further reinvestment as program income at the date the report was submitted.

8. Amount reported by address – please list each address and amount of program income earned for each property.

Certification of Preparer. Must be signed by individual preparing Program Income Reporting Form

SUBMISSION OF SIGNED FORMS:

E MAIL and FAX:
MDOC will accept signed, scanned copies of the form submitted via email or fax to NSP staff

Fax (406) 841-2878 (ATTN: NSP)
OR

Jennifer Olson	Becky Anseth
jeolson@mt.gov	banseth@mt.gov

MAIL COMPLETED FORM TO:

Montana Neighborhood Stabilization Program
Montana Department of Commerce
P.O. Box 200523
Helena, MT 59620-0523
Telephone (406) 841-2800

EXHIBIT 13-4-D.NSP

Montana NSP Program Income Reporting Form

BEFORE PROJECT CLOSEOUT

Grantee	Contract #	Date Program Income Report submitted __/__/____
Prepared By		
Description of activities which generated Program Income (PI):		
Description of activities funded by Program Income (PI):		

PROGRAM INCOME CASH STATUS REPORT	
1. Date(s) Program Income Earned for this transaction (i.e. 3/15/2010, 3/16/2010)	
2. Available Balance of Program Income prior to this transaction	
3. Total Amount of Program Income Earned during this transaction(s)	
4. Amount of PI Reinvested into NSP eligible use (if applicable)	
5. Balance of PI (not reinvested) (line 2 plus line 3 less line 4)	
ADMINISTRATIVE FUND STATUS REPORT	
6. Are there Administrative Funds charged against any amount of Program Income? **___ Yes OR ___ No** *If yes*, what is the amount of Administrative Funds reinvested into the NSP Project.	
7. Net Total Balance of Program Income (line 5 less line 6)	

8. Amount Reported by Address

Address	Amount PI Earned	Amount PI Reinvested

Approval by NSP Program Specialist	**Certification of Preparer**
_____ NSP Authorized Signature Date	To the best of my knowledge, the data on this form is correct and all disbursements were made in accordance with grant regulations. I certify that all NSP program income is maintained in a separate NSP fund/account.
	Signature of Preparer
	Street Address

FOR NSP USE ONLY	**Yes**	**No**
PI eligible for reuse		

PI over 10% admin		
PI over NSP $25,000 threshold		
Date Program Income Plan approved		
Date Program Income Report Processed		

Phone Number
Email Address

INSTRUCTIONS FOR COMPLETING "PROGRAM INCOME REPORTING FORM BEFORE CLOSEOUT"

*NOTE**

This program income report must be completed and submitted EACH time program income is earned by a property or project to be reported by MDOC staff to HUD. Program income must be reported, by MDOC staff, as soon as earned to ensure that all draw requests can be processed according to HUD guidelines. If this information is not received in a timely manner, your draw request could be delayed.

Grantee – same as "Grantee" as shown on Contract or Contract Amendment.

Contract # - begins with #MT-NSP-_ _ _-_ _-_ _ _.

Date Program Income Report submitted – please input date submitted to MDOC NSP.

Prepared by – name of individual preparing Income Reporting Form.

Description of activities which generated Program Income (PI) - list the general activities that generated the program income. For example: rental income or sale of NSP assisted house.

Description of activities funded by Program Income (PI) – eligible use and description must be carried out in compliance with the approved project activities as listed in the grantees contract and contract amendment and all other applicable program requirements.

PROGRAM INCOME CASH STATUS REPORT

1. Date program income was earned (i.e. date of sale of house)
2. Available Balance of Program Income prior to this transaction(s) - this is the balance of PI from previously reported information.
3. Total amount of program income earned during the transaction(s) - this is the dollar amount that was generated as program income.
4. Amount of program income reinvested into NSP eligible use or project(s) for this transaction (if applicable).
5. Balance of Program Income remaining (line 2 plus line 3 less line 4). The new balance of the current program income would be determined by calculating the available balance of program income plus the amount of program income received in this reporting period minus the amount reinvested into another project activity such as down payment assistance. This balance of program income does NOT include any reporting of administrative funds to be reinvested. Reporting of administrative funds occurs in the following cell.

ADMINISTRATIVE FUND STATUS REPORT

6. Is there Administrative Funds charged against any amount of Program Income? Grantees MUST select an appropriate answer to clearly identify if Administrative Funds will be budgeted for a project which uses program income.

   If yes, what is the amount of Administrative Funds reinvested into the NSP Project. – Grantees must identify what amount of Administrative Funds will be reinvested. The amount of Administrative Funds cannot be greater than 10%.

7. Net Total Balance of Program Income (line 5 less line 6). This number represents the remaining balance of funds available for further reinvestment as program income at the date the report was submitted.

8. Amount reported by address – please list each address and amount of program income earned for each property.

Certification of Preparer. Must be signed by individual preparing Program Income Reporting Form

SUBMISSION OF SIGNED FORMS:

E MAIL and FAX:
MDOC will accept signed, scanned copies of the form submitted via email or fax to NSP staff

Fax (406) 841-2878 (ATTN: NSP)
OR

Jennifer Olson	Becky Anseth
jeolson@mt.gov	banseth@mt.gov

MAIL COMPLETED FORM TO:
Montana Neighborhood Stabilization Program
Montana Department of Commerce
P.O. Box 200523
Helena, MT 59620-0523
Telephone (406) 841-2800

GUIDEFORM

- NSP VOLUNTARY ACQUISITION OF FORECLOSED PROPERTY -

- Informational Notice -

(Agencies/Persons **Without** Eminent Domain Authority)

Grantee or Agency Letterhead

(date)

Dear _____:

(Name of Agency/Person) _____, is interested in acquiring property you own at (address) _____ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Neighborhood Stabilization Program (NSP).

Please be advised that (Name of Agency/Person) _____ does not have authority to acquire your property by eminent domain. In the event we cannot reach an amicable agreement for the purchase of your property, we will not pursue this proposed acquisition.

Under the NSP, we are required to purchase residential foreclosed properties (which may include certain residential properties in mortgage or tax default status that meet the NSP definition of "foreclosed") at a discount from their market appraised value.

The subject property is listed for purchase at $ _____. (If currently listed)

Select one: a) We currently believe that the property's market value is $_____. We are prepared to purchase your property; however, depending on the results of the appraisal, our written offer may differ from this amount.

b) Our appraisal indicates the property's market value is $_____. We are prepared to offer you $_____ to purchase your property.

Please contact us at your convenience, if you are interested in selling your property.

If your property is in default, but foreclosure proceedings have not been initiated/completed, and our offer is for less than the current balance of your mortgage loan(s), we suggest that you seek legal counsel or guidance. We cannot provide you with legal advice regarding any tax, credit, or deficiency judgment consequences to you related to the sale.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. A tenant-occupant who moves as a result of a voluntary acquisition for a federally-assisted project may be eligible for relocation assistance as a displaced person. Such displaced persons may include not only current lawful occupants, but also former tenants required to move for any reason other than an eviction for cause in accordance with applicable federal, state, and local law. If your property is currently tenant-occupied or a tenant lawfully occupied your property within the past 3 months prior to our offer, we need to know immediately. Further, you should not order current occupant(s) to move, or fail to renew a lease, in order to sell the property to us as vacant.

If you have any questions about this notice or the proposed project, please contact (name)_____, (title)_____, (address)_____, (phone)_____.

NOTES to NSP Voluntary Acquisition Notice (Agency/person without Eminent Domain authority).

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or via certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3 J of Handbook 1378.)

2. Tenant-occupants displaced as a result of a voluntary acquisition may be entitled to URA relocation assistance and must be so informed per 49 CFR 24.2(a)(15)(iv) – Initiation of Negotiations (ION), and 49 CFR 24 Appendix A - 24.2(a)(15)(iv) and http://www.hud.gov/offices/cpd/library/relocation/nsp/index.cfm

3. See 49 CFR 24.206 regarding eviction for cause.

4. This guideform may only be used if all of the requirements of 49 CFR 24.101(b)(2)(i)and (ii) or 49 CFR 24.101(b)(3) are met.

5. This is a guideform. It should be revised to reflect the circumstances. NSP defines "foreclosed" to include residential properties in which the property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or (b) the property owner is 90 days or more delinquent on tax payments. While considered "foreclosed" for NSP purposes, such properties may still be owned by the mortgagor unless the State foreclosure process is complete and title to the property transferred. Short sales and other foreclosure alternatives are complex transactions involving coordination and cooperation among a number of parties (e.g., owners, lenders, servicers, investors).

GUIDEFORM

- NSP VOLUNTARY ACQUISITION OF FORECLOSED PROPERTY -

- Informational Notice -

(Agencies with Eminent Domain Authority)

Grantee or Agency Letterhead

(date)

Dear _____:

(City, County, State, other) _____, is interested in acquiring property you own at (address) _____ for a project receiving funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Neighborhood Stabilization Program (NSP).

Please be advised that, (City, County, State, other) _____ possesses eminent domain authority to acquire property, however, in the event you are not interested in selling your property, or if we cannot reach an amicable agreement for the purchase of your property, we will not pursue its acquisition under eminent domain.
Your property is not a necessary part of the proposed project and is not part of an intended, planned, or designated project area where substantially all of the property within the area is to be acquired.

Under the NSP, we are required to purchase residential foreclosed properties (which may include certain residential properties in mortgage or tax default status that meet the NSP definition of "foreclosed") at a discount from their current market appraised value.

The subject property is listed for purchase at $ _____. (If currently listed)

Select one: a) We currently believe the property's market value is $_____. We are prepared to purchase your property; however, depending on the results of the appraisal, our written offer may differ from this amount.

b) Our appraisal indicates the property's market value is $_____. We are prepared to offer you $_____ to purchase your property.

Please contact us at your convenience, if you are interested in selling your property.

If your property is in default, but foreclosure proceedings have not been initiated/completed, and our offer is for less than the current balance of your mortgage loan(s), we suggest that you seek legal counsel or guidance. We cannot provide you with legal advice regarding any tax, credit, or deficiency judgment consequences to you related to the sale.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. A tenant-occupant who moves as a result of a voluntary acquisition for a federally-assisted project may be eligible for relocation assistance as a displaced person. Such displaced persons may include not only current lawful occupants, but also former tenants required to move for any reason other than an eviction for cause in accordance with applicable federal, state, and local law. If your property is currently tenant-occupied or a tenant lawfully occupied your property within the past 3 months prior to our offer, we need to know immediately. Further, you should not order current occupant(s) to move, or fail to renew a lease, in order to sell the property to us as vacant.

If you have any questions about this notice or the proposed project, please contact
(name)_____, (title)_____,
(address)_____, (phone)_____.

NOTES to NSP Voluntary Acquisition of Foreclosed Property Informational Notice

1. The case file must indicate the manner in which this written notice was delivered (e.g., personally served or via certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3 J of Handbook 1378.)

2. Tenant-occupants displaced as a result of a voluntary acquisition may be entitled to URA relocation assistance and must be so informed per 49 CFR 24.2(a)(15)(iv) – Initiation of Negotiations (ION), 49 CFR 24 Appendix A - 24.2(a)(15)(iv), and
http://www.hud.gov/offices/cpd/library/relocation/nsp/index.cfm

3. See 49 CFR 24.206 regarding eviction for cause.

4. This guideform may only be used if all of the requirements of 49 CFR 24.101(b)(1)(i)-(iv) are met.

5. This is a guideform. It should be revised to reflect the circumstances. NSP defines "foreclosed" to include residential properties in which the property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or (b) the property owner is 90 days or more delinquent on tax payments. While considered "foreclosed" for NSP purposes, such properties may still be owned by the mortgagor unless the State foreclosure process is complete and title to the property transferred. Short sales and other foreclosure alternatives are complex transactions involving coordination and cooperation among a number of parties (e.g., owners, lenders, servicers, investors).

EXHIBIT 13-7-C NSP

GUIDEFORM GENERAL INFORMATION NOTICE
RESIDENTIAL TENANT WHO MAY BE DISPLACED **(NSP)**

Grantee or Agency Letterhead

(Date)

Dear _____:

_____(City, County, State, Public Housing Authority (PHA), other)_____, is interested in (acquiring, rehabilitating, demolishing)_____ the property you currently occupy at (address)_____ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the Neighborhood Stabilization Program (NSP).

The purpose of this notice is to inform you that you may be displaced as a result of the proposed project. This notice also serves to inform you of your potential rights as a displaced person under federal laws known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and section 104(d) of the Housing and Community Development Act of 1974, as amended. You may be eligible for relocation assistance and payments under either the URA or section 104(d), if the proposed project receives HUD funding and if you are displaced as a result of acquisition, rehabilitation, demolition or conversion for the project.

- **This is not a notice to vacate the premises.**

- **This is not a notice of relocation eligibility.**

If you are determined to be eligible for relocation assistance in the future, you may be eligible for: 1) Relocation advisory services including help to find another place to live; 2) At least 90 days advance written notice of the date you will be required to move; 3) Payment for your moving expenses; and 4) Replacement housing payments to enable you to rent or purchase a comparable replacement home. You will also have the right to appeal the agency's determination, if you feel that your application for assistance was not properly considered. The enclosed HUD brochures, "Relocation Assistance To Tenants Displaced From Their Homes" and "Relocation Assistance to Persons Displaced from Their Homes (section 104(d))" provide an explanation of this assistance and other helpful information.

(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance under the URA, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)

Please be advised that you should continue to pay your rent and meet any other obligations as specified in your lease agreement. Failure to do so may be cause for eviction. If you choose to move for reasons unrelated to the proposed project or if you are evicted for cause prior to receiving a formal notice of relocation eligibility, you will not be eligible to receive relocation assistance. It is important for you to contact us before making any moving plans.

Again, this is not a notice to vacate the premises and does not establish your eligibility for relocation payments or assistance at this time. If you are determined to be displaced and are required to vacate the premises in the future, you will be informed in writing. In the event the proposed project does not proceed or if you are determined not to be displaced, you will also be notified in writing.

If you have any questions about this notice or the proposed project, please contact
(name)_____, (title)_____,
(address)_____, (phone)_____.

NOTES to NSP Guideform General Information Notice

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3 J of Handbook 1378)

2. This is a guideform. It should be revised to reflect the circumstances.

Exhibit 13-7-D NSP

QUALIFIED HOMEBUYER CLOSING CHECKLIST FOR NSP PROJECTS

Documents Prior to Closing Property Location:_____

1. _____ Potential Homebuyer Name

2. _____ Estimated NSP Loan Amount

3. _____ Verification of Income

4. _____ Loan Analysis documents (underwriting summary)

5. _____ Home buyer Education Certificate

6. _____ Buy Sell Agreement

7._____ HQS Inspection

8. _____ Voluntary Agreement signed by Homebuyer

9. _____ Draft Settlement Statement (HUD-I)

Immediately following closing
(all documents must be final and executed)

10. _____ Final Settlement Statement (HUD-1)

11. _____ Promissory Note

12. _____ 1st & last page of Deed of Trust –with recording info listed

13. _____ NSP Rider to the Deed of Trust

14. _____ Final Income Verification

15. _____ Lead Based Paint Disclosure

16. _____ Acknowledgment from Homebuyer of "Protect your Family from Lead" & "Renovate Right" pamphlets

---

_____ Family Structure M / F *

_____ Race **

_____ % of Median

_____ # Bedrooms

_____ Ethnicity**** (Hispanic or Latino or not)

_____ Family size

_____ Handicapped

_____ Assistance Type***

_____ Elderly

* Family Structure M / F
Select the family type that is head of the household
Ex: If both male and female live in the household circle both M and F

If this is a male only head of household circle only M
If this a female only head of household circle only F

** Race
Please identify the racial category with the following codes:
1. White 2. Black or African American 3. Asian 4. American Indian or Alaskan Native 5. Native Hawaiian or Other Pacific Islander 6. American Indian or Alaskan Native and White 7. Asian and White 8. Black or African American and White 9. American Indian or Alaskan Native and Black or African American 10. Other Multi-racial (balance of individuals reporting more than one race)

***Assistance Type
Please identify the assistance type. For example if the direct assistance is loan with recapture, resale or subsidy with a forgiveness period.

****Ethnicity
Please state whether the homebuyer is Hispanic or Latino OR Not Hispanic or Latino

EXHIBIT 13-9-A NSP

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

- **Interlocal agreements related to NSP projects need to be reviewed and approved by MDOC/NSP.**

- **Certain clauses are required by HUD regulations (24 CFR 570.503). Copies of the HUD requirements are available upon request from the Department of Commerce, NSP Program.**

~ ~ ~ ~ ~ ~ ~

SUB-RECIPIENT INTERLOCAL AGREEMENT

[LOCAL GOVERNMENT]
AND [SUB-RECEPIENT/NON-PROFIT]

THIS AGREEMENT is entered into on the ___ day of _____, 2009, by and between the [Local Government], hereinafter referred to as "the City/County" and [Sub-recipient/non-profit], a private, non-profit corporation incorporated under the laws of Montana, hereinafter referred to as "the Center."

WITNESSETH THAT

WHEREAS, the Center desires to contract with the City/County to carry out Neighborhood Stabilization Program (NSP) activities to _____ [please list activities identified in the NSP Contract under Scope of Work] (the "Grantee's NSP Program"); and

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

WHEREAS, the City/County has applied for and been awarded a grant under Montana's NSP Program; and

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

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

I. Responsibilities Delegated to the Center

A. The Grantee agrees to carry out its NSP Program in accordance with the terms and conditions of Contract #MT-NSP-_ _ _-_ _-_ _ _ between the Montana Department of Commerce (MDOC) and the City/County, attached hereto and specifically incorporated herein by this reference; the MDOC Community Development Block Grant (CDBG) / Neighborhood Stabilization Program (NSP) Grant Administration Manual; the State of Montana NSP Substantial Amendment, Plan Year 2008 Annual Action Plan, approved by HUD January 30, 2009; the Housing and Economic Recovery Act (HERA) of 2008; all applicable sections of 24 C.F.R. Parts 85 and 570; and any other requirements for NSP as set forth by HUD, including but not limited to OMB Circular A-110, OMB Circular A-122, and the Federal Register Notice dated October 6, 2008, Vol. 73, No. 194, and any revisions thereto.

B. The Center agrees to carry out the duties and responsibilities assigned to it in the Project Management Plan, approved by the MDOC on , 2009, attached hereto and specifically incorporated herein by this reference.

C. Following the completion of the Project, the Center will submit annual reports to the City/County, on a date to be specified by the City/County, unless later excused by new regulation or agreement. These annual reports shall include:

(1) a copy of the Center's annual IRS 990 tax form; and
(2) a copy of the Center's annual Treasurer's report; and
(3) proof of adequate insurance on each facility acquired in whole or in part with Grantee's NSP Program funds.

D. The Center will comply with the applicable procurement requirements set forth 24 CFR §85.36. The Center will provide copies of all quotes and any other construction documents as requested by the City/County and MDOC. The Grantee shall procure all materials, property, or services in accordance with the requirements of Attachment O of OMB Circular A-110, Procurement Standards.

II. Duration of the Agreement

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

1. The MDOC and the City/County have executed the NSP Grant Contract;

2. The MDOC has approved the City's/County's "Request for Release of Funds and Certification";

3. The attorney for the City/County and the attorney for the Center have approved this Agreement as to form and content; and

4. he City/County Manager and the Center's Executive Director have each reviewed this Agreement, agreed fully to its terms and conditions, and executed the same.

B. This Agreement will be in effect for the period of affordability for activity, which may be up to twenty (20) years from the date of completion of the City's/County's NSP Program, 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).

III. Administration

A. The Center does not assume the City's/County's environmental responsibilities described at 24 CFR Part 58.

B. The Center does not assume the City's/County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

IV. Disposition of Real Property or Acquired Equipment

A. The Center will manage the Project during the term of this Agreement in accordance with the terms set forth herein.

B. With respect to any real property or any equipment under the Center's control that was acquired or improved in whole or in part with funds from NSP Grant #MT-NSP-_ _ _-_ _ -_ _ _ in excess of $50,000, the Center will either:

1. use the property to meet one of the national objectives contained in 24 CFR 570.208 during the period of affordability;

2. dispose of the property or equipment in a manner that reimburses the City/County in the amount of the current fair market value of the property or equipment, less any portion of the value attributable to expenditures of non-NSP funds for

acquisition of, or improvements to, the property or equipment, subject to all NSP program income requirements. Reimbursement is not required after the period of time specified in subparagraph (B)(1) of this section.

C. With respect to any real property or any equipment under the Center's control that was acquired or improved in whole or in part with funds from NSP Grant #MT-NSP-_ _ _-_ _-_ _ _ totaling less than $50,000, the City/County may require the Center, with approval of MDOC, to payback Grantee's NSP Program funds to MDOC, up to the total amount of the grant award.

D. Upon the expiration of this Agreement, the Center will transfer to the City/County any of the Grantee's NSP Program funds on hand at the time of expiration of this Agreement and any accounts receivable attributable to the use of NSP funds.

E. The parties agree that concurrent with execution of this Agreement, as security for the performance of the obligations set forth herein, an abstract of this Agreement will be duly recorded with the [Insert specific county] County Clerk and Recorder's office against each property acquired in whole or in part with Grantee's NSP Program funds.

V. Indemnification

The Grantee shall indemnify and hold harmless the City/County, the City/County Community Development Department, and their agents and employees from and against all claims, damages, losses and expenses, including attorney fees arising out of, or resulting from, the performance of the work, provided that any such claim, damage, loss, or expense which is:

1. attributable to bodily injury, sickness, disease or death or to damage or destruction of tangible property, other than the work itself, including the loss and use resulting there from; and,
2. is caused in whole or in part by any negligent act or omission of the contractor(s), and subcontractor(s), or anyone directly or indirectly employed by any one of them or anyone else, for whose acts any of them may be liable, regardless whether or not it is caused in part or by party indemnified hereunder.

VI. Debarment

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

VII. Access to and Retention of Records

A. In accordance with the requirements of 24 C.F.R. § 85.37, the Center shall create and retain records supporting the services covered by this Agreement, including but not limited to financial records, supporting documents, and such other records as are required by law or other authority, for a period of four (4) years after either the completion date of this Agreement or the conclusion of any claim, litigation, or exception relating to this Agreement taken by the State of Montana, the City/County, or third party, whichever is later. These records will be kept in the Center's offices in _____, Montana.

C. In accordance with the requirements of 24 C.F.R. § 85.37, the Center shall provide the Department, HUD, Comptroller General of the United States, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine compliance with the Agreement and to make audits, examinations, excerpts, and transcripts.

VIII. Progress Reports

The Center shall submit regular Progress Reports to the City/County in the form, content, and frequency as required by the City/County and the MDOC.

IX. Assignment, Transfer, and Subcontracting

The Center may not assign, transfer, or subcontract any portion of this Agreement without prior written approval by the City/County and MDOC. If such approval is granted, the Center accepts responsibility for the adherence to the terms of this Agreement 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 Agreement.

X. Payment Procedures

The City/County will pay to the Center funds made available under the City's/County's NSP Program based upon information submitted by the Center and consistent with any approved budget and MDOC policy concerning payments. Payments will be made for eligible expenses actually incurred by the Center, and not to exceed actual cash requirements. In addition, the City/County reserves the right to liquidate funds available under this Agreement for costs incurred by the City/County on behalf of the Center.

XI. Suspension or Termination

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2009.

CITY/COUNTY

BY: _____ DATE: _____
_____, City/County Manager

ATTEST:

_____
_____, City/County Clerk

APPROVED AS TO FORM:

_____
_____, City/County Attorney

[SUB-RECIPIENT/NON-PROFIT]

BY: _____ DATE: _____
_____, Executive Director

STATE OF MONTANA)
:
County of_____)

On this _____ day of _____, 2009, before me _____, a Notary Public for the State of Montana, personally appeared, _____ of the _____ in Montana, and acknowledged to me that he/she executed the written instrument on behalf of said Business.

(NOTARY SEAL)

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

DEVELOPER AGREEMENT

[LOCAL GOVERNMENT]
AND [DEVELOPER/NON-PROFIT]

THIS AGREEMENT is entered into on the ___ day of _____, 2009, by and between the [Local Government], hereinafter referred to as "the City/County" and [Developer/non-profit], a private, non-profit/for-profit corporation incorporated under the laws of Montana, hereinafter referred to as "the Center."

WITNESSETH THAT

WHEREAS, the Center desires to contract with the City/County to carry out Neighborhood Stabilization Program (NSP) activities to _____ _____ [please list activities identified in the NSP Contract under Scope of Work] (the "Grantee's NSP Program"); and

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

WHEREAS, the City/County has applied for and been awarded a grant under Montana's NSP Program; and

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

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

I. Responsibilities Delegated to the Center

A. The Grantee agrees to carry out its NSP Program in accordance with the terms and conditions of Contract #MT-NSP-_ _ _-_ _-_ _ _ between the Montana Department of Commerce (MDOC) and the City/County, attached hereto and specifically incorporated herein by this reference; the MDOC Community Development Block Grant (CDBG) / Neighborhood Stabilization Program (NSP) Grant Administration Manual; the State of Montana NSP Substantial Amendment, Plan Year 2008 Annual Action Plan, approved by HUD January 30, 2009; the Housing and Economic Recovery Act (HERA) of 2008; all applicable sections of 24 C.F.R. Parts 85 and 570; and any other requirements for NSP as set forth by HUD, including but not limited to OMB Circular A-110, OMB Circular A-122, and the Federal Register Notice dated October 6, 2008, Vol. 73, No. 194, and any revisions thereto.

B. The Center agrees to carry out the duties and responsibilities assigned to it in the Project Management Plan, approved by the MDOC on _____, 2009, attached hereto and specifically incorporated herein by this reference.

C. Following the completion of the Project, the Center will submit annual reports to the City/County, on a date to be specified by the City/County, unless later excused by new regulation or agreement. These annual reports shall include:

(1) a copy of the Center's annual IRS 990 tax form; and
(2) a copy of the Center's annual Treasurer's report; and
(3) proof of adequate insurance on each facility acquired in whole or in part with Grantee's NSP Program funds.

D. The Center will comply with the applicable procurement requirements set forth 24 CFR §85.36. The Center will provide copies of all quotes and any other construction documents as requested by the City/County and MDOC. The Grantee shall procure all materials, property, or services in accordance with the requirements of Attachment O of OMB Circular A-110, Procurement Standards.

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2. The MDOC has approved the City's/County's "Request for Release of Funds and Certification";

3. The attorney for the City/County and the attorney for the Center have approved this Agreement as to form and content; and

4. The City/County Manager and the Center's Executive Director have each reviewed this Agreement, agreed fully to its terms and conditions, and executed the same.

B. This Agreement will be in effect for the period of affordability for activity, which may be up to twenty (20) years from the date of completion of the City's/County's NSP Program, 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).

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A. The Center does not assume the City's/County's environmental responsibilities described at 24 CFR Part 58.

B. The Center does not assume the City's/County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

IV. Disposition of Real Property or Acquired Equipment

A. The Center will manage the Project during the term of this Agreement in accordance with the terms set forth herein.

B. With respect to any real property or any equipment under the Center's control that was acquired or improved in whole or in part with funds from NSP Grant #MT-NSP-_ _ _-_ _ -_ _ _ in excess of $50,000, the Center will either:

1. use the property to meet one of the national objectives contained in 24 CFR 570.208 during the period of affordability;

2. dispose of the property or equipment in a manner that reimburses the City/County in the amount of the current fair market value of the property or equipment, less any portion of the value attributable to expenditures of non-NSP funds for acquisition of, or improvements to, the property or equipment, subject to all NSP program income requirements. Reimbursement is not required after the period of time specified in subparagraph (B)(1) of this section.

C. With respect to any real property or any equipment under the Center's control that was acquired or improved in whole or in part with funds from NSP Grant #MT-NSP-_ _ _-_ _-_ _ _ totaling less than $50,000, the City/County may require the Center, with approval of MDOC, to payback Grantee's NSP Program funds to MDOC, up to the total amount of the grant award.

D. Upon the expiration of this Agreement, the Center will transfer to the City/County any of the Grantee's NSP Program funds on hand at the time of expiration of this Agreement and any accounts receivable attributable to the use of NSP funds.

E. The parties agree that concurrent with execution of this Agreement, as security for the performance of the obligations set forth herein, an abstract of this Agreement will be duly recorded with the __[Insert specific county]__ County

Clerk and Recorder's office against each property acquired in whole or in part with Grantee's NSP Program funds.

V. Indemnification

The Grantee shall indemnify and hold harmless the City/County, the City/County Community Development Department, and their agents and employees from and against all claims, damages, losses and expenses, including attorney fees arising out of, or resulting from, the performance of the work, provided that any such claim, damage, loss, or expense which is:

1. attributable to bodily injury, sickness, disease or death or to damage or destruction of tangible property, other than the work itself, including the loss and use resulting there from; and,

2. is caused in whole or in part by any negligent act or omission of the contractor(s), and subcontractor(s), or anyone directly or indirectly employed by any one of them or anyone else, for whose acts any of them may be liable, regardless whether or not it is caused in part or by party indemnified hereunder.

VI. Debarment

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

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A. In accordance with the requirements of 24 C.F.R. § 85.37, the Center shall create and retain records supporting the services covered by this Agreement, including but not limited to financial records, supporting documents, and such other records as are required by law or other authority, for a period of four (4) years after either the completion date of this Agreement or the conclusion of any claim, litigation, or exception relating to this Agreement taken by the State of Montana, the City/County,

or third party, whichever is later. These records will be kept in the Center's offices in _____, Montana.

B. In accordance with the requirements of 24 C.F.R. § 85.37, the Center shall provide the Department, HUD, Comptroller General of the United States, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine compliance with the Agreement and to make audits, examinations, excerpts, and transcripts.

VIII. Progress Reports

The Center shall submit regular Progress Reports to the City/County in the form, content, and frequency as required by the City/County and the MDOC.

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The Center may not assign, transfer, or subcontract any portion of this Agreement without prior written approval by the City/County and MDOC. If such approval is granted, the Center accepts responsibility for the adherence to the terms of this Agreement 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 Agreement.

X. Payment Procedures

The City/County will pay to the Center funds made available under the City's/County's NSP Program based upon information submitted by the Center and consistent with any approved budget and MDOC policy concerning payments. Payments will be made for eligible expenses actually incurred by the Center, and not to exceed actual cash requirements. In addition, the City/County reserves the right to liquidate funds available under this Agreement for costs incurred by the City/County on behalf of the Center.

XI. Suspension or Termination

In accordance with 24 CFR 85.43 and 85.44, the City/County may suspend or terminate this Agreement if the Center materially fails to comply with the terms and conditions of this Agreement, or if NSP Grant #MT-NSP-_ _ _-_ _-_ _ _ is terminated by the MDOC in accordance with the terms of the City's/County NSP contract with MDOC, attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2009.

CITY/COUNTY

BY: _____ DATE:_____

_____, City/County Manager

ATTEST:

_____

_____, City/County Clerk

APPROVED AS TO FORM:

_____

_____, City/County Attorney

[DEVELOPER/NON-PROFIT]

BY: _____ DATE:_____
_____, Executive Director

STATE OF MONTANA)
:
County of _____)

On this _____ day of _____, 2009, before me _____, a Notary Public for the State of Montana, personally appeared, _____ of the _____ in Montana, and acknowledged to me that he/she executed the written instrument on behalf of said Business.

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

Exhibit 13-15-A.NSP

PRELIMINARY ARCHITECTURAL REPORT REQUIREMENTS
MONTANA NEIGHBORHOOD STABILIZATION PROGRAM (NSP)

A. A PAR MUST:

- be prepared by a professional architect licensed to practice in the State of Montana;
- adequately describe existing building conditions (if applicable to the proposed NSP project) and problems and propose a specific course of action for solving the identified problems or meet other identified needs;
- provide sufficient information to adequately assess the need for, feasibility, and general, estimated cost of the proposed NSP project; and
- thoroughly address all of the other issues identified in this PAR outline.

The PAR outline presented here is by no means all-inclusive. The architect should use his or her professional judgment to present sufficient information during preparation of the PAR, taking into account that different projects require varying levels of detail (rehabilitation of an existing building versus construction of a new building) and consideration of the specific course of action for solving the identified problems or meeting identified needs.

- The architect should provide appropriate documentation, wherever possible, to support the analysis of the condition of the property and the final NSP proposal submitted.
- The public should be involved in the selection of the specific course of action for solving the identified problems or needs, especially representatives or members of any groups that are expected to be the principal users of the proposed structure or facility.
- Architects and project representatives can call NSP staff (406/841-2773) to request clarification and guidance regarding this PAR outline.

B. ENVIRONMENTAL CONSIDERATIONS RELATED TO THE PAR

All Montana state and CDBG funded projects are subject to the **Montana Environmental Policy Act (MEPA)** and the **National Environmental Policy Act of 1969 (NEPA)**.

Both laws seek to avoid adverse impacts on the environment by mandating careful consideration of the potential impacts of any development assisted with federal funds or approved by a Montana state agency.

- **NEPA** establishes national policy, goals, and procedures for protecting, restoring, and enhancing environmental quality within the United States as a whole;
- **MEPA** seeks to avoid or mitigate adverse impacts on the natural and human environment by mandating careful consideration of the potential impacts of any development assisted with state funds or approved by a Montana state agency;

- Architects and project representatives should consult the Environmental Checklist, Environmental Assessment, and/or Environmental Review Record that has been completed by the sponsoring unit of general local government.

- In order to avoid delays, all applicants to state or federal infrastructure or housing funding programs should consider potential environmental impacts during project planning. As a result, local officials may be able to avoid or mitigate potential environmental impacts through project design or location decisions by carefully considering potential, adverse environmental consequences of projects and the actions that could be required to mitigate any identified adverse consequences.

- Various funding agencies have different requirements related to the environmental review process, the selection of the preferred alternative, and adoption of the preliminary architectural report. Applicants should contact those agencies that they are considering applying to so that each agency's specific requirements can be met concurrently and avoid any unnecessary delays in project completion.

C. PRELIMINARY ARCHITECTURAL REPORT OUTLINE

I. PROBLEM AND/OR NEED DEFINITION - DESCRIBE AND DOCUMENT THE PROBLEM(S) TO BE SOLVED OR NEED(S) IDENTIFIED.

A. IDENTIFY THE PLANNING AND SERVICE AREA OF THE FACILITY.

Using narrative and drawings, describe the planning and service area. The description should include the following information:

1. **LOCATION** - Indicate legal and natural boundaries, major obstacles, environmental constraints (such as floodplains), etc., using maps, photographs, and sketches of the planning and service area for the structure or facility.

2. **GROWTH AREAS AND PROJECTED POPULATION TRENDS** - Identify specific areas of projected, concentrated population growth and relate these to the forecasted growth in the clientele to be served by the proposed NSP project.

   Provide population projections for the project's planning and service area (and for the persons and/or groups the facility will serve) for the projected design period (i.e., the anticipated useful life of the proposed facility).

   Base projections for the clientele to be served upon historical records, Census data, or economic projections, citing recognized sources.

B. EVALUATE THE CONDITION OF THE EXISTING FACILITY OR STRUCTURE (IF APPLICABLE TO THE PROPOSED NSP PROJECT). Describe the existing facility or structure, including at least the following information:

1. **HISTORY** - Provide a brief history of the facility or structure, including when the unit was constructed, major improvements implemented in the past, and any past problems.

2. **CONDITION OF FACILITIES** - Describe the present condition and any problems such as code deficiencies, general structural decay, presence of asbestos, mold or moisture, lead based paint, subsidence issues, overcrowding, or handicapped accessibility. Describe the adequacy or capacity of the existing facility(ies) or structure(s) to meet existing and long-term needs.

3. **HEALTH AND SAFETY** - Describe concerns and deficiencies, compliance issues, and relevant regulations such as the International Building Code, (and other codes as listed in "Special Requirements Concerning Code and Standards Enforcement" in Chapter V of the Application Guidelines), asbestos, lead-based paint, handicapped accessibility, zoning ordinances, and other federal, state, local, or tribal requirements concerning the existing facility.

   Attach pertinent correspondence to or from appropriate federal, state, and local regulatory agencies, especially information that provides documentation of health and safety concerns and deficiencies.

II. FINAL PROPOSAL

A. DESCRIPTION OF SELECTED SITE

1. **IF PROPOSING REHABILITATION OF EXISTING BUILDINGS** - Describe existing buildings within the selected site that could be modified or rehabilitated to accommodate the proposed facility or structure.

   Describe the potential benefits and possible deficiencies with the proposed design, building or site, including code compliance issues, floor space, handicapped accessibility, and potential for long-term expansion, as applicable.

2. **IF PROPOSING NEW CONSTRUCTION** - If proposing new construction, describe the selected building site for new construction, any existing structures on the site(s), potential for long-term expansion, proximity to other services, environmental constraints, etc.

B. REGULATORY COMPLIANCE AND PERMITS. Describe issues that must be addressed regarding compliance (for either a new building or a rehabilitated building) with appropriate regulations such as the International Building Code and other relevant codes, zoning, asbestos, lead-based paint, special permits, handicapped accessibility (American Disabilities Act and HUD 504 regulations), designated 100-year floodplains, and any other applicable federal, state, local or tribal requirements.

C. LAND ACQUISITION ISSUES. Identify sites to be purchased or leased and any easements needed, if applicable.

D. CONSTRUCTION SITE PROBLEMS OR ISSUES. Discuss potential concerns such as geological constraints, limited access, underground storage tanks, floodplains, high water table, asbestos, lead-based paint, contaminated soil, noise, odors, or other conditions that may affect cost of construction or long-term operation of the (new or rehabilitated) facility or structure.

E. COST ESTIMATES FOR THE SELECTED SITE.

1. **PROJECT COSTS** administrative, financial, engineering, architecture, and anticipated construction costs and

2. **PROJECTED ANNUAL OPERATION AND MAINTENANCE COSTS.** In responding to items 1 and 2 for Housing projects, consult Section C (Financial Analysis, Parts I-VI) of the Uniform Application for Montana Housing Loan, Grant & Tax Credit Programs previously submitted with the NSP application.

3. **OPERATIONAL REQUIREMENTS.** Discuss the expertise required to operate the facility or structure and any unique operational requirements or benefits of the proposed NSP activity and project.