

- (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. COMPLIANCE WITH APPLICABLE LAWS

The Contractor must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973 and the Patient Protection and Affordable Care Act ("Affordable Care Act"). Any subletting or subcontracting by the Contractor subjects subcontractors to the same provisions. In accordance with Mont. Code Ann. § 49-3-207, the Contractor agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract. Compliance with the Affordable Care Act requires Contractor to provide healthcare coverage for its employees, who provide services for the State, work for 30 or more hours per week and their dependents under the age of 26, and provide coverage that meets the minimum essential coverage, minimum value, and the affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and would otherwise satisfy the requirements of the Code § 4980 H (ACA) if provided by the State.

Section 14. ACCOUNTING, COST PRINCIPLES, AND AUDITING

- (a) The Grantee, in accordance with Section 18-4-311, MCA and other authorities, must maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (GAAP).
- (b) The Department or any other legally authorized governmental entity or their authorized agents may, at any time during or after the term of this Contract, conduct, in accordance with Sections 2-7-503, 5-13-304, and 18-1-118, MCA and other authorities, audits for the purposes of ensuring the appropriate administration, expenditure of the monies, and delivery of services provided through this Contract.

Section 15. AVOIDANCE OF CONFLICT OF INTEREST

- (a) 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), and any other applicable local, state, or federal law regarding the avoidance of conflict of interest.
- (b) The Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or

potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

- (c) The Grantee shall promptly refer to the Department any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

Section 16. OWNERSHIP AND PUBLICATION OF MATERIALS

- (a) 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.
- (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 17. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

- (a) 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.
- (b) The Grantee's assignment, transfer, or subcontract of this Contract or any portion thereof neither makes the State a party to that agreement nor creates any right, claim, or interest in favor of any party to that agreement against the State.
- (c) The Grantee must immediately notify the Department of any litigation concerning any assignment, transfer, or subcontract of this Contract or any portion thereof.

Section 18. 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 WORK, and Exhibit A, within the budget set forth in Exhibit B.
 - (iii) The Grantee submits to the Department and the Department approves an acceptable Project Budget 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) Other conditions, as needed, including the Signature Certification and Designation of Depository Forms.
- (b) Within nine (9) months of the date of the announcement of the tentative grant award letter issued by the Department October 7, 2015, 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 Section 6, SCOPE OF WORK 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 19. 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, and subcontractors under the Contract.

Section 20. INSURANCE

- (a) General Requirements. Grantee shall maintain and shall assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the duties and

obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. The 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) 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) 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 21. 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 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 would materially alter the circumstances under which the original application was reviewed by the Department.

Section 23. 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.
- (b) Any costs or expenses incurred by the Grantee from obligations arising during a suspension or after termination of the grant pursuant to this Section are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently in writing thereafter. Other necessary and not reasonably avoidable Grantee costs incurred during suspension or after termination are allowable if:
 - i) They result from obligations properly incurred by the Grantee before the

- effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, noncancellable; and
- ii) 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.
- (c) 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;
- (d) The Grantee may terminate this Contract in whole or in part at any time with the consent of the Department 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.
- (e) The Department may, at its sole discretion, terminate or reduce the scope of this Contract if available funding sources are eliminated or reduced for any reason. If a termination or modification is so required, the Department will, if sufficient Program funds are available, compensate the Grantee for eligible Project 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 24. DEFAULT

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

Section 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 39-71-417, 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 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. 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 30. REFERENCE TO CONTRACT

The Contract number must appear on all invoices, reports, and correspondence pertaining to the 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. 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 33. 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 caused this Contract to be executed.

CITY OF MILES CITY:

John Hollowell, Mayor

Date

MONTANA DEPARTMENT OF COMMERCE:

Kelly A. Lynch, Administrator
Community Development Division

Date

**EXHIBIT A
PROJECT IMPLEMENTATION SCHEDULE
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CITY OF MILES CITY
CONTRACT # MT-CDBG-15PL-09**

TASK	MONTH
PROJECT START UP	
Preparation of MDOC Contract	December 2015
PROCUREMENT OF PROFESSIONAL ASSISTANCE ¹	
Submit Request for Proposals (RFP) to DOC for approval, if required ²	Complete
Publish RFP	Complete
Select professional	Complete
Execute agreement with professional	Complete
PROJECT IMPLEMENTATION	
Prepare draft plan/report	May 2016
Submit interim Request for Funds	June 2016
Public review and comment	July-Aug 2016
Finalize plan/report	September 2016
PROJECT CLOSEOUT	
Submit final document	October 2016
Submit final Request for Funds and Project Completion Report	October 2016

¹ Including professional engineers, architects, and community development consultants, etc.

² Architectural and engineering services must be procured in compliance with Section 18-8-201, MCA.

**EXHIBIT B
PROJECT BUDGET
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CITY OF MILES CITY
CONTRACT #MT-CDBG-15PL-09**

BUDGET for CDBG Planning Grant				
	SOURCE: CDBG	SOURCE: Match – City of Miles City	SOURCE: MDT	TOTAL
Professional Services	\$20,100	\$9,900	\$120,000	\$150,000
Other				
TOTAL Planning Project	\$20,100	\$9,900	\$120,000	\$150,000

CONTRACT INFORMATION SHEET

Division staff are required to complete the items in blue print.

Contract Number: MT-CDBG-15PL-09 Division: _____
 Contractor's Name: Miles City Comm Development
 Approved As To N/A
 Form Name: _____
 Approved As To N/A
 Form Email _____
 Contractor (Signee) Name: John Hollowell, Mayor
 Contractor's Email: mayor@milescity-mt.org
 Contractor's Address: PO Box 910, Miles City 59301 Vendor Number: _____
 Attest Name: N/A
 Attest Email: N/A
 Duns or FIN Number: _____ Begin Date: _____
 (Federal Funds Required) _____ 10/7/2015
 Amount: \$ 20,100.00
 Organization Number: 606305 End Date: _____
 RFP Number (if app.): _____ 10/6/2016
 Program Number: _____

Liaison: Maria Jackson Bureau Chief: _____
 Liaison Email: mjackson3@mt.gov Bureau Chief email: amouch@mt.gov Date _____
 Liaison Phone: 841-2550 Division Admin. _____
 Division Admin. email: klynch@mt.gov Date _____

Signatures: _____ Carbon Copies:
 Division Admin Kelly A. Wachtel 11/13/2016 Liaison:
 Fiscal Review Jeri Quince 11/13/2016 Director (> \$200K):
 Legal Counsel Amy Fitzpatrick 11/13/2016 Deputy Director (<\$25K):
 Filenet

Secretary of State:

BIA:

Clerk of Court: