

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.

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. 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).

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

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[FOR-PROFIT/NON-PROFIT]

- 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.

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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 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.

(NOTARY SEAL)

PRINTED NAME: _____

Notary Public for the State of Montana

Residing at _____

My Commission expires _____