

CITY OF BILLINGS
**COMMUNITY DEVELOPMENT DIVISION - BUSINESS CONSORTIUM PROJECT
SUBRECIPIENT AGREEMENT**

This Agreement is entered into by the City of Billings, (City),
and
Rimrock Foundation (Subrecipient)
on this date:
August 22, 2011

WHEREAS, the Subrecipient desires to work with the City of Billings to further a social-enterprise business in the City of Billings, Yellowstone County, Montana;

WHEREAS the City has concurrently received notification of Economic Development Initiative funding via the Consolidated Appropriations Act, 2010 (PL 111-117) as provided through the U.S. Department of Housing and Urban Development;

WHEREBY the City will receive and administer these federal moneys to provide financing, in part, for a social-enterprise project to be undertaken by the Subrecipient;

WHEREAS, the Subrecipient is desirous of obtaining such financing to participate in the Business Consortium Project in Billings and is willing to assume obligations to the City under the above stated contracts on the terms and conditions, as provided herein; AND

WHEREAS, the Subrecipient desires to acquire equipment to offer employment opportunities to the homeless, and the Subrecipient desires to use \$100,000 in federal funds from sources noted above for equipment purchase.

WITNESSETH THAT the City and the Subrecipient mutually agree as follows:

1. PURPOSE

The purpose of this Agreement is to provide funding for the purchase a bobcat and grinder to assist in social-enterprise business start-up to provide training and employment opportunities to individuals who have experienced homelessness.

2. RESPONSE TO REQUEST FOR PROPOSALS INCORPORATED BY REFERENCE

The Subrecipient's proposal submitted on October 1, 2010 for financial assistance is incorporated into this Agreement by this reference and the representations made in the application are binding upon the Subrecipient.

3. ACCEPTANCE OF LOCAL, STATE AND FEDERAL REQUIREMENTS

The Subrecipient will comply with all applicable local, state and federal requirements, laws, administrative directives and procedures, and local ordinances and resolutions. This includes compliance with Uniform Administrative Requirements as described in 24 CFR 570.502. The Subrecipient will provide necessary documentation to the City of the Subrecipient's compliance with all requirements.

The Subrecipient expressly agrees to repay to the City any funds provided to the Subrecipient under this Agreement which the Subrecipient, its subcontractors or subrecipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Agreement expends in violation of the terms of this Agreement or the Federal and State statutes and regulations governing the Program.

The Subrecipient agrees to comply with all appropriate federal, state, and local laws applicable to the funding awarded to complete approved activities undertaken through this Agreement, including:

- A. All program requirements which regulate and restrict the use of state and federal funds under the U.S. Department of Housing and Urban Development. This includes the regulations issued there under, now or hereafter, including but not limited to 24 CFR, and the regulations, policies, guidelines, and requirements as they relate to the Request for Proposals response submitted by the Subrecipient, acceptance, and use of state and federal funds for this program;
- B. Subrecipient's project application statements included in a response to the City's Request for Proposals on October 1, 2010. The response included: certifications of compliance; organization identification and mission; capacity and experience; project design and soundness of approach; financial structure and project implementation;

- C. Federal Office of Management and Budget (OMB) Circular A-122, “Cost principles Non-Profit Organizations” and the provisions of OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations” concerning the use of state and federal funds provided under this Agreement, which includes conformity to the City’s procurement policy for the purposes of purchasing equipment;

Amount	Written Quotes	Sealed Bids	Request for Proposals
\$5,000 - \$50,000	X		
> \$50,000 for Equipment		X	X

- D. Montana Human Rights Act (MCA § 49-2-101 (2002) et seq.);
- E. Governmental Code of Fair Practices (MCA § 49-3-101 (2002) et seq.);
- F. Federal Civil Rights Act of 1964 (42 USC 2000d, et seq.);
- G. Federal Age Discrimination Act of 1975 (42 USC 6101 et seq.);
- H. Uniform Relocation Act of 1973;
- I. Federal Americans with Disabilities Act of 1990 (42 USC 12101, et seq.);
- J. Federal Labor Standards set forth in 24 CFR 570-605;
- K. Environmental Review Procedures as outlined in 24 CFR Part 58; AND
- L. Property purchased with federal funding must be purchased, managed and disposed of in accordance with pertinent provisions at 45 CFR § 74 and § 92.

4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Agreement takes effect on August 22, 2011 and will terminate upon completion of the final project closeout by the City, a period of seven (7) years after the first date of full employment opportunity for six residents of the Business Consortium Project as provided by the Subrecipient.

5. SCOPE OF SERVICES

The Subrecipient will engage in the activities set forth in the Subrecipient’s application for grant assistance. The major components of the project include:

Purchase of equipment to be used to implement a social-enterprise business, providing employment opportunities to six previously homeless individuals served by the Business Consortium Project - Housing Component through the Subrecipient.

6. BUDGET

- A. The total amount of this Agreement will not exceed \$100,000.
- B. Budget adjustments must be approved in advance by the City, and funding shall not exceed \$100,000.
- C. The Subrecipient will record receipt and expenditure of program income as part of the financial transactions involving purchased equipment. If the Subrecipient anticipates program income after project closeout, a program income plan must be developed and submitted for review and written approval by the City at the time of closeout. At the time of closeout, the City will specify the conditions and requirements that will apply to program income received by the Subrecipient after project closeout.

7. LEVELS OF ACCOMPLISHMENT – GOALS AND PERFORMANCE MEASURES

Unless amended by mutual written agreement by the Subrecipient and the City, the Subrecipient will perform the described tasks as outlined below:

Activity / Timeline	Units per Month	Total Units / Year
Provision of employment opportunities.	4 - 6	6
Provide definition of Units of Service here (households assisted, units rehabbed, etc.):		
Number of Individuals Employed.		

8. STAFFING

The Subrecipient shall assign the following staff as Key Personnel to this project:

Staff Member / Title	General Project Duties
Mona Sumner / COO	Oversight of procurement process to purchase equipment according to the City’s procurement procedures.

9. PERFORMANCE MONITORING

The City will monitor the performance of the Subrecipient against goals and performance standards as stated in this Agreement, including data reporting on a quarterly and annual basis. Substandard performance as determined by the City will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, Agreement suspension or termination procedures will be initiated.

10. AMOUNT OF GRANT AND METHOD OF REIMBURSEMENT

- A. The City will authorize the Subrecipient to request the total award amount against the funding reserved for it by the City on a reimbursement basis.
- B. The City will reimburse all eligible expenses incurred in furtherance of this Agreement as provided in this Agreement and upon approval by the City of the Subrecipient’s request for Payment. The City agrees to reimburse the Subrecipient for successfully completing the activities set forth in SCOPE OF ACTIVITIES, as the Subrecipient incurs project costs.
- C. The City will reimburse the Subrecipient for approved, eligible and necessary expenses according to the documentation submitted by the Subrecipient to support the expenditures. The City will not reimburse the Subrecipient for any expenses not included in the approved budget or not clearly and accurately supported by the Subrecipient’s records. Any authorized funds not expended under this grant will revert to the City and will be used to finance other eligible projects.
- D. The reimbursement of eligible costs incurred is contingent upon SPECIAL PROJECT START UP CONDITIONS. **In the event the Subrecipient is unable to comply with the terms and the conditions of this Agreement, any costs incurred will be the Subrecipient’s sole responsibility.**
- E. If the actual total cost of completing the project is less than has been projected by the Subrecipient, the City may, at its discretion, reduce the amount to be provided under this Agreement in proportion to the overall savings.
- F. If the City determines that the Subrecipient has failed to satisfactorily carry out its responsibilities under this Agreement, the City may revoke the Subrecipient’s authority to request reimbursement approved under this Agreement until the City and the Subrecipient agree on a plan to remedy the deficiency.
- G. Funding allocated for this project must be expended within one (1) year after the project was approved for funding. Funding not expended within one (1) shall be considered un-programmed funds and made available for allocation to new projects.

11. LIAISON

City	Subrecipient
Brenda Beckett Community Development Manager City of Billings PO Box 1178 Billings, MT 59103 Phone: 406-657-8286 Fax: 406-657-8327 Email: beckettb@ci.billings.mt.us	Mona Sumner Chief Operating Officer Rimrock Foundation 1231 North 29 th Street Billings, MT 59101 Phone: (406) 248-3175 Email: monasumner@aol.com

12. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any Contractor or subcontractor pursuant to this Agreement are to be the property of the City and the Subrecipient which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating thereto. No material produced in whole or part under this Agreement may be copyrighted or patented in the United States or in any other country without the City's prior written approval.

13. ACCESS TO RECORDS, RECORDS RETENTION AND PROJECT MONITORING

- A. The Subrecipient will maintain adequate and reasonable records of its performance under this Agreement for at **least five years following project closeout** and will allow access to these records at any time during normal business hours by the City, the U.S. Department of Housing and Urban Development, the Comptroller General and, when required by law, the Montana Legislative Auditor. These records will be kept in the Subrecipient's offices in Billings, Montana, located at the address listed above.
- B. The City or its agents may monitor and inspect all phases and aspects of the Subrecipient's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of the Subrecipient's records and accounts. The City will advise the Subrecipient of any specific areas of concern and provide the Subrecipient opportunity to propose corrective actions acceptable to the City.

14. PROJECT PROGRESS REPORTING

- A. During the term of this Agreement, the Subrecipient will submit progress reports to the City **with each request for reimbursement**. This report will describe the status of the project with respect to each implementation objective including, at a minimum, the percentage of the project which has been completed, costs incurred, funds remaining and anticipated completion date. The report must also describe any significant problems encountered and any necessary modification of the project scope or implementation schedule being requested. **A project narrative for each payment is a mandatory requirement.**
- B. The City will not honor claims for reimbursement until the required progress report has been submitted to and approved by the City.

15. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Subrecipient as a result of this Agreement will be on the basis of merit and qualification, and the Subrecipient will not discriminate against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin. As used herein, "qualifications" means qualification as are generally related to competent performance of the particular occupational task.

16. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1) Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2) Nondiscrimination

The Subrecipient will not discriminate against any employee or applicant for employment due to race, color, creed, religion, ancestry, national origin, sex, disability, or other handicap, age, marital / familial status, or status with regard to public assistance. The Subrecipient will take affirmative action to ensure all employment practices are free from such discrimination. The Subrecipient agrees to comply with the non-discrimination in employment and Contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279.

3) Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action / Section 3

1) Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 USC 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

2) Access to Records

The Subrecipient shall furnish and cause each of its own Subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

3) Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement / Section 3

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer. The Subrecipient will also, to the greatest extent feasible, direct all employment, contract, and training opportunities to low- and very-low income persons and businesses, including seasonal and temporary employment opportunities. This includes recruitment of potential employees residing in lower-income areas and those residing in public or federally-assisted housing.

4) Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Subrecipients or subcontractors.

C. Employment Restrictions

1) Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

17. AVOIDANCE OF CONFLICT OF INTEREST

The Subrecipient will comply with the provisions of the applicable HUD regulations of 24 CFR 570.611 Subpart J; and with sections 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest. As the City provided technical assistance to the Subrecipient during the Request for Proposals process, positions offered as a result from receipt of this grant will be advertised and open for competitive application.

18. MODIFICATION AND ASSIGNABILITY OF AGREEMENT

This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this written Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement, and does not imply any continuing commitment by the City of Billings beyond the termination date noted in the Agreement. The Subrecipient accepts responsibility for the adherence to the terms of this Agreement by subcontractor of Subrecipient entities and by public or private agents or agencies to which it

delegates authority to carry out portions of this Agreement.

19. SPECIAL PROJECT START UP CONDITIONS

The Subrecipient will not obligate or utilize funds for any activities provided for by this Agreement until:

- A. An Environmental Review Record (ERR) is completed. The ERR has been completed by the City as of November 23, 2010.
- B. The Subrecipient submits to the City evidence of the firm commitment of the other resources necessary for the completion of the project.
- C. The City will not release any funds to the Subrecipient until the Subrecipient has obtained firm commitments for all non- resources to be involved in the project. The Subrecipient may not expend or obligate any funds, until the City determines that this condition has been satisfied.

20. VENUE

This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court in and for the County of Yellowstone, State of Montana.

21. CITY RECOGNITION

The Subrecipient shall ensure recognition of the role of the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

22. INDEMNIFICATION

- A. The Subrecipient waives any and all claims and recourse against the City, including the right of contribution, for loss or damage to persons or property arising from, growing out of, or in a any way connected with or incidental to the Subrecipient's or any Subrecipient's performance under this Agreement.
- B. Further, the Subrecipient will indemnify, hold harmless, and defend the City and the State of Montana against any and all claims, demands, damages, costs, expenses, or liability arising out of the Subrecipient's or any Subrecipient's performance of this Agreement. In the event that the City is named as a codefendant in any action relating to activities to be performed by the Subrecipient or a Subrecipient under this Agreement, the Subrecipient will notify the City of the action and will represent the City in the action unless the City undertakes to represent itself as a codefendant, in which case the City will bear its own litigation costs, expenses, and attorneys' fees.
- C. Further, the City will indemnify, hold harmless, and defend the Subrecipient against any and all claims, demands, damages, costs, expenses, or liability arising out of the City's performance of this Agreement. In the event that the Subrecipient is named as a codefendant in any action relating to activities to be performed by the City under this Agreement, the City will notify the Subrecipient of the action and will represent the Subrecipient in the action unless the Subrecipient undertakes to represent itself as a codefendant, in which case the Subrecipient will bear its own litigation costs, expenses, and attorneys' fees.

23. AGREEMENT AMENDMENT

The Subrecipient may request that this Agreement be amended. However, the City will allow an amendment only if the Subrecipient clearly demonstrates that the modification is justified and will enhance the overall impact of the original project.

24. PROPERTY MANAGEMENT

Title to real property or equipment acquired under a grant will vest upon acquisition in the City or Subrecipient. The City or Subrecipient will use, manage, and dispose of this property or equipment in accordance with the requirements set out in 24 CFR Part 85, Subpart C and 24 CFR Part 570, Subpart J.

25. REVERSION OF ASSETS

Upon this Agreement's expiration, **seven (7) years post commencement of employment of six tenants served by the Business Consortium Project**, the Subrecipient shall transfer to the City any funds on hand and any accounts receivable attributable to the use of funds. Any real property under the Subrecipient's control that was acquired or improved in whole or in part with funds in excess of \$25,000 must adhere to the following:

- A. Used to meet one of the national objectives in 24 CFR 570.208 until five years after the expiration of the agreement or for such longer period of time as determined to be appropriate by the recipient; or
- B. If not used to meet objectives outlined herein, the Subrecipient shall pay to the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non- funds for the acquisition of, or improvement to, the property. The payment shall be treated as program income by the City. No payment back to the City would be required if property is sold five years after the termination of this Agreement.

26. INDEPENDENT SUBRECIPIENT

The Subrecipient shall be considered independent from the City, and may not be the agent or employee of City, shall have no authorization, express, implied, or apparent, to bind the City to any Agreements, settlements, liability, or understanding except as expressly set forth herein.

The Subrecipient must maintain appropriate workers compensation and unemployment insurance coverage. The Subrecipient is solely responsible for and must meet all labor and tax law requirements pertaining to employment and contracting services, inclusive of insurance premiums, tax deductions, tax withholding, overtime wages and other employment obligations that may be legally required with respect to the Subrecipient's organization.

27. TERMINATION OF AGREEMENT

This Agreement may be terminated as follows:

- A. Termination and Modification Due Loss of Funding. If, for any reason, federal financial resources required by the City to fund the Subrecipient's projects are withdrawn from the City, the City may unilaterally terminate or modify the terms of this Agreement to reflect the loss of funding. If a termination or modification is required, the City will, to the extent permitted by available funding, compensate the Subrecipient for eligible expenses incurred by the Subrecipient as of the revised termination date. The City will give the Subrecipient written notice of the effective date of the modification or termination of this Agreement and, if a reduction in funding is required, the Subrecipient will provide the City with a modified project budget.
- B. Termination Due to Noncompliance with Agreement Terms. If the City determines that the Subrecipient has failed to comply with the general terms and conditions of this Agreement, the project schedule, or any special conditions, and if upon notification of the defect the Subrecipient does not remedy the deficiency within a reasonable period to be specified in the notice, the City may terminate this Agreement in whole or in part at any time before the date of completion. The City will promptly notify the Subrecipient in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.
- C. Termination Due to Adverse Environmental Impact. This Agreement will terminate at the conclusion of the environmental review process if the City or Subrecipient determines that the project would have a significant adverse impact on the quality of the human environment and that this impact cannot be avoided or sufficiently mitigated by reasonable, cost-effective means.
- D. Effect of Termination. In the event of termination due to the Subrecipient's failure to comply with the terms of this Agreement or the project's adverse environmental impact, any cost incurred will be the responsibility of the Subrecipient. However, at its discretion, the City may approve request by the Subrecipient for reimbursement of expenses incurred. The City's decision to authorize payment of these costs or to recover expended funding will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Subrecipient to comply with the terms of this Agreement and on whether any failure to comply with the terms of this Agreement was the result of circumstances beyond the Subrecipient's control.

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

CITY

SUBRECIPIENT

Thomas W. Hanel, Mayor
City of Billings

By: _____
Authorized Official

Date

Date

Print Name

Mailing Address

Phone and Fax Number

E-mail address