

DEVELOPMENT AGREEMENT

Between:

City of Billings
A Montana Municipal Corporation
whose address is
P.O. Box 1178, Billings, Montana 59103
(the "City")

And

NeighborWorks Montana ("Subrecipient")

For:

C & C Manufactured Home Community Infrastructure Project

This Development Agreement (the "Agreement"), entered this 11th day of May, 2020, by and between, **NeighborWorks Montana**, as subrecipient (the "Subrecipient") of Community Development Block Grant ("CDBG") funds, and the **City of Billings**, as the grantee (the "Grantee") and provider of such funds pursuant to a CDBG award, for the project entitled **C & C Manufactured Home Community Infrastructure Project**, (the "Project"), made by the City of Billings' Community Development Division under provisions of Title I of the Housing and Urban Development Act of 1974, as amended (the "Act"). It is mutually agreed that no funds will be disbursed prior to the date of the execution of this Development Agreement (the "Agreement"). This Agreement will remain in effect as long as the Subrecipient has control over CDBG funds, including program income, or assets including real property acquired with funds dispersed under the Grant.

Any provisions contained herein which are found to be inconsistent with the Act, federal, state or local laws, and implementing regulations, will be deleted or appropriately modified as directed by Community Development staff and in no case shall any such inconsistency, whether remedied or not, impair the remainder.

1. PURPOSE

The purpose of this written Agreement is to provide CDBG funding to the Subrecipient for their use in carrying out project activities described in the application and approved under the City's Community Development Block Grant (CDBG) Program. Funding allocations are as follows: \$150,000 CDBG revenue received by the City in FY2019-2020; \$235,000 in new CDBG entitlement allocations for FY2020-2021. The FY2020-2021 U.S. Department of Housing and Urban Development (HUD) allocation is dependent on federal Consolidated / Annual Action Plan approval. Other City revenues may be utilized in place of this allocation.

Under this Agreement, the Grantee is still responsible for the overall administration and monitoring of the use of CDBG funds in accordance with program requirements.

2. APPLICATION INCORPORATED BY REFERENCE

The Subrecipient's application for CDBG assistance (copy attached) is incorporated into this Agreement by this reference and the representations made in the application are binding upon the Subrecipient.

3. NATIONAL OBJECTIVE COMPLIANCE / ELIGIBILITY

The Subrecipient certifies that the activities carried out with CDBG funds provided under this Agreement will meet one or more of the CDBG program's National Objectives as defined in 24 CFR Part 570.208. The City and Subrecipient agree this Public infrastructure – Low-Income Housing Benefit project is eligible under CDBG Matrix Code 03K, Street Improvements.

CDBG assistance shall be utilized for design, plans and specifications development, and construction of infrastructure required to support the development of affordable housing. The Subrecipient must ensure adherence to the CDBG 51% low-income benefit restrictions for the area serviced by the new

infrastructure. The Subrecipient will provide necessary documentation to the City of the Subrecipient's compliance with this requirement.

The Subrecipient agrees all Contracts entered into by it for the completion of the activities described in Section 4 – SCOPE OF WORK of this Agreement will contain special provisions requiring Contractors to comply with all applicable federal, state and local requirements.

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

4. SCOPE OF WORK

The Subrecipient will be responsible for administering the following activities in a manner satisfactory to the Grantee consistent with any standards and CDBG requirements as a condition of providing these funds. The Subrecipient will engage in the activities set forth in the Subrecipient's application for CDBG assistance.

Property Location / Description:

- Tax ID:** D01558
- Geocode:** 03092709201090000
- Property owner:** C & C Community Inc.
- Certificate of Survey:** 1456
- Tract:** 2A
- Legal description:** S09, T01 S, R26 E, C.O.S. 1456, PARCEL 2A, LESS CS 3711 AREA A (20)
- Address:** 307 SOUTH BILLINGS BLVD

The major components of the project include:

Design, prepare plans and specifications, and construct infrastructure improvements for the entire manufactured home community, C & C Community, Inc., which is a resident-owned community located within the city limits of Billings, Montana. The Project includes asphalt paving, improved drainage, and installation and connection of fire hydrants as recommended by the engineer's Property Condition Report. The scope of work is to be clearly defined within any and all contracts between the Subrecipient and contractors and subcontractors.

5. PROJECT SCHEDULE / LEVELS OF PERFORMANCE

Each level of performance below includes time periods for performance. Unless amended by mutual written agreement by the Subrecipient and the City, the Subrecipient will perform the described tasks as outlined below:

Activity	Estimated Timeline
Design, or contract for the design of, infrastructure improvements for the entire manufactured home community, C & C Community, Inc. To include asphalt paving, improved drainage, and fire hydrants as recommended by the engineer's Property Condition Report. Provide proof of design contract(s); insurance certificates; bonding; etc.	May 31, 2020
Prepare, or contract for the preparation of, infrastructure improvement plans and specifications recommended by the engineer's Property Condition Report. Provide proof of plan / design contract(s); insurance certificates; bonding; etc.	July 15, 2020
Construct, or contract for the construction of, infrastructure improvements recommended by the engineer's Property Condition Report. Provide proof of construction contract(s); permits; insurance certificates; bonding; final inspection; etc.	August 1, 2020
Infrastructure will be completed in accordance with federal, state and local laws, ordinances, and regulations and must demonstrate sound engineering processes.	

6. 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.

7. PERSONNEL ASSIGNED TO SCOPE OF WORK

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

Staff Member / Title	General Project Duties	Time Allocation
Kaia Peterson, Executive Director	Compliance	5%
Kevin Lee, Chief Financial Officer	Compliance / Accounting	10%
Danielle Maiden, ROC Program Manager	Project Oversight	5%
Mary Lou Affleck, Project Dev. Coordinator	Project Coordinator	20%

8. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Agreement becomes effective upon execution of this Agreement by all parties and will terminate upon completion of the final project closeout by the City.

Services of the Subrecipient shall commence on May 31, 2020, and are expected to be completed on December 31, 2020. The terms of this Agreement and the provisions herein shall be extended to cover any additional time during which the Subrecipient remains responsible for carrying out the approved activities and any assets or program income.

9. BUDGET / PROGRAM INCOME

- a. The total amount of CDBG funds committed to this Project under this Agreement will not exceed **\$385,000**.
- b. A copy of the preliminary project budget is located in the "Funding Uses" section of Attachment A, the Subrecipient's application for CDBG assistance and by this reference made a part of this Agreement and binding upon the Subrecipient.
- c. Budget adjustments must be approved by the City in writing and in advance of expenditures.
- d. The Subrecipient will expend any program income it receives before requesting additional CDBG funds. The City will deduct the amount of program income on hand, shown on the drawdown form, from the amount requested by the Subrecipient. This program income will be treated as additional CDBG funds and will be subject to all applicable requirements governing the use of CDBG funds. The Subrecipient will record receipt and expenditure of program income as part of the financial transactions of the grant program. 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.

10. COMPENSATION AND METHOD OF PAYMENT / DRAWDOWN REQUESTS (24 CFR 85.21 or 570.502(b)(3)(i))

- a. The City will authorize the Subrecipient to request the total assistance 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 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 Section 4 - SCOPE OF WORK, 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 assistance will revert to the City and will be used to finance other CDBG projects.

- d. The reimbursement of eligible costs incurred is contingent upon Section 28 - 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 in its budget (Attachment A), 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 the Subrecipient has failed to satisfactorily carry out its responsibilities under this Agreement, the City may revoke the Subrecipient's authority to request CDBG funds approved under this Agreement until the City and the Subrecipient agree on a plan to remedy the deficiency.
- g. Funding allocated for any City of Billings CDBG project must be expended within three (3) years after the project was approved for funding. Funding not expended within three years shall be considered un-programmed funds and made available for allocation to new projects. **Projects funded for FY 2019-2020 must be expended by June 30, 2023.**

11. RECORDKEEPING / RETENTION PERIOD / ACCESS TO RECORDS

The general CDBG standard for record keeping is that records must be accurate, complete, and orderly.

- a. The Subrecipient will comply with record keeping regulations in 24 CFR Part 570 and CFR Parts 84 and 85, as now in effect or as they may be amended during the term of this Agreement; all requirements established by the City; applicable State and Federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.
- b. The Subrecipient shall furnish and cause each of its contractors and 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.
- c. In general, records shall be retained for four (4) years from the date of submission of the City's Comprehensive Annual Performance Evaluation Report (CAPER) in which the specific activity is reported for the last time, unless there is litigation, claims, audit, negotiation, or other actions involving the records, which has started before expiration of the 4-year period. In such cases, the records must be retained until completion of the action and resolution of all issues that arise from it or the end of the regular 4-year period, whichever is longer.
- d. Representatives of the City, HUD, the Comptroller General of the United States, or of other authorized governmental agencies have the right of access to any pertinent records of the subrecipient to make audits, examinations, excerpts, and transcripts. (24 CFR 85.10 (e) and 84.53 (e)).

12. PUBLIC ACCESS TO PROGRAM RECORDS

Subrecipient shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

The Subrecipient will maintain adequate and reasonable records of its performance under this Agreement and will allow access to these records at any time during normal business hours by citizens, the City, HUD, the Comptroller General and, when required by law, the Montana Legislative Auditor. These records will be kept in the Subrecipient's offices located at **17 5th Street South, Great Falls, MT 59401.**

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.

13. REPORTING REQUIREMENTS

- a. During the term of this Agreement, the Subrecipient will submit progress reports to the City **with each request for payment**. This report will describe the status of the project with respect to each implementation objective including, at a minimum, the percentage of the project that 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 payment until the Subrecipient submits to the City the required progress report and the City has approved it.

14. CDBG PROGRAM REQUIREMENTS

The Subrecipient will comply with all applicable parts of Title I of the Housing and Community Development Act of 1974, as amended; the applicable HUD regulations in 24 CFR Part 84.21-28 as amended by 570.502, as now in effect or as they may be amended during the term of this Agreement; all requirements established by the City; applicable state and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.

15. UNIFORM ADMINISTRATIVE AND PROGRAM MANAGEMENT STANDARDS

Subrecipient will ensure compliance with 2 CFR Part 200 and 24 CFR Part 84.21-28 as amended by 570.502, for non-profit subrecipients.

The Subrecipient's internal controls will consist of a combination of procedures:

- a. An organizational chart,
- b. Written definition of duties and key job responsibilities,
- c. Qualified personnel,
- d. Formal system of authorization and supervision,
- e. Separation of duties so no one individual has authority over an entire financial transaction,
- f. Control over access to assets, blank forms, and confidential documents,
- g. Periodic comparisons of financial records to actual assets and liabilities (reconciliation),
- h. Records that together create accountability in the Subrecipient's financial system and safeguard its cash, property, and other assets.

The Subrecipient is required to have accounting records that adequately identify the source and application of CDBG funds provided to them (24 CFR 85.20(b)(2) and 84.21). To meet this requirement, the Subrecipient's accounting system should include at least the following elements:

- e. **Chart of accounts.** This is a list of names and the numbering system for the individual accounts that contains the basic information about particular classifications of financial transactions for the organization.
- f. **Cash receipts journal** that documents chronologically when funds were received, in what amounts, and from what sources.
- g. **Cash disbursements journal** that documents chronologically the expenditures of the organization (e.g., when the expense was incurred, how much was spent, to whom funds were paid, and for what purpose).
- h. **Payroll journal** that documents the organization's expenses on salaries and benefits and distinguishes different categories for regulatory purposes.
- i. **General ledger.** After a transaction is entered in a journal, that information also should be transferred to the proper accounts contained in the general ledger. The general ledger summarizes chronologically the activity and financial status of all the accounts of an organization.

The Subrecipient's accounting records must contain reliable and up-to-date information about the sources and uses of funds, including:

- a. Federal grant awards (or subgrant allocations) received by the organization
- b. Current authorizations and obligations of CDBG funds

- c. Unobligated balances (funds remaining available for distribution)
- d. Assets and liabilities
- e. Program income
- f. Actual outlays or expenditures
- g. "Eligible activity" classifications specified in 24 CFR 570.201-570.206.

16. ALLOWABLE COSTS (24 CFR 85.22 and 84.27)

The Subrecipient is required to ensure all expenditures are necessary, reasonable, and directly related to Project activities detailed within this Agreement AND not prohibited under federal, state or local laws or regulations. The standards for determining allowable costs reasonableness, allowability, and allocability of costs incurred as part of CDBG-financed activities are found in Omnibus Circular – 2 CFR Part 200.

17. PROCUREMENT STANDARDS AND METHODS

The Subrecipient is required to ensure compliance with 24 CFR 85.36 for governmental subrecipients and 24 CFR 84.40-48 for non-profit subrecipient organizations. At a minimum, this shall include documenting the following:

- a. Follow a free and open competitive process in securing products and services from the date this Agreement is executed until project completion (i.e., construction).
- b. Properly document purchasing activities and decisions.
- c. Observe the special rules for particular kinds of purchases (small purchases, competitive sealed bids, competitive proposals, and sole source procurements).
- d. Properly bond and insure work involving large construction contracts and/or subcontracts.
- e. Use local businesses and contract with small, minority and/or women-owned businesses to the maximum extent feasible.

18. AVOIDANCE OF CONFLICT OF INTEREST

The Subrecipient must comply with the conflict of interest requirements in the Omnibus Circular (or 24 CFR parts 84 and 85, as applicable).

19. COMPLIANCE WITH LAWS / REGULATIONS

The Subrecipient is responsible for compliance with all applicable federal or state laws, Executive Orders, and regulations of the CDBG program.

20. OTHER PROGRAM REQUIREMENTS

The Subrecipient will carry out its activities in compliance with the requirements of Subpart K of 24 CFR 570, except, however, that the Subrecipient does not assume the grantee's environmental responsibilities or the responsibility for initiating the environmental review process under 24 CFR Part 52.

21. REVERSION OF ASSETS

Upon expiration, termination, or closeout of this Agreement, the Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds under this Agreement.

22. USE OF REAL PROPERTY

Any real property acquired or improved in whole or in part with CDBG funds must continue to be used for the purpose for which it was acquired or improved. Any changes in its use within five years of closeout of the project activities detailed within this Agreement must be approved by the City in writing.

23. AMENDMENTS

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. Any changes in the scope of the project, as outlined in this Agreement, including cost increases, must be submitted in writing by the Subrecipient to the City as a request for an award adjustment. Any adjustment granted by the City shall be appended to this Agreement as an amendment.

24. INDEMNIFICATION

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 any way connected with, or incidental to, the Subrecipient's or any contractor's or subcontractor's performance under this Agreement.

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 contractor's or subcontractor's performance of this Agreement. In the event the City is named as a co-defendant in any action relating to activities to be performed by the Subrecipient or a contractor or subcontractor 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 co-defendant, in which case the City will bear its own litigation costs, expenses, and attorneys' fees.

25. SUSPENSION AND TERMINATION

In accordance with 2 CFR Part 200, suspension or termination of payment to the Subrecipient under this Agreement may occur if the Subrecipient materially fails to comply with any terms of this Agreement, and the Agreement may be terminated for convenience in accordance with 2 CFR Part 200.

- a. **Termination and Modification Due to Loss of Funding.** If, for any reason, federal financial resources required by the City to fund the Subrecipient's Project is 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 CDBG funds, 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 Development 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 a request by the Subrecipient for reimbursement of expenses incurred. The City's decision to authorize payment of these costs or to recover expended CDBG funds 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.

26. GRANT CLOSEOUT PROCEDURES (24 CFR § 570.509)

During the term of this Agreement, the City or its agents will review Project activity records to ensure:

- a. The Subrecipient followed a free and open competitive process in securing products and services for this project and all purchasing activities and decisions are properly documented.
- b. The Subrecipient, the Subrecipient's contractor(s) and subcontractor(s) applied for, and obtained, all necessary permits and inspections.
- c. Appropriate local, city, state, and/or federal inspectors approved and/or signed off on all required inspections.
- d. The Subrecipient addressed all findings or concerns raised during Project activities and documented the process and response.
- e. All costs to be paid with CDBG funds have been incurred, with the exception of closeout costs (e.g., audit) or contingent liability costs.
- f. The work to be financed with CDBG funding has been completed, including activities financed through escrow accounts, loan guarantees, or similar mechanisms.
- g. The other responsibilities of the Subrecipient under its agreement with the City have been met, or the City believes there is no further benefit in keeping the Agreement open for the purpose of securing performance.

27. ETHICS, ACCOUNTABILITY AND CAMPAIGN REFORM ACT OF 1991

All provisions of this Act have been and will be complied with by the parties to this Agreement in regard to actions and expenditures of funds related to the CDBG project giving rise to this Agreement.

28. SPECIAL PROJECT START UP CONDITIONS

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

- a. The City completes an Environmental Review Record (ERR).
- b. The Subrecipient submits to the City evidence of the firm commitment of the other resources necessary for the completion of the project, if any, as defined in Section 9: Budget / Program Income and Attachment A of this Agreement.
- c. The Subrecipient must receive permission from the City to enter into Construction Contract(s). This provision is to assure that the Subrecipient has complied with applicable procurement requirements and Labor Standards.
- d. Subrecipient provides documentation that demonstrates that fifty-one (51) percent of the persons or households assisted are low- and moderate-income.

The City will not release any CDBG funds to the Subrecipient until the Subrecipient has obtained firm commitments for all non-CDBG resources to be involved in the project. The Subrecipient may not expend or obligate any CDBG funds, until the City determines that this condition has been satisfied.

29. NONDISCRIMINATION

The Subrecipient will not discriminate against any employee or applicant for employment due to race, color, creed, religion, ancestry, national origin, sex, disability, gender identity, sexual orientation, 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.

The Subrecipient will provide equal access in accordance with the individual's gender identity and in a manner that affords equal access to the individual's family (24 CFR part 570).

The Subrecipient shall not discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property (Montana Code Annotated 2015 49-2-305).

30. FAIR HOUSING ACT, TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 (PUBLIC LAW 90-234)

The Fair Housing Act prohibits discrimination in housing practices on the basis of race, color, religion, sex, gender identity, sexual orientation, and national origin.

31. EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259 (IMPLEMENTED IN 24 CFR PART 107)

This order and its implementing regulations require HUD to take all actions necessary to prevent discrimination because of race, color, religion, sex, gender identity, sexual orientation, or national origin in the use, occupancy, sale, leasing, rental, or other disposition of residential property assisted with Federal loans, advances, grants, or contributions.

32. AFFIRMATIVE ACTION: WOMEN AND MINORITY-OWNED BUSINESSES

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 African-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.

33. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION STATEMENT

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.

34. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Subrecipient under 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, gender identity, sexual orientation, 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.

35. AUDITS (OMNIBUS CIRCULAR – 2 CFR Part 200).

Subrecipient shall comply with the requirements and standards within Omnibus Circular – 2 CFR Part 200. The threshold for when an entity is required to have an audit is \$750,000. This Project is not subject to audit requirements.

Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

36. CIVIL RIGHTS 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.

37. 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.

38. 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.

39. ENVIRONMENTAL REQUIREMENTS (24 CFR 570.604)

In their use of CDBG funds, grantees are required to assume responsibility for environmental review, decision making, and other action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other related provisions of law. The CDBG regulations explicitly prohibit subrecipients from assuming the grantee’s environmental responsibilities (see 24 CFR 570.503(b)(5)(i)).

However, under the applicable regulations for any project receiving CDBG assistance, no party involved with the project, including subrecipients, may commit funds to the project, including incurring project costs, until the grantee completes the appropriate environmental review and public notification process, and HUD approves a certification of compliance with environmental laws and request for release of funds from environmental conditions. Activities not subject to this restriction are those the regulations define as exempt from environmental review. However, before any party involved with the project can incur costs, even for activities that are exempt, the grantee must first make a formal determination that the activity(ies) is exempt. (The list of activities that are exempt from environmental review are found in 24 CFR part 58.34 and 58.35(b).)

40. NOTICES / LIAISONS

Notices required by this Agreement shall be in writing and delivered via mail (postage paid), commercial courier, or personal delivery or sent by electronic mail, facsimile or other electronic means. Any notice delivered or sent as previously mentioned shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

City:	Subrecipient:
<p style="text-align: center;">Tam Rodier Community Development Coordinator City of Billings PO Box 1178 Billings, MT 59103</p> <p style="text-align: center;">Phone: (406) 657-8284</p> <p style="text-align: center;">FAX: (406) 294-7595</p> <p style="text-align: center;">Email: rodiert@billingsmt.gov</p>	<p style="text-align: center;">Mary Lou Affleck Project Development Coordinator NeighborWorks Montana PO Box 1025 Great Falls, MT 59403</p> <p style="text-align: center;">(406) 670-9100</p> <p style="text-align: center;">FAX (406) 604-4540</p> <p style="text-align: center;">Email: maffleck@nwmmt.org</p>

41. 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.

42. SUBCONTRACT PROVISIONS

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

43. MODIFICATION AND ASSIGNABILITY OF DEVELOPMENT 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 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.

44. CONSTRUCTION AND VENUE

Montana's prevailing wage law, often referred to as Montana's Little Davis-Bacon Law, applies to public works contracts entered into for construction services (heavy, highway and building) or nonconstruction services by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is \$25,000 or more. It requires that bidders on contracts pay a set rate of compensation, including employee benefits, and that at least 50% of the employees of each contractor working on the jobs be bona fide Montana residents.

Davis-Bacon wage rates are required for CDBG projects where construction costs exceed \$2,000 or where nine (9) or more housing units are created. Consultation **is required** with the Community Development Manager for the City prior to undertaking CDBG financed construction work to assist with compliance with: Federal Labor Standards; Davis-Bacon wage rates; lead-based paint; environmental review; historic preservation; and procurement practices to ensure work is competitively bid when required.

The State of Montana charges a 1% tax on the gross receipts from all public contracts over \$5,000. Subrecipient shall ensure payment of gross receipts as required. Details may be found on the Montana Department of Revenue website at:

<https://mtrevenue.gov/taxes/miscellaneous-taxes-and-fees/contractors-gross-receipts/#quickinfo>

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. In the event of litigation concerning it, Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

45. 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.

46. INSURANCE AND BONDING

Insurance: The Subrecipient shall maintain in good standing the insurance described in this Section. The Subrecipient shall furnish the City with proof of insurance in accordance with this Section before rendering any services under this Agreement.

The Subrecipient shall secure and maintain such insurance policies, including those set forth below, as will protect itself, its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this agreement; whether the acts were made by the City or Subrecipient or by any contractor or subcontractor or anyone employed by the Subrecipient directly or indirectly. The following insurance policies are required:

- a. Workers' compensation and employer's liability coverage as required by Montana law;
- b. Commercial General Liability, including contractual and personal injury coverages of \$750,000 per claim and \$1,500,000 per occurrence for injuries, including accidental death to any one

- person;
- c. Professional liability in the amount of \$1,500,000 per claim;
- d. Automobile liability of \$1,500,000 per accident;
- e. Builder's Risk Insurance in an amount not less than the completed value of the infrastructure project;
- f. The City shall be listed as an additional insured on all insurance policies during construction; and
- g. All insurance policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against the CITY.

Insurance certificates shall be filed with the City giving satisfactory evidence of insurance as stipulated above **at the time** the Agreement is signed. The Public Liability Insurance certificate shall be maintained during the life of the Agreement. The Builders Risk Insurance shall be secured prior to initiating construction.

- a. **Insurance Certificates:** The Subrecipient, contractors and subcontractors shall name the City as an insured party and the policy shall contain the following language, *"The Company agrees that it will give the City of Billings, Montana no less than 30 days advance written notice of its intent to cancel or materially change the described policy."* This language, however, if accompanied by a disclaimer or any other language, which negates company responsibility for failing to provide said notice, will not be acceptable.
- b. **Approval of Contractor / Subcontractor and Insurer:** The insurer must be satisfactory to the City Attorney for the City of Billings. Further, the Subrecipient will assure all subcontractors performing work on the project maintain public liability, property, and casualty insurance and stationary workers compensation insurance coverage in compliance with state Law.
- c. **Construction Contracts:** The Subrecipient agrees to deny participation in construction contracts by ineligible, debarred or suspended persons or entities at 24 CFR Part 24. The Subrecipient will provide the City with the names of contractor(s) and subcontractor(s) prior to entering into contracts.

Bonding: The Subrecipient will provide proof that contractor(s) and subcontractor(s) selected for the project possess performance and completion bonds equal to the completed value of the infrastructure project.

47. OTHER ADMINISTRATIVE AND PROGRAM REQUIREMENTS

Following are 14 CDBG administrative and program requirements specified in Subparts J and K of 24 CFR Part 570 that apply to Subrecipients as well as Grantees:

- a. Program Income (24 CFR 570.503 and 570.504).
- b. Programmatic and Budget Changes.
- c. Civil Rights and Fair Housing; Employment and Contracting Opportunities (24 CFR 570.601, 570.607 and 570.614).
- d. Labor Standards (24 CFR 570.603).
- e. Environmental Requirements (with respect to the use of funds, 24 CFR 570.604).
- f. Historic Preservation.
- g. National Flood Insurance Program (24 CFR 570.605).
- h. Floodplain Management (24 CFR Part 55).
- i. Relocation, Real Property Acquisition, and One-for-One Housing Replacement
- j. (24 CFR 570.606).
- k. Lead-based Paint (24 CFR 570.608).
- l. Political Activity (24 CFR 570.207(a)(3)).
- m. Conflict of Interest (24 CFR 570.611).
- n. Program Monitoring (24 CFR 570.501(b), 24 CFR 85.40(a) and (e), and 24 CFR 84.51(a)).
- o. Suspension and Termination (24 CFR 570.503 (b) (6), 24 CFR 85.43 and 44, and 24 CFR 84.62).

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

CITY

SUBRECIPIENT

City Administrator, City of Billings

By: _____
Authorized Official - Signature

Printed Name

Printed Name

Date

Date

Mailing Address

Phone and Fax Number

E-mail address