

EXHIBIT 8-B2
SAMPLE FUNDING ASSISTANCE AGREEMENT

Grant Assistance Agreement
Agreement Number _____

(This agreement sample should be used for infrastructure grants, or non-profit grants)

A. PARTIES: The parties to this contract (*the Contract*) are (name of local government and address) (the City, Town, or County), and (name of assisted business or non-profit, and address) (the Contractor), tax identification number _____.

B. PURPOSE: The purpose of the Contract is for the Contractor to

(use \$ _____ in Community Development Block Grant – Economic Development (CDBG-ED) grant funds for [name activity to be completed under agreement by the non-profit], or

(receive extension of water/sewer service [or other improvement] as a result of the CDBG-ED award to the City, Town or County).

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the parties hereto agree as follows:

1. SCOPE AND DUTIES: The Contractor will engage in activities as set forth in the Contractor's Montana Department of Commerce's application, and in the Contractor's Hiring and Training Plan (*Attachment A*), including any written modifications resulting from the review of the application by the Montana Department of Commerce for grant assistance, all of which, by this reference are made a part hereof.

The scope of the Contract is for the Contractor to (describe activity).

The Contractor will submit status reports on project performance at the request of, and in the format prescribed by, the (City, Town, or County) and the Montana Department of Commerce. These reports include, but are not limited to:

- a) Project progress reports describing the status of the project with respect to each implementation objective, including at a minimum, the percentage complete, costs incurred, funds remaining and projected completion date. The report must also describe significant problems encountered, documented uses of matching funds and/or in-kind contributions and any necessary scope or implementation schedule modifications requested; and

- b) Unless otherwise specified, by the (City, Town, or County), the Contractor will submit quarterly progress reports to the (City, Town, or County) until the goals contained in the plan have been achieved, and the Contractor receives project closeout approval from the (City, Town, or County) and the Montana Department of Commerce.

The Montana Department of Commerce and the (City, Town, or County) must pre-approve any changes to these terms and conditions.

2. COMPENSATION & CONSIDERATION: The total amount to be awarded to the Contractor under the Contract will be up to \$_____. The Contractor will provide at least \$_____ in matching funds (cash and in-kind) consistent with the purposes expressed in the application during the period of the Contract. The Contractor may modify this budget only after having requested and received prior approval of the adjustment from the (City, Town, or County), and the Montana Department of Commerce.

The (City, Town or County's) and the Montana Department of Commerce's approval of the Request for Payment form will constitute approval of the budget adjustment. The rationale for budget adjustment must be described in the Project Progress Report and the proposed adjustments noted in the Request for Payment and Status of Funds Report submitted with draws against the Contract funding reserve.

- a) The (City, Town, or County) will authorize the Contractor to draw up to \$_____ against the funding reserved for the Contractor by the (City, Town, or County). In drawing against the reserved amount, the Contractor will follow the instructions supplied by the (City, Town, or County).
- b) If the (City, Town, or County) determines that the Contractor has failed to satisfactorily carry out the duties and responsibilities under the Contract, the (City, Town, or County) may revoke the Contractor's authority to draw against the reserved amount described herein until such time as the (City, Town, or County) and the Contractor agree on a plan to remedy the deficiency.
- c) The (City, Town, or County) reserves the right to withdraw a commitment for any CDBG-ED funds which remain un-disbursed at the end of the Contract period.

The Contractor shall contact the (City, Town, or County) if the Contractor has any questions regarding costs eligible for reimbursement.

3. PERIOD OF CONTRACT: The Contract will be in effect for the period commencing (date) and ending (date) unless otherwise terminated by law or in compliance with the terms of the Contract.

4. LIAISON: The contact person for the (City, Town, or County) is (name, title,

location), and (name, title, location), for the Contractor.

5. COMPLIANCE WITH WORKERS' COMPENSATION ACT: The Contractor is required to supply the (City, Town, or County) with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-120, 39-71-401, and 39-71-405.) Neither the Contractor nor its employees are employees of the State. The proof of insurance/exemption must be valid for the entire Contract period and must be received by the (City, Town, or County) within 5 working days of the Contractor's execution of the Contract.

CONTRACTS WILL NOT BE ISSUED TO CONTRACTORS WHO FAIL TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.

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

6. DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the (City, Town, or County).

7. FAILURE TO HONOR CONTRACT: If the Contractor refuses or fails to deliver in accordance with the Contract terms and conditions, the State Procurement Bureau may, in its discretion, suspend the Contractor for a period of time from entering into any contracts with the State of Montana.

8. ACCESS AND RETENTION OF RECORDS: The Contractor agrees to provide the (City, Town, or County), the Montana Department of Commerce, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party.

9. TERMINATION OF CONTRACT: Unless otherwise stated, the (City, Town, or County) may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the Contract.

10. UNAVAILABILITY OF FUNDING: The (City, Town, or County) may, at its sole discretion, terminate or reduce the scope of the Contract if available funding is eliminated or reduced for any reason.

11. U.S. FUNDS: All prices and payments must be in U.S. dollars.

12. SECURITY: As security for the performance of this Agreement, Contractor will guarantee to the County/City/Town that in the event that Contractor does not make jobs available to low and moderate-income persons and cooperate in the documentation of job creation and income verification that the full amount of assistance provided under this agreement will be paid back to the County/City/Town.

13. DEFAULT: Failure on the part of either party to perform the provisions of the Contract constitutes default. Default may result in the pursuit of remedies for breach of contract, including but not limited to damages and specific performance.

14. CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without prior written consent of the (City, Town, or County) and the Montana Department of Commerce. Supplies delivered which do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

15. VENUE: The Contract is governed by the laws of Montana. The parties agree that any litigation concerning the Contract must be brought in the (First, Second, etc.) Judicial District in and for the (appropriate County), State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

16. COMPLIANCE WITH LAWS: The Contractor must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with Mont. Code Ann. § 49-3-207, the Contractor agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

17. DISABILITY ACCOMMODATIONS: The (City, Town, or County) does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

18. ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The Contractor shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the (City, Town, or County) and the Montana Department of Commerce. (Mont. Code Ann. § 18-4-141.)

19. MODIFICATION: The Contract may not be enlarged, modified, amended or altered except upon written agreement signed by all parties to the Contract.

20. NOTICE: All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons either by regular mail or personal service.

21. SEPARABILITY: A declaration by any court, or any other binding legal source, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

22. HOLD HARMLESS AND INDEMNIFICATION: The Contractor agrees to protect, defend, and save the Montana Department of Commerce, and the (City, Town, or County) elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under the Contract.

23. REGISTRATION WITH SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with Mont. Code Ann. §§ 35-1-1026 and 35-8-1001. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.mt.gov>.

24. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning non-visual access standards.

25. REFERENCE TO CONTRACT: The Contract number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the Contract.

26. INTEGRATION: The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein are valid or binding.

This Contract is made and entered into on the _____ day of _____, 2012.

(name, title) _____ Date
(name of business)

(local official's name, title) _____ Date
(City, Town or County)