# PROFESSIONAL SERVICES CONTRACT

**MONTANA DEPARTMENT OF COMMERCE**

**BIG SKY ECONOMIC DEVELOPMENT TRUST FUND PROGRAM**

**PLANNING PROJECTS**

***SAMPLE***

This Contract is entered into this \_\_\_\_ day of \_\_\_\_\_\_\_, 20\_\_, by and between the ***(name of certified regional development corporation, eligible economic development organization, local government or tribal government)***,herein referred to as the **(“CRDC”, “EDO”, “Local Government” or “Tribal Government”)** and***(name of Professional Services Contractor)****,* ***(Contractor address)***, herein referred to as the "Contractor," Witnesseth:

WHEREAS, the Montana Department of Commerce, herein referred to as "the Department," has awarded the ***(CRDC, EDO, Local Government or Tribal Government)*** grant funds under the Big Sky Economic Development Trust Fund (BSTF) for purposes of ***(name activities)***; and

WHEREAS, the ***(CRDC, EDO, Local Government or Tribal Government)*** desires to engage the Contractor to render certain services related to the administration of the above described project; and

WHEREAS, the ***(CRDC, EDO, Local Government or Tribal Government)*** has complied with state and federal procurement requirements regarding the selection of contractors; and

WHEREAS, the ***(CRDC, EDO, Local Government or Tribal Government)*** desires to enter into an agreement with the Contractor as hereinafter provided to assure the effective management of the project;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. EMPLOYMENT OF CONTRACTOR. The ***(CRDC, EDO, Local Government or Tribal Government)*** agrees to engage the Contractor, and the Contractor agrees to provide the services as outlined in the Scope of Work attached as Exhibit ***\_\_***.

2. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and that neither its principals nor its employees, if any, are employees of the ***(CRDC, EDO, Local Government or Tribal Government)*** for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Contractor has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principals and employees for the services to be performed hereunder.

3. LIAISON. The ***(CRDC, EDO, Local Government or Tribal Government)***’s designated liaison with the Contractor is ***(name and title of CRDC, EDO, Local Government Local Tribal Government’s liaison)***. The Contractor's designated liaison with the ***(CRDC, EDO or Tribal Government)*** *is* ***(name and title of Contractor’s liaison)***.

4. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract takes effect on ***(Date)***. The services to be performed by the Contractor will be completed no later than ***(Date)****.*

5. SCOPE OF SERVICES. The Contractor will perform the services as outlined in the Scope of Work attached as Exhibit ***\_\_***.

It is understood and agreed by the parties that the services of the Contractor do not include any of the following: the disbursement or accounting of funds distributed by the ***(CRDC, EDO, Local Government or Tribal Government)***’s financial officer, legal advice, fiscal audits or assistance with activities not related to the project.

6. COMPENSATION. For the satisfactory completion of the services to be provided under this Contract, the ***(CRDC, EDO, Local Government or Tribal Government)*** will pay the Contractor a sum not to exceed $***(dollar amount)*** as in the manner set forth in the attached Exhibit ***\_\_***, which by this reference is made a part of this contract. Each specific service the Contractor will provide under this contract, and the maximum amount that the ***(CRDC, EDO, Local Government or Tribal Government)*** will pay the Contractor for each of these services, is set forth in the attached Exhibit ***\_\_***. The Contractor may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

7. CONFLICT OF INTEREST. The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the BSTF project which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in performing this Contract, it will employ no person who has any such interest.

8. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract 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 the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Contractor may not subcontract or assign its rights, including the right to compensation, or duties arising hereunder without the prior written consent of the ***(CRDC, EDO, Local Government or Tribal Government)****.*  Any subcontractor or assignee will be bound by all of the terms and conditions of this contract.

9. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt of the funds from the Department and that in the event that said funds are not provided, the ***(CRDC, EDO, Local Government or Tribal Government)*** incurs no responsibilities or liabilities under this Contract.

10. INSURANCE. **It is advised that you consult your insurer or attorney for more specific advice on other provisions that you may want to include under this section, or any other section of this agreement.**

1. General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
2. Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, the ***(CRDC, EDO, Local Government or Tribal Government)***, and their officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, the ***(CRDC, EDO, Local Government or Tribal Government)***, and their officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
3. Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors. The State, the ***(CRDC, EDO, Local Government or Tribal Government)***, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured’s; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.
4. Certificate of Insurance/Endorsements. Insurance must be placed with an insurer with a Best's rating of no less than A-. The ***(CRDC, EDO, Local Government or Tribal Government)***, ***(Address)***, must receive all required certificates and endorsements within 10 days from execution of this Contract. The Contractor must notify the ***(CRDC, EDO, Local Government or Tribal Government)*** immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The ***(CRDC, EDO, Local Government or Tribal Government)*** reserves the right to require complete copies of insurance policies at all times.

11. COMPLIANCE WITH WORKERS’ COMPENSATION ACT.The Assisted Business accepts responsibility for supplying, and requiring all subcontractors to supply, the ***(CRDC, EDO, Local Government or Tribal Government)*** with proof of compliance with the Montana Workers’ Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-401, 39-71-405, and 39-71-417.) Neither the Assisted Business nor its employees are employees of the ***(CRDC, EDO, Local Government or Tribal Government)***. The proof of insurance/exemption must be in the form of workers’ compensation insurance, an independent contractor exemption, or documentation of corporate officer status and must be received by the ***(CRDC, EDO, Local Government or Tribal Government)*** within 10 working days of the execution of this Contract, and must be kept current for the entire term of the contract.

CONTRACTS WILL BE TERMINATED PURSUANT TO THE PROVISIONS OF SECTION 12 TERMINATION OF CONTRACT IF THE ASSISTED BUSINESS FAILS 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.

12. TERMINATION OF CONTRACT. This Contract may only be terminated in whole or in part as follows:

1. Termination Due to Loss or Reduction of Funding. The ***(CRDC, EDO, Local Government or Tribal Government)***, at its sole discretion, may terminate or reduce the scope of this Contract if available funding sources are eliminated or reduced for any reason. If a termination or modification is so required, the ***(CRDC, EDO, Local Government or Tribal Government)*** may, if sufficient program funds are available, compensate the Contractor for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The ***(CRDC, EDO, Local Government or Tribal Government)*** will notify the Contractor of the effective date of the termination or modification of this Contract and, if a reduction in funding is required, will provide the Contractor with a modified Project budget.
2. Termination for Cause with Notice to Cure Requirement. The ***(CRDC, EDO, Local Government or Tribal Government)*** may terminate this Contract for failure of the Contractor, its contractors, or subcontractors to perform or comply with any of the services, duties, terms or conditions contained in this Contract after giving the Contractor written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.
3. Effect of Termination. In the event of termination due to the Contractor’s, its contractors', or subcontractors' failure to perform or comply with any of the services, duties, terms, or conditions of this Contract, any costs incurred will be the responsibility of the Contractor. However, at its sole discretion, the ***(CRDC, EDO, Local Government or Tribal Government)*** may approve requests by the Contractor for reimbursement of expenses incurred. The ***(CRDC, EDO, Local Government or Tribal Government)’s*** decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Contractor to comply with the any of those services, duties, terms, or conditions of this Contract, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Contractor’s control.

13. COMPLIANCE WITH LAWS.

1. The Contractor must, in performance of work under this Contract, fully comply with all applicable federal, state, and tribal laws, rules, policies, and regulations, concerning, but not limited to, human rights, civil rights, employment law, Affordable Care Act and labor law. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision.
2. The Contractor shall promptly refer to the ***(CRDC, EDO, Local Government or Tribal Government)*** any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

14. DOCUMENTS INCORPORATED BY REFERENCE. The ***(CRDC, EDO, Local Government or Tribal Government)***’s application to the Department for funding, dated ***(date)***, and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Contractor.

15. EQUAL EMPLOYMENT OPPORTUNITY. Any hiring of employees by the Contractor under this Contract will be on the basis of merit and qualification, and the Contractor will not discriminate against any person on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

16. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are the property of the ***(CRDC, EDO, Local Government or Tribal Government)***and the Department which have the nonexclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. No material produced in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the ***(CRDC, EDO, Local Government or Tribal Government)*** and the Department.

Additionally, the following statement must be included with all materials developed wholly or in part by the funding provided by the Big Sky Economic Development Trust Fund Program:

The funding for (identify the document) was funded in part by an award by the Montana Department of Commerce, Big Sky Economic Development Trust Fund Program.

17. REPORTS AND INFORMATION. The Contractor will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the ***(CRDC, EDO, Local Government or Tribal Government)***to assure proper accounting for all project funds.

18. ACCESS TO RECORDS. It is expressly understood that the Contractor's records relating to this Contract will be available during normal business hours for inspection by the ***(CRDC, EDO, Local Government or Tribal Government)***, the Department and, when required by law, the Montana Legislative Auditor and Legislative Fiscal Analyst.

19. PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE. The parties understand and agree that performance of this contract is within the **(CRDC region, EDO county or Local or Tribal Jurisdictional Area)** and that in the event of litigation concerning it, venue is in the ***\_\_\_***th Judicial District in and for the County of ***\_\_\_\_\_\_\_***, State of Montana.

This Contract will be construed under and governed by the laws of the State of Montana.

20. INDEMNIFICATION. The Contractor waives any and all claims and recourse against the ***(CRDC, EDO, Local Government or Tribal Government)****,* including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Contractor's performance of this contract except for liability arising out of concurrent or sole negligence of the ***(CRDC, EDO, Local Government or Tribal Government)***or its officers, agents or employees. Further, the Contractor will indemnify, hold harmless, and defend the ***(CRDC, EDO, Local Government or Tribal Government)*** against any and all claims, demands, damages, costs, expenses or liability arising out of the Contractor's performance of this Contract except for liability arising out of the concurrent or sole negligence of the ***(CRDC, EDO, Local Government or Tribal Government)*** or its officers, agents or employees.

21. LEGAL FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

22. ELIGIBILITY. The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in State of Montana assisted contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on

the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_.

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| CONTRACTOR  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Contractor  DATE:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ***(CERTIFIED REGIONAL DEVELOPMENT CORPORATION, ECONOMIC DEVELOPMENT ORGANIZATION OR LOCAL GOVERNMENT OR TRIBAL GOVERNMENT NAME)***  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Official Representative of the ***(name of CRDC, EDO, Local Government or Tribal Government)***  DATE:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

***(ATTACH ANY EXHIBITS HERE)***

**For Example:**

***Exhibit A: Scope of Services***

*(Provide exhibit and list details of scope of services)*

***Exhibit B: Payment Schedule***

*(Provide exhibit listing details of payment schedule)*