

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF BILLINGS AND BBWA
FOR RENEWABLE RESOURCE GRANT AND LOAN PROGRAM**

THIS Memorandum of Understanding (MOU) is entered into by and between the CITY OF BILLINGS, herein referred to as "LOCAL GOVERNMENT", and the BILLINGS BENCH WATER ASSOCIATION (BBWA), herein referred to as "PARTNER ORGANIZATION".

WITNESSETH THAT:

WHEREAS, the LOCAL GOVERNMENT is the recipient of DNRC grants to rehabilitate the irrigation canal owned and operated by the PARTNER ORGANIZATION; and

WHEREAS, this MOU between the LOCAL GOVERNMENT and the PARTNER ORGANIZATION will enable them to enhance cooperation in implementing the LOCAL GOVERNMENT's DNRC awards to accomplish multiple projects; and

WHEREAS, the LOCAL GOVERNMENT, in its capacity as a DNRC grantee, has determined that the PARTNER ORGANIZATION can better supervise the design and construction phases of the projects; and

WHEREAS, the DNRC has required the LOCAL GOVERNMENT to enter into a MOU with the PARTNER ORGANIZATION specifying the terms and conditions of the LOCAL GOVERNMENT's delegation of certain DNRC grant management responsibilities to the PARTNER ORGANIZATION; and

WHEREAS, both parties to this MOU understand that neither the LOCAL GOVERNMENT nor the PARTNER ORGANIZATION involved herein has in any way, expressly or implied, abrogated any of its individual powers, and that this MOU does not create any new organization or legal entity.

NOW, THEREFORE, THE LOCAL GOVERNMENT AND THE PARTNER ORGANIZATION MUTUALLY AGREE AS FOLLOWS:

I. Responsibilities Delegated to the PARTNER ORGANIZATION

A. The PARTNER ORGANIZATION will, subject to prior approval by the City Administrator or Designee of the LOCAL GOVERNMENT, retain the services of a consulting engineering firm to design and supervise the construction of the project.

B. The PARTNER ORGANIZATION will be responsible for all facets of the design and construction phases of the project, including the following:

1. Design engineering;

2. Construction engineering;
3. Except as provided by paragraph IV. Administration below, compliance with all applicable state and federal requirements;
4. Except as provided by paragraph IV. Administration below, compliance with all other state and federal requirements as described in the applicable DNRC Grant Agreement;
5. Preparation of construction bid documents; and
6. Supervision of the bid process, the awarding of construction contracts, and construction of the project. The selection of the project contractor will be subject to the ratification of the City Administrator or City Council of the LOCAL GOVERNMENT and bid solicitation documents will reflect this requirement.

C. The PARTNER ORGANIZATION and its consulting engineer will receive, review, and approve all requests for payment for the items contained in paragraph B, above, and prepare and submit such requests to the City or Designee of the LOCAL GOVERNMENT in a timely fashion in accordance with established procedures.

D. During the term of this MOU, the PARTNER ORGANIZATION will maintain reasonable records of its performance hereunder in a manner consistent with generally accepted accounting principles. The PARTNER ORGANIZATION will allow the LOCAL GOVERNMENT and DNRC and their authorized representatives access to these records at any time during normal business hours. At the request of the LOCAL GOVERNMENT, the PARTNER ORGANIZATION will submit to the LOCAL GOVERNMENT, in the format prescribed by the LOCAL GOVERNMENT, status reports on its performance under this MOU.

E. The PARTNER ORGANIZATION will provide documentation that the local share of the applicable project that exceeds DNRC funds may be accessed by the LOCAL GOVERNMENT for the project no later than the time of construction bid award.

II. Payment of Design and Construction Costs Incurred by the PARTNER ORGANIZATION.

In consideration of the PARTNER ORGANIZATION's acceptance of the responsibilities described in paragraph I, above, the LOCAL GOVERNMENT agrees to the following:

A. Upon receipt of a valid claim for payment from the PARTNER ORGANIZATION for allowable project costs as specified in the LOCAL GOVERNMENT's applicable grant agreement with DNRC, the LOCAL GOVERNMENT will request the required amount of grant funds from DNRC and upon receipt of these

funds, the LOCAL GOVERNMENT will honor the PARTNER ORGANIZATION's claim and pay the engineer or contractor accordingly. Grant funds can be reimbursed directly to contractors and not to entities ineligible to receive DNRC grant funds.

B. Each payment for engineering and construction costs will be drawn from DNRC and PARTNER ORGANIZATION funds (if applicable) in amounts that are proportionate to the percentage that such funds represent of the total cost of the applicable project.

C. The LOCAL GOVERNMENT will deduct a retainage from each payment request equal to five percent of the request, submitted by the PARTNER ORGANIZATION for construction costs incurred by the project contractor and hold this retainage until construction is completed, the engineer approves final payment, and the project is accepted, all in accordance with the conditions of the construction contract.

D. The LOCAL GOVERNMENT will also withhold one percent of the amount of any claim submitted by the contractor and will forward this amount to the Montana Department of Revenue pursuant to section 15-50-206(2), MCA.

E. The LOCAL GOVERNMENT may refuse to pay any claim which it deems not valid under the terms of the applicable DNRC grant agreement. Any agreement between a DNRC grantee and a partner organization or subrecipient, such as a water or sewer district, should include a "Scope of Work" which includes a description of the work to be performed, a schedule for completing the work, and a budget.

III. Duration of MOU

A. This MOU takes effect when the following conditions are satisfied:

1. DNRC and the City Administrator or City Council of the LOCAL have executed the applicable DNRC grant agreement;
2. The LOCAL GOVERNMENT Attorney and the attorney for the PARTNER ORGANIZATION have approved this MOU as to form and content; and
3. The City Council of the LOCAL GOVERNMENT and the PARTNER ORGANIZATION's governing body have each reviewed this MOU and agreed fully to its terms and conditions.

B. The LOCAL GOVERNMENT'S obligations under this MOU for each applicable DNRC grant agreement will terminate 90 days after the project engineer files a certificate of completion of the project with the Montana Department of Environmental Quality and Department closes out the DNRC project with the LOCAL GOVERNMENT.

IV. Administration

For purposes of implementing the joint undertaking established by this MOU, the City Administrator or Designee of the LOCAL GOVERNMENT and the PARTNER ORGANIZATION's Board of Directors hereby agree to coordinate with the LOCAL GOVERNMENT's DNRC grant agreement liaison, the project engineer, and a designated representative of the PARTNER ORGANIZATION. These individuals may meet on a regular basis during the term of the applicable DNRC projects to provide for the efficient and effective implementation of the projects.

V. Management of Real Property or Equipment Acquired

The primary purpose of this MOU is to allow the LOCAL GOVERNMENT to delegate responsibility for the design and construction of the PARTNER ORGANIZATION's projects to the PARTNER ORGANIZATION and to define the procedures by which the LOCAL GOVERNMENT will disburse DNRC funds to pay the costs incurred as a result of these activities. The PARTNER ORGANIZATION's facilities will be constructed or improved as described in the applicable DNRC grant agreements and the PARTNER ORGANIZATION may continue to own and operate those facilities subject to the limitations contained in subparagraph B.

Upon the completion of each project designed and constructed pursuant to this MOU, the PARTNER ORGANIZATION will transfer to the LOCAL GOVERNMENT any DNRC funds on hand at the time of expiration and any accounts receivable attributable to the use of DNRC funds.

VI. Indemnification

The PARTNER ORGANIZATION waives any and all claims and recourse against the LOCAL GOVERNMENT, 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 incident to the PARTNER ORGANIZATION's performance of this MOU except claims arising from the concurrent or sole negligence of the LOCAL GOVERNMENT or its officers, agents, or employees. The PARTNER ORGANIZATION will indemnify, hold harmless, and defend the LOCAL GOVERNMENT against any and all claims, demands, damages, costs, expenses, or liability arising out of the PARTNER ORGANIZATION's performance of this MOU except for liability arising out of the concurrent or sole negligence of the LOCAL GOVERNMENT or its officer's agents, or employees.

VII. Suspension and Termination

The LOCAL GOVERNMENT may suspend or terminate this MOU if the PARTNER ORGANIZATION materially fails to comply with any term of the LOCAL GOVERNMENT's applicable grant agreements with DNRC. In addition, the LOCAL GOVERNMENT may terminate this MOU for convenience with reasonable notice.

This MOU has been approved by the LOCAL GOVERNMENT's City Council and the PARTNER ORGANIZATION's Board of Directors.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

WILLIAM A. COLE,
MAYOR



APPROVED AS TO FORM:

SIGNATURE



PRINT NAME

CITY ATTORNEY'S OFFICE

PRINT TITLE

ATTEST:

DENISE BOHLMAN, CITY CLERK