

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

THIS Memorandum of Agreement (MOA) is entered into by and between the CITY OF BILLINGS (the "CITY") and the BILLINGS BENCH WATER ASSOCIATION (the "BBWA").

WITNESSETH THAT:

WHEREAS, CITY is the recipient of a DNRC grant for the Tunnel Alternative Evaluation owned and operated by BBWA; and

WHEREAS, this MOA between the CITY and the BBWA will enable both parties to this MOA to enhance cooperation in implementing the CITY's DNRC award to accomplish the above described project; and

WHEREAS, the CITY, in its capacity as a DNRC grantee, has determined that the BBWA can better supervise the alternative analysis phases of this project; and

WHEREAS, the DNRC has required the CITY to enter into an MOA with the BBWA specifying the terms and conditions of the CITY's delegation of certain DNRC grant management responsibilities to the BBWA; and

WHEREAS, both parties to this MOA understand that neither the CITY nor the BBWA has in any way, expressly or implied, abrogated any of its individual powers, and that this MOA does not create any joint venture, partnership, new organization or legal entity.

NOW, THEREFORE, THE CITY AND THE BBWA AGREE AS FOLLOWS:

I. Responsibilities Delegated to the BBWA

A. The BBWA will, subject to prior approval by the City Administrator or Designee of the CITY, retain the services of a consulting engineering firm to perform the alternative analysis of the project.

B. The BBWA will be responsible for all facets of the performance of the project, including the following:

1. Field Investigation of Potential Tunnel Sites;
2. Laboratory Testing;
3. Compliance with all applicable state and federal requirements;

4. Compliance with all other state and federal requirements as described in the applicable DNRC Grant Agreement;

5. Preparation of Technical Report; and

C. The BBWA 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 Administrator or Designee of the CITY in a timely fashion in accordance with established procedures.

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

E. The BBWA will provide documentation that the local share of the applicable project that exceeds DNRC funds may be accessed by the CITY for this project no later than the time of award of consultant contract.

II. Payment of Design and Construction Costs Incurred by the BBWA

In consideration of the BBWA's acceptance of the responsibilities described in paragraph I, above, the CITY agrees to the following:

A. Upon receipt of a valid claim for payment from the BBWA for allowable project costs as specified in the CITY's applicable grant agreement with DNRC, a copy of which is appended as Attachment A of this Contract, and which by this reference is made a part hereof, the CITY will request the required amount of grant funds from DNRC and upon receipt of these funds, the CITY will honor the BBWA's claim and pay the engineer accordingly. Grant funds can be reimbursed directly to contractors and not to entities ineligible to receive DNRC grant funds.

B. Each payment for engineering costs will be drawn from DNRC and the BBWA funds (if applicable) in amounts that are proportionate to the percentage that such funds represent of the total cost of the project as specified in Exhibit B of Attachment A.

C. The CITY may refuse to pay any claim which it deems not valid under the terms of the DNRC grant agreement (Attachment A). Any agreement between the CITY as a DNRC grantee and the BBWA shall 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 MOA

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

1. DNRC and the City Administrator or City Council of the CITY have executed the applicable DNRC grant agreement;
2. The City Attorney and the attorney for the BBWA have approved this MOA as to form and content; and
3. The City Council of the CITY and the BBWA governing body have each reviewed this MOA and agreed fully to its terms and conditions.

B. This MOA 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 CITY.

IV. Administration

For purposes of implementing this MOA, the City Administrator or Designee of the CITY and the BBWA'S governing board hereby agree to coordinate with the CITY'S DNRC grant agreement liaison, the project engineer, and a designated representative of the BBWA. These individuals may meet on a regular basis during the term of this DNRC project to provide for the efficient and effective implementation of this project.

V. Management of Real Property or Equipment Acquired

The primary purpose of this MOA is to allow the CITY to delegate responsibility for the performance of BBWA's project to the BBWA and to define the procedures by which the CITY will disburse DNRC funds to pay the costs incurred as a result of these activities. The BBWA may continue to own and operate those facilities subject to the limitations contained in subparagraph B.

Upon the expiration of this MOA, the BBWA will transfer to the CITY any DNRC funds on hand at the time of expiration and any accounts receivable attributable to the use of DNRC funds.

VI. Indemnification

The BBWA agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, officers, agents, and employees from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, demands, judgments, injunctive relief, awards, and settlements, including, without limitation, payment of claims of liability resulting from any injury or death of any person or damage to or destruction of any property arising out of the willful misconduct, negligent, or tortious act or omission of the BBWA, its agents, employees, licensees, contractors, or subcontractors and 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 incident to the BBWA'S performance of this MOA except claims arising from the concurrent or sole negligence of the CITY or its officers, agents, or employees in performance of this MOA.

VII. No Partnership

Nothing in this MOA is intended, or shall be deemed, to constitute a partnership or joint venture between the CITY and the BBWA. This MOA is merely the convenient means for establishing the terms necessary for recompensing the BBWA for the study phase of this DNRC grant project.

VIII. Suspension and Termination

The CITY may suspend or terminate this MOA if the BBWA materially fails to comply with any term of the CITY'S applicable grant agreement with DNRC. In addition, the CITY may terminate this MOA for convenience with reasonable notice.

This MOA has been approved by the City Council of the CITY and the BBWA'S governing board of directors.

IX. Jurisdiction and Venue

This MOA shall be construed in accordance with the laws of Montana and the parties agree that venue shall be in Yellowstone County, 13th Judicial District Court of the State of Montana.

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**

SIGNATURE

APPROVED AS TO FORM:

PRINT NAME

CITY ATTORNEY'S OFFICE

PRINT TITLE

ATTEST:

DENISE BOHLMAN, CITY CLERK