

DNRC CARDD EXAMPLE MEMORANDUM OF UNDERSTANDING

Note: This example should not simply be copied. It is only provided as an example to help create an agreement between a local government entity and project partner organization or subrecipient that is to be reviewed and approved by all parties and their attorney's.

THIS CONTRACT is entered into by (Insert Name of LOCAL GOVERNMENT), herein referred to as "LOCAL GOVERNMENT", and the (Insert Name of PARTNER ORGANIZATION), herein referred to as "PARTNER ORGANIZATION".

WITNESSETH THAT:

WHEREAS, the LOCAL GOVERNMENT is the recipient of a DNRC grant to PROJECT NAME (describe the Project) owned and operated by the PARTNER ORGANIZATION; and

WHEREAS, this Contract between the LOCAL GOVERNMENT and the PARTNER ORGANIZATION will enable them to enhance cooperation in implementing the LOCAL GOVERNMENT's DNRC award to accomplish the above-described project; 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 PROJECT NAME; and

WHEREAS, the DNRC has required the LOCAL GOVERNMENT to enter into a contract 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 Contract understand that neither local government involved herein has in any way, expressly or implied, abrogated any of its individual powers, and that this Contract 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 Board of LOCAL GOVERNMENT Commissioners/Directors, 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 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 LOCAL GOVERNMENT Board of Commissioners/directors 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 LOCAL GOVERNMENT Board of Commissioners/directors in a timely fashion in accordance with established procedures.

D. During the term of this Contract, 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 Contract.

E. The PARTNER ORGANIZATION will provide documentation that the local share of the 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 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 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. ***(Note: Be sure to specify clearly that 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 project as specified in Exhibit B of Attachment A.

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. **(Note: A retainage requirement is optional.)**

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 DNRC grant agreement (Attachment A). 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. (These items are standard components of any DNRC grant agreement which is referred to here as an attachment.)

III. Duration of the Contract

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

1. DNRC and the LOCAL GOVERNMENT Board of Commissioners/directors have executed the DNRC grant agreement;
2. The LOCAL GOVERNMENT Attorney and the attorney for the PARTNER ORGANIZATION have approved this Contract as to form and content; and
3. The LOCAL GOVERNMENT Board of Commissioners/directors and the PARTNER ORGANIZATION's governing body have each reviewed this Contract and agreed fully to its terms and conditions.

B. This Contract 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 Contract, the LOCAL GOVERNMENT's Board of Commissioners 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 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 Contract is to allow the LOCAL GOVERNMENT to delegate responsibility for the design and construction of the PARTNER ORGANIZATION's project 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 DNRC grant agreement (Attachment A) and the PARTNER ORGANIZATION may continue to own and operate those facilities subject to the limitations contained in subparagraph B.

Upon the expiration of this Contract 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 Contract 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 Contract 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 Contract if the PARTNER ORGANIZATION materially fails to comply with any term of the LOCAL GOVERNMENT's grant agreement with DNRC. In addition, the LOCAL GOVERNMENT may terminate this Contract for convenience with reasonable notice.

This Contract has been approved by the LOCAL GOVERNMENT's Board of Commissioners and the PARTNER ORGANIZATION's Board of Directors.

(Name of LOCAL GOVERNMENT) Commissioners

_____ Chairman

Date: _____

_____ Commissioner

Date: _____

_____ Commissioner

Date: _____