



## CONSERVATION AND RESOURCE DEVELOPMENT DIVISION

### Renewable Resource Grant Program - RRG

### Reclamation and Development Grant Program - RDG

## GUIDANCE FOR SPONSORED OR PARTNER GRANTS

### RRG and RDG Planning and Project Grants

The DNRC Renewable Resource Grant (RRG) and Reclamation and Development Grant (RDG) Programs are authorized to award grants to state agencies and local governments ([MCA 85-1-605](#) and [MCA 90-2-111](#)).

#### Grant Recipient Eligibility – Local Governments Only

Only government entities may apply for and receive RRG and RDG project and planning grants.

- **Eligible RRG project/planning grant applicants:**  
A department, agency, board, commission, or other division of state government, or any city, county, or other political subdivision or local government body of the state, including an authority as defined in [75-6-304](#), or to a tribal government. [MCA 85-1-605\(1\)](#)
- **Eligible RDG project/planning grant applicants:**  
A department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state. [MCA 90-2-111\(1\)](#)

DNRC uses the Department of Administration Local Government Services Bureau entities list to verify the eligibility of local government to meet the definitions above.

- Example Special Purpose Districts: Irrigation Districts, County Water and Sewer Districts, Conservation Districts, Regional Water Authorities, and School Districts.

#### Sponsoring a Grant for an Ineligible Entity

An eligible local government may sponsor an RRG or RDG grant on behalf of an ineligible entity (sponsored or partner entity). The local government applying for the grant must act as the grant recipient throughout the grant period and meet the terms and conditions of the DNRC grant agreement.

#### To sponsor a grant for an ineligible entity, the local government (grant recipient) must:

1. Have a material connection to the work being performed.
2. Act as the primary point of contact for the DNRC grant, including all reimbursement requests.
3. Ensure it will not “pass” or transfer any grant funds or responsibilities to the ineligible entity.
4. Act as the legal party for purposes of project representation, negotiations, and communications.
5. Provide DNRC with an executed Memorandum of Understanding (MOU) that outlines the roles and responsibilities of each party before entering into a grant agreement.

**DNRC grant agreements are not “assignable”.** Therefore, the grant recipient CANNOT pass through or transfer the terms and conditions of their DNRC grant agreement to a sponsored or partner entity.

## Memorandum of Understanding (MOU)

For sponsored grants, DNRC requires the grant recipient and sponsored or partner organization to formally define their relationship as a start-up condition. DNRC generally recommends using a Memorandum of Understanding (MOU) for this purpose.

### MOU Structure and Example

Every project is different, as is the relationship between the local government and partner organization. A suggested MOU structure and example are included in [Appendix A – Example MOU Structure](#) and [Appendix B – Example MOU](#). These documents are guidance only.

**The local government should consult its legal counsel when drafting and executing an MOU with a sponsored or partner organization. DNRC Grant Managers cannot provide guidance beyond the grant agreement terms and conditions.**

DNRC strongly encourages local governments and partner organizations to take the following proactive steps before applying for or receiving DNRC grant funds.

1. Review the legal requirements in DNRC grant agreements.
2. Examine relevant local government laws, rules, and regulations.

## An MOU Versus a Legal Contract

An MOU is generally not considered a legal contract. While it signifies a commitment to work together, it does not create legal obligations or enforceability.

### Memorandum of Understanding (MOU)

An MOU is a formal, written document outlining the shared intentions and common goals of two or more parties in a collaborative effort. It establishes a framework for cooperation and clarifies expectations, roles, and responsibilities. While signifying a serious commitment, an MOU is generally not legally binding or enforceable.

### Legal Contract

A contract is a legally binding agreement between two or more parties, establishing mutual obligations and enforceable rights. For validity, a contract typically requires an offer, acceptance, consideration (exchange of value like money for services), and an intention to create legal relations. Failure to fulfill contractual obligations may result in legal remedies, including suing for monetary damages.

## Procurement

The grant recipient must follow all applicable procurement laws and guidance. It must oversee procurement for vendors reimbursed with DNRC grant funds. The grant recipient cannot pass or assign procurement requirements to a partner organization.

See the [DNRC Procurement Guidance and Plan](#) for more information.

## DNRC MOU Review Process

Grant recipients sponsoring a grant must provide DNRC with an executed MOU defining the relationship between the local government and partner organization as a grant start-up condition.

DNRC will review each project and MOU for the following:

1. A clear statement that the grant recipient (local government) will not pay or transfer DNRC grant funds to the sponsored or partner organization (ineligible entity). This payment would violate [MCA 85-1-605](#) or [MCA 90-2-111](#).
2. A clear statement that local government is responsible for oversight and monitoring compliance with the grant agreement terms and applicable laws of the project and activities of the partner organization.
3. A plan for procurement that meets either the Montana Procurement Act or the local procurement laws, rules and regulations.
4. Compliance with State Prevailing Wage Laws. [MCA 18-2-401 – 432](#)
5. Compliance with Public Contract Laws, particularly the requirement that an Engineer or Land Surveyor supervise construction projects. [MCA 18-2-121](#)
6. Compliance with Public Utility Services Law ([MCA 7-13](#)) requiring that plans, specifications and other required documents shall be prepared by a professional engineer licensed in Montana ([MCA 37-67](#)). Plans, specifications and other required documents must be submitted to the Montana Department of Environmental Quality (DEQ) for review and approval prior to construction ([MCA 75-6-1](#)).

DNRC will notify the grant recipient if its MOU does not meet DNRC requirements. In most cases, DNRC will not approve start-up conditions nor execute a grant agreement until it approves the grant recipient's MOU.

## Example Scenarios for Sponsored Grants

### Examples of Successful Relationships Meeting DNRC Requirements

Below are examples of successful projects where a local government sponsor a DNRC grant on behalf of a partner organization.

1. A Conservation District (CD) sponsors a grant for a canal company to upgrade a high-hazard irrigation dam.
  - a. The CD's Role: The CD agrees to fund the engineering design, preparation of bid documents and oversight of the construction contract. The CD procures and contracts with the engineering firm to design, prepare plans and specifications, prepare bid documents and oversee construction. The CD pays the engineering contractor. The CD contract with the engineering firm includes grant administration to meet the DNRC requirements. The CD also agrees to procure and purchase the equipment necessary for the construction of the high-hazard dam repairs which are specified in the plans and specifications prepared by the engineering firm. **DNRC reimburses only the expenses paid directly by the CD.**
  - b. The canal company's role: The canal company agrees to contract with and pay the construction contractor. The canal company agrees to cooperate with the engineering firm who is responsible for overseeing the construction project. Permits are the responsibility of the canal company and copies of permits are provided to the CD for reporting as required by the DNRC grant agreement. **DNRC does not reimburse expenses paid by the canal company.**

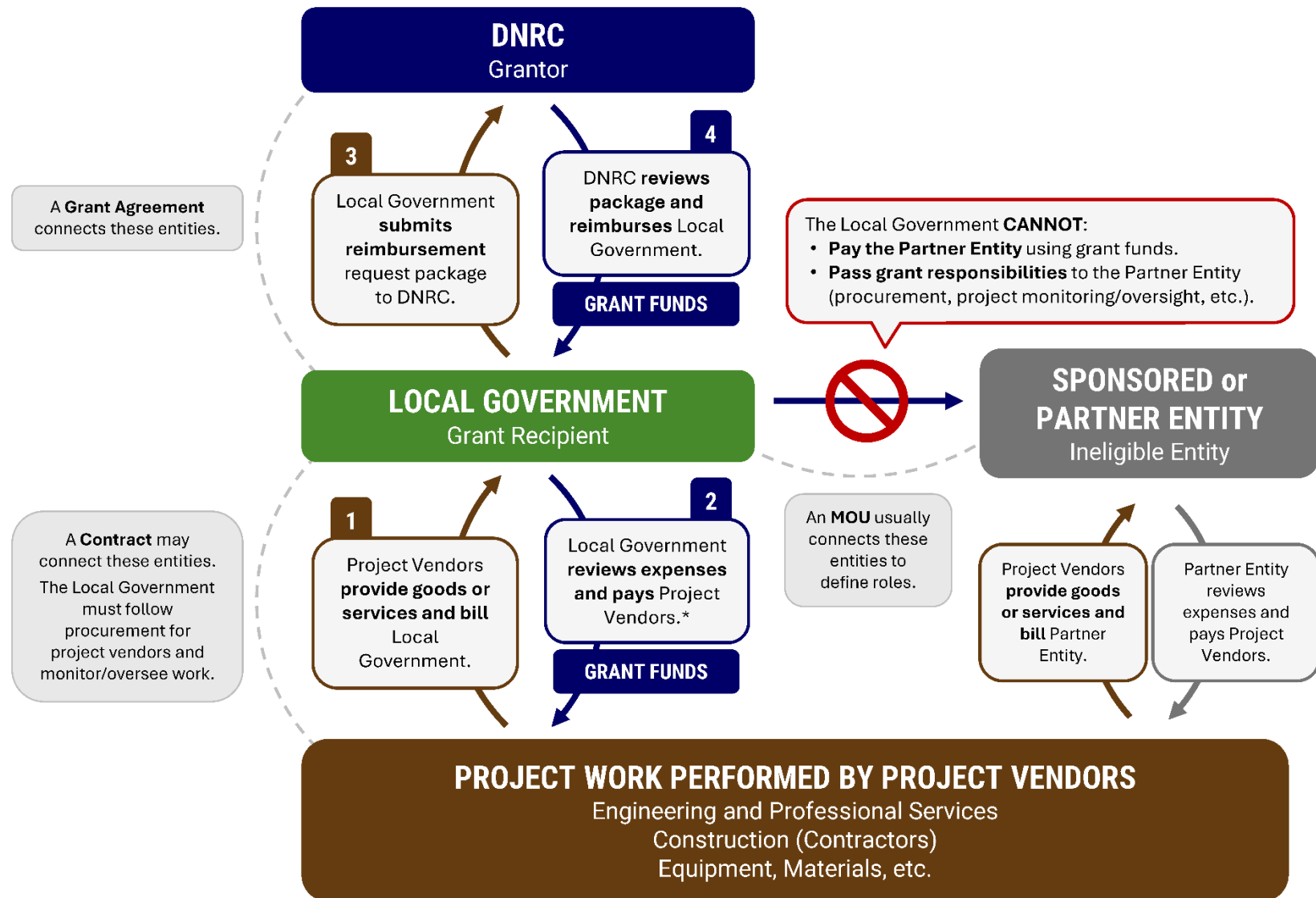
2. A County sponsors a grant for a Town. The Town is ineligible for grant funding due to compliance issues with financial management identified in audits.
  - a. The County and the Town sign an Interlocal Agreement. The County reviews the Town's procurement and contract with an engineering firm for design, construction oversight, and grant administration services and finds that it meets the County's requirements. The County pays the Town's contracted engineering firm under the provisions of the Montana Procurement Act for cooperative purchasing.
  - b. The Town's engineering contractor provides the County with progress reports, as well as invoices which the County pays directly. **DNRC reimburses only the expenses paid directly by the County.**
  - c. The Town procures and pays for the construction contractor to complete the project. Construction progress reports are provided to the County. **DNRC does not reimburse expenses paid by the Town.**

### **Examples of Relationships that DO NOT Meet DNRC Requirements**

Below are examples of projects where a local government sponsors a grant on behalf of a partner organization but the relationship between the two parties does NOT meet DNRC's grant requirements and violates the local government's procurement and contracting laws.

1. A Conservation District (CD) sponsors a grant for a canal company to improve irrigation facilities.
  - a. The CD agrees to pay DNRC grant funds to the canal company for expenses incurred for engineering, equipment and construction.
  - b. The canal company is not subject to procurement law and executes contracts for engineering and construction.
  - c. **Overview of Compliance Issues: The MOU signed by the CD and canal company is not a legal contract and authorizes payments to the canal company above the limits provided for in the Conservation District Procurement laws as well as the Montana Procurement Act.**
2. A County sponsors a grant on behalf of a privately owned public water supply (PWS) to improve its drinking water system.
  - a. The County pays the PWS directly for materials and equipment that were neither procured nor contracted in compliance with the County's procurement laws, rules, or procedures.
  - b. The private PWS cannot provide documentation that the project activities were reviewed and approved by DEQ. The PWS cannot provide certification from a licensed professional engineer that work was completed in compliance with public water supply laws.
  - c. **Overview of Compliance Issues: The MOU signed by the County and the PWS is not a legal contract and violated the County's procurement and contracting laws. Furthermore, the County did not monitor compliance with the grant agreement terms and conditions, nor applicable Public Water Supply laws and rules for project activities.**

## DNRC GRANT ROLES AND RESPONSIBILITIES



\*Grant recipients may request relief from DNRC's reimbursement requirement.

## APPENDIX A – EXAMPLE MOU STRUCTURE

An MOU between a local government and sponsored or partner entity should include and define the following elements.

1. **Identification of Parties**
  - a. Full legal names of the local government entity and the partner organization.
  - b. Addresses and primary contact information for both parties.
2. **Purpose of the MOU**
  - a. Clearly state the overarching goal of the partnership (e.g., to collaboratively apply for, receive, and implement a specific grant).
  - b. Reference the specific grant program or funding opportunity the MOU pertains to.
3. **Scope of Work/Project Description**
  - a. A concise description of the project or activities to be undertaken with the grant funds.
  - b. Outline the shared objectives and desired outcomes.
4. **Roles and Responsibilities of Each Party**
  - a. **Local Government**
    - i. Grant applicant/recipient.
    - ii. Fiscal agent responsibilities (if applicable, including receiving, disbursing, and accounting for funds).
    - iii. Oversight and monitoring responsibilities.
    - iv. Specific programmatic contributions.
    - v. Reporting requirements to the grantor.
  - b. **Partner Organization**
    - i. Specific services, activities, or deliverables to be provided.
    - ii. Personnel allocation.
    - iii. Reporting requirements to the local government.
    - iv. Contributions in kind or matching funds (if applicable).
    - v. Compliance with grant terms and conditions.
5. **Funding and Financial Management**
  - a. **Grant Amount:** Anticipated or actual grant amount.
  - b. **Budget Allocation:** How the grant funds will be divided and utilized by each party, often with reference to an attached budget.
  - c. **Invoicing and Payment Procedures:** How the partner organization will pay invoices for contracted services as well as how the local government will pay invoices for contracted services and the payment schedule.
  - d. **Fiscal Reporting:** Requirements for both parties to maintain accurate financial records and provide financial reports.
  - e. **Audit Requirements:** Agreement on audit procedures and responsibilities.
6. **Term and Termination**
  - a. **Effective Date:** When the MOU becomes active.
  - b. **Duration:** The period for which the MOU will be in effect.
  - c. **Conditions for Extension:** How the MOU can be extended if necessary.
  - d. **Termination Clauses**
    - i. Conditions under which either party can terminate the MOU (e.g., breach of terms, loss of grant funding, mutual agreement).
    - ii. Procedures for termination, including notice periods.

- iii. Provisions for the disposition of assets or unspent funds upon termination.
- 7. **Reporting and Evaluation**
  - a. **Progress Reports:** Frequency and content of reports from the partner organization to the local government.
  - b. **Data Collection:** Agreement on what data will be collected and shared for reporting to the grantor.
  - c. **Evaluation Metrics:** How the success of the project will be measured.
- 8. **Compliance with Laws and Regulations**
  - a. Both parties agree to comply with all applicable federal, state, and local laws, regulations, and grant-specific requirements.
  - b. Specific mention of requirements like non-discrimination, accessibility, environmental regulations, etc.
- 9. **Indemnification and Liability**
  - a. Provisions outlining responsibility for damages, losses, or claims arising from the activities under the MOU.
  - b. Typically, each party indemnifies the other for their own negligence or willful misconduct.
- 10. **Insurance Requirements**
  - a. Specification of required insurance coverage for both parties (e.g., general liability, professional liability, workers' compensation).
  - b. Proof of insurance may be required.
- 11. **Confidentiality**
  - a. If sensitive information is shared, clauses regarding the protection and non-disclosure of confidential data.
- 12. **Dispute Resolution**
  - a. Procedures for resolving any disagreements or disputes that may arise between the parties (e.g., negotiation, mediation).
- 13. **Amendments and Modifications**
  - a. How the MOU can be changed or amended (typically in writing and signed by both parties).
- 14. **Governing Law**
  - a. Which jurisdiction's laws will govern the interpretation and enforcement of the MOU.
- 15. **Signatures**
  - a. Authorized representatives of both the local government and the partner organization.
  - b. Dates of signatures.
  - c. Often, a witness signature or notarization is included.
- 16. **Important Considerations (Beyond the Core Elements)**
  - a. **Grant-Specific Requirements:** Thoroughly review the specific grant award document and program guidelines.
  - b. **Legal Review:** It is highly recommended that both the local government and the partner organization have their legal counsel review the MOU before execution.
  - c. **Public Records Laws:** Be mindful of public records laws that may apply to the MOU and related documents.
  - d. **Internal Approvals:** Ensure that both organizations have completed all necessary internal approval processes (e.g., city council resolution, board approval) before signing.
  - e. **Attachments/Exhibits:** Often, the MOU will reference and incorporate by reference other documents such as:
    - i. Detailed budget

- ii. Project work plan
- iii. Grant application or proposal
- iv. Resumes of key personnel
- v. Certifications and assurances required by the grant



## APPENDIX B – EXAMPLE MEMORANDUM OF UNDERSTANDING

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

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

\_\_\_\_\_ Chairperson

Date: \_\_\_\_\_

\_\_\_\_\_ Commissioner

Date: \_\_\_\_\_