

AGREEMENT  
BETWEEN THE LINCOLN CONSERVATION DISTRICT  
AND  
[Insert Name of Project Manager]

This Agreement is hereby made and entered into by the Lincoln Conservation District, herein after called “LCD,” and [Insert Name of Project Manager] (Employer I.D. \_\_\_\_\_), hereinafter referred to as “Project Manager.” This Agreement is effective on the last date of signing by all parties. This Agreement is made for good and valuable consideration as set forth herein, the sufficiency of which is hereby acknowledged.

Section 1. PROJECT DESCRIPTION. Project Manager will be the project manager to assist LCD in the completion of a stream restoration project near Eureka, Montana on the Mud Creek (Project). The Project goals are to improve fisheries by addressing stream health including sediment reduction and floodplain access. The Project addresses approximately a one half mile reach of stream. The Project funded under an EPA 319 grant sponsored by the Department of Environmental Quality (DEQ). Funding for the design and construction of a fish barrier has been funded by a U.S.F.&W.S. Partners for Fish Wildlife Program through the Kootenai River Network.

Section 2. BACKGROUND. In 2015, the landowner, Barry Roose approached the LCD for assistance to restore Mud Creek. LCD agreed to help sponsor the project by obtaining a DNRC 223 Grant. This document developed a preliminary design that is the basis for obtaining funding from different grant programs. A 319 Grant offered by the DEQ was awarded in July 2017.

The fish barrier will be addressed through other funding sources. The amount of funding received from other funding sources will determine the coordinator’s role in the fish barrier. The successful Project Manager will be responsible in assisting LCD in obtaining funding if necessary.

A DNRC Watershed Grant was awarded and will be used as the non-federal matching funds for the final design.

Section 3. PURPOSE. The LCD seeks to provide project management to LCD in implementing the Project. The purpose of this Agreement is to establish mutually agreeable terms and conditions, specifications and requirements for grant management, project management and grant reporting for the Project.

Section 4. TERM. The effective date of this Agreement is the date of last signing and shall terminate [insert termination date], unless terminated earlier pursuant to Section 18. Termination, or upon completion of the Project, which ever is later, including Project Manager’s submission of all reports and invoices compliance with Section 7.

Payment.

Section 5. LIAISON. All communications by Project Manager to the LCD concerning this Agreement shall be addressed to: Becky Lihme, District Administrator, 406-297-2233, [lincolnLCD@interbel.net](mailto:lincolnLCD@interbel.net). All communications by the LCD to Project Manager shall be addressed to: [insert liaison's name, position, address, phone number and email].

Section 6. SCOPE OF WORK. The following documents define the scope of work. These documents, together with this Agreement, form the entire Agreement between the Project Manager and LCD, which are totally and completely a part of this Agreement as if attached hereto or repeated herein:

- 2017 DEQ 319 Grant Contract #217008
- 2017 RFP from Kootenai River Network (U.S.F.&W.S. Partners for Fish and Wildlife Program)
- The 2016 Mud Creek Conceptual Design Plan Set
- Alternate Channel Location Diagram

Project Manager shall:

1. Coordinate implementation of this project funded by DEQ Contract #217008.
2. Assist/Provide LCD with technical assistance during the should the funding through U.S.F.W.S. Partners for Wildlife is in received. If full funding is not made available, Project Manager will assist LCD in seeking additional funding for the fish barrier.
3. Coordinate implementation of the fish barrier based on available funding and is tentatively scheduled to coincide with the channel restoration in 2018.

Project Manager shall fulfill this Agreement by undertaking LCD's duties and responsibilities of grant administration, management and reporting for the Project. This includes, but is not limited to: general project management and coordination; final design documents; securing regulatory permits, including, but not limited to, floodplain permits; channel and floodplain construction and revegetation; project monitoring according to the scope of work; providing any reports in the required format and according to grant deadlines; and soliciting and procuring according to conservation district procurement laws the hiring and overseeing of all contractors completing the project work, including, but not limited to engineering, construction and monitoring, hereinafter referred to as "project contractors."

Project Manager shall require project contractors to have: current contractor license numbers; proof of Workers Compensation for all employees; current performance and payment bonds; liability insurance (commercial and vehicle); and professional insurance.

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Project Manager shall be responsible for all invoicing and payments and for all project contractor contracts entered into under the construction contract. Project Manager shall require project contractors and their subcontractors to provide lien releases for all materials and work.

In managing and administering project agreements, Project Manager is responsible to LCD for the acts and omissions of all project contractors or agents, and of persons directly or indirectly employed by such project contractors, and for the acts and omissions of persons employed directly by Project Manager providing services under this Agreement. No contractual relationships exist between any of project contractors and LCD under this Agreement.

Project Manager shall warrant that the services to be provided conform to the contract requirements, including all descriptions, specifications and any attachments made a part of this Agreement. LCD's acceptance of services provided by Project Manager shall not relieve Project Manager from its obligations under this warranty. In addition to its other remedies under this Agreement, at law, or in equity, LCD may, at Project Manager's expense, require prompt correction of any services failing to meet Project Manager's warranty herein up to total reasonable expenses during the term of the Agreement, unless mutually agreed to in writing by the parties. Services corrected by Project Manager shall be subject to all the provisions of this Agreement in the manner and to the same extent as services originally furnished.

Project Manager acknowledges that LCD sponsored the application for Contract # 217008 through the DEQ. Project Manager further acknowledges that the LCD has entered into a funding agreement with DEQ, and incorporated herein by this reference. To the extent there is a conflict between this Agreement and the DEQ/LLCD funding agreement the terms of the DEQ/LCD agreement shall control.

Section 7. PAYMENT. In consideration of services rendered pursuant to this Agreement, LCD agrees to pay Project Manager an amount not to exceed \$\_\_\_\_\_.00 for carrying out Project Manager's duties and responsibilities under this Agreement. LCD agrees to pay Project Manager an amount not to exceed \$ \_\_\_\_\_.00 for the Project and not to exceed \$ \_\_\_\_\_.00 for the fish barrier.

LCD agrees to pay Project Manager, or at Project Manager's request pay directly to the project contractor implementing the Project, an amount not to exceed \$\_\_\_\_\_.00 for actual project costs from the funds received by the LCD from DEQ pursuant DEQ Contract #217008. LCD may withhold 10 percent of the total authorized grant amount until all reporting requirements are completed and approved by LCD and accepted by DEQ.

Project Manager shall submit invoices to LCD for reimbursement of approved services. LCD shall pay Project Manager within 45 days after approval by LCD and the DEQ of invoices, progress reports, and contract deliverables. LCD may not be assessed any

interest or late fees on bills submitted by Project Manager.

LCD agrees to review and submit invoices and reports to DEQ following receipt from Project Manager in a timely manner.

The obligation to pay Project Manager or project contractors shall survive termination of this Agreement.

Section 8. LEGAL REQUIREMENTS. Project Manager shall comply with all applicable federal, state, and local laws, statutes and ordinances and all applicable rules, regulations, and standards established by LCD and the DEQ.

Section 9. MONTANA LAW AND VENUE. Any action at law or suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Montana. This Agreement shall be governed by the laws of the State of Montana, both as to interpretation and performance. In the event of litigation concerning the terms of this Agreement, venue shall be in the 19<sup>th</sup> Judicial District in and for the County of Lincoln.

Section 10. PERSONNEL. Project Manager is independent and is not an employee of LCD or DEQ and is not covered by the Workers' Compensation laws applicable to LCD or DEQ as an employer. Contactor and project contractors providing services pursuant to this Agreement must acquire and maintain Workers' Compensation coverage or the appropriate exemption throughout the term of this Agreement. Project Manager shall provide evidence of Workers' Compensation or an approved exemption to LCD on or before the signing of this Agreement. Project Manager shall require project contractors to provide Project Manager with evidence of Workers' Compensation or an approved exemption, which shall be made available to LCD upon request. The insurance/exemptions must be valid for the entire contract term and any extension. Upon request by LCD, renewal documents must be provided to LCD.

Section 11. INDEMNITY AND LIABILITY (Hold Harmless/Indemnification). Each party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other party (the "Indemnified Party"), its officials, agents, and employees, while acting within the scope of their duties from and against all third party claims, demands, and causes of action of any kind or character, arising out of: (1) the Indemnifying Party's breach of its obligations under this Agreement; (2) bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or; (3) in any way resulting from the acts or omission of the Indemnifying Party and/or its agents, employees, subcontractors or its representatives under this Agreement, all to the extent of Project Manager's negligence or LCD's gross negligence.

Section 12. INSURANCE. Project Manager shall maintain for the duration of this

Agreement, at its cost and expense, professional liability insurance and occurrence coverage commercial general liability 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 Project Manager, its agents, employees, representatives, assigns, or subcontractors. The insurance limits shall be not less than \$300,000 per occurrence and \$600,000 aggregate. This insurance shall cover such claims as may be caused by any negligent act or omission. Project Manager's liability insurance policies shall list LCD, its officers, officials, employees, and volunteers as an additional insured.

Project Manager's insurance coverage shall be primary insurance with respect to LCD, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by LCD, its officers, officials, employees, or volunteers shall be excess of Project Manager's insurance and shall not contribute with it.

The Project Manager shall purchase and maintain either (1) a vehicle insurance policy of split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage) to cover such claims as may be caused by any act, omission, or negligence of the Project Manager, or (2) a vehicle insurance policy of combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Project Manager or its officers, agents, representatives, assigns or subcontractors. LCD, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Project Manager, including the insured's general supervision of Project Manager, products, and completed operations, and the premises owned, leased, occupied, or used.

The insurance policies required under this Agreement shall not be cancelled or materially changed unless Manager provides at least thirty (30) days prior written notice to LCD.

Section 13. EQUAL EMPLOYMENT. Any hiring of employees under this Agreement shall be on the basis of merit and qualifications, and there shall be no discrimination on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. "Qualifications" mean qualifications as are generally related to competent performance of the particular occupational task.

Section 14. PUBLIC INFORMATION AND OWNERSHIP OF PRODUCTS. Non-sensitive and non-confidential information resulting from the Project funded under this Agreement shall be made available to the public. Upon completion of this Agreement, information, reports, data, records, documents, and materials that the LCD deems non-sensitive and non-confidential and pertaining to this Agreement shall be available to the public. Project Manager shall indemnify and hold harmless the LCD from liability for injury caused by the release of any information, reports, data, records, documents, and materials provided by Project Manager.

Section 15. ASSIGNMENTS, TRANSFERS AND SUBCONTRACTS. This Agreement is between Project Manager and the LCD. This Agreement shall be binding on all successors and assigns of Project Manager, including successors in interest. It is understood that Project Manager will ensure all services and obligations are completed.

There will be no assignment, transfer or subcontracting of this Agreement, nor any interest in this Agreement unless agreed to by both parties in writing as provided in Section 17, Modifications.

Section 16. AUDIT. Project Manager shall maintain reasonable records of its performance under this Agreement. Project Manager agrees that the LCD, the DEQ, the Legislative Auditor, or the Legislative Fiscal Analyst may audit all records, reports, and other documents that Project Manager maintains under or in the course of this Agreement to insure compliance with this Agreement. Such records, reports, and other documents may be audited at any reasonable time. LCD may unilaterally terminate the Agreement upon Project Manager's refusal to comply with this or any other section.

Section 17. MODIFICATIONS. This instrument contains the entire Agreement between the parties, and no statement, promises, or inducements made by either party, or agents of either party, who are not contained in this Agreement shall be valid or binding and this Agreement may not be enlarged, modified or altered except as provided in this Agreement. No letter, telegram, or other communication passing between the parties to this Agreement, concerning any matter during the term of this Agreement shall be deemed a part of this Agreement unless it is distinctly stated in such letter, telegram, or communication that it is to constitute part of this Agreement, and such letter, telegram, or communication is attached to this Agreement and is signed by the authorized representative of each of the parties to this Agreement. If executed properly under this section, modifications of this Agreement do not need independent consideration to be legally enforceable.

Section 18. TERMINATION. Upon material breach of any of the terms and conditions of this Agreement by Project Manager, the LCD may terminate this Agreement and have any and all remedies at law or equity. In the event of such breach and termination, the LCD may further, at its option, take over the work and services and prosecute the same to completion by contract or otherwise and Project Manager shall be liable to the LCD for any excess cost occasioned to the LCD thereby. In the event of such breach and termination, LCD shall make payments to Project Manager and its contractors implementing the Project for all services rendered through the effective date of termination, unless the LCD issues a work stoppage order in which event LCD shall make payments for all services rendered through receipt of the order.

If Project Manager fails to comply with the terms and conditions of this Agreement, or reasonable directives or orders from LCD, LCD may terminate this Agreement and refuse

disbursement of any additional funds from the grant.

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts of God, materials shortages, transportation delays, fires, wind storms, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays.

The Parties may cancel this Agreement by mutual written agreement.

Project Manager may stop work or suspend its services in the event LCD fails or refuses to pay Project Manager when due as provide in Section 7. Payment.

This Agreement terminates if funds are not appropriated or otherwise made available to support continuation of performance of this Agreement. LCD shall provide Project Manager with the date LCD's termination shall take effect. LCD shall not be liable to Project Manager for any payment that would have been payable had this Agreement not been terminated under this provision. LCD shall be liable to Project Manager only for the payment, or prorated portion of that payment, owed to Project Manager up to the date LCD's termination takes effect. This is Project Manager's sole remedy. LCD shall not be liable to Project Manager for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues. Project Manager shall not be responsible or liable to perform, or to continue to perform, any work or services or any provision under this Agreement if there is no appropriation to fund the Agreement or if any appropriated funds are unavailable or exhausted.

Section 19. WAIVER. A waiver of any particular provision of this Agreement by the LCD shall not be construed as a waiver of any other provision, nor shall any such waiver otherwise preclude the LCD from insisting on strict compliance with this Agreement in other circumstances.

Section 20. SEVERABILITY. If any section, or portion of a section, of this Agreement is held to be void or unenforceable it shall be stricken, and all remaining provisions shall continue to be valid and binding on the parties, who agree that this Agreement shall be reformed to replace the stricken provisions, or part thereof, with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision, or part thereof.

Section 21. DEBARMENT. Project Manager certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any governmental department or agency.

Section 22. INCORPORATION OF GRANT AGREEMENT. Funding for Phase I of this Agreement is through a DEQ grant. The terms and conditions set forth in Contract #216031 are made a binding part of this Agreement. Funding for Phase II of the Agreement has not been identified, nevertheless, the Parties agree that the terms and conditions set forth in any funding agreement for Phase II will become a binding part of this Agreement.

Section 23. COMPLETE AGREEMENT. This Agreement contains the entire understanding of the parties and supersedes all prior agreements, unless otherwise specifically included and incorporated herein.

Section 24. CONTENTS. This Agreement consists of pages 1 through [insert number of last page], and includes all of the documents referenced in Section 6. Scope of Work.

Section 25. EXECUTION. The Parties through their authorized agents have executed this Agreement on the dates set out below.

A scanned copy or facsimile copy of the original has the same force and effect as the original document.

**Lincoln Conservation District**

\_\_\_\_\_  
Wayne Maahs, Chairperson

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Becky Lihme, Administrator

**[Insert Project Manager Name]**

\_\_\_\_\_

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_



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