

MEMORANDUM OF AGREEMENT
HEADWATERS TRAIL SYSTEM

This Memorandum of Agreement is entered into by and between the City of Three Forks (“City”), 206 S. Main Street, Three Forks, Montana 59752, and Gallatin County (“County”), 311 W. Main Street, Bozeman, Montana 59715.

WHEREAS, the Montana Department of Transportation (“MDT”) and the County recently entered the S-205 Recreational Trail Maintenance Agreement (“MDT Agreement”) by which MDT required the County to maintain, or cause to be maintained, a shared use path in the MDT right-of-way on S-205 from Reference Posts 2.857-3.159, as shown in Attachment B of the MDT Agreement and referenced as the “Project”;

WHEREAS, pursuant to the MDT Agreement, the County must meet certain obligations for MDT to provide the necessary Encroachment Permit to install the Project;

WHEREAS, through this Memorandum of Agreement, the City agrees to assume the responsibilities and liabilities required by MDT for the Project, as set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and agreements between the City and the County, it is agreed as follows:

1. **TERM**: The term of this Memorandum of Agreement shall run with the term of the MDT Agreement or until it is terminated in writing under the terms and conditions set forth in Section 5 (“Termination”) of this Memorandum of Agreement.
2. **COUNTY RESPONSIBILITIES**: The County maintains any responsibilities set forth in the MDT Agreement not assumed by the City as stated below.
3. **CITY RESPONSIBILITIES**: The City agrees to assume responsibility and liability for, and that it will comply with the following terms and conditions of, the MDT Agreement:
 - a. Article II. General Obligations of the County;
 - b. Article III. Project Specific Features; and
 - c. Article IV. General Terms and Conditions:
 - i. Paragraph 2, Termination
 - ii. Paragraph 5, Public Safety.
 - iii. Paragraph 6, Invoicing and Indirect Cost
 - iv. Paragraph 14, Highway modifications
 - v. Paragraph 15, Revocation
 - vi. Paragraph 16, Utilities

4. HOLD HARMLESS AND INDEMNIFICATION: The City waives any and all claims and recourse against the County or its officers, agents, or employees, including the right of contribution for loss or damage to person or property arising from, growing out of, or in any way connected with or incident to the performance of this Memorandum of Agreement except claims arising from the intentional acts or concurrent or sole negligence of the County or its officers, agents, or employees. The City will indemnify, hold harmless, and defend the County and its agents, principals, and employees from and against any and all claims, demands, damages, costs, expenses, losses, liability (including liability where activity is inherently or intrinsically dangerous), judgments, defense expenses, and attorney's fees arising out of or resulting from The City's wrongful acts, errors, omissions, or negligence, or from the City's failure to comply with the requirements of this Memorandum of Agreement or with all federal, state, and local law applicable to the performance of this Memorandum of Agreement. In the event of an action filed against the County resulting from the City's performance under this Memorandum of Agreement, the County may elect to represent itself and incur all costs and expenses of suit which shall be recoverable as provided in this section. These obligations shall survive termination of this Memorandum of Agreement.
5. TERMINATION: Either party may terminate its participation in this Memorandum of Agreement by thirty (30) days written notification to the other party. It is specifically understood and agreed by the City that if it terminates this Memorandum of Agreement for any reason, it must assign those applicable duties and obligations set forth above in Section 3 to another legal entity. Prior to such assignment, the scope of the assignment and the assignment itself must be approved by the County in writing. Such approval shall not be unreasonably withheld.
6. ADDITIONAL ENTITIES: The County understands that the City may enter into agreements with other entities for the maintenance of the Project. Maintenance shall be conducted pursuant to written agreement in a form approved by the County authorizing the entity to perform such work on behalf of the City. Such form shall require the entity to hold the County and its employees and agents harmless and defend the same from any and all liability, judgments, costs, expenses, and performance or nonperformance of their work. The City agrees to hold the County and its employees and agents harmless and to defend the same for any actions of the volunteer group.
7. CONSTRUCTION: The parties hereto acknowledge that each party and their respective counsel have reviewed this Memorandum of Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Memorandum of Agreement or any amendment or exhibits thereto.
8. LAWS & REGULATIONS: In performance of their obligations herein, the Parties, their agents, and subcontractors, shall comply with all applicable federal, state, and local laws,

rules, and regulations. The parties agree that, in the performance of this Memorandum of Agreement, all hiring will be on the basis of merit and qualifications and the parties will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. Further, the parties agree that during the performance of any work arising out of this Memorandum of Agreement, the parties shall comply with all applicable non-discrimination regulations set forth in Attachment A to the MDT Agreement, attached hereto and made a part of this Memorandum of Agreement.

9. **CHOICE OF LAW AND VENUE:** This Memorandum of Agreement shall be governed by the laws of Montana. The City and the County agree that any litigation concerning this Memorandum of Agreement, wherein MDT would not be a party to the litigation, shall be brought in the Eighteenth Judicial District, Gallatin County. However, if MDT is a party, paragraph 7 of Article IV of the MDT Agreement applies. Each party shall pay its own costs and attorney fees, except as otherwise provided in Section 4 of this Memorandum of Agreement.
10. **INSURANCE:** The City shall purchase and maintain Commercial General Liability insurance of no less than \$1,500,000.00 per occurrence. Such policies shall be primary and noncontributory and shall be maintained during the term of the Memorandum of Agreement. The City shall require their subcontractors to meet the same insurance coverage. Certificates of Insurance evidencing Gallatin County as an additional insured and endorsement thereof must be supplied with the signed return of this Memorandum of Agreement. Such certificates shall require no less than fifteen (15) days' notice of cancellation to the County. The County shall be notified immediately of any changes or cancellation in coverage. Insurance shall be purchased from a company licensed to do business in Montana (with an "A" rated or better classification). The City must also maintain workers' compensation insurance and require its contractors and its contractors' sub-contractors to carry their own workers' compensation coverage while performing any maintenance or repairs pursuant to this Memorandum of Agreement. Neither the City nor its employees are employees of the County.
11. **BINDING EFFECT:** The benefits and obligations set forth in the Memorandum of Agreement shall be binding upon, and inure to the benefit of, their respective successors, administrators, and assigns of the parties.
12. **RELATIONSHIP OF PARTIES.** Nothing contained in this Memorandum of Agreement shall be deemed or construed (either by the parties hereto or by any third party) to create the relationship of principal and agent or create any partnership or joint venture or other association between the parties.

13. NON-WAIVER: No delay or failure by either party to enforce or assert any right, claim, defense, remedy, or provision of this Agreement shall operate as any waiver of any such right, claim, defense, or remedy.

14. COUNTERPART EXECUTION: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Memorandum of Agreement. The counterparts of this Memorandum of Agreement may be executed and delivered by electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered as if the original had been received.

GALLATIN COUNTY

Scott MacFarlane
Chair of Gallatin County Commission

Date

ATTEST:

Eric Semerad
Gallatin County Clerk & Recorder

Date

CITY OF THREE FORKS

Date