

**GALLATIN COUNTY OPEN SPACE LEVY FUND
FOR “OTHER ELIGIBLE PROJECT” FUNDING
GRANT AWARD AGREEMENT**

1. **PARTIES AND CONTACT REPRESENTATIVES:** This GALLATIN COUNTY OPEN SPACE LEVY FUND FOR OTHER ELIGIBLE PROJECT FUNDING GRANT AWARD AGREEMENT (this “GRANT AWARD AGREEMENT”), is made between GALLATIN COUNTY, 311 West Main, Bozeman, MT 59715 (“COUNTY”) AND HEADWATERS TRAIL SYSTEM (“APPLICANT”), acting with and on behalf of CITY OF THREE FORKS (“PROPERTY OWNER/(S)”) (together APPLICANT and PROPERTY OWNER/(S), are “GRANTEES”) (collectively COUNTY and GRANTEES, are “PARTIES”).

COUNTY designates the Gallatin County Chief Planning Officer, 311 West Main, Bozeman, MT 59715, as its contact representative.

APPLICANT designates HEADWATERS TRAIL SYSTEM, PO BOX 187, THREE FORKS MT, 59752, GENE TOWNSEND as its contact representative.

PROPERTY OWNER/S designate CITY OF THREE FORKS, PO BOX 187, THREE FORKS MT, 59752, as its contact representative.

2. **GRANT AWARD:** The COUNTY awards to GRANTEES an award of grant funds from the Open Space Levy Fund for an Other Eligible Project in the amount of \$75,000 (the “GRANT AWARD”).
3. **STATEMENT OF WORK:** GRANTEES shall complete the work and obligations as described in this GRANT AWARD AGREEMENT and set forth in the GALLATIN COUNTY OPEN SPACE LEVY FUNDING APPLICATION “OTHER ELIGIBLE PROJECTS” CATEGORY (“GRANTEE APPLICATION”) describing the project as approved, attached to this GRANT AWARD AGREEMENT as **EXHIBIT A**, and fully incorporated herein by reference, before the expiration or termination of this GRANT AWARD AGREEMENT. The COUNTY may compensate or reimburse GRANTEES for project expenses incurred prior to the execution of the GRANT AWARD AGREEMENT if included in the GRANTEE APPLICATION, but shall otherwise not be liable to compensate GRANTEE for any work or expenses performed prior to the execution of this GRANT AWARD AGREEMENT. The COUNTY shall have no liability to compensate or reimburse GRANTEES for the delivery of any goods or performance of any services that are not specifically set forth in this GRANT AWARD AGREEMENT.

If the project that is the subject of GRANTEE APPLICATION involves work that is not located on public land or land dedicated to public use, GRANTEE acknowledges the requirement that public access must be provided in the form of a long-term easement or land use license granting public access. GRANTEE shall record proof of such public access with

the COUNTY Clerk and Recorder and furnish proof of such recordation to COUNTY. Payments to GRANTEES under the GRANT AWARD AGREEMENT may be withheld, in the sole discretion of the COUNTY, until adequate record(s) evidencing public access have been provided to COUNTY.

4. **PAYMENTS TO GRANTEES:**

- a. **Maximum Amount:** the maximum amount payable under this GRANT AWARD AGREEMENT is the GRANT AWARD amount, as determined by the COUNTY. If the project cannot be completed for the GRANT AWARD amount, GRANTEE agrees to provide any additional funds required for the successful completion of the project. Payments to GRANTEES are limited to the unpaid, obligated balance of the GRANT AWARD. The COUNTY shall not pay GRANTEES any amount that exceeds the GRANT AWARD amount as provided above in Section 2 of this GRANT AWARD AGREEMENT.
- b. **Payment:** GRANTEES shall submit to COUNTY proof of expenditures and any other requested documentation to support costs and expenditures, including detailed invoices. GRANTEES acknowledge that payment of GRANT AWARD is contingent upon COUNTY approval of GRANTEES' submission.

The COUNTY shall only reimburse allowable costs of project that are: reasonable and necessary to accomplish the project as set forth in the GRANTEE APPLICATION; and equal to the actual net cost to GRANTEES (e.g. the price paid minus any items of value received by GRANTEE that reduce the cost actually incurred).

5. **TERM:** The Parties' respective performances under this GRANT AWARD AGREEMENT shall be effective as the date of execution by the Parties. The GRANT AWARD AGREEMENT shall terminate on July 20, 2023, unless sooner terminated or further extended in accordance with the terms of this GRANT AWARD AGREEMENT.

Upon request of the APPLICANT, the Gallatin County Commission may, in its sole discretion, extend the term of this GRANT AWARD AGREEMENT. A request to extend the term of the GRANT AWARD AGREEMENT shall be provided in writing at least 30 calendar days prior to the termination date of the GRANT AWARD AGREEMENT and provide an explanation and rationale for the request and explain any delays.

6. **EARLY TERMINATION IN THE PUBLIC INTEREST:** The COUNTY is entering into this GRANT AWARD AGREEMENT to support the purpose of the Gallatin County Open Space Levy and the public interest. If the GRANT AWARD ceases to further the purposes of the Gallatin County Open Space Levy or public interest, as determined by the COUNTY, or if funds used for this GRANT AWARD become unavailable, the COUNTY, in its sole discretion, may terminate this GRANT AWARD AGREEMENT in whole or in part by

providing written notice to GRANTEES. If the COUNTY terminates this GRANT AWARD AGREEMENT, the COUNTY shall pay GRANTEE an amount equal to the percentage of the total reimbursement payable under this GRANT AWARD AGREEMENT that corresponds to the percentage of work satisfactorily completed, as determined by the COUNTY, less payments previously made. Additionally, the COUNTY, in its sole discretion, may reimburse GRANTEE for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this GRANT AWARD AGREEMENT that are incurred by GRANTEES that are directly attributable to the uncompleted portion of GRANTEES' obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount designated as the GRANT AWARD.

7. **REPRESENTATIONS AND WARRANTIES:** GRANTEES make the following specific representations and warranties, each of which was relied on by the COUNTY in entering into this GRANT AWARD AGREEMENT:
 - a. **Standard and Manner of Performance:** GRANTEES shall perform all obligations under this GRANT AWARD AGREEMENT in accordance with the highest standards of care, skill, and diligence.
 - b. **Legal Authority:** GRANTEES warrant they possess the legal authority to enter into this GRANT AWARD AGREEMENT and have taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this GRANT AWARD AGREEMENT, or any part thereof, and bind GRANTEES to its terms. If requested by the COUNTY, GRANTEES shall provide the COUNTY with proof of GRANTEE's authority to enter into this GRANT AWARD AGREEMENT within 15 days of receiving such request.
 - c. **Licenses, Permits, Etc.:** GRANTEES represent and warrant that they have, and that at all times during the duration of this GRANT AWARD AGREEMENT, that they shall have and maintain, in GRANTEES' sole expense, all licenses, certifications, approvals, insurance, permits, or other authorizations required by law to perform the obligations under this GRANT AWARD AGREEMENT. Additionally, all employees or agents of GRANTEES performing any services under this GRANT AWARD AGREEMENT shall hold all required licenses and certifications, if any, to perform their responsibilities.
8. **BREACH OF AGREEMENT:** In the event of a breach of the GRANT AWARD AGREEMENT, the aggrieved party shall give written notice of Breach of the GRANT AWARD AGREEMENT. If the notified party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the party may exercise the remedies set forth in the GRANT AWARD AGREEMENT.
9. **COUNTY REMEDIES:** If GRANTEES are in breach under any provision of this GRANT AWARD AGREEMENT and fails to cure such breach, the COUNTY, following the notice

and cure period shall have all of the remedies listed in this section, in addition to all other remedies set forth in this GRANT AWARD AGREEMENT or as otherwise provided by law. The COUNTY may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

- a. Termination for Breach: In the event of GRANTEE's uncured breach, the COUNTY may terminate the entire GRANT AWARD AGREEMENT or any part of the GRANT AWARD AGREEMENT. GRANTEE shall continue performance of this GRANT AWARD AGREEMENT to the extent not terminated, if any.

To the extent specified in any termination notice, GRANTEE shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding work with third parties.

COUNTY shall only pay GRANTEE for accepted work received as of the date of termination. If, after termination by the COUNTY, the COUNTY agrees that GRANTEE was not in breach or that GRANTEE'S action or inaction was excusable, such termination shall be treated as a termination in the public interest, as set forth above.

Notwithstanding any other remedial action by the COUNTY, GRANTEES shall remain liable to the COUNTY for any damages sustained by the COUNTY in connection with a breach by the GRANTEES, and the COUNTY may withhold payment to GRANTEE for the purpose of mitigating GRANTEE'S damages until such time as the exact amount of damages due to the COUNTY from GRANTEE is determined. COUNTY may withhold any amount that may be due GRANTEES as the COUNTY deems necessary to protect the COUNTY against loss including, without limitation, loss of outstanding liens and excess costs incurred by the COUNTY in procuring from third parties replacement work.

- b. Remedies Not Involving Termination: The COUNTY, in its discretion, may exercise one or more of the following additional remedies:
 - i. Suspend Performance: Suspend GRANTEES' performance with respect to all or any portion of the project pending corrective actions as specified by the COUNTY and COUNTY shall not be liable for costs incurred by GRANTEE after the suspension in performance.
 - j. Withhold Payment: Withhold payment to GRANTEES until GRANTEES correct the work.
 - k. Deny Payment: Deny payment for work not performed, or that due to the GRANTEES' actions or inactions, cannot be performed or if they were performed

are reasonably of no value to the COUNTY; provided, that any denial of payment shall be equal to the value of the obligations or work not performed.

1. **Removal:** Demand immediate removal of any GRANTEES' employees, agents, or subcontractors from the work whom the COUNTY deems to be incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this GRANT AWARD AGREEMENT is deemed by the COUNTY to be contrary to the public interest.
10. **INDEPENDENT CONTRACTOR:** GRANTEES shall perform their duties hereunder as independent contractors and not as an employee of COUNTY. Neither GRANTEES, nor any agent or employee of GRANTEES, shall be deemed to be an agent or employee of the COUNTY. GRANTEE shall not have authorization, express or implied, to bind the COUNTY to any agreement, liability, or understanding.
11. **COMPLIANCE WITH LAW:** GRANTEES shall comply with all applicable federal and State laws, rules, and regulations in effect or as hereafter established.
12. **WAIVER AND INDEMNIFICATION:** To the fullest extent permitted by law, GRANTEES waive any and all claims and recourse against 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 or any obligation under this GRANT AWARD AGREEMENT, except claims arising from the intentional acts or negligence of the COUNTY or its officers, agents, or employees. To the fullest extent permitted by law, GRANTEES will indemnify, hold harmless, and defend the COUNTY and its officers, agents, and employees against any claim, damage, liability, loss, expense, fee, action or charge (including liability where activity is inherently or intrinsically dangerous), including attorney's fees (including fees of the County Attorney) arising out of GRANTEE's acts, errors, omissions, or negligence or from GRANTEES failure to comply with the requirements of this GRANT AWARD AGREEMENT or any applicable law. In the event of an action filed against COUNTY resulting from GRANTEES' performance under this GRANT AWARD AGREEMENT, COUNTY may elect to represent itself and incur all costs and expenses of suit. These obligations shall survive termination of this GRANT AWARD AGREEMENT.
13. **CHOICE OF LAW AND VENUE:** The Parties agree that this GRANT AWARD AGREEMENT shall be governed and interpreted according to the laws of the State of Montana. In the event of a dispute arising from or related to this GRANT AWARD AGREEMENT, venue shall be in the Eighteenth Judicial District of the State of Montana, in and for the County of Gallatin.
14. **INTERPRETATION:** The Parties equally having been given an opportunity to review and have reviewed this GRANT AWARD AGREEMENT, the rule of construction providing that

an agreement should be construed against the drafter will not be used in the interpretation of this GRANT AWARD AGREEMENT. Words shall be given plain meaning and effect.

15. GENERAL PROVISIONS:

- a. Assignment: The Parties, respectively, bind themselves, their successors, assigns and legal representatives to the other party with respect to all terms and conditions of this GRANT AWARD AGREEMENT. GRANTEES' rights and obligations under this GRANT AWARD AGREEMENT are personal and may not be transferred or assigned without the prior, written consent of the COUNTY. Any assignment or transfer of GRANTEES' rights and obligations approved by the COUNTY shall be subject to the provisions of this GRANT AWARD AGREEMENT.
- b. Captions: The captions and headings in this GRANT AWARD AGREEMENT are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.
- c. Entire Understanding: This GRANT AWARD AGREEMENT and incorporated exhibits, represent the complete integration of all understandings between the Parties related to this GRANT AWARD. This GRANT AWARD AGREEMENT supersedes all prior negotiations, or representations, either written or oral.
- d. Modification: The Parties may modify this GRANT AWARD AGREEMENT by a properly executed formal amendment.
- e. Notice: Any notices under this GRANT AWARD AGREEMENT must be in writing and sent by personal delivery or certified mail to the Parties' contact representatives.
- f. Severability: The invalidity or unenforceability of any provision of this GRANT AWARD AGREEMENT shall not affect the validity or enforceability of any other provision of this GRANT AWARD AGREEMENT, which shall remain in full force and effect, provided the Parties can continue to perform their obligations under the GRANT AWARD AGREEMENT in accordance with the intent of the GRANT AWARD.
- g. Survival of Certain GRANT AWARD AGREEMENT Terms: Any provision of this GRANT AWARD AGREEMENT that explicitly imposes an obligation on the Parties after termination or expiration of the GRANT AWARD AGREEMENT shall survive the termination
- h. Non-Waiver: No waiver of any breach of this GRANT AWARD AGREEMENT will be held as a waiver of any other subsequent breach thereof.

EXHIBIT A