A
MEMORANDUM OF AGREEMENT
Between
Yellowstone County Commissioners, Big Sky Economic Development Authority,
City of Billings, City of Laurel
And
Beartooth Resource Conservation & Development Area, Inc.

THIS MEMORANDUM OF AGREEMENT is made and entered into this ____ day of _____, 202___, by and between **Beartooth Resource Conservation & Development Area, Inc.**, whose principal business address is P.O. Box 180, Joliet, Montana 59041, hereinafter referred to as **"Beartooth RC&D"** and **Yellowstone County Commissioners, City of Billings, City of Laurel, and Big Sky EDA**, and hereinafter referred to as **"the Entity."**

WHEREAS, The Beartooth RC&D has been formally recognized by the U.S. Department of Commerce, Economic Development Administration (EDA) as a designated Economic Development District (EDD), and as a District, the Beartooth RC&D has been awarded funding to carry out its Comprehensive Economic Development Strategy (CEDS). This funding will provide a staff person, administrative support and operating costs. This is a continual grant, renewable based on successful program operation and availability of federal funds. Local match is required.

WHEREAS, Each entity participating in the District will designate a representative and an alternate to the regional Beartooth RC&D Board. This individual will convey the needs and economic development goals of the community to the Beartooth RC&D board meetings. Regular board meetings will be held every two months to assess project status and evaluate regional economic development needs.

NOW THEREFORE IT IS UNDERSTOOD AS FOLLOWS:

ARTICLE 1: SCOPE OF WORK:

Beartooth RC&D employs an Economic Development Director to assist in the completion of the Comprehensive Economic Development Strategy for the five-county region. The Director's time will be allocated consistent with the goals in the CEDS by the Beartooth RC&D board of directors. The board is composed of one representative and an alternate from business partners, county and local elected officials, and local economic development partners from our five-county region. Input from this board is essential for meeting the needs of the communities in our region.

Priority will be assigned projects of regional scope or projects with strong local leadership. Grant funding for this position is from EDA; therefore, emphasis will be on regional economic development planning and projects which have a correlation to job creation, economic diversification and increased tax base. Matching funds are from participating entities and emphasis will be placed on their specified projects.

Annual Evaluation:

The performance of the Economic Development District will be evaluated annually by local entities participating on the regional Beartooth RC&D Board. Progress and/or accomplishments on each program/project will be reported and evaluated to ensure resources are being utilized in the most effective and efficient manner possible. Annual Comprehensive Economic Development Strategy updates and an annual plan of work will be developed with input from the Beartooth RC&D staff and board. Annual reports on projects and economic development activities will be provided to the board and participating entities along with the renewal of the Memorandum of Agreement.

ARTICLE 2: PERIOD OF PERFORMANCE:

The term of this Memorandum of Agreement shall be from the date it is signed through **December 31, 2027**, unless extended by mutual agreement by both parties. Such extension must be in writing, signed by authorized representatives of both parties, and made a part of the original Memorandum of Agreement by modification reference. This Memorandum of Agreement supersedes the prior Memorandum for participation in the Economic Development District.

ARTICLE 3: PAYMENT:

The Entity's annual contribution will be **$4,500.00** as a "Membership" fee plus a per capita assessment of **.26** cents per person. These funds will provide the necessary match to obtain the $70,000.00 in federal funds. Entities who do not participate financially in the match requirement will not receive services from the Economic Development Director. The calculated fee for **the Entity** is **$49,399.92.** This figure is a total of the **$4,500.00** fee plus **$44,899.92** per capita formula using a population of **172,692 x (.26)** as per the 2025 Census data. The Entity's full payment will be separated into a four-way payment system. Each entity within the county will pay a percentage (%) similar to the previous year. Big Sky EDA – 34% or **$16,795.97**, City of Billings – 36% or **$17,783.97**, City of Laurel – 6% or **$2,964.00**, and Yellowstone County – 24% or **$11,855.98**.

Annually, the Beartooth RC&D/EDD staff will provide a comprehensive report of the past year's activity. A new Memorandum of Agreement will be prepared and a request submitted for the next year's match. Entities will be billed for match funds after January 1, 2027, for the current year's assessment.

Payment as provided in this section shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment, and incidentals necessary to complete the work.

ARTICLE 4: EXAMINATION OF RC&D RECORDS:

The Entity or its representatives shall have the right to examine any books, records, or other documents of the Beartooth RC&D, directly relating to costs when such costs are the basis of compensation hereunder.

ARTICLE 5: OWNERSHIP AND USE OF DOCUMENTS:

Reproducible copies of all documents and other materials produced by the Beartooth RC&D in connection with the services rendered under this Memorandum of Agreement shall be provided to the Entity for the Entity's use whether the project for which they are made is executed or not. The Beartooth RC&D shall be permitted to retain originals, including reproducible originals, of drawings and specifications for information, reference and use in connection with Beartooth RC&D endeavors.

ARTICLE 6: WARRANTY:

The Beartooth RC&D warrants that all services performed herein shall be performed using that degree of skill and care ordinarily exercised in and consistent with generally accepted practices for the nature of the services and shall conform to all requirements of this Memorandum of Agreement.

ARTICLE 7: SAFETY:

The Beartooth RC&D agrees to fully comply with the Occupational Safety and Health Act of 1970, all regulations issued thereunder and all state laws and regulations enacted and adopted pursuant thereto. The Beartooth RC&D shall take all necessary precautions in performing the services hereunder to prevent injury to persons or damage to property.

ARTICLE 8: CONFIDENTIALITY AND CONFLICTS OF INTEREST:

The Beartooth RC&D agrees to hold in strict confidence any proprietary or other data, findings, results, or recommendations deemed to be confidential by the Entity and obtained or developed by the Beartooth RC&D in connection with the work under this Memorandum of Agreement. The Beartooth RC&D warrants and agrees they do not and will not have any conflicts of interest regarding the performance of services hereunder.

ARTICLE 9: APPLICABLE LAW:

This Memorandum of Agreement shall be governed in all respects by the laws of the State of Montana. No changes, amendments or modifications of any of the terms and conditions hereof shall be valid unless agreed to in writing. Venue of any proceeding arising hereunder shall be the Thirteenth Judicial District.

ARTICLE 10: COMPLIANCE WITH LAWS:

The Beartooth RC&D shall in performing the services contemplated by this Memorandum of Agreement faithfully observe and comply with all federal, state, and local laws, ordinances and regulations applicable to the services to be rendered under this Memorandum of Agreement.

ARTICLE 11: CHANGES:

The parties, by mutual written agreement, may, at any time during the term of this Memorandum of Agreement and without invalidating the Memorandum of Agreement, make changes within the general scope of the Memorandum of Agreement. The Beartooth RC&D to perform such changed services. The Entity's priority list for project work within their area can be changed at any time. In such case, the District will be informed of this change at the Entity's earliest convenience.

ARTICLE 12: TERMINATION:

This Memorandum of Agreement may be terminated in whole or in part, in writing, by either party in the event of substantial failure by the other party to fulfill its obligations under this Memorandum of Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

Upon such termination the Entity shall pay the Beartooth RC&D amounts due and unpaid for services rendered as of the effective date of termination, and the Beartooth RC&D shall provide to the Entity all materials, surveys, reports, data, and other information performed or prepared as of such date.

ARTICLE 13: INDEMNIFICATION:

The Beartooth RC&D agrees to and does hereby indemnify and save the Entity, its officers, officials and employees, harmless against and from:

1. Any and all claims and liabilities, including but not limited to costs, expenses, and attorney fees arising from injury to, or death of, persons (including claims and liabilities for care or loss of services in connection with any bodily injury or death) and including injuries, sickness, disease, or death to Beartooth RC&D employees occasioned by a negligent act, omission, or failure of the Beartooth RC&D;

2. Any and all claims and liabilities, including costs and expenses, for loss or destruction of or damage to any property belonging to the Beartooth RC&D or the Entity caused by a negligent act, omission, or failure of the Beartooth RC&D; and

3. Any fines, penalties, or other amounts assessed against the Entity by reason of the Beartooth RC&D failure to comply with all health, safety, and environmental laws and regulations applicable to the services; resulting directly or indirectly from or occurring in the course of the Beartooth RC&D performance of the services. However, this indemnity shall not extend to claims and liabilities for (i) injury or death to persons or (ii) loss of or damage to property to the extent that these claims and liabilities result directly from the Entity's negligence or willful misconduct.

ARTICLE 14: INSURANCE:

The Beartooth RC&D shall maintain and demonstrate the following types of insurance:

1. The Beartooth RC&D agrees that its employees and particularly the employees designated to work on this Memorandum of Agreement are covered by applicable Worker's Compensation provisions. The Beartooth RC&D further agrees that if the Entity should legally incur any costs whatsoever under the Worker's Compensation laws by reason of the Beartooth RC&D employees' injury or death while engaged in the contract work, the Beartooth RC&D will indemnify and hold harmless the Entity for such costs which the Entity may legally be required to pay to employees of the Beartooth RC&D.

2. Comprehensive general liability insurance for bodily injury, death, or loss of or damage to property of third persons or other liability due to the negligent acts of the Beartooth RC&D in the minimum amounts of $750,000 per claim and $1,500,000 per occurrence and $2,000,000 aggregate for personal injury; and $1,000,000 per occurrence/aggregate for property damage. Upon request, proof of coverage as required by this section shall be delivered to the Entity within fifteen (15) days of execution of this Agreement.

3. Professional liability errors and omissions insurance in an amount of $1,000,000.

ARTICLE 15: NONDISCRIMINATION:

The Beartooth RC&D will not discriminate against any employee or applicant for employment relating to this project on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin. All hiring associated with any project shall be on the basis of merit and qualifications related to the requirements of the particular position being filled.

ARTICLE 16: INDEPENDENT CONTRACTOR:

The Beartooth RC&D and the Entity agree that the Beartooth RC&D is an independent contractor with respect to the services provided pursuant to this Memorandum of Agreement. Nothing in this Memorandum of Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Beartooth RC&D nor any employee of the Beartooth RC&D shall be entitled to any benefits accorded the Entity's employees by virtue of the services provided under this Memorandum of Agreement. The Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state Worker's Compensation program, nor shall the Entity be deemed in any way to assume the duties of an employer with respect to the Beartooth RC&D, or any employee of the Beartooth RC&D.

ARTICLE 17: ASSIGNMENT:

The Beartooth RC&D shall not sublet or assign any of the services covered by this Memorandum of Agreement without the express written consent of the Entity.

ARTICLE 18: NON-WAIVER:

Waiver by the Entity of any provision of this Memorandum of Agreement or any time limitation provided for in this Memorandum of Agreement shall not constitute a waiver of any other provision.

ARTICLE 19: NOTICES:

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

ENTITY:	**City of Billings** **PO Box 1178** **Billings, MT 59101**	**RC&D:**	**Beartooth RC&D** **P.O. Box 180** **Joliet, MT 59041**

ARTICLE 20: INTEGRATED AGREEMENT:

This Memorandum of Agreement together with attachments or addenda represents the entire and integrated Agreement between the Entity and the Beartooth RC&D and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Agreement may be amended only by written instrument signed by both the Entity and the Beartooth RC&D.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Agreement the day and year in this instrument first above written.

CITY OF BILLINGS	**BEARTOOTH RC&D/EDD**
_____	_____
Mike Nelson	Mike Boyett
Mayor	Chairman

ATTEST: _____ Date: _____