

AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND HEARTLAND OUTDOORS, INC., D/B/A TRAILARTS
FOR CITY PARKS TRAIL MAINTENANCE & IMPROVEMENTS

This Agreement is entered into this _____ day of _____, 2013, by and between the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, of 515 West Blvd., Rapid City, SD 57701 ("City"), and Heartland Outdoors, Inc., d/b/a TrailArts, with its principal place of business located at P.O. Box 38186, Colorado Springs, CO 80937 ("Contractor"). The parties agree to the following terms:

1. Statement of Work. Contractor agrees to perform the work described in the attached Scope of Work for "City Parks Trail Maintenance & Improvements," (hereinafter "Work"), attached hereto and incorporated herein by this reference, generally described as constructing and remediating trails and/or other features by furnishing the labor, materials, equipment, and/or services necessary to perform the Work.

All changes in the Work must be agreed to by the parties in a written memo, signed by both Contractor and City.

2. Contract Price for Work. Contractor agrees to perform the work described above for an amount not to exceed Twenty-Four Thousand Five Hundred Dollars (\$31,000.00). Contractor will only be paid for work actually performed and accepted by City.

If Contractor believes additional work is necessary which would cause the total cost to exceed the above amount (\$31,000.00), it agrees to seek written approval from City prior to performing the Work.

3. Payment. Contractor agrees to bill City by invoice for work completed under this Agreement. City shall remit payment to Contractor within forty-five (45) days of each invoice for Work that has been accepted by City.

4. Contractor's Obligations. Contractor shall supervise and direct to the Work, and shall have control over the construction means, sequences and procedures.

5. City Obligations and Representations. A reasonable time before the Work is due to commence, City shall provide the Contractor with a description of the property where the trails and/or other features of the Work will be located ("Site"). This description of the Site shall accurately depict and describe all relevant boundaries and property lines, easements, and access, as may be needed to construct the trails, trailheads and other features specified in the Work. This description may include a survey if Contractor requests a survey.

City is responsible to obtain and pay for all consents, easements, variances, waivers, legal permissions, charges, and other legal rights necessary to perform the Work.

City represents that it will obtain all permits, consents, waivers, permissions, Site access, and other legal rights necessary to complete all Work in this Agreement.

City agrees that the Parks and Recreation staff overseeing the Work will inform Contractor of any constraints upon the construction of trails, trailheads and other features of the project and other Work of which these Parks and Recreation staff are aware, including the following:

- a. Physical or legal restrictions on access to or travel across any part of the Site;
- b. Neighborhood or landowner disputes or restrictions concerning location of trails and/or other features and/or ownership, easements, or access across the Site;
- c. Allowable construction equipment and any restrictions on use of heavy equipment, tools, mechanized equipment, etc.;
- d. Critical wildlife habitat, and threatened or endangered species issues;
- e. History of landslides, major erosion, flooding, and unstable soils;
- f. Utility locations and other natural or man-made hazards; and
- g. Legal covenants and other regulatory restrictions that may restrict the design or implementation of the Project.

City's obligation as described above only extends to those items of which the designated Parks and Recreation employees are aware. City does not have any affirmative obligation to investigate or discover constraints listed above, nor does the Parks and Recreation Department have any duty to investigate or discover constraints of which other City departments may be aware.

City is responsible to approve and accept design, layout, and configuration of all trail including grade, width, surface, and materials, as well as any additions and closures of trails, bridges, structures and other trail features described in the Work. Trail work shall comply with all applicable laws, regulations, covenants, licenses, permits and approvals. City agrees to review and respond to all Work within a reasonable time and at its expense.

6. Authority. City represents that it has the right, capacity and authorization necessary to enter into this Agreement and is not subject to a conflict with any law or agreement that would prevent or delay any or all of the Work. This Agreement is made and entered into by the Director of Parks & Recreation pursuant to the authority granted by SDCL 9-1-5 and Section 3.04.090 of the Rapid City Municipal Code.

7. Insurance. Contactor shall obtain and maintain at its expense the following minimum limits of occurrence-based insurance coverage for the duration of this Agreement.

<u>Type of Coverage</u>	<u>Minimum Limits of Coverage</u>
A. Workers' Compensation Employer's Liability	Statutory \$100,000
B. Comprehensive General Liability (Including Contractual Liability and Completed Operations)	
Bodily Injury and Property Damage	\$1,000,000 each occurrence
General Aggregate	\$2,000,000

Such insurance policies shall name the City as an additional insured with respect to all activities arising out of the performance of the work and/or services under this Agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the City before commencing any work and/or services. Such Certificates shall afford City thirty (30) days written notice of cancellation or of a material change in coverage. City's failure to obtain from the Contractor a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity section.

8. Indemnity. Contractor agrees to indemnify, defend and hold City harmless from and against any and all liability, losses, claims, damages, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of Contractor and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by Contractor or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by Contractor.

Contractor shall not, by this provision, be required to indemnify the City for loss or damages, or costs incurred in defense, which arise out of the negligence of City or which are not the result of the conduct of Contractor or its employees, subcontractors or its employees, or any person, firm, partnership or corporation employed or engaged by Contractor.

9. Warranties. Contractor agrees to perform the Work in a professional and workmanlike manner in accordance with the requirements of the Statement of Work as discussed in section 1. Contractor provides a two-year warranty for the problems created by reasonable use and reasonable weather conditions, but provides no other warranty including warranty of merchantability or warranty of fitness for purpose or quality. All work not conforming to the requirements of the Work within this warranty period may be considered defective and shall be repaired or replaced by the Contractor at City's request within the warranty period.

Contractor is not responsible for damage to trails, other trail features, the Site, or surrounding property due to abuse by users, normal usage and wear and tear, errors or defects in City's design plans, specifications and drawings, adverse weather, vegetation growth, fire, landslides, and similar causes. In any dispute arising out of this Agreement, the amount of the

Contractor's liability to City shall not exceed the total of fees payable under this Agreement, and the Contractor will not be responsible for any consequential or indirect damages, lost profits or income, or punitive damages.

10. Time for Completion. Contractor agrees to begin the Work in **July 2013** and to work diligently to its completion. In the event the Contractor is delayed in completion of any part of the Work by fire, adverse weather, unusual delay in equipment or materials availability, changes in the scope of Work, an act or omission by City, or other causes beyond the Contractor's control, the completion time shall be extended a reasonable time.

11. Termination of Agreement. Either party may terminate this Agreement on the grounds that the other party has failed in performance or has otherwise breached this Agreement. Prior to such a termination, the party wishing to terminate must provide written notice to the other party of its intent to terminate, including the reasons for termination. The party in receipt of the notice of intent to terminate shall have ten calendar days after receipt of such notice in which to cure the alleged failure or breach. If that party does not cure the failure or breach, the non-breaching party may terminate the Agreement.

The Contractor or City may terminate this Agreement at any time upon forty-five calendar days advance written notice to the other.

12. Relationship between the Parties. Heartland Outdoors, Inc., d/b/a TrailArts, is an independent contractor of the City. This Agreement does not create an employment relationship between the City of Rapid City and TrailArts, or its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between TrailArts, and the City of Rapid City. No agent of TrailArts, shall be the agent of the City, and TrailArts, covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

13. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

14. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

15. Entire Agreement. This Agreement, along with attached "Scope of Work for City Parks Trail Maintenance & Improvements," constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

16. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

17. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

18. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

19. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

CITY OF RAPID CITY:

Mayor

ATTEST:

Finance Officer

(seal)

HEARTLAND OUTDOORS INC.,
D/B/A TRAILARTS:

By: David B. Dessel
Its: President

STATE OF _____) {PRIVATE }
) ss.
COUNTY OF _____)

On this _____ day of _____, 2013, before me, the undersigned officer, personally appeared _____ who acknowledged himself to be the _____ of Heartland Outdoors, Inc., d/b/a Trail Arts and as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)

Notary Public, State of _____
My Commission Expires: _____