

**INTERLOCAL AGREEMENT
FOR
THE ALLOCATION AND USE OF RESORT TAX REVENUE
Fiscal Years 2022, 2023, 2024**

This Interlocal Agreement (“Agreement”) is made and entered into by and between the Big Sky Resort Area District (“District”), and the Big Sky Transportation District (“Contractor”). The District and Contractor enter into this Interlocal Agreement under the authority vested in them by law and, more specifically, pursuant to §§ 7-6-1509(1)(b), and 7-11-104, MCA, respectively.

RECITALS

1. The District is a resort tax area created effective April 7th, 1998 pursuant to Mont. Code Ann. §§ 7-6-1531 through 1550 and the current members of the Board of Directors (“Board”) have been duly elected to serve on behalf of the District.

2. Contractor is a transportation district, validly organized pursuant to Title 7, Chapter 14, Parts 201 through 246, which has been duly incorporated and in existence since November 18, 1991. Contractor is located within the boundaries of the District.

3. Contractor is authorized, among other things, to supply transportation services and facilities to district residents and other persons. within Contractor’s service area, which in turn falls within the District.

4. Pursuant to Section 19 of District Ordinance 98-01, as amended, (“Ordinance”), the District is required to award the revenue derived from the imposition of the resort tax in the District for “infrastructure facilities (as that term is commonly defined) in the District; public services, including but not limited to the establishment and maintenance of an adequately-sized post office; ambulance and other emergency medical services; public transportation systems; snow plowing; tourism development for the District; and other services that provide for the public health, safety, and welfare within the District; and reimbursement or payment to the resort area district of the costs associated with the collection, administration, and litigation of the resort tax.”

5. Contractor submitted an application for receipt of resort tax funds in each of the next three fiscal years (July 1, 2021 through June 30, 2022 (“FY22”), July 1, 2022 – June 30, 2023 (“FY23”), and July 1, 2023 – June 30, 2024 (“FY24”)) (“Application”) to the District requesting funds for it FY22-FY24 Operations project, described as This request for FY22-24 will allow the Transportation District to continue and expand its transportation services to meet the transportation needs of the Big Sky community, including the need for travel between Big Sky and the greater Bozeman area. in the amount of \$850,000 for FY22, \$950,000 for FY23, and \$975,000 for FY24 (collectively, the “Services”).

6. The Contractor also submitted additional information related to the Services in response to Q & A from the District (“Supplemental Information”).

7. The District conducted a public hearing, on June 7th and June 10th, 2021 on all applications for receipt of resort tax revenue for the District's FY22 funding cycle, and on the Contractor's request for resort tax revenue in each of the next three fiscal years.

8. Following discussion at the duly noticed and held public meeting on June 7th and June 10th, 2021, the District determined that Contractor's Application to provide the Services as described in its Application, the Supplemental Information, and in this Agreement meets the requirements of Section 19 of Ordinance #98-01 as amended, and Title 7, Chapter 6, Part 15, MCA and approved funding in each of the next three fiscal years as follows: FY22 in the amount of \$850,000; FY23 in the amount of \$950,000; and FY24 in the amount of \$975,000 (the "Award") for the Contractor's Services pursuant to the terms and conditions set forth in this Agreement.

9. Those portions of the Application and the Supplemental Information which relate to the Services constituting the Award are incorporated hereby by this reference as if fully set forth in this Agreement as an integral part of the description of the Services.

In consideration of the foregoing and the promises contained in this Agreement, and pursuant to the statutory authority granted to the parties to enter into Interlocal Agreements, the parties agree as follows:

AGREEMENT

1. **RECITALS.** The Recitals to this Agreement are incorporated herein by this reference as if fully set forth in this Agreement.

2. **TERM.** The Term of this agreement shall be for FY22, FY23, and FY24, commencing on, July 1st 2021 and shall terminating on July 15, 2024. The terms and conditions of this agreement and the award allocation shall be reviewed by the Board in each the spring during the District's normal appropriation cycles. This Award is not a guarantee that the District will grant an Award to Contractor for future Services after the Term expires.

3. **SCOPE OF SERVICES.** Contractor shall fully perform all Services in each fiscal year of the Term, and take all actions in each fiscal year of the Term as described in the Application and in the Supplemental Information, which are each incorporated into this Agreement by this reference and which are each on file at the District office. In addition, Contractor shall fully comply with the terms and conditions set forth in this Agreement.

4. **CONTRACTOR EXPENDITURE REQUIREMENTS; AMENDMENTS.** Contractor shall expend the Award for each fiscal year of the Term solely for the Services to be provided in each fiscal year of the Term as specifically described in its Application and Supplemental Information, and as approved and/or limited by the District in this Agreement. Should Contractor desire an amendment to this Agreement, or to change the Services or the use of the Award, such amendment must first be approved by the District in writing.

5. **SUBMISSION OF PAYMENT REQUESTS BY CONTRACTOR.**

A. *Execution of Agreement as Condition Precedent to Payment.* This Agreement must be fully executed and returned to the District before Contractor may submit any payment request for the Award and no payment request may be submitted to the District prior to July 15th, 2021.

B. *Award Orientation.* An Award Orientation must be completed by the Contractor before Contractor may submit payment request for the Award.

C. *Contractor's Designated Representative.* All payment requests must be signed and submitted by Contractor's Designated Representative identified as David Kack.

D. *Documentation to Support Payment Requests.* Payment of the Award shall be made to Contractor only upon receipt of documentation deemed appropriate by the District in its sole discretion. All payment requests and follow up forms shall be submitted using the online portal established by the District, using forms provided by the District. Contractor shall attach to the payment request proper documentation showing the Services have been performed and/or the materials have been received, including without limitation all invoices for Services received, payroll records for all payroll costs, documentation of compliance with applicable federal, state and county laws, regulations, and ordinances, and any other documentation related to the Services or projects as requested by the District. If the payment request is for Services which have not yet been performed or materials which have not yet been received, the District reserves the right, in its sole discretion, to delay payment until performance or receipt, or to permit payment but to require Contractor to submit proof of performance or receipt within five (5) days following actual performance or receipt; should Contractor fail to timely provide such proof of performance or receipt, Contractor shall be in default of this Agreement. Documentation submitted by Contractor must clearly show the dollar amounts, and all documentation must be submitted in the order in which the expense appears on the itemized expense list form required by the District. No payment requests for alcohol or tobacco shall be considered to fall within the Scope of Services described in Section 3 of this Agreement. The District, in its sole discretion, may determine whether or not the payment request submitted is for items or services within the scope of Services described by Section 3 of this Agreement. Payment requests for items or services not within the scope of Services described in Section 3 of this Agreement, as determined by the District, will not be paid or reimbursed.

E. *Timing of Award Payments.* All payment requests must be timely submitted to the District not later than sixty (60) days following the date on which the Services were performed by Contractor, the materials were received by the Contractor, or the Contractor was itself invoiced for services or materials for the project. Payments shall be made only for services actually rendered and/or materials actually supplied during the payment period; no payments shall be made for services to be rendered in future time periods within the Term. The District shall process payment requests on the 1st and 15th day of each month (each a "Processing Date"). Should contractor's payment request not be received by the Processing Date, the District shall hold the payment request until the next Processing Date. The District shall not be obligated to fund any payment request that is not timely submitted by the Contractor.

F. *Retainage Amounts.* The District reserves the right, in its sole discretion, to retain up to 15% of each approved Award payment to assure Contractor's continued provision

of the balance of the Services and compliance with this Agreement. Payment of any retained amounts will be made when the District, in its sole discretion, has determined the Services have been completed in their entirety.

G. *Schedule of Payment Requests; Changes to Schedule.* All payment requests are to be submitted on the schedule established by the District during the award orientation. Contractor shall notify the District of any changes of \$50,000.00 or more to a scheduled payment request as soon as possible following Contractor's determination that a change in schedule is desired or required. All requested changes to the payment scheduled must be agreed to in writing by the District a minimum of 10 days prior to the date of the desired change in schedule. Requested changes to the payment schedule not timely received by the District shall not be approved.

H. *Final Payment Requests.* All final requests for payment at the end of the Term must be submitted to the District no later July 15th, 2024, for Services received on or before June 30th, 2024, for processing on the next Processing Date. The District shall not be obligated to fund any final payment request that is not timely submitted by the Contractor or for any Services incurred after June 30, 2024.

I. *Form of Payment.* The District prefers to make all payments of the award to Contractor through an ACH payment system. Should Contractor instead desire payment from the District by check, Contractor authorizes the District to issue checks payable to Contractor's Designated Representative at Contractor's address listed in this Agreement. Should Contractor's address change during the term of this Agreement, it shall be Contractor's sole responsibility to promptly notify the District of such change in writing.

6. **NONCOMPLIANCE.** If resort tax funds are paid to Contractor under this Agreement and Contractor is unable to provide the Services as specified in Section 3, Contractor shall notify the District immediately. If Contractor is unable to provide the Services specified in Section 3, Contractor shall immediately return any and all portions of the Award previously paid to the Contractor, unless good cause is shown by the Contractor and the District expressly agrees in writing to waive the return of such previously paid Award amounts.

7. **RETURN OF FUNDS-UNSPENT FUNDS.** If for any reason, resort tax funds awarded to Contractor have not been spent by Contractor prior to the date specified in Section 5(H) of this Agreement, the unspent Award shall not be disbursed to Contractor, but shall be retained by the District and reallocated for other purposes in the sole discretion of the District. The District shall not be obligated to re-award unspent funds from the prior year.

8. **RECORDS.** Contractor shall maintain accounts, records and other evidence pertaining to the funds expended under this Agreement during the term of this Agreement and for a period of five (5) years following the expiration of this Agreement. The system of accounting employed by the Contractor shall be in accordance with generally accepted accounting principles or other comprehensive basis of accounting and will be applied in a consistent manner so that the expenditures under this Agreement can be clearly identified from all other expenditures. Upon reasonable notice, Contractor agrees to provide the District or its designated agent with access to the accounts and records relating to the services provided and payments made under this Agreement and to subject its use of the Award for the Services to audit by the District's auditors upon the District's written request.

9. **LIABILITY.** Contractor shall hold the District, Board and all its agents and employees harmless and indemnify for any acts, errors, or omissions arising from the services provided or project performed by the Contractor which could result in any claims by the Contractor, its employees or by a third party. The Contractor shall assure the provision of the comprehensive general liability insurance that includes coverage of bodily injury, property damage, and attorney's fees incurred at all trial and appellate levels, and automobile liability, with a limit of not less than \$1,000,000.00 per occurrence. Contractor must provide proof of insurance for itself and its subcontractors to the District prior to any payments being made to Contractor under this Agreement.

10. **STATUTORY PROVISIONS.** Contractor shall comply with all applicable state, federal and local laws, and regulations.

11. **DEFAULT AND TERMINATION.**

A. In the event Contractor fails to comply with any provision of this Agreement, the Contractor shall have the right to cure such a breach within ten (10) days from receipt of written notice of the default or breach provided by the District to the Contractor.

B. In the event the Contractor fails to timely cure any breach of this Agreement as set forth in paragraph A of this Section, the District may terminate the Agreement immediately without any further opportunity of the Contractor to cure or remedy the breach.

C. Upon termination of the Agreement by the District for failure of the Contractor to perform provisions of the Agreement as described in paragraphs A and B of this Section, the District may require that all resort tax funds plus 6% annual interest from the date of receipt of the funds shall be immediately returned to the District.

D. Either party may terminate this Agreement without cause, upon thirty (30) days' written notice to the other party, provided that, if the Contractor is seeking to terminate the Agreement, Contractor must return to the District all resort tax funds previously paid under this Agreement, unless the District expressly agrees in writing that return of the funds is waived for good cause shown.

12. **ASSIGNMENT.** Contractor may not assign or subcontract any portion of this Agreement without the prior written approval of the District.

13. **INDEPENDENT CONTRACTOR STATUS.** Contractor is an independent provider or contractor. Neither the Contractor nor any of its employees are employees of the District under this Agreement nor will they be considered employees of the District under any subsequent amendment to this Agreement, unless otherwise expressed. The District is not responsible for the withholding of any state or federal taxes, or social security or other benefit contributions, nor will the District extend to the Contractor any of the benefits that it extends to employees of the District. Contractor is responsible for maintaining necessary workers' compensation coverage for its employees.

14. **OWNERSHIP OF PROPERTY.** Unless otherwise specified in this Agreement, any property purchased by the Contractor with resort tax funds in order to provide the Services under this Agreement is owned by the Contractor.

15. **INTERPRETATION.**

A. This Agreement shall be governed and interpreted according to the laws of the State of Montana.

B. The provisions of this Agreement are independent and severable, and the invalidity, partial invalidity, or unenforceability of any one provision or portion shall not affect the validity or enforceability of any other portion.

16. **ENTIRE AGREEMENT.** This Agreement, and all documents incorporated herein by reference including without limitation the Application and the Supplemental Information, constitutes the entire agreement between the parties. No alterations, modifications, or additions to this Agreement shall be binding upon the parties unless reduced to writing and signed by the parties.

17. **NOTICES.** Any notices, demands, or other communication required by this Agreement to be in writing shall be delivered (i) in person, against receipt, (ii) by certified mail, postage prepaid, return receipt requested, (iii) by U.S. Express Mail or a commercial overnight courier that guarantees delivery within the next two business days, or (iv) by email if the original notice is also served by one of the processes described in (i), (ii) or (ii) above. Such notices shall be addressed as follows:

To the District: Daniel Bierschwale
Executive Director
Big Sky Resort Area District
11 Lone Peak Drive, Suite 204
P.O. Box 160661
Big Sky, MT 59716

To the Contractor: Ennion Williams
Board Chair
Big Sky Transportation District
PO Box 161104
Big Sky, MT 59716

All notices complying with this Section shall be effective only upon delivery.

18. **AVAILABILITY OF FUNDS.** The District and Contractor agree that if, for any reason, revenues received from the collection of the resort tax are insufficient to pay the Award, the District may unilaterally adjust the Award based on actual availability of cash and revenue and without liability or remedy to Contractor.

19. **PUBLIC ACKNOWLEDGEMENT OF RECEIPT OF DISTRICT**


FUNDING. Contractor shall provide prominent public acknowledgement that the District has funded the Services and/or project(s) described in Contractor's Application. Each project is uniquely different and may require direct coordination with the District to ensure compliance. Acknowledgement applies to, but is not limited to, printed materials, online materials, press, billboards, plaques, online ads, website recognition, and public events. Contractor should receive approval from the District prior to public acknowledgement. Contractor further agrees to provide photos or printouts of Contractor's Services or projects for use by the District in promotional or other materials. During Award Orientation, Contractor will work with the District to form a recognition plan.

20 **PROJECT IMPACT REPORTS AND MEETINGS.** Contractor shall submit a minimum of one project impact report and attend one annual project meeting with the District detailing the progress it has achieved in providing the Services funded by the District. Dates of the Impact Meeting will be determined by the District.

BIG SKY RESORT AREA DISTRICT:

CONTRACTOR:


Daniel Bierschwale (Jul 8, 2021 09:26 MDT)


ennion williams (Jul 8, 2021 09:58 MDT)

Name: Daniel Bierschwale

Name: Ennion Williams

Title: Executive Director

Title: Board Chair

Date: 7/8/21

Date: 7/8/21








Interlocal Agreement FY22 FY23 FY24_BSTD

Final Audit Report

2021-07-08

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