

AGREEMENT FOR RECEIPT OF RESORT TAX FUNDS
FISCAL YEAR 2025
BSTRP Recreational Asset Management Project

THIS AGREEMENT for the receipt of resort tax funds (“Agreement”) is entered into by and between the Big Sky Resort Area District (“District”) and the Gallatin County Big Sky Meadow Trails, Recreation and Parks Special District, and the Madison County Big Sky Mountain Parks, Trails & Recreation Special District. These two Special Districts share common boundary lines and are governed by a joint special district Board pursuant to the current Interlocal Agreement between Gallatin County and Madison County dated April 12, 2022 and are generally referred to as the “Big Sky Trails, Recreation & Parks District, and are collectively referred to “BSTRP” (and referred to herein collectively as the “Contractor”).

RECITALS

1. The District was 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. 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.”

3. The District conducted public hearing on May 8, 2024 on all governmental services applications for receipt of resort tax revenue for the District's fiscal year 2025 through 2027 funding cycles.

4. Contractor submitted an application for receipt of resort tax funds ("Application") to the District for FY25 in the amount of in the amount of \$675,533 for its Recreational Asset Management Project described as to provide funds to BS RTP for the ongoing maintenance of parks, trails, and recreation areas in Big Sky, including but not limited to, safety, cleanliness, clearing debris, field maintenance, winter maintenance, preventative maintenance, and protection of assets to ensure residents and visitors have a positive and safe experience while recreating (the "Services").

5. The Contractor also submitted additional information related to the Services in response to written Q & A from the District and answered all questions posed to it by the District during the public hearings ("Supplemental Information").

6. Following discussion at the duly noticed and held public meetings, 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. The Board further determined that while the Contractor made funding requests for each FY25, FY26, and FY27, the Board was prepared only to approve funding for FY25. The Board approved the full amount Contractor requests for FY25, in the amount of \$675,533 (the "Award") for the Contractor's Services pursuant to the terms and conditions set forth in this Agreement.

7. Those portions of the Application and the Supplemental Information which related 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.

NOW THEREFORE, for good and valuable consideration, the form, receipt and sufficiency of which is hereby acknowledged by the Parties, the District and Contractor 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.** This Agreement shall commence on July 1, 2024 and shall terminate on July 15, 2025.

3. **SCOPE OF SERVICES; CONTINGENCIES.**

A. **Scope of Services.** Contractor shall fully perform all Services, and take all actions described in the Application, which Application is incorporated into this Agreement by this reference and is on file at the District's office. In addition, Contractor shall fully comply with the terms and conditions set forth in this Agreement.

B. **Contingencies.** As part of its performance of this Agreement, Contractor shall comply with the following Contingencies:

1. No special Contingencies or requirements were imposed.

4. **CONTRACTOR EXPENDITURE REQUIREMENTS; AMENDMENTS.** Contractor shall expend the Award solely for the Services as specifically described in its Application 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 15, 2024.

B. *Award Orientation.* If Contractor's Designated Representative, as identified in Section 5(C), has not completed an Award Orientation with the District for a prior award, such Designated Representative must complete an Award Orientation before Contractor may submit payment request for this Award.

C. *Contractor's Designated Representative.* All payment requests must be submitted by Contractor's Designated Representative identified as BSCO.

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. *Final Payment Requests.* All final requests for payment at the end of the Term must be submitted to the District no later July 15, 2025, for Services received on

or before June 30, 2025, 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, 2025.

H. *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. *Right to Cure.* 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. *Right to Terminate for Failure to Cure.* 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. *Right to Return of Funds.* 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. *Right to Terminate Without Cause.* 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. *Choice of Law.* This Agreement shall be governed and interpreted according to the laws of the State of Montana.

B. *Severability.* 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 (iii) 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: Whitney Montgomery
Board Member
Big Sky Trails, Recreation & Parks District
PO Box 161395
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 during the Term at the request of the District's staff and will cooperate with and respond to all requests by the District's Staff or Board Chair for information related to the Project during the Term. Contractor shall also attend any project meetings with the District which may be requested by the District's staff or Board Chair to detail 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:



Daniel Bierschwale (Aug 19, 2024 15:34 MDT)

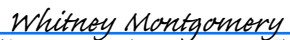
Name: Daniel Bierschwale
Title: Executive Director
Date: 08/19/24


CONTRACTOR: The undersigned, being all of the Board Members of the Joint Board governing both the Gallatin County Big Sky Meadow Trails, Recreation & Parks Special District and the Madison County Big Sky Mountain Parks, Trails & Recreation Special District (collectively, BSTRP), are authorized to execute this **AGREEMENT FOR RECEIPT OF RESORT TAX FUNDS FISCAL YEAR 2025 BSTRP Recreational Asset Management Project** and to bind each special district as a party hereto.

Dated: 08/19/24


Al Malinowski (Aug 19, 2024 09:52 MDT)
Al Malinowski


Kate Ketschek (Aug 21, 2024 11:26 MDT)
Katherine Ketschek


Whitney Montgomery (Aug 19, 2024 09:34 MDT)
Whitney Montgomery


Madeline Feher (Aug 19, 2024 14:23 MDT)
Madeline Feher


John Olsen











BSTRP FY25 Recreational Asset Management Project Contract

Final Audit Report

2024-08-21

Created:	2024-08-19
By:	Jenny Muscat (jenny@resorttax.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAkwUzzRO5t33QKjKeO6IJKIopADwZW1Pz

"BSTRP FY25 Recreational Asset Management Project Contract" History

-  Document created by Jenny Muscat (jenny@resorttax.org)
2024-08-19 - 3:27:47 PM GMT
-  Document emailed to Daniel Bierschwale (daniel@resorttax.org) for signature
2024-08-19 - 3:27:52 PM GMT
-  Document emailed to Whitney Montgomery (whitney@bscomt.org) for signature
2024-08-19 - 3:27:53 PM GMT
-  Document emailed to Al Malinowski (al_mal@yahoo.com) for signature
2024-08-19 - 3:27:53 PM GMT
-  Document emailed to Kate Ketschek (kate@revolutionhousemedia.com) for signature
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-  Document emailed to Jon Olsen (jolsen@lonemountainland.com) for signature
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-  Document emailed to Madeleine Feher (madeleine@bscomt.org) for signature
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-  Email viewed by Jon Olsen (jolsen@lonemountainland.com)
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-  Document e-signed by Whitney Montgomery (whitney@bscomt.org)
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 Email viewed by Al Malinowski (al_mal@yahoo.com)

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 Email viewed by Madeleine Feher (madeleine@bscomt.org)

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 Document e-signed by Madeleine Feher (madeleine@bscomt.org)

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 Email viewed by Daniel Bierschwale (daniel@resorttax.org)


2024-08-19 - 9:34:35 PM GMT

 Document e-signed by Daniel Bierschwale (daniel@resorttax.org)


Signature Date: 2024-08-19 - 9:34:50 PM GMT - Time Source: server

 Document e-signed by Jon Olsen (jolsen@lonemountainland.com)

Signature Date: 2024-08-20 - 9:29:26 PM GMT - Time Source: server

 Email viewed by Kate Ketschek (kate@revolutionhousemedia.com)

2024-08-21 - 5:10:34 PM GMT

 Document e-signed by Kate Ketschek (kate@revolutionhousemedia.com)

Signature Date: 2024-08-21 - 5:26:23 PM GMT - Time Source: server

 Agreement completed.

2024-08-21 - 5:26:23 PM GMT