

**GRANT AGREEMENT  
(COMMUNITY PARK RENOVATION PROJECT)**

**THIS GRANT AGREEMENT** (“Agreement”) is entered into as of this 10<sup>th</sup> day of September, 2025, by and between the Big Sky Resort Area District (“District”) and Big Sky Community Organization (“Contractor”).

**RECITALS**

1. The District was created effective April 7, 1998 pursuant to Montana Code Annotated, Title 7, Chapter 6, Part 15, as amended (the “Act”), and the current members of the Board of Directors (“Board”) have been duly elected to serve on behalf of the District.

2. Pursuant to the Act, the District is authorized to issue bonds to provide, install, or construct any public facilities, improvements, or capital projects authorized in the resolution creating the resort area and pledge for repayment of the bonds the revenue derived from the resort tax; provided that approval of the electors is required for the issuance of bonds in an amount exceeding \$500,000.

3. Pursuant to Section 1(6) of District Ordinance 98-01, as amended (“Ordinance”), the resort taxes imposed at the rate of 3% (the “3% Resort Tax”) are to be used, among other things, to “fund infrastructure facilities or projects, public transportation, tourism development, and other public services and facilities within the District.”

4. At an election duly called, noticed and held on May 6, 2025, the electors of the District authorized the issuance of bonds payable from the 3% Resort Tax for the purpose of financing all or a portion of the costs of public facilities, improvements and capital projects serving the District comprising the Contractor’s community park renovation project (as further described herein, the “Project”), and to pay related costs of issuance or other financing costs.

5. By Resolution No. 2025-01R, adopted by the Board on February 4, 2025, as amended by the First Amendment to Resolution No. 2025-01R, adopted by the Board on March 13, 2025, the Board provided that the District would contribute up to \$6,800,000 in bond proceeds to the Project.

6. The Project is underway, the District is proceeding with its sale and issuance of 3% Resort Tax revenue bonds (the “Bonds”), and the parties desire to formalize their agreement with respect to the grant of the proceeds of the Bonds in the amount of \$6,800,000 to pay or reimburse the Contractor for costs of the Project.

**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 the date hereof and shall terminate on the later of the date that all proceeds of the Bonds to be used to pay costs of the Project (up to \$6,800,000) have been advanced or the date that the Contractor has confirmed that the Project is substantially complete; provided that Sections 7 and 8 hereof shall survive the termination of this Agreement.

3. **THE PROJECT; USE OF FUNDS.** The Project consists of park renovations, expected to include racket courts, upgraded multi-use athletic fields, expanded bathrooms, improved parking, new volleyball courts, and related improvements. The Project is being funded by resort tax funds on hand, private contributions, and Bond proceeds. The Contractor agrees that it will expend Bond proceeds advanced pursuant to this Agreement solely on costs that are properly capitalizable as part of the Project and that it will not apply Bond proceeds to portions of the Project that are subject to private use (including naming rights agreements with private use implications) in any manner which would cause the interest on the Bonds to become includable in gross income for federal tax purposes under the Internal Revenue Code of 1986 (the "Code"). Should Contractor desire an amendment to this Agreement, or to change the Project or the use of the Bond proceeds, such amendment must first be approved by the District in writing.

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

A. *Execution of Agreement as Condition Precedent to Payment; Sale of Bonds.* This Agreement must be fully executed and returned to the District before Contractor may submit any payment request hereunder. The District shall have no obligation to advance funds hereunder until the Bonds are issued and Bond proceeds are available.

B. *Contractor's Designated Representative.* All payment requests must be submitted by Contractor's Designated Representative identified as Madeleine Feher.

C. *Documentation to Support Payment Requests.* The Contractor acknowledges and agrees that the funds granted to the Contractor under this Agreement are from proceeds of the Bonds issued by the District, and agrees to execute and deliver such documents and provide such information as may be required or appropriate in connection with the Bonds to ensure compliance by the District with state and federal laws, rules, and regulations, including without limitation, the Code and the federal Treasury Regulations. Disbursements of Bond proceeds hereunder shall be made to Contractor only upon receipt of documentation deemed appropriate by the District in its reasonable 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, including without limitation, all invoices related to Project and documentation of compliance with applicable federal, state and county laws, regulations, and ordinances, and any other documentation related to the Project as requested by the District. If the payment request is to reimburse Contractor for costs it has already paid, Contractor will provide evidence of its payment. Nothing herein shall be construed to require that payment requests be solely for reimbursement of the Contractor; Contractor is expressly authorized to submit requests for payment of current invoices related to the Project. 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. The District, in its reasonable discretion, may

determine whether or not the payment request submitted is for costs of the Project described by Section 3 of this Agreement. Payment requests for anything other than costs of the Project described in Section 3 of this Agreement, as determined by the District, will not be paid or reimbursed.

D. *Timing of Payments.* All payment requests must be timely submitted to the District not later than sixty (60) days following the date on which the Contractor was invoiced for work or materials for the Project. The District shall process payment requests on the 1<sup>st</sup> and 15<sup>th</sup> 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.

E. *Final Payment Requests.* All final requests for payment must be submitted to the District within a reasonable time, as determined by the District, after the Contractor confirms to the District that the Project is substantially complete, and in any event not later than 3 years after the date hereof.

F. *Form of Payment.* The District shall disburse funds hereunder to the Contractor, regardless of whether the funds are for the initial payment of invoiced costs or to reimburse the Contractor for Project costs it has paid, and the Contractor is required to see to the proper application of all funds received hereunder. The District prefers to make all disbursements 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.

5. **NONCOMPLIANCE.** If Bond proceeds are disbursed to Contractor under this Agreement and Contractor is unable to undertake the Project as specified in Section 3, Contractor shall notify the District immediately. If Contractor is unable to undertake or provide the Project, Contractor shall immediately return any and all Bond proceeds 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 Bond proceeds. Notwithstanding anything herein to the contrary: this Agreement is intended to be and will be construed to evidence a “grant” to the Contractor under the Code and Treasury Regulations of proceeds of Bonds issued by the District. The parties agree that there is no expectation that any grant funds will be repaid or that any other payments will be made by the Contractor to the District in connection with this Agreement and that the Contractor is not a related party to, or acting as an agent of, the District in connection with the Project or this Agreement.

6. **UNSPENT PROCEEDS.** The Bond proceeds are disbursed hereunder solely for purposes of the Project and are not available for other purposes of the Contractor. If for any reason, unspent Bond proceeds remain after the Project is complete and all costs thereof have been paid, the District shall apply the unspent proceeds in accordance with the tax certificate executed in connection with the issuance of the Bonds.

7. **RECORDS.** Contractor shall maintain accounts, records and other evidence pertaining to the Bond proceeds expended under this Agreement for a period of three years after the final redemption date of the Bonds. 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 Project and payments made under this Agreement and to subject its use of the Bond proceeds for the Project to audit by the District's auditors upon the District's written request. If the Contractor receives a disbursement of funds hereunder, this provision shall survive the termination of this Agreement.

8. **LIABILITY.** Contractor shall hold the District, Board and all its agents and employees harmless and indemnify for any acts, errors, or omissions arising from this Agreement, the Project or any services provided or work performed by the Contractor in connection with the Project 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. This provision shall survive any termination of this Agreement.

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

10. **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 thirty (30) 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 Remedies.* 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 shall have the right to pursue all remedies that may be available to it at law or in equity, including the remedy of specific performance.

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

12. **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. The Contractor is not a related party to the District.

13. **OWNERSHIP OF PROPERTY.** Unless otherwise specified in this Agreement, the Project and any property purchased by the Contractor with Bond proceeds under this Agreement is owned by the Contractor. None of the Project or related property is owned by the District or by a related party to the District.

14. **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.

15. **ENTIRE AGREEMENT.** This Agreement 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.

16. **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: Madeleine Feher, CEO  
Big Sky Community Organization  
PO Box 161404  
285 Simkins Drive  
Big Sky, MT 59716

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

17. **AVAILABILITY OF FUNDS.** The District agrees to use commercially reasonable best efforts to sell and issue the Bonds by the end of October 2025. The District and Contractor agree that if, for any reason, the Bonds cannot be issued in a principal amount sufficient to provide \$6,800,000 in proceeds for the Project, the District may unilaterally adjust the amount committed hereunder based on actual availability of Bond proceeds and without liability or remedy to Contractor. The parties agree that if, for any reason, the Bonds cannot be issued, the District and the Contractor will meet and determine in good faith whether the District can fund all or some portion of the \$6,800,000 described herein from 3% Resort Tax funds.


18. **PUBLIC ACKNOWLEDGEMENT OF RECEIPT OF DISTRICT FUNDING.** Contractor shall provide prominent public acknowledgement that the District has funded portions of the Project. 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 the Project for use by the District in promotional or other materials. Contractor will work with the District to form a recognition plan.

19. **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 on the Project. Dates of the Impact Meeting will be determined by the District. Contractor shall also participate with the District's efforts to track project progress and encourage public engagement and comments by using the District's Engagement HQ software. Contractor's Representative shall be designated as the Project Listener for the Project Page in the Engagement HQ software. In this capacity, Contractor shall manage the Project Page, post monthly (or more frequently as the circumstances may warrant) Project updates on the Project Page, and weekly review and respond to public comments posted to the Project Page.

**BIG SKY RESORT AREA DISTRICT:**

**CONTRACTOR:**

  
Daniel Bierschwale (Sep 10, 2025 14:31:39 MDT)  
Name: Daniel Bierschwale  
Title: Executive Director  
Date: 09/10/25

  
Name: Madeleine Feher  
Title: CEO  
Date: 09/10/25









# Bond proceeds grant agreement\_BSCO

Final Audit Report

2025-09-11

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