**AGREEMENT BETWEEN THE (LOCAL OR TRIBAL GOVERNMENT)**

**AND THE (ASSISTED BUSINESS)**

***SAMPLE-ADJUST AS NEEDED BETWEEN THE GOVERNMENT AND BUSINESS-The attached sample management plan is between the Government, EDO and the Assisted Business***

**A. PARTIES**: The parties to this contract (the Contract) are the **(name of Local or Tribal Government and address),** (the“Government”), andthe **(name of Assisted Business and address)**, (the “Assisted Business”); Tax identification number (Number).

B. PURPOSE: The purpose of this Contract is for the Assisted Business to use up to $(Amount) in Big Sky Economic Development Trust Fund (the “BSTF”) grant funds, to be used as follows:

* Up to (Project Amount) to assist with (Purchase or lease of \_\_\_\_\_\_).
1. **The Assisted Business has agreed to create (Number) eligible net new jobs at the project site located at (Location) (the “Project Site”) in the Government’s jurisdictional area within the Contract time period.** An eligible net new job is defined as one that is new to the company and has not been filled on or before (**Date**). Eligible new job criteria is a full-time job, meaning a predominantly year-round position requiring an average of 35 hours of work each week; and
2. Pays wages that meet or exceed **$(Amount)** per hour, (excluding benefits) \*OR\* (including employee benefits that meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.).
3. In addition, the (Government and/or the Assisted Business) have agreed to a total new investment at the Project Site, which is equal to or greater than $1 for every $(1 or 2, check High-Poverty County status) of BSTF financial assistance received or up to $(amount of match required), within this Contract time period, to satisfy the required match ratio for the grant.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants herein, the parties hereto agree as follows:

**1. SCOPE AND DUTIES**: The Government and the Assisted Business shall engage in activities as set forth in the Government’s Montana Department of Commerce (“Department”) BSTF application, including any written modifications resulting from the review of the application by the Department for grant assistance, all of which, by this reference are made a part hereof. The Government shall enter into this Assistance Agreement with the Assisted Business that shall be approved in writing by the Department before the release of funds. The Government will only release funds to reimburse eligible and documented costs. Management of the BSTF grant is referenced in the attached Exhibit A of this Contract.

2. REPORTING: Unless otherwise specified by the Government, the Assisted Business will also submit Project Progress Reports quarterly to the Government and the Department until the Assisted Business receives Contract closeout approval from the Government and Department. The Project Progress Report must be provided on or before April 15, July 15, October 15 and January 15 for each year of the Contract time period and at closeout of the Contract. The Project Progress Reports shall include, but are not limited to, the following information:

* Certified employment documentation from the Assisted Business that includes the breakdown of jobs created, using the Job Status Spreadsheet and accompanying Job Certification Form; and
* Written Progress Report that should include the following items:
	+ detailing progress towards achieving the hiring objectives and project goals that were described in the application with projected completion date;
	+ any difficulties encountered in working towards these goals;
	+ any changes within the assisted business structure, business name or changes to its registration with the Montana Secretary of State’s office; and
	+ any other pertinent information.

In drawing against the reserved amount, the Assisted Business shall:

* Provide a Project Progress Report, and a current, signed Job Creation Spreadsheet and Certification as noted above;
* Provide documentation of eligible reimbursable costs/match-usually consultant invoices; and
* Update the Invoice Tracking spreadsheet, with updates of latest invoices included.

**3. COMPENSATION AND CONSIDERATION**: The total amount to be reimbursed to the Assisted Business under the Contract shall be up to **$(X,XXX less grant admin)** per eligible net new job created by the Assisted Business for documented costs with reimbursement not to exceed a total of **$(total BSTF award, minus grant administration)** dollars for the entire Contract.

The Government will not reimburse the Assisted Business for any costs incurred prior to **(date of award)**, nor for any expenses not included in the approved budget or not clearly and accurately supported by the Assisted Business’s records.

1. The Government will authorize the Assisted Business to draw up to $(total BSTF award minus grant administration) against the funding reserved for the Assisted Business by the Department. Unless otherwise authorized by the Government, the Assisted Business may receive grant funds periodically over the Contract period only upon documenting the expenditure of the required matching funds and the creation of the eligible net new jobs by the Assisted Business, and after incurring eligible expenses.
2. If the Governmentdetermines that the Assisted Business has failed to satisfactorily carry out the duties and responsibilities under the Contract, the Government may revoke the Assisted Business's ability to access additional funds until such time as the Governmentand the Assisted Business agree on a plan to remedy the deficiency.
3. The Government may recapture funds and return funds to the Department if:
* At the end of the contract period the Department has overpaid based on the number of net new jobs at the end of the contract period; or
* The Assisted Business ceases operations at the Project Site within the contract period.
1. The Governmentreserves the right to withdraw a commitment for any BSTF funds which remain un-disbursed at Contract closeout or at the end of the Contract period.
2. The Assisted Business certifies that no request for reimbursement submitted for eligible expenses under this Contract shall duplicate any expense submitted to the Department for reimbursement under any other program administered by the Department.

**4. PERIOD OF CONTRACT**: The Contract will be in effect for the period commencing **(date of award)** and will expire once the Montana Department of Commerce officially closes out the BSTF grant award to the Government.

With approval by the Department, the Government reserves the right to extend this Contract based on, but not limited to, the Assisted Business’s performance of the contracted activities, and the Assisted Business’s compliance with program requirements. This would include but not limited to:

a) The Assisted Business has created the net new jobs paying the BSTF wage rate per the original application; and

b) The submission of:

* a new Job Creation Report and executed Certification form;
* A formal request from the Government, that provides the Department with a clear picture of the current business activities which clearly outlines why a contract extension is being requested;
* A new hiring plan that covers the extension period; and
* Any additional information as requested by the Department in making their determination of approval.

**5. LIAISON**: The contact person for the Government is **(Contact name, and phone number)**, or successor, and **(Contact name, and phone number)** or successor for the Assisted Business.

**6. SIGNATORY JOB CREATION REPORTING**: The person responsible for approving and signing the Job Creation Certification for the Assisted Business is (Contact name, title and phone number), or successor in the same job role, and (Contact name, title and phone number), or successor in the same job role. ***Note: It is recommended by BSTF that multiple signatories are listed here to ensure timely draw request submission when needed.***

**7. PROJECT MONITORING:** The Department or any of its authorized agents may monitor and inspect all phases and aspects of the Contractor’s performance to determine compliance with the SCOPE OF WORK, the proper use of Program funds, and other technical and administrative requirements of this Contract, including the adequacy of the Contractor’s records and accounts. The Department will advise the Contractor of any specific areas of concern and provide the Contractor opportunity to propose corrective actions acceptable to the Department.

Failure by the Contractor to proceed with reasonable promptness to take necessary corrective actions shall be a default. If the Contractor’s corrective actions remain unacceptable, the Department may terminate this Contract in whole or in part, or reduce the contract price or award to reflect the reduced value of services received.

**7. COMPLIANCE WITH WORKERS’ COMPENSATION ACT** The Assisted Business accepts responsibility for supplying, and requiring all subcontractors to supply, the Government with proof of compliance with the Montana Workers’ Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-401, 39-71-405, and 39-71-417.) Neither the Assisted Business nor its employees are employees of the Government. The proof of insurance/exemption must be in the form of workers’ compensation insurance, an independent contractor exemption, or documentation of corporate officer status and must be received by the Government within 10 working days of the execution of this Contract, and must be kept current for the entire term of the contract.

CONTRACTS WILL BE TERMINATED PURSUANT TO THE PROVISIONS OF SECTION 11 TERMINATION OF CONTRACT IF THE ASSISTED BUSINESS FAILS TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.

Coverage may be provided through a private carrier or through the State Compensation Insurance Fund (406) 444-6500. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division (406) 444-1446. Corporate officers must provide documentation of their exempt status.

**8. ACCESS AND RETENTION OF RECORDS**:Upon receipt of reasonable advance notice, the Assisted Business agrees to provide the Government, Montana Department of Commerce, Legislative Auditor or their authorized agents, access to any records necessary to determine contract compliance. The Assisted Business agrees to create and retain records supporting the BSTF project activities for a period of three years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party.

**9. TERMINATION OF CONTRACT**: This Contract may only be terminated in whole or in part as follows:

1. Termination Due to Loss or Reduction of Funding. The Government, at its sole discretion, may terminate or reduce the scope of this Contract if available funding sources are eliminated or reduced for any reason. If a termination or modification is so required, the Governmentmay, if sufficient program funds are available, compensate the Assisted Business for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The Governmentwill notify the Assisted Business of the effective date of the termination or modification of this Contract and, if a reduction in funding is required, will provide the Assisted Business with a modified Project budget.
2. Termination for Cause with Notice to Cure Requirement. The Governmentmay terminate this Contract for failure of the Assisted Business, its contractors, or subcontractors to perform or comply with any of the services, duties, terms or conditions contained in this Contract after giving the Assisted Business written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.
3. Effect of Termination. In the event of termination due to the Assisted Business’s, its contractors', or subcontractors' failure to perform or comply with any of the services, duties, terms, or conditions of this Contract, any costs incurred will be the responsibility of the Assisted Business. However, at its sole discretion, the Government may approve requests by the Assisted Business for reimbursement of expenses incurred. The Government’s decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Assisted Business to comply with the any of those services, duties, terms, or conditions of this Contract, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Assisted Business’s control.

**10. COMPLIANCE WITH LAWS**: The Assisted Business must, in performance of work under this Contract, fully comply with all applicable federal, state, local and tribal laws, rules and regulations, including Executive Order No. 12-2015 Amending and Providing For Implementation of the Montana Sage Grouse Conservation Strategy , the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973 and the Patient Protection and Affordable Care Act (“Affordable Care Act”). Any subletting or subcontracting by the Assisted Business subjects subcontractors to the same provisions. In accordance with Mont. Code Ann. § 49-3-207, Executive Order No. 04-2016, the Assisted Business agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, sex, pregnancy, childbirth or medical conditions related to childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status.

The Affordable Care Act requires an Assisted Business, if the Assisted Business is an applicable large employer under the ACA, to provide healthcare coverage for its employees, who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee’s dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980 H (ACA) if provided by the State.

(Assisted Business Official: Type Name and Title)

(Name of Assisted Business)

(Local or Tribal Government Official: Typed Name and Title)

(Name of Local or Tribal Government)

ATTEST:

**BSTF Staff can provide the following section provisions on request:**

UNAVAILABILITY OF FUNDING SEPARABILITY

U.S. FUNDS HOLD HARMLESS AND INDEMNIFICATION

DEFAULT INSURANCE

CONFORMANCE WITH CONTRACT REGISTRATION WITH THE SECRETARY OF STATE

VENUE ASSIGNMENT, TRANSFER & SUBCONTRACTING

MODIFICATION

NOTICE

Exhibit A

MANAGEMENT PLAN

On (Date of Award), the (Name of Local or Tribal Government), was awarded a grant from the Big Sky Economic Development Trust Fund (BSTF) Program to assist (Name of the Assisted Business) with (insert use of the BSTF Funds) and the creation of jobs in Montana. The (Name of Economic Development Organization) (EDO) will be responsible for assisting with the administration of the BSTF grant. This Management Plan is written to assure proper management of the BSTF grant, which includes financial management of grant funds, compliance with state and federal requirements, and the timely start‑up and completion of project activities.

1. **ADMINISTRATIVE STRUCTURE**
2. **(Name of Local or Tribal Government)**, GOVERNMENT

The following persons will have lead responsibility for administering the Government’s BSTF grant to facilitate an expansion of the Assisted Business:

1. (Name and Title of the Chief Elected Official), as the Government’s Chief Elected Official, will have responsibility for all official contacts with the Montana Department of Commerce (Department). The Chief Elected Official and (Council or Commissioners) will have the ultimate authority and responsibility for the implementation of the Government’s BSTF grant to facilitate an expansion of the Assisted Business. The Chief Elected Official will approve and sign administrative documents and approve all payment requests to the BSTF program. The (Council or Commissioners) will approve all contracts and payment requests. The telephone number for the Chief Elected Official is (406) xxx-xxxx.
2. (Name of the Government Attorney), Attorney, will review any proposed contractual agreements associated with the BSTF grant, advise the (Council or Commissioners) regarding the agreements, and provide any other legal guidance as requested. Telephone: (406) xxx-xxxx.
3. (Name of the Government Financial Officer), Financial Officer, has been designated as the Fiscal Officer and will be responsible for maintaining all financial records related to the BSTF grant funds for the Government. Telephone: (406) xxx-xxxx.
4. (Name of the Government Clerk), Clerk, will be responsible for maintaining all official records related to the BSTF grant for the Government. Telephone: (406) xxx-xxxx.
5. (Name of the Government \_\_\_\_\_\_), (Position-i.e. County Development Office), has been designated as the Project Manager and will be responsible for maintaining records related to the management of the BSTF grant funds for the Government. This contact will be the liaison between the EDO, the (Council or Commissioners) and the Government Attorney. Telephone: (406) xxx-xxxx.
6. **(Name of EDO),** ECONOMIC DEVELOPMENT ORGANIZATION (EDO)

The EDO will provide general technical assistance, coordination of funding sources, assurances of compliance with all applicable state requirements for the BSTF grant program. The Government has designated the EDO as its Administrator. The following EDO personnel will be responsible for the project:

1. (Name), Executive Director, will be responsible for all official contacts with the Government on behalf of the EDO. Telephone: (406) xxx-xxxx.
2. (Name), (Title), will serve as the EDO Administrator and will be responsible for overall coordination of the BSTF grant awarded to the Government. Telephone: (406) xxx-xxxx.
3. **(Name of Assisted Business),** ASSISTED BUSINESS

The following Assisted Business Officer will be responsible for the implementation of the project:

1. (Name), (Title), will serve as the Business Official for the Assisted Business. This person will have responsibility for all official contacts with the Government. Telephone: (406) xxx-xxxx.
2. (Name), (Title), will serve as the Business Contact for the Assisted Business and will be the liaison with the EDO and the BSTF Department Staff. Telephone: (406) xxx-xxxx.
3. **PROJECT MANAGEMENT**
4. The **(Name of the designed Project Manager for Government)** Project Manager, will:
5. Work with the EDO Administrator and the Department in the timely execution of the BSTF contract between the Government and the Department.
6. Work with the EDO Administrator and the Assisted Business in the development of a Business Assistance Agreement.
7. Make appropriate recommendations and route all contract documents, administrative documents, and payments as necessary.
8. Review all proposed expenditures of BSTF funds to ensure compliance with the BSTF contract.
9. Review, approve, and submit the BSTF payment requests, after preparation by EDO Administrator and approval by the (Council or Commissioners), to the BSTF Program, Montana Department of Commerce, and ensure disbursement of funds.
10. Review and approve all BSTF closeout documents.
11. The **(Name of designed EDO Administrator**), EDO Administrator is responsible for the following day to day project activities and will:
12. Assisting the Government and the Department in developing the Government contract, along with all the required paperwork, with the Department that will address all requirements related to effective project start‑up and implementation.
13. Assisting the Government and the Assisted Business with the preparation of a Business Assistance Agreement.
14. Establishing and maintaining complete and accurate project files and preparing all documentation and reports incidental to administration of the project.
15. Assist the assisted business with the baseline and subsequent Job Creation Report and Job Creation Certification.
16. Meet regularly with the Assisted Business to monitor the business’s compliance with the requirements of the grant assistance agreement including implementation of the project hiring or hiring/training plan.
17. Reviewing all proposed project expenditures or payment requests from the business to ensure their propriety and proper allocation of expenditures to the BSTF project budget.
18. In cooperation with the Project Manager, processing payment requests and preparing payment requests for the Department, including the Request for Payment Form and the Project Progress Report with each payment request and quarterly as specified by the Department.
19. Assist the Government during the BSTF on-site monitoring visit which is conducted to ensure compliance with the requirements of the BSTF contract.
20. Preparing all required performance reports and Project Closeout Certification for submittal to the Department.
21. Closing the BSTF project in a timely fashion within the period of the contract between the Department and the Government.
22. Attending (Council or Commissioners) meetings to provide project status reports and representing the BSTF project at any other public meetings as deemed necessary by the (Council or Commissioners).
23. It is understood and agreed that the EDO’s services within this Management Plan does not include any of the following: the disbursement or accounting of funds distributed by the Government’s financial officer, legal advice, fiscal audits or assistance with activities not related to the BSTF project.
24. The **(Name of Designated Assisted Business Contact),** Business Contact, will:
25. Will oversee the compliance with the proposed Hiring Plan as submitted in the BSTF Application.
26. With assistance of the EDO Administrator, prepare the Job Creation Reports, Job Creation Certifications and Progress Reports.
27. Provide copies of invoices for reimbursement by the BSTF Program and to satisfy the matching funds requirement.
28. Maintain own project files.
29. Assist the Project Manager, EDO Administrator with monitoring of the project.
30. Will notify the Government Project Manager, EDO Administrator and Montana Department of Commerce of any changes within it’s business structure, business name or changes to its registration with the Montana Secretary of State’s office.
31. **FINANCIAL MANAGEMENT**

As designed in the BSTF contract, the total amount of the BSTF award will not exceed $(Amount).

1. **Government – Awardee**

The Fiscal Officer will be responsible for:

1. Depositing and recording the BSTF funds into the Government’s existing accounting system based on claims and supporting documents approved by the Project Manager and (Council or Commissioners).
2. Preparing checks/warrants for approved expenditures.
3. Disbursing funds in accordance with the Government’s established claim review procedures.
4. With the assistance of the Project Manager, preparing the final financial report for the project Closeout Certification.
5. The original financial documents (claims with all supporting documents attached) will be retained in the Government’s offices.
6. **Economic Development Organization - Administration Funds**
7. Administrative payments will consist of reimbursement for actual time and costs incurred at up to $\_\_\_\_(list the dollar amount per job which is typically 8% of the total eligible cost per job i.e. $400 or $600) per eligible net new job created by the Assisted Business for documented cost with reimbursement not to exceed a total of $\_\_\_\_\_(list amount available for Administration).
8. If an additional award is made for year two to the Government, to assist (Assisted Business), and for the creation of up to (number) of jobs, that assistance reimbursement would be for additional funds up to ($), with up to ($) for admin expenses and up to an additional ($) to go to (Assisted Business).
9. **Business - Project Funds**
10. As outlined in the BSTF Contract, the Assisted Business will receive up to $ list the dollar amount per job LESS ADMINISTRATION, i.e. $4,600 or $6,900) per eligible net new job created by the Assisted Business for documented cost with reimbursement not to exceed a total of $list amount available for Assisted Business, less admin.

The Business Contact will be responsible for:

1. Supply invoices for reimbursement and match requirement, and update the tracking spreadsheet for completeness and accuracy.
2. Ensuring accurate deposit for each draw taken and recording the funds into the Assisted Business’s existing accounting system.
3. With the assistance of the Project Manager, preparing the final financial report for the project Closeout Certification.
4. The original financial documents (claims with all supporting documents attached) will be retained in the Assisted Business’s office files for at least three years.

The Government’s application to the Department for BSTF funding, dated\_\_\_\_, 20\_\_\_\_, and all applicable federal and state statutes and regulations are incorporated into this Agreement by this reference.

This Management Plan will expire once the Montana Department of Commerce officially closes out the BSTF grant award to the Government.

we have read the management plan and are aware of the responsibilities for the management and overall success of the bstf project as the designated liaisons for the project:

**GOVERNMENT PROJECT MANAGER GOVERNMENT FISCAL OFFICER**

(Name of Project Manager) Date (Name of Fiscal Officer) Date

**EDO ADMINISTRATOR: BUSINESS CONTACT**

(Name of EDO Administrator) Date (Name of Business Contact) Date

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

(Name of Chief Elected Official) Date (Name of EDO Signatory) Date

(Name of Local or Tribal Government) (Name of EDO)

(Name of Assisted Business Official) Date

(Name of Assisted Business)