

**MONTANA BOARD OF HORSE RACING
RACETRACK AWARD
CONTRACT #25-78-MBOHR-01**

This agreement ("Contract") is entered into by the Montana Board of Horse Racing ("Board") and Great Falls Turf Club, Inc. ("Grantee").

Grantee and the Board hereby agree to the following terms:

Section 1. PURPOSE

The purpose of the Contract is to provide funding to Grantee for activities and expenses approved by the Board to assist with the expenses at the Grantee's racetrack.

Section 2. AUTHORITY

This Contract is issued under authority of Title 23, Chapter 4, Part 1 of the Montana Code Annotated ("MCA") and Title 8, Chapter 22 of the Administrative Rules of Montana ("ARM").

Section 3. ACCEPTANCE OF BOARD REQUIREMENTS

- (a) The Grantee will comply with all applicable local, state, and federal laws as well as all applicable regulations, ordinances, and resolutions now in effect or as may be amended during the term of this Contract. Grantee will comply with all administrative directives and procedures that may be established or amended by the Board.
- (b) The Grantee agrees that all contracts and subcontracts entered into for the completion of the activities described in Section 5, Scope of Work will require such contractors, subcontractors, and subrecipient entities to also comply with all requirements placed on the Grantee in paragraph (a) of this Section.
- (c) The Grantee agrees to repay to the Board any funds advanced under this Contract that the Grantee, its contractors, subcontractors, or any public or private agent or agency to which it delegates authority to carry out portions of this Contract, expends in violation of: (i) the terms of this Contract; (ii) the statutes, and regulations governing the Board; or (iii) any applicable local, state, or federal requirements.

Section 4. EFFECTIVE DATE AND TIME OF PERFORMANCE

- (a) This Contract shall take effect on December 1, 2024 and will terminate on November 30, 2025, unless otherwise terminated in accordance with this Contract.

- (b) The Board may grant an extension to this Contract upon request by the Grantee if the Board determines, in its sole discretion, that the Grantee has demonstrated progress toward completion of the scope of work, has engaged in a good faith effort to comply with the duties, terms, and conditions of this Contract, or the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control. A written request for an extension must be submitted at least sixty (60) days prior to November 30, 2025.

Section 5. SCOPE OF WORK

- (a) The Grantee shall use the award for the following activities associated at the Grantee's horse racetrack located in Great Falls, MT:
- Capital improvements and
 - Operations of the racetrack.
- (b) Upon completion of the activities, the Grantee shall provide the Board with a report that includes the following information:
- i. A financial report corresponding with the total grant amount of \$47,500.00 in the format required by the Board that includes an itemized list of all contractor's names and addresses that were paid for purchases, rentals, and services corresponding receipts or proof of payment for each.
 - ii. Placement of the Board's logo and name recognition on site during construction as follows, "*Made possible in part by the Montana Board of Horse Racing.*"

Section 6. BUDGET

- (a) The total amount to be awarded to the Grantee under this Contract shall not exceed \$47,500.
- (b) Any authorized funds not expended under this grant or otherwise accounted for in accordance with the provisions of this Section will revert to the Board.
- (c) As set forth in Section 14, Termination of Contract, if the Grantee fails to or is unable to comply with any of the terms and conditions of this Contract, any costs incurred will be the Grantee's sole responsibility.

Section 7. ACCESS TO AND RETENTION OF RECORDS

- (a) The Grantee agrees to create and maintain records supporting the services covered by this Contract, including but not limited to, financial records, supporting documents, and such other records as are required by law or other

authority, for a period of five (5) years after either the termination 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, whichever is later. These records will be kept in the Grantee's office.

- (b) The Grantee agrees to provide the Board, Montana Legislative Auditor, or their authorized agents, information relevant to this Contract or access to any records related to the Event or otherwise necessary to determine Contract compliance at no cost to the Board, the Montana Legislative Auditor, or their authorized agents.

Section 8. LIAISONS

All Contract management and coordination on behalf of the Board shall be through a single point of contact designated as the Board's liaison. The Grantee shall designate a liaison that will provide the single point of contact for management and coordination of Grantee's work. All work performed pursuant to this Contract shall be coordinated between the Board's liaison and the Grantee's liaison. The liaisons for this Contract are:

For the Board:

Gary Koepplin (or successor)
Executive Secretary
PO Box 551
Corvallis, MT 59828
406-369-1032
406-841-2725
gwkepp@montana.com

For the Grantee:

Sparky Kottke
Club President
PO Box 82
Great Falls, MT 59403
406-781-6599
sparkykottke@yahoo.com

Section 9. METHOD OF DISBURSEMENT

- (a) In consideration of the work described herein, the Board will pay the Grantee an amount not to exceed \$47,500 within thirty (30) days of Contract execution.
- (b) If the Board determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Board may require the Grantee to repay the award amount unless the Board and the Grantee agree on a plan to remedy the deficiency.

Section 10. REPORTING REQUIREMENTS

Progress Report: The Grantee shall submit progress reports on performance of the Contract at the request of, and in the format prescribed by the Board. These reports will describe the status of the activities set forth in Section 5, Scope of Work.

Expenditure Report: An itemized list of expenditures with contractors to complete the activities set forth in Section 5, Scope of Work. and corresponding receipts shall be submitted to the Board within sixty (60) days of completing the activities set forth in

Section 5, Scope of Work. The Board may request an expenditure report at any time during the term of this Contract.

Completion Report: The Grantee shall submit a final project report in the format prescribed by the Board upon the completion of the project. The report shall verify that the Grantee has completed the project in accordance with the terms of this Contract.

Section 11. NOTICE

All notices required under the provisions of the Contract must be in writing and delivered to the Parties' liaisons identified herein either by first class mail, electronic mail, or personal service.

Section 12. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

The Grantee may not assign, transfer, or subcontract any portion of this Contract without the Board's prior written consent. (§ 18-4-141, MCA). The Grantee is responsible to the Board for the acts and omissions of all Grantee's subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Grantee. No contractual relationships exist between any subcontractor and the Board under this Contract.

Section 13. CONTRACT AMENDMENT

This Contract may not be enlarged, modified, amended, or altered without a written agreement signed by all Parties to the Contract.

Section 14. TERMINATION OF CONTRACT

This Contract may only be terminated in whole, or in part, as follows:

- (a) Termination for Cause with Notice to Cure Requirement: The Board may terminate this Contract for failure of the Grantee, its contractors, subcontractors, or subrecipient entities to perform or comply with any of the services, duties, terms, or conditions contained in this Contract after giving the Grantee written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period 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.
- (b) Termination Due to Loss or Reduction of Funding: The Board, at its sole discretion, may terminate or reduce the scope of this Contract if any funding sources are eliminated or reduced for any reason, including as permitted by Montana Code Annotated § 18-4-313(4). If a termination or modification is required, the Board may, if sufficient Board funds are available, compensate the Grantee for eligible services rendered and actual, necessary, and eligible expenses incurred as of the

revised termination date. The Board will notify the Grantee of the effective date of the termination or modification of this Contract and, if a reduction in funding is required, provide the Grantee with a modified budget.

- (c) Effect of Termination: In the event of termination due to the Grantee's, its contractors', subcontractors', or subrecipient entities' failure to perform or comply with any of the services, duties, terms, or conditions of this Contract, any costs incurred will be the sole responsibility of the Grantee. However, at its sole discretion, the Board may approve written requests by the Grantee for reimbursement of eligible expenses incurred. The Board's decision to authorize payment of any costs incurred or to recover expended Board funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with 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 Grantee's control.

Section 15. COMPLIANCE WITH APPLICABLE LAWS

- (a) Grantee shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, 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. Grantee is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Grantee holds their subcontractors liable to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. Grantee agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or 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, vaccination status, or marital status by the persons performing this Contract.
- (b) Grantee shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and the Grantee shall not discriminate during the term of the contract against a firearm entity or firearm trade association. This section shall be construed in accordance with § 30-20-301, MCA.

Section 16. INSURANCE

Grantee must maintain and assure that its representatives, assigns, and subcontractors maintain for the duration of the Contract, at their own cost and expense, primary liability insurance against claims for injuries to persons or damages to property, including contractual liability, and workers' compensation insurance that may arise from or in connection with the performance of the duties and obligations in the Contract by Grantee, its agents, employees, representatives, assigns, or subcontractors. This insurance must cover such claims as may be caused by any negligent act or omission. The State, its officers, officials, employees, and volunteers must be covered as additional insureds for all claims arising out of the use of grant proceeds provided by the State of Montana.

Section 17. HOLD HARMLESS AND INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify and hold harmless State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of the Grantee's negligent acts, errors, or omissions in work or services performed under this Contract, including but not limited to, the negligent acts, errors, or omissions of any subcontractor or anyone directly or indirectly employed by any subcontractor for whose acts subcontractor may be liable.

Claims under this provision also include those arising out of or in any way connected with the Grantee's breach of this contract, including any Claims asserting that any of the Grantee's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under Internal Revenue Code ("Code") §§ 4980H, 6055 or 6056.

Section 18. DEFAULT

Failure on the part of either party to perform the provisions of the Contract constitutes default. Default may result in the pursuit of remedies for breach of contract as set forth herein or as otherwise legally available, including but not limited to damages and specific performance.

Section 19. FORCE MAJEURE

Neither party will be liable for any failure or delay in performing its duties in this agreement due to Force Majeure Events. "Force Majeure Event" means an event or circumstance beyond a party's reasonable control, such as natural catastrophes and acts of terrorism or war, and the consequences of that event or circumstance. Force Majeure Event does not include a strike or other labor unrest that affects only that party, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstance that results in that Party's not having sufficient funds to comply with an obligation to pay. If a Force Majeure Event continues for thirty (30) days, the other party may terminate this agreement or suspend payments while the event continues.

Section 20. SEVERABILITY

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal or void, shall not affect the legality and enforceability of any other provision of the Contract unless the provisions are mutually dependent.

Section 21. NO WAIVER OF BREACH

No failure by the Board to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights regarding that event, or any subsequent event. No express failure of any event of breach will be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the Board to enforce each and all the provisions hereof upon any further or other breach on the part of the Grantee.

Section 22. JURISDICTION AND VENUE

The Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the First Judicial District in Lewis and Clark County, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in Section 17, Hold Harmless and Indemnification.

Section 23. LEGAL RELATIONSHIP BETWEEN THE PARTIES

This Contract does not create a partnership, joint venture, joint enterprise, or joint undertaking of any sort between the Board and the Grantee, its agents, employees, cooperators, subcontractors, or independent contractors during the performance of the activities described herein. In performing the activities described herein the Grantee, its agents, employees, cooperators, subcontractors, or independent contractors are not agents, employees, cooperators, subcontractors, or independent contractors of the Board.

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Section 24. INTEGRATION

This Contract contains the entire agreement between the parties. No statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

The parties through their authorized agents have executed this Contract on the dates set out below.

GRANTEE:

<small>Signed by:</small>	
<i>Warren "Sparky" Kottke</i>	1/2/2025
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Warren "Sparky" Kottke, Club President Great Falls Turf Club, Inc.	Date

BOARD:

<small>Signed by:</small>	
<i>Gary Koeplin</i>	1/3/2025
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Gary Koeplin, Executive Secretary Montana Board of Horse Racing	Date

APPROVED AS TO FORM:

<small>Signed by:</small>	
<i>Amy Barnes</i>	1/2/2025
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Legal Counsel Montana Department of Commerce	Date