

**TOWN OF KEYSTONE
Summit County, Colorado**

RESOLUTION 2024-75

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE
APPROVING A CONTRACT WITH VAIL SUMMIT RESORTS, INC. FOR
MAINTENANCE OF CERTAIN ROADS**

WHEREAS, the Town of Keystone (“Town”) is a home rule municipality governed by the Keystone Home Rule Charter; and

WHEREAS, Town Staff recommends that the Town contract for the maintenance of certain public roads in the Town; and

WHEREAS, Vail Resorts, Inc., a Colorado Corporation, d/b/a Keystone Resort, Inc. (“VSRI”) has historically maintained certain roads listed in Exhibit A to the Services Agreement; and

WHEREAS, the Town Council finds it is the best interest of the Town to contract with VSRI as provided in the attached Services Agreement.

Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:

Section 1. The Town Council approves the Services Agreement in substantially the form that is provided and authorizes the Town Manager to sign the Services Agreement.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

ADOPTED by a vote of 7 in favor and 0 against, this 10TH day of December 2024.

Signed by:
By: Kenneth D. Riley _____
FFCC105F18734F9...
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

Signed by:
By: Madeline Sielw _____
2C62343E156A422...
Town Clerk

Signed by:
By: Jennifer Madsen _____
89751994A1B74EC...
Town Attorney

EXHIBIT A

SERVICES AGREEMENT FOR YEAR-ROUND ROAD MAINTENANCE

This Services Agreement (“Agreement”) is made and entered into as of the 1st day of January, 2025, by and between the Town of Keystone, a Colorado home rule municipality with offices at 1628 Saints John Rd., Keystone, Colorado 80435 (the “Town”) and Vail Summit Resorts, Inc., a Colorado corporation d/b/a “Keystone Resort, Inc.” (hereinafter referred to as “VSRI”), also collectively referred to herein as the “Parties” or individually as “Party.”

WHEREAS, the Parties desire to contract for VSRI’s provision of year-round road maintenance services for certain roads as set forth herein; and

WHEREAS, the Town has authority to compensate an entity to maintain Town roads; and

WHEREAS, the Parties have negotiated and now desire to enter into this Agreement to provide the necessary consents and to establish the general provisions with respect to VSRI’s provision of year-round maintenance on certain roads; and

WHEREAS, the Town finds that this Agreement is entered in accordance with the subject policy regarding compensation to an entity to maintain Town roads; and

WHEREAS, the Parties hereby find that it is in the interest of the public’s health, safety and welfare to have VSRI provide year-round maintenance on certain public roads for the term of this Agreement.

NOW, THEREFORE, in consideration of the above and the mutual promises and benefits herein expressed and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. SERVICES.

A. The Town seeks to secure maintenance services for certain of its public rights-of-way. As of the date of the Agreement, the Town lacks the necessary equipment and labor to perform these services. Accordingly, the Town intends to contract with VSRI to provide year-round maintenance of certain roads (the "Services"). The specific roads that are the subject of this Agreement are detailed in the attached Exhibit A entitled "Scope of Work," which is incorporated herein by this reference. The Parties may add additional Town roads, or portions thereof, to the "Scope of Work," as mutually agreed in writing. VSRI agrees to perform the Services at the direction of the Town as its independent contractor.

B. VSRI shall perform the Services as more specifically described in Exhibit A. The Services shall not include capital project work, including but not limited to paving, bridge repair and/or improvements, overlays and chip seals, guardrail repair/replacement and road/traffic studies.

2. CONTRACT AMOUNT AND PAYMENT.

A. The total annual value of compensation provided by the Town to VSRI for the Services set forth in Exhibit A shall be as follows:

1) In 2025 - \$74,000 (the "Contract Amount"). In addition to the Contract Amount, the Town agrees to pay for any additional Services beyond those set forth in Exhibit A requested by the Town and agreed to in writing by VSRI.

2) Renewal Term(s), if agreed upon - \$74,000, which amount shall be adjusted as necessary to account for: (i) any increase in the cost of providing the Services; and (ii) any expansion or reduction in the Services provided hereunder for any Renewal Term. Examples of expansion or reduction in Services warranting adjustment of the Contract Amount include addition of road mileage to be maintained as compared with the mileage(s) set out in Exhibit A. The Parties shall negotiate in good faith during the Review Period, defined below, regarding any change to Services and corresponding increase or decrease in the Contract Amount.

3) VSRI shall submit invoices quarterly for Services performed during the previous quarter. Payment by the Town of such invoices will be due within twenty-five (25) days of receipt thereof. Invoices paid more than twenty-five (25) days after receipt shall accrue interest at the rate of one percent (1%) per month until paid in full.

B. No later than October 1 of any given year, the Parties will propose any desired revisions to the Scope of Work and Contract Amount (the "Review Period"). If either Party requests any revisions and the Parties reach an agreement by December 1, the Agreement shall be amended to include the revised Scope of Work (Exhibit A) and/or Contract Amount before January 1 of the following calendar year.

3. TERM. The effective date of this Agreement shall be January 1, 2025, and it shall continue until December 31, 2025, at which time, this Agreement will renew automatically for additional periods of one year from the latter date (the "Renewal Term(s)"), subject to the termination provisions of this Agreement.

4. TERMINATION. The Town may terminate this Agreement with or without cause upon giving thirty (30) days written notice to VSRI. In the event the Town terminates this Agreement, VSRI shall be entitled to reimbursement of costs incurred pursuant to this Agreement through the date of actual termination of Services. VSRI may terminate this Agreement with or without cause upon giving thirty (30) days written notice to the Town. In the event VSRI terminates this Agreement, the Town shall be entitled to reimbursement of those costs paid to VSRI in excess of the costs incurred pursuant to this Agreement through the date of actual termination of Services.

5. INDEMNIFICATION.

A. VSRI shall indemnify, keep and hold the Town harmless from and against damages, including court costs and reasonable attorney's fees, arising from claims against the Town for injuries which lie in tort or could lie in tort (whether that may be the type of action or form of relief chosen by the claimant) and arise out of or result from the following:

- 1) Accidents resulting from the grossly negligent or intentional acts or omissions of VSRI employees, contractors, officers or agents and occurring while such individuals are engaged in VSRI's performance of the Services hereunder;
- 2) Failure by VSRI to remove or mitigate a "dangerous condition" (as defined in C.R.S. § 24-10-103, as amended or provided in any successor provision) in the facilities it is obligated hereunder to maintain, including but not limited to the public roadways identified in Exhibit A, when such facility or the use thereof constitutes an unreasonable risk to the health or safety of the public, which is known by VSRI to exist. A dangerous condition should have been known to exist by VSRI if it is determined that the condition existed for such a period of time and was of such nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered by VSRI.

B. VSRI's indemnification of the Town shall not exceed those amounts set forth in C.R.S. §24-10-114, as amended or provided in any successor provision (Colorado Governmental Immunity Act - Limitations on Judgments), where such caps are available and applicable to the Town.

C. VSRI's indemnification obligations shall not apply to reimburse the Town for any claims, court costs or attorney's fees where:

- 1) The Town is found to be immune from claims or suit for injury suffered by private persons pursuant to the Colorado Governmental Immunity Act, C R S. § 24-10-101, *et seq.* and no Town liability exists under any other claim/theory;
- 2) The Town, pursuant to C R S § 24-10-104, waives the immunity granted in C.R.S. § 24-10-106; or
- 3) The Town, without the express written permission of VSRI, which permission shall not be unreasonably withheld, compromises or settles a claim against it that arises out of or allegedly arises out of VSRI's grossly negligent, reckless or intentional acts or omissions in the performance of the Services hereunder.

D. Excluding VSRI's indemnification obligations hereunder pertaining to the Services, VSRI is not obligated to indemnify the Town for claims otherwise arising out of the Town's failure to maintain or design, construct and repair public roadways.

E. VSRI further expressly denies indemnification of the Town for the willful and wanton conduct of the Town, its employees, contractors, officers and agents.

F. All of the foregoing provisions of this Paragraph notwithstanding, the Town agrees that, unless there exists an irreconcilable conflict of interest between the Town and VSRI regarding the subject claim, VSRI shall have the right to select the attorney or attorneys to provide a defense for the Town against any claim covered by the foregoing indemnification, and the Town further agrees that such attorney or attorneys selected by VSRI may represent both VSRI and the Town.

6. INDEMNIFICATION BY TOWN.

A. In consideration for being named as an additional insured on VSRI's liability insurance policies, the Town shall, to the extent authorized by law, indemnify, keep and hold VSRI, including its parent and subsidiary entities, employees, contractors, officers and agents, harmless from and against damages, including court costs and reasonable attorney's fees, arising from claims against VSRI for injuries which lie in tort or could lie in tort (whether that may be the type of action or form of relief chosen by the claimant) where:

1) The claims against VSRI are found to result from the Town's negligent, or intentional acts or omissions including those of its employees, contractors, officers or agents;

2) The claims against VSRI are found to result from the Town's negligent, or intentional acts or omissions regarding responsibilities, obligations or services which VSRI did not hereby expressly contract to perform;

3) Excluding VSRI's obligations hereunder pertaining to the performance of Services, the claims against VSRI are found to result from the Town's failure to maintain or design, construct and repair public roadways;

4) The Town, without the express written permission of VSRI, which permission shall not be unreasonably withheld, compromises or settles a claim against the Town that arises out of or allegedly arises out of VSRI's performance of the Services hereunder; or

5) The Town, its employees, contractors, officers or agents are seeking recovery from VSRI's Worker's Compensation benefits.

B. The Town's indemnification obligations shall not apply to reimburse VSRI for any claims, court costs or attorney's fees where VSRI, without the express written permission of the Town, which permission shall not be unreasonably withheld, compromises or settles a claim against it that arises out of or allegedly arises out of the Town's acts or omissions related to the Services performed by VSRI hereunder.

C. The Town further expressly denies indemnification of VSRI for the willful and wanton conduct of VSRI, its employees, contractors, officers and agents.

7. INSURANCE.

A. VSRI shall obtain, and maintain at all times during the term of this Agreement, insurance in the following kinds and amounts:

1) Standard Workers' Compensation and Employer Liability as required by State statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.

2) General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverage:

- i. Combined single limit of \$600,000 written on an occurrence basis.
- ii. Any aggregate limit will not be more than \$1,000,000.
- iii. If any aggregate limits are reduced below \$600,000 because of claims made or paid during the required policy period, VSRI shall promptly obtain additional insurance to restore the full aggregate limit.

3) The Town shall be named as an additional insured on the aforementioned liability policies.

4) The insurance shall include provisions preventing cancellation without thirty (30) days prior notice to the Town.

5) The Town understands, acknowledges and agrees that the liability coverage provided to the Town as a named additional insured thereunder is limited to and is for the sole purpose of covering those claims, including court costs and attorney's fees, against the Town for injuries which lie in tort or could lie in tort (whether that may be the type of action or form of relief chosen by the claimant) and arising out of or resulting from those circumstances set forth above in Section 5.A for which VSRI is herein obligated to indemnify the Town, and in no other circumstance shall the Town bring a claim or be entitled to coverage under such liability policies.

8. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed as waiving the rights and privileges of the Town under the Colorado Governmental Immunity Act with respect to any other person, entity or third parties. Further, it is expressly understood and agreed that enforcement of the terms and conditions of the Agreement, and all rights and actions relating to such enforcement, shall be strictly reserved to the Town and VSRI. It is the express intention of the Town and VSRI that nothing contained in this Agreement shall give or allow any claim or right of action by any other third person. It is the express intention of the Town and VSRI that any person other than the Town and VSRI receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

9. NOTICES. All notices under this Agreement must be in writing and delivered to the notice address below (i) by registered, express, or certified mail or (ii) by courier or messenger service. Notice is deemed given on the date delivered or attempted but delivery is refused.

IF TO THE TOWN:

Joshua Weber
Town of Keystone, Public Works Department
1628 Sts. John Road, Keystone, CO 80435
Email: jweber@keystoneco.gov

IF TO VSRI:

Vail Summit Resorts, Inc.
Attn: Keystone Resort General Manager
Road Maintenance, K40
P.O. Box 38
Keystone, CO 80435

with a copy to:

Legal Department, Box 1-88
390 Interlocken Crescent, Suite 1000
Broomfield, CO 80021
Email: legalnotices@vailresorts.com

Either party may change its address for notices pursuant to a written notice which is given in accordance with the terms hereof.

10. THIRD PARTIES. This Agreement does not and shall not be deemed to confer upon any third party any right to claim damages or to bring suit, or other proceeding against either VSRI or the Town because of any term contained in this Agreement.

11. ASSIGNMENT AND SUBCONTRACTING. This Agreement is for personal services predicated upon VSRI's special abilities or knowledge, and VSRI shall not assign this Agreement in whole or in part nor shall VSRI subcontract any part of the Services to be provided hereunder without the Town's prior written consent.

12. ENTIRE AGREEMENT. This Agreement states the entire understanding of the Parties with respect to its subject matter and supersedes any and all prior agreements and understandings between the Parties with respect to its subject matter. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing.

13. MODIFICATION. This Agreement may be modified or amended only by a duly authorized written instrument executed by the Parties hereto.

14. PARAGRAPH HEADINGS. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

15. ATTORNEY'S FEES. If an action is brought to enforce this Agreement, the prevailing party shall be entitled to costs and reasonable attorney's fees.

16. SEVERABILITY. In case one or more of the provisions contained in the Agreement, or any application hereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in the Agreement and the application thereof shall not in any way be affected or impaired thereby.

17. APPLICABLE LAW. At all times during the performance of this Agreement, the Town shall strictly adhere to all applicable federal, state and local laws, rules and regulations that have been or may hereafter be established, and all work performed under this Agreement shall comply with federal, state and local laws, rules and regulations. This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado.

18. WAIVER. A Party's waiver of any breach or failure to enforce any of the terms, covenants or conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision of this Agreement.

19. ANNUAL APPROPRIATION/FUND AVAILABILITY. Payment pursuant to this Agreement, whether in whole or in part, is subject to and contingent upon the continuing availability of Town funds for purposes hereof. In the event that said funds, or any part thereof, become unavailable as determined by the Town, either Party may terminate this Agreement in accordance with the provisions of Paragraph 4 herein.

[SIGNATURES ON THE FOLLOWING PAGE]

In Witness Whereof the Parties hereto have executed this Agreement with the effective date of the Agreement being January 1, 2025.

TOWN OF KEYSTONE

VAIL SUMMIT RESORTS, INC.

BY: ^{Signed by:} John Crone _____
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BY: ^{Signed by:} Shannon Butler _____
853E77B9F292471...

EXHIBIT A
SCOPE OF WORK: SERVICES AGREEMENT FOR
YEAR-ROUND ROAD MAINTENANCE

The Town shall pay VSRI for VSRI's provision of regular road maintenance services on specified roads and rights-of-way, which are listed below, for the term defined in this Agreement. The specific services to be provided by VSRI include:

- Snow plowing in accordance with the Priority Map attached hereto as Exhibit A-1;
- Road sanding services including provision of material for sanding;
- Cutting back the snowpack along rights-of-way;
- Hauling snow to prescribed locations; and
- Repairing potholes (1) if VSRI deems such repair necessary to prevent damage to equipment or buses or (2) at the Town's request and subject to VSRI's agreement, with associated costs for labor and materials to be charged to the Town over and above the Contract Amount set forth in the Agreement.

The following roads and mileages are the subject of this Agreement:

- Soda Ridge Road (CR 4) – 1.0 miles
- East and West Keystone Rd. – 1.5 miles
- Bear Tree Ct (CR 162) – 0.03 miles
- Bristlecone Ct (CR 168) – 0.04 miles
- Porcupine Ct. (CR 163) – 0.03 miles
- Appaloosa Ct. (CR 167) – 0.04 miles
- Lenawee Lane (CR 164) – 0.09 miles
- Last Chance Lane (CR 166) – 0.09 miles
- Wild Irishman Rd. (CR 165) – 0.48 miles
- Saw Whiskers Cit. (CR 169) – 0.15 miles
- Saw Whiskers Dr. (CR 170) – 0.17 miles
- Elk Crossing Ln (CR 180) – 0.3 miles
- Elk Dr (CR157) – 0.07 miles
- Elk Cir (CR 154) – 0.68 miles
- River Overlook Ct (CR 198) – 0.08 miles
- Independence Road West (CR 257) – 0.34 miles
- Oro Grande Road – 0.5 miles

Daily conditions/needs for Services shall be communicated to the following VSRI personnel: primary contact: Maggie Doar (847) 220-0150; secondary contact: Brayden Hicks (970) 496-3645.

EXHIBIT A-1
SERVICE AREA PRIORITY MAP

Docusign Envelope ID: 310FE546-9296-4016-9BED-D3816B26C28D

