

## INTERGOVERNMENTAL AGREEMENT

**THIS INTERGOVERNMENTAL AGREEMENT** effective this 26<sup>th</sup> day of AUGUST, 2008, by and between the **TOWN OF ESTES PARK, COLORADO**, (the "Town"), and the **BOARD OF COUNTY COMMISSIONERS, LARIMER COUNTY**, (the "County").

### RECITALS

**WHEREAS**, the Local Marketing District Act, Section 29-25-101 *et seq.*, C.R.S. provides for the organization of local marketing districts ("the Act"); and

**WHEREAS**, the Act allows formation of a local marketing district within the Town of Estes Park and unincorporated Larimer County; and

**WHEREAS**, the Town and the County hereby agree to form a local marketing district pursuant to the terms and conditions of the Act for properties located within the Town and unincorporated areas of Larimer County; and

**WHEREAS**, Section 29-25-105 (3) C.R.S. of the Act provides that the Town and the County, by contract, may create a local marketing district to exercise the functions authorized by the Act following receipt of a petition for the organization of a local marketing district from the requisite number of owners of commercial real property in the proposed service area; and

**WHEREAS**, a petition has been filed with the Town Clerk and the Clerk of the Board of County Commissioners meeting the requirements set forth in Section 29-25-105 (2) C.R.S. of the Act; and

**WHEREAS**, the Town and the County desire to establish the Estes Park Local Marketing District pursuant to the terms and conditions of this Intergovernmental Agreement; and

**WHEREAS**, Section 29-25-105 C.R.S. provides that the question of establishing a local marketing district shall be submitted to the registered electors residing within the District at a general election; and

**WHEREAS**, the Petition states that the District shall be funded by the levying of a two percent (2%) marketing and promotion tax pursuant to the provisions of Section 29-25-112 C.R.S.; and

**WHEREAS**, approval by the registered electors residing within the service area of the proposed local marketing district of the establishment of the local marketing district and the authorization for the levying of a two percent (2%) marketing and promotion tax to fund the services of the local marketing district is a prerequisite to the implementation of this Intergovernmental Agreement; and

**WHEREAS**, pursuant to the applicable statutes of the State of Colorado, the Town and the County are authorized to enter into this Intergovernmental Agreement.

**NOW, THEREFORE, IN CONSIDERATION OF THE RECITALS SET FORTH ABOVE WHICH ARE INCORPORATED HEREIN, AND THE COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

I. **Name and Purpose.** The name of the District is the Estes Park Local Marketing District (the "District"). The purpose of the District is to provide the services set forth in Section 29-25-111 (1)(e)(I)(A), (B) and (C) C.R.S.

II. **District Service Area.** The District Service Area (the "Service Area") is depicted on Exhibit A attached hereto and incorporated herein by this reference.

III. **Eligible Electors.** An eligible elector or registered elector of the District means an elector as defined in Section 1-1-104 C.R.S. who has complied with the registration provisions of the Uniform Election Code of 1992 in Larimer County, and resides within the Service Area of the District.

IV. **Elections.** An election shall be held pursuant to Section 29-25-105 (6) C.R.S. for the purpose of establishing the District pursuant to the terms and conditions of this Intergovernmental Agreement. An election shall be held pursuant to Section 29-25-112 (1)(a) C.R.S. for the purpose of authorizing the levying of a two percent (2%) marketing and promotion tax on the purchase price paid or charged to persons for rooms or accommodations located within the District. All District elections will be conducted as provided in Section 29-25-105 (6) C.R.S. The Town and the County agree that the question of approval of this Intergovernmental Agreement for the establishment of the District and authorization for a two percent (2%) marketing and promotion tax shall be placed upon the General Election ballot of November 4, 2008. Each entity shall be responsible for its share of the cost of said election based upon the number of registered electors from each entity eligible to vote in District elections and the formula for payment as set forth in the County Clerk and Recorder's coordinated election agreement. If the District is established, the District shall be responsible for reimbursing the Town and the County for all costs incurred by each entity for said election upon receipt of marketing and promotion tax revenue. The County delegates to the Town the authority to enter into the Agreement Concerning Election Services with the Larimer County Clerk and Recorder for the purpose of conducting the election as part of the coordinated General Election. The Town Clerk of the Town shall be the Designated Election Official for the election and shall be responsible for the wording of the ballot issues and certifying the ballot issues to the Clerk and Recorder of Larimer County, Colorado.

V. **Effective Date.** This Agreement shall automatically take effect upon certification of the Clerk and Recorder of Larimer County, Colorado, that a majority of the registered electors voting at the November 4, 2008 General Election has approved the establishment of the District.

VI. **Board of Directors.** The Board of Directors of the District shall have all legislative power of the District. The Board of Directors shall be composed and appointed as follows:

- A. Number. The number of Directors shall be seven (7). Five (5) members shall be appointed by the Town. Two (2) members shall be appointed by the County. Each member shall serve a four (4) year term. The terms shall be staggered so that two (2) members are appointed each year and one (1) member in the fourth year. All Directors shall serve until their successor is appointed by the respective entity. Members may serve for more than one (1) term but no more than two (2) consecutive four year terms.
- B. Residency. All appointees shall be residents of the Service Area of the District for at least one year prior to the appointment and shall continue to be residents of the Service Area during their entire term.
- C. Officers. There shall be a Chair and a Vice-Chair. Each shall serve one (1) year terms, beginning with the first meeting in January of each year. The Chair and Vice-Chair may serve for two (2) consecutive terms. The Chair and Vice-Chair shall be chosen by the members of the Board. The Vice-Chair shall serve as the Chair in absence of the Chair.
- D. Attendance. All members shall attend all meetings, including special meetings, if possible. In the event any member misses three (3) consecutive regular meetings or a total of four (4) regular meetings in a calendar year, the Town or the County may remove its appointed member for neglect of duty and designate a new member to fill the vacancy.
- E. Vacancy. Any vacancy occurring on the Commission shall be filled as soon as practical by appointment by either the Town or County.
- F. Meetings. Regular meetings of the Board of Directors of the District shall be once a month. Special meetings may be called as necessary.
- G. Powers. The Board of Directors shall have all the powers set forth in the Act.
- H. Quorum. The majority of the Board of Directors shall constitute a quorum. A vote of majority of those present at a meeting shall be necessary for action by the Board.
- I. Waiver of Term Limits. The Town or the County may waive the term limit set forth in subparagraph A. above in the event that either party, in its sole discretion, determines that there are no qualified applicants for a vacant Director position and a term limited Director wishes to serve another term.

VII. **Term.** The term of the District shall be for an initial term of five years beginning on the approval of the establishment of the District by an election (see Section IV), and continuing until December 31, 2013. The term shall automatically extend for additional five (5) year

periods unless on or before July 1 of any calendar year prior to the end of any five (5) year period, either party gives written notice to the other party terminating this Agreement. In said event, the District shall automatically terminate on December 31 of said calendar year. Between the date of giving the notice of termination and December 31, the District shall continue to be in existence and have all powers as set forth herein. This Agreement nor the District may not be terminated, repealed or rescinded so long as the District has any outstanding financial obligations.

VIII. **Distribution and Division of the Assets of the District.** In the event of termination of the District either by action of the Town and County as more fully set forth herein or by order of any court having jurisdiction thereof, all assets of the District shall be divided between the Town and the County based upon the percentage of marketing and promotion tax collected from the Town and unincorporated Larimer County in the previous calendar year to the extent feasible.

IX. **Other Provisions.**

- A. **Transition.** During the period of time between the election establishing the District and January 1, 2010 ("the transition period"), the Town shall provide a staff member to act as administrator of the District. Also, the Town shall provide necessary office space and support to said staff member for administration of the District. In the transition period, the Town Attorney shall provide legal services to the District Board. The Town Attorney shall consult with the County Attorney in any matters affecting the unincorporated portions of Larimer County within the Service Area.
- B. **Automatic Termination.** The parties understand and agree that in the event the registered electors of the District fail to approve the formation of the District at the General Election held for said purpose on November 4, 2008, this Agreement shall automatically terminate and be of no further force and effect.
- C. **Enforcement.** It is the intent of both the Town and County that this Agreement is binding upon both the Town and County, and that either party hereto shall be permitted to specifically enforce any provisions of this Agreement in a court of competent jurisdiction.
- D. **Amendment.** This Agreement may be amended in writing at any time by mutual agreement of the parties.
- E. **Notices.** All notices, demands or other documents required or desired to be given, made or sent to the parties under this Agreement shall be made in writing, shall be deemed effective upon mailing or personal delivery. If mailed, said notice shall be mailed, by regular mail, postage prepaid (unless this Agreement specifically requires certified mail) addressed as follows:

**TOWN OF ESTES PARK**

Attn. Town Administrator  
Post Office Box 1200  
Estes Park, CO 80517

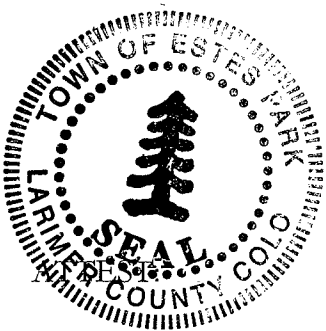
**LARIMER COUNTY BOARD OF COUNTY  
COMMISSIONERS**

Attn: Chair  
Post Office Box 1190  
Fort Collins, CO 80522

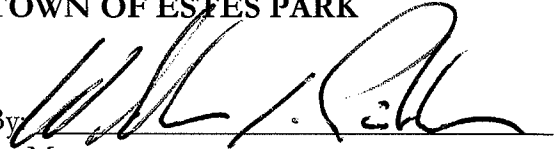
- F. **Governmental Immunity.** The parties agree and understand that both parties are relying on and do not waive, by any provision of this Agreement, the monetary limitations or terms (presently One Hundred Fifty Thousand and 00/100 Dollars (\$150,000) per person and Six Hundred Thousand and 00/100 (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, C.R.S., as from time to time amended, or otherwise available to the parties or any of their officers, agents or employees.
- G. **Current Year Obligations.** The parties acknowledge and agree that any payments provided for hereunder or requirements for future appropriations shall constitute only currently budgeted expenditures of the parties. The parties' obligations under this Agreement are subject to each individual party's annual right to budget and appropriate the sums necessary to provide the services set forth herein. No provision of this Agreement shall constitute a mandatory charge or requirement in any ensuing fiscal year beyond the then current fiscal year of each individual party. No provisions of this Agreement shall be construed or interpreted as creating a multiple fiscal year, direct or indirect debt or other financial obligation of either or both parties within the meaning of any constitutional or statutory debt limitation. This Agreement shall not directly or indirectly obligate either party to make any payments beyond those appropriated for each party's then current fiscal year. No provision of this Agreement shall be construed to pledge or create a lien on any class or source of either party's monies, nor shall any provision of this Agreement restrict the future issuance of either party's bonds or any obligations payable from any class or source of each individual party's money.
- H. **Operating Plan.** Prior to the levying of a Marketing and Promotion Tax or provision of services, the Town and the County shall approve an Operating Plan for the District. The District Board shall file with each entity no later than September 30 of each year, an Operating Plan specifically identifying services to be provided by the District, any Marketing and Promotion Tax to be imposed by the District, and such additional information as required to inform each entity as to the activities, services, and funding of the District in the upcoming year. The Operating Plan shall include a proposed budget for the next fiscal year. Either the Town or the County or both may require the District to supplement the Operating Plan or budget where

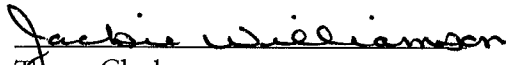
necessary. The Town and the County shall approve or disapprove the Operating Plan including the proposed budget within thirty (30) days after receipt of the Operating Plan, the proposed budget, and all additional documentation requested by either entity but no later than December 5 of the year in which such documents are filed. The services and financial arrangements of the District shall conform so far as practical to the approved Operating Plan. The Operating Plan may, from time to time, be amended by the District with the approval of the Town and County.

- I. **Dispute Resolution.** Either the Town or the County may request mediation of any dispute pursuant to the terms and conditions of this Intergovernmental Agreement. The request for dispute resolution shall be submitted in writing to the other party. The Town and the County shall participate in a dispute resolution process in good faith. The dispute resolution process shall be concluded within sixty (60) days of filing of the request for dispute resolution. If the dispute is not resolved by this process, either or both parties may enforce the terms and conditions of this Agreement as provided in Paragraph IX (C) above.



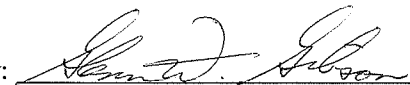
TOWN OF ESTES PARK

By:   
Mayor


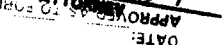
  
Town Clerk

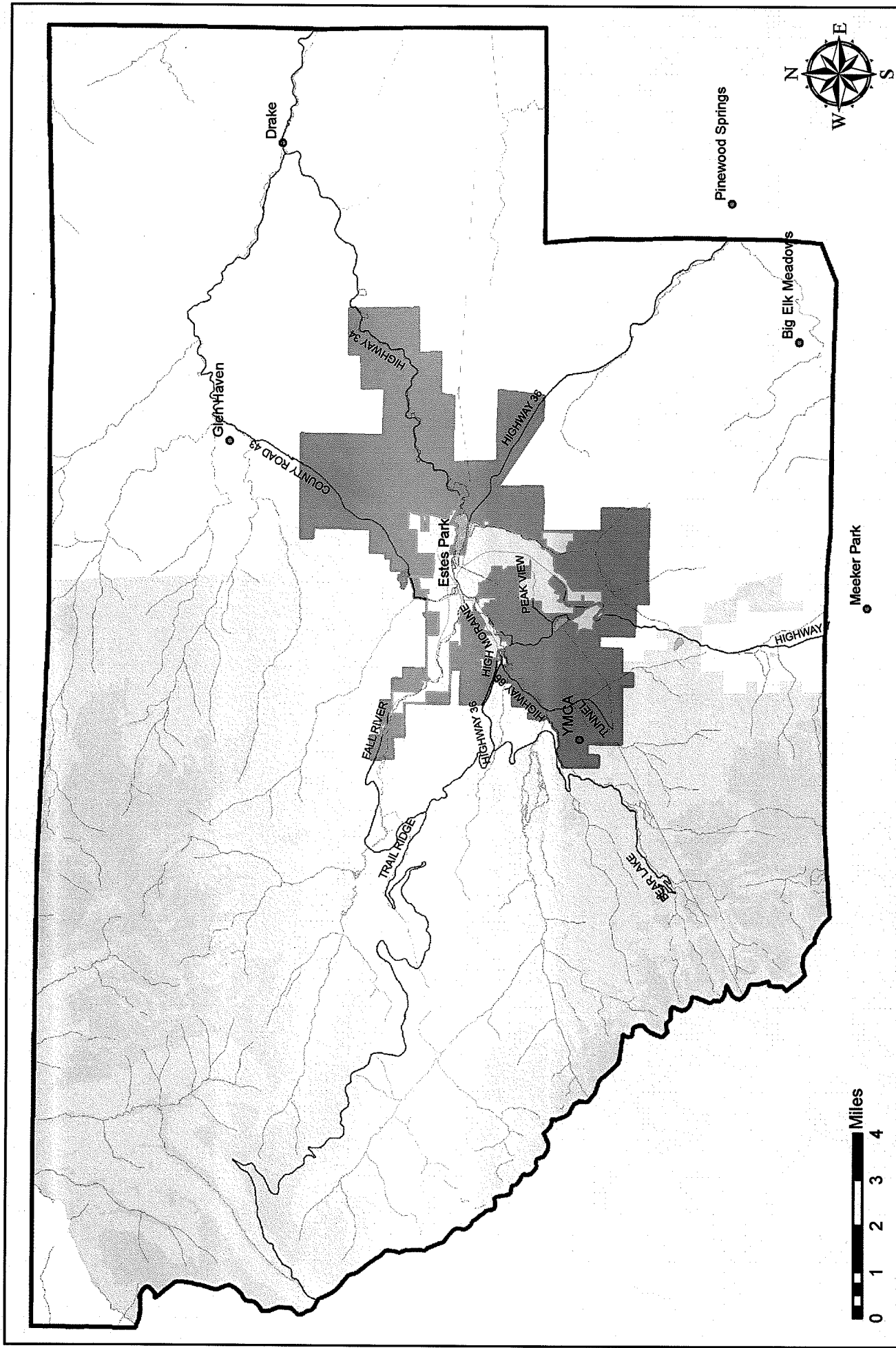
BOARD OF COUNTY COMMISSIONERS OF THE  
COUNTY OF LARIMER.



By: 

ATTN:   
Deputy Clerk of the Board

DATE: 8/21/08  
APPROVED:   
COUNTY ATTORNEY  
APPROVED AS TO FORM:   
DATE:



ESTES PARK  
COLORADO

# Estes Valley Local Marketing District

EXHIBIT "A"

Prepared by: Town of Estes Park GIS Services\_SB\_June, 11th 2008

	Town Boundary		Roads
	EP Fire Response Area		RMNP
	Marketing District		Water