

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this ~~10th~~ day of ~~NOVEMBER~~ 2009, by and between the **ESTES PARK LOCAL MARKETING DISTRICT**, a Colorado local marketing district, hereinafter referred to as the "LMD", and the **TOWN OF ESTES PARK, COLORADO**, a Colorado statutory town, hereinafter referred to as the "Town".

WITNESSETH:

WHEREAS, the LMD is a local marketing district organized to provide the services set forth in Section 29-25-111 (1)(e)(I)(A), (B) and (C), C.R.S.; and

WHEREAS, the LMD was created pursuant to the provisions of Section 29-25-101 *et seq.* C.R.S. and the Intergovernmental Agreement dated August 26, 2008 and all amendments thereto between the Town and the Board of County Commissioners, Larimer County; and

WHEREAS, applicable provisions of the Colorado Constitution and the statutes of the State of Colorado, specifically Section 29-20-101 *et seq.* C.R.S., authorize the LMD and the Town to enter into mutually binding and enforceable agreements, including agreements addressing the subject matter of this Agreement; and

WHEREAS, effective January 1, 2010, the LMD will need the professional services and assistance of four employees of the Town (the "Employees") in order to provide the services set forth in the Operating Plan of the LMD approved by the Town on September 8, 2009; and

WHEREAS, in order for the efficient performance of the Operating Plan, the LMD will supervise the Employees with the Town being responsible for the salaries and benefits of the Employees pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Town and the LMD have determined that it is the best interest of both entities to accomplish the efficient provision of marketing and promotional services as set forth in the Operating Plan by the terms of this Intergovernmental Agreement.

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **Preamble.** The Parties acknowledge that the recitals set forth above are true and correct, and those recitals are hereby incorporated into this Agreement.

2. **Effective Date.** The Agreement shall be effective upon its execution by both parties.
3. **Employees.** The Town agrees that it shall provide the following services to the LMD:
 - a. **Office Space.** The Town shall provide sufficient office space for the Employees at the Visitor's Center. The Parties agree to cooperate in the provision of necessary work space for the Employees which will be similar to the current work space of the Employees at the time of execution of this Agreement. The Town shall have the right, after consultation with the LMD, to rearrange work areas of the Employees to ensure the efficiency of both the LMD and Town operations.
 - b. **Job Description.** Attached hereto as Exhibit A are job descriptions for the four individual Employees reflecting the supervision of the Employees by the LMD and their job duties. The LMD may change individual job descriptions after consultation with the Town.
 - c. **Supervision of Employees.** The Employees shall be supervised by the LMD. All Employee disciplinary actions including, but not limited to, suspension and/or termination, shall be pursuant to the terms and conditions of the Town's Personnel Policy Manual dated March 23, 2004. For purposes of all matters involving the Employees and the Town's Personnel Policy Manual, the LMD, or its designated Supervisory Employee, shall be the supervisor of the Employees. Any allowable appeal of a disciplinary action regarding the Employee shall be to the LMD Board. The LMD hereby agrees that all personnel actions involving any of the Employees shall remain confidential unless requested in writing to be public by the individual Employee. Any amendment to the Town's Personnel Policy Manual shall also apply to the Employees.
 - d. **Supervisory Employee.** The LMD contemplates selecting one of the four individual Employees as the Working Director of the LMD. In said event, the Parties agree to amend the job description of said Employee to reflect the new duties and responsibilities of the Working Director. Upon the request of the LMD, the Working Director shall begin his/her duties for the LMD and be supervised by the LMD prior to January 1, 2010.
 - e. **Changes in Salary and/or Benefits.** Any change, whether an increase or decrease in the Town's pay structure and/or benefits shall be applicable to the Employees. In the event the LMD wishes to provide additional compensation and/or benefits to any the individual Employee, said increase shall be the responsibility of the LMD; and the LMD shall provide sufficient funds to the Town to pay for such increase in compensation and/or increased benefits. Any increase in compensation and/or benefits to any individual Employee by the LMD shall be the sole responsibility of the LMD and shall not be a future obligation of the Town in the event that any individual Employee is no longer subject to the terms and conditions of this Agreement.

f. Termination or Resignation of Employee. In the event any of the four individual Employees is terminated or resigns, the Parties agree they shall cooperate in the hiring of an individual to fill the vacated job position. Said cooperation shall include the job notice, application, and interviews for the vacant position. Said newly hired individual shall become an employee of the Town and be one of the Employees under the terms and conditions of this Agreement.

4. Other Employees. The LMD retains the right to hire any other persons to be employees of the LMD including, but not limited to, a supervisory position for the Employees. The terms and conditions of any such employment shall be in the sole discretion of the LMD and not subject to the terms and conditions of this Intergovernmental Agreement.

5. Other Services. The LMD and the Town, by separate agreement, may agree that the Town shall provide other services to the LMD such as accounting, investments, and/or administrative staffing.

6. Annual Audit. If the Town determines, pursuant to applicable GASB Standards, that the Town's audit requires the inclusion of the LMD as part of the audit, the LMD shall reimburse the Town the amount of the cost of the LMD's portion of the Town's audit expense.

7. Effective Date and Termination.

a. This Intergovernmental Agreement shall take effect upon its execution by both parties, and shall remain in full force and effect until December 31, 2010, or unless terminated earlier by mutual agreement of the parties. The parties agree that they shall review the terms and conditions of this Agreement in August of 2010 in anticipation of the preparation of the 2011 Operating Plan by the LMD and the negotiation of a new Intergovernmental Agreement.

b. If, through any cause, either party fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law, the non-breaching party shall give the breaching party written notice of said breach. The breaching party shall have thirty (30) days to correct the breach. If the breaching party fails to correct the breach within said thirty (30) day period, the non-breaching party shall have the right to terminate this Agreement for cause.

8. Annual Appropriation. Nothing herein shall constitute a multiple fiscal year obligation pursuant to the Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the Town's obligations under this Agreement are subject to annual appropriation by the Town. Any failure of the Town annually to appropriate adequate monies to finance the Town's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are depleted. Notice shall be given promptly to the LMD of any failure to appropriate adequate monies.

9. **Notices.** All notices or other communication hereunder shall be deemed given when personally delivered or after the lapse of five (5) business days following mailing by certified mail, postage prepaid, address as follows:

ESTES PARK LOCAL MARKETING DISTRICT

Attn: Chairperson
Post Office Box 4426
Estes Park, CO 80517


TOWN OF ESTES PARK

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

10. **Relationship of the Parties.** The Parties enter into this Intergovernmental Agreement as separate and independent entities and shall maintain such status throughout the term of this Intergovernmental Agreement.
11. **Governmental Immunity.** Nothing contained herein shall be construed as a waiver or modification of the rights afforded to the LMD and/or the Town under the Colorado Governmental Immunity Act and subsequent amendments thereto.
12. **Indemnification.** To the extent permissible by law, the LMD shall indemnify, protect, defend and hold harmless, the Town of Estes Park and its employees, elected and appointed officials, from any and all claims, losses or damages incurred in connection with the services to be provided by the Town pursuant to this Intergovernmental Agreement. Such indemnification shall include reasonable attorney's fees and costs.
13. **Governing Law in Effect.** This Intergovernmental Agreement shall be governed by and construed under the laws of the State of Colorado.
14. **Venue.** Venue for all purposes shall be deemed proper in the District Court of Larimer County, Colorado.
15. **Entire Agreement of the Parties.** The recitals contained herein represent the entire agreement of the Parties, and shall be binding upon the parties hereto and their successors.
16. **Amendment.** No amendment or other modification of this Intergovernmental Agreement shall be valid unless pursuant to a written instrument signed by both parties.
17. **Assignment.** The benefits and burdens under this Intergovernmental Agreement may not be assigned by either party without the written consent of the other.

IN WITNESS WHEREOF, the Parties hereto have caused this Intergovernmental Agreement to be executed the day and year first written above.

**ESTES PARK LOCAL MARKETING
DISTRICT**


By: 
Chairperson

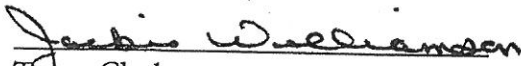
ATTEST:





TOWN OF ESTES PARK

By: 
Mayor


Town Clerk