

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT 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", is effective the 1st day of January, 2012.

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, 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 January 1, 2012.
3. **Employees.**
 - a. As of January 1, 2012, the three Town employees assigned to the LMD ("LMD Employees") shall become employees of the LMD and their employment relationship with the Town shall terminate. As LMD Employees, the LMD shall be responsible for providing all salaries, benefits and terms of employment. The Town shall transfer the personnel files of the LMD Employees to the LMD. The Town may retain copies of

information in the personnel files for the Town's administrative purposes in the same fashion as the Town retains records for former employees.

- b. Benefits Plan. To the extent permitted by law and the terms of third party provider agreements, the Town shall allow the LMD Employees to be covered for all current Town benefits (medical, dental, vision, EAP, health club, flex plans and retirement plans). The LMD shall reimburse the Town for all costs of the benefits for LMD employees plus a 3% administrative fee for the management and administration of those services.
 - c. The LMD Employee's accrued sick time and vacation time under Town of Estes Park policies as stated in the Town of Estes Park Personnel Policy Manual shall be payable to the LMD employees. All future accrual of sick time and vacation time for the LMD employees shall be administered under the LMD's policies and procedures effective January 1, 2012.
 - d. Beginning January 1, 2012, the LMD shall be responsible for providing worker's compensation insurance coverage for the LMD Employees.
4. Quarterly Meetings. To facilitate effective and efficient marketing operations which are mutually beneficial to both parties, quarterly meetings of two LMD Board members, two Town Board members, the LMD's President or designee and the Town Administrator or designee shall take place.
5. Advertising Products. All advertising products are sold by the LMD to local businesses aka: "Stakeholders." Should advertising sale opportunities become present through a service provided by the Town, the Town shall coordinate those business advertising sales through the LMD. As Estes Park's official destination marketing organization the LMD is responsible for managing advertising programs for local stakeholder businesses. This includes research, new product development, promotion, sales, servicing, fulfillment, invoicing, and collections. Current advertising venues include brochure and menu display at the Visitor Center, listings and ads on www.VisitEstesPark.com, and Official Visitor Guide ads. Should the Town include the option for advertising in the shuttle bus, the LMD shall work with the Town in utilizing this advertising option. The LMD shall have authority to use all photographs collected, archived and created by the Town of Estes Park prior to January 1, 2010 for uses related to marketing purposes and the LMD shall retain possession of said photographs for those purposes. However, the Town of Estes shall have the ability to use and retain possession of said photographs at their discretion.
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 pay for the cost of the LMD's portion of the Town's audit expense.

7. **Town Financial Participation.** The 2012 Town Budget includes funding of \$85,000 to be transferred from the Town to the LMD for use by the LMD for its brand strategy program.
8. The LMD is relocating its offices from the Visitors Center to another location. Following relocation of the LMD officers, the LMD will no longer receive support from the Town for phone, electronic, internet, or IT services. The Town shall transfer to the LMD, without charge, the phone system and all computers currently used by the LMD. Said transfer shall be by bill of sale.
9. **Effective Date and Termination.**
 - a. This Intergovernmental Agreement shall take effect on January 1, 2012, and shall remain in full force and effect unless terminated earlier by mutual agreement of the parties or as provided in subsection c. below. The parties agree that they shall review the terms and conditions of this Agreement annually in anticipation of the preparation of the annual Operating Plan by the LMD.
 - 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.
 - c. Either party may terminate this Agreement upon ninety (90) days written notice prior to the end of any calendar year. Said termination shall be effective as of the last day of the applicable calendar year. If the Town terminates this Agreement, the Town shall, to the extent permitted by law and the terms of its agreement(s) with third party providers, allow the LMD to purchase Town benefits for the Employees through 2013 as stated in Paragraph 3.b.
10. **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, either Party's obligations under this Agreement are subject to annual appropriation by the Party. Any failure of a Party to annually appropriate adequate monies to finance the Party's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are depleted. Written notice shall be given by the non-appropriating Party promptly to the other Party of the failure to appropriate adequate monies.

11. **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

12. **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.
13. **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.
14. **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.
15. **Governing Law in Effect.** This Intergovernmental Agreement shall be governed by and construed under the laws of the State of Colorado.
16. **Venue.** Venue for all purposes shall be deemed proper in the District Court of Larimer County, Colorado.
17. **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.
18. **Amendment.** No amendment or other modification of this Intergovernmental Agreement shall be valid unless pursuant to a written instrument signed by both parties.
19. **Assignment.** The benefits and burdens under this Intergovernmental Agreement may not be assigned by either party without the written consent of the other.

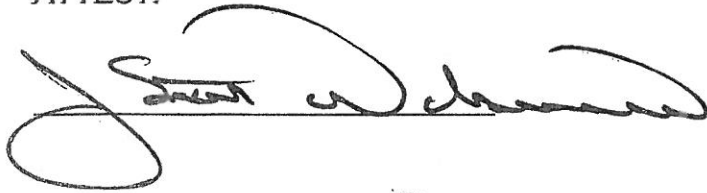
IN WITNESS WHEREOF, the Parties hereto have caused this Intergovernmental Agreement to be executed.

**ESTES PARK LOCAL MARKETING
DISTRICT**

By: _____

Chairperson

ATTEST:

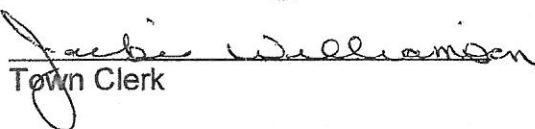


TOWN OF ESTES PARK

By: _____

Mayor

ATTEST:


Town Clerk

