

INTERGOVERNMENTAL AGREEMENT BETWEEN THE ESTES PARK LOCAL MARKETING DISTRICT AND THE TOWN OF ESTES PARK

THIS INTERGOVERNMENTAL AGREEMENT by and between the Estes Park Local Marketing District (also known as Visit Estes Park), 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, 2014.

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 in 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, 2014.
3. **LMD Employees Benefits Plan**. To the extent permitted by law and the terms of third party provider agreements, the Town shall allow LMD employees to be covered for all current Town benefits (medical, dental, vision, EAP, health club, flex plans, etc.). The LMD shall have the option to select the individual Town benefit plans in which its employees shall be covered. This selection shall be on an annual basis with the LMD providing the Town its selection of benefit plans on concurrent with the Town's open enrollment period of each year to be effective January 1 of the next year. The selection of individual benefit plans shall be subject to the written approval of the Town, which approval shall not be unreasonably withheld.

The parties agree that no retirement benefit plans for LMD employees are provided by the Town to the LMD in this Agreement.

LMD employees shall only mean employees of the LMD and not members of the LMD's governing board.

The LMD shall pay to the Town an administrative fee equal to three percent (3%) of the monthly cost of benefit coverage for the LMD employees.

In administering the benefit plans for the LMD, the Town shall pay the appropriate sums for covered LMD employees to its third party providers at the beginning of each calendar month. The Town will invoice the LMD for those payments. The LMD agrees to reimburse the Town for those payments, plus the 3% administrative fee, within thirty (30) days of receipt of the reimbursement invoice from the Town. It is specifically understood by the LMD, that in the event that the reimbursement payment and the administrative fee is not made to the Town within said thirty (30) day period, the Town shall have the right to provide the LMD with a twenty (20) day notice of its intent to terminate LMD employees from participation in the applicable benefit plans. If the LMD does not pay the reimbursement amount and fee within the twenty (20) day notice period, the Town shall have the right to immediately terminate participation of the LMD employees from all benefit plans administered by the Town for the LMD pursuant to the terms of this Agreement.

The LMD understands and agrees that the Town shall not be responsible for any human resource/personnel matters as part of its benefit administration. Neither the LMD nor its employees shall seek advice or counsel from the Town with regard to any human resource/personnel issues concerning LMD employees. The LMD specifically waives any claim against the Town and any individual employee, consultant, agent, or volunteer of the Town for any act or omission in the performance or non-performance of its benefit administration for LMD employees. In the event that any third party, including any employee, agent or volunteer of the LMD, makes any claim, demand, lawsuit, or takes any other action against the Town for an act or omission in performing its benefit administration, the LMD agrees to indemnify and hold harmless the Town, its officers, agents, volunteers and employees from and against any and all liability for any and all claims, liens, suits, demands, actions for damages, including court costs and reasonable attorney's fees, arising out of or resulting from acts or omissions of the Town in the benefit administration for LMD employees.

4. **Destination Leadership.** To facilitate effective and efficient marketing operations and destination development, which are mutually beneficial to both parties, periodic meetings of two LMD Board members, two Town Board members, the LMD's President & CEO or designee and the Town Administrator or designee shall take place. The purpose of the meetings is to open up communication channels between the LMD and the Town for the mutual goal of advancing the destination for tourism and the economic vitality of the community.

5. **Service Level Agreement.** The parties agree to meet and negotiate in good faith for the purposes of reaching an agreement regarding the minimum level of service to visitors at the Visitors Center, including without limitation such topics as staffing, hours of operation, Call Center operations, training on delivering the new Estes Park brand promise, and other topics of mutual concern to the parties.
6. **Advertising Products.** As Estes Park's official destination marketing organization the LMD has been responsible for launching and managing advertising programs for local stakeholder businesses such as VisitEstesPark.com web listings, leads, brochure rack display in the Visitor Center, etc. This includes research, new product development, promotion, sales, servicing, fulfillment, invoicing, and collections. Should advertising sale opportunities become present through the shuttle system, which is a service provided by the Town of Estes Park, the Town if it so chooses, may sell advertising to local stakeholder businesses. The Town will advise the LMD of the intent, and agrees that all advertisers must be located within the Marketing District boundaries. Any deviation to this must be approved by the LMD Board of Directors.
7. **Photography.** 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 and promotion and the LMD shall retain possession of said photographs for those purposes. However, the Town of Estes Park shall have the ability to use and retain possession of said photographs at their discretion. The LMD understands and agrees that the use of any of the photographs may be subject to a copyright, trademark or other restriction by the original owner/photographer of such photographs.
8. **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.
9. **Effective Date and Termination.**
 - a. This Intergovernmental Agreement shall take effect on January 1, 2014, 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 for an additional 180 days following the date of termination, as stated in Paragraph 3b.
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 to 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

11. **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.
12. **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.
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.

**ESTES PARK LOCAL MARKETING
DISTRICT**

By: _____
Chairperson

ATTEST:

TOWN OF ESTES PARK

By: _____
Mayor

ATTEST:

Town Clerk