

INTERGOVERNMENTAL AGREEMENT

FOR THE ESTES PARK LOCAL MARKETING DISTRICT

This Intergovernmental Agreement for the Estes Park Local Marketing District ("Agreement" is effective January 1, 2019 ("Effective Date"), between the Town of Estes Park, Colorado ("Town") and the Board of County Commissioners of Larimer County, Colorado ("County"). The Town and County may collectively be referred to in this Agreement as "Parties."

I. RECITALS

- A. The Local Marketing District Act, C.R.S. 29-25-101 *et seq.*, provides for the organization, governance, and operation of local marketing districts ("Act").
- B. Pursuant to the Act, local governments in combination may create a local marketing district by contract 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.
- C. The Town and County entered into an Intergovernmental Agreement for the formation of the Estes Park Local Marketing District ("District") dated September 12, 2017 ("Current IGA").
- D. The Estes Park Local Marketing District and the implementation of a two percent (2%) marketing and promotion tax on the purchase price paid or charged to persons for rooms or accommodations in the District to fund the services of the District was approved by the voters at a general election held on November 4, 2008.
- E. The Town and County entered into a second Intergovernmental Agreement for the governance, administration, and operation of the Estes Park Local Marketing District effective September 19, 2017 ("current IGA").
- F. The Parties seek to amend and restate the current IGA to address the governance of the District not included in the current IGA. To this end, this Agreement replaces and supersedes the current IGA as of the Effective Date hereof.

II. CONSIDERATION

Now, therefore, in consideration of the Recitals set forth above which are incorporated herein, and the covenants and conditions contained here, the Parties agree as follows.

III. TERMS AND CONDITIONS

1. **Name and Purpose.** The name of the District is the Estes Park Local Marketing District. The purpose of the District is to promote the health, safety, prosperity, security, and general welfare of the habitants and the property owners of the District and promote the continued vitality of commercial business areas within the Town and County.

2. **Boundaries of Service Area.** The Service Area is the geographical area described and/or depicted on Exhibit "A" to this Agreement.

3. **Powers.** The powers of the District include those expressly set forth in C.R.S. 29-25-111 and 112 and those powers impliedly necessary to implement and carry out the express powers, except as otherwise provided in this Agreement.

4. **Elections.**

4.1 Should the District seek or be required to submit any question to an election, such election shall be held in accordance with Colorado Constitution Article X, Section 20, the Uniform Election Code of 1992, C.R.S. 1-1-101 *et seq.*, and/or the Colorado Local

Government Election Code, C.R.S. 1-13.5 110 *et seq.*, as applicable.

4.2 The Town Clerk and the County Clerk and Recorder shall assist the District in conducting elections.

4.3 The District shall pay the costs incurred in conducting such election.

4.4 The Town Clerk shall be the designated Election Official for elections and shall be responsible for the wording of the ballot issues and certifying the ballot issues to the County Clerk and Recorder.

4.5 The County hereby delegates to the Town the authority to enter into the agreement Concerning Election Services with the County Clerk and Recorder for purposes of conducting an election as part of a coordinated General Election.

5. **Board of Directors for the District.**

5.1 Powers. The Board of Directors for the District shall have the legislative power of the District and is authorized to implement and carry out the annual operating plan approved by the Town and County.

5.2 Number. The Board of Directors shall be comprised of seven members.

5.3 Appointment. The Board of Directors shall be appointed by the County and Town as follows:

5.3.1 The Town Board shall appoint five (5) members. One or two Town appointees may be members of the Town Board. Said appointed Town Board members shall serve as Directors of the District only during their term as members of the Town Board.

5.3.2 The Board of County Commissioners shall appoint two (2) members. One County appointee may be a member of the Board of County Commissioners. Said appointed County Commissioner shall serve as a Director of the District only during his/her term as County Commissioner.

5.4 Term. A term for purposes of Board membership shall be four (4) years. Terms shall be staggered so that two (2) members are appointed each year and one (1) member is appointed in the fourth year.

5.5 Successors. Each member shall serve until his/her successor is appointed by the Town or County respectively.

5.6 Term Limits. No member may serve for more than two (2) consecutive terms. Notwithstanding the foregoing, the Town or County may waive the term limit in the event that either the Town or County in their sole discretion determines that there are no qualified applicants for a vacant Director position and an otherwise term limited Director wishes to serve another term. This section shall not apply to any Town or County Elected official serving on the Board of Directors of the District.

5.7 Residency. Each Director, with the exception of any member of the Larimer County Board of Commissioners who may be appointed to the Board, shall be a resident of the Service Area of the District for at least one (1) year prior to his/her appointment and shall continue to be a resident of the Service Area during his/her entire term.

5.8 Officers. The officers of the Board of Directors shall consist of a Chair and a Vice-Chair. Each officer shall serve for one (1) year commencing with the first meeting in January of each year. The Chair and Vice-Chair may serve for two (2) consecutive one-year terms. The Chair and Vice-Chair shall be elected by the members of the Board of Directors. The Vice-Chair shall serve as the Chair in the absence of the Chair.

5.9 Bylaws. The Board of Directors shall act in conformity with Bylaws mutually adopted, and as may be amended from time to time, by the Town and County.

5.10 Quorum. Four (4) members shall constitute a quorum of the Board of Directors. A majority of those members present at a meeting shall be necessary for the Board to act.

5.11 Attendance. Members shall attend all meetings, including special meetings. In the event any member is absent for 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 respective appointed member and designate a new member to fill the vacancy.

5.12 Vacancy. The Town or County shall fill a vacancy of one of its appointed members as soon as practical.

5.13 Meetings. The Board of Directors shall hold regular meetings once each month. The Board of Directors may hold special meetings as deemed necessary. Meetings of the Board of Directors shall be subject to the provisions of C.R.S. 24-6-401 *et seq.* (Colorado Sunshine Law) as applicable. The Board of Directors shall act by motion or resolution.

5.14 Removal. The members of the Board of Directors serve at the pleasure of the Town and County and have no property or other enforceable interest in their appointment. A majority of the collective governing members of the County and Town (i.e., six (6) members) may remove any member of the Board of Directors or the entire Board of Directors with or without cause.

6. Operating Plan

6.1 The District shall file with the Town and with the County 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 levied by the District, and such additional information as may be appropriate or required to inform the Town and County as to the activities, services, and funding of the District in the upcoming calendar year. The Operating Plan shall include a proposed budget for the next fiscal year.

6.2 The Town, County or both may require the District to supplement the Operating Plan or budget when necessary.

6.3 The Town and County shall review the Operating Plan within thirty (30) days after receipt of the Operating Plan and all requested documentation relating thereto, and shall approve, modify or disapprove the Operating Plan no later than December 5 of the year in which such documents are filed.

6.4 The services and financial arrangements of the District shall conform so far as practical to the approved Operating Plan.

6.5 The District may amend the Operating Plan from time to time with the approval of both the Town and County.

7. Duration and Dissolution of the District.

7.1 The District shall remain in effect until and unless on or before July 1 of any calendar year, either the Town or County provides written notice to the other of its intent to terminate this Agreement. In such event, the District shall automatically terminate on December 31 of the year in which such notice is given.

7.2 Notwithstanding the foregoing, neither this Agreement nor the District may be terminated, repealed or rescinded so long as the District has any outstanding financial obligations.

8. Distribution and Division of District Assets.

8.1 In the event of termination of the District pursuant to this Agreement or by order of any court having jurisdiction, all assets of the District shall be divided between the Town and County based upon the percentage of marketing and promotion tax collected from the Town and from the unincorporated area of the County in the previous calendar year to the extent feasible.

8.2 In the alternative, such assets may be sold for the best price obtainable and the proceeds divided between the Town and County based upon the percentage of marketing and promotion tax collected from the Town and from the unincorporated area of the County in the previous calendar year.

9. Notices.

9.1 All notices, demands or other documents required or desired to be given, made or sent to the Town or County under this Agreement shall be made in writing and shall be deemed effective upon mailing or personal delivery.

9.2 If mailed, said notices, demand or documents shall be mailed, by regular mail, postage prepaid addressed as follows:

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

Board of County Commissioners of Larimer County
Attn: Chair
Post Office Box 1190
Fort Collins, CO 80522

10. Amendment. This Agreement may be amended in writing at any time by mutual agreement of the Town and County.

11. Governmental Immunity. The Town and County agree that both Parties are relying on and do not waive, by any provision of this Agreement, the rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*, as may be amended from time to time, or otherwise available to the Parties or any of their officers, agents or employees.

12. Current Year Fiscal Obligations. Any financial obligations by either the Town or County or requirements for future appropriations shall constitute only currently budgeted expenditures. Any financial obligations of the Town or County under this Agreement are subject to each Party's annual right to budget and appropriate the sums necessary to provide the services set forth herein. No provision 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 such Party's money.

13. Dispute Resolution.

13.1 Either the Town or the County may request mediation of any dispute about or related to the terms and conditions of this Agreement. The request for dispute resolution shall be submitted in writing to the other party.

13.2 The Town and County shall mutually agree on a mediator. If they are unable to agree, the Town and County shall each select a mediator. The two mediators shall then select mediator to conduct the dispute resolution.

13.3 The Town and County shall participate in the 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 Section 14 of this Agreement.

14. Enforcement. The Town and County intend that this Agreement is binding upon both of them and that either of them shall be permitted to specifically enforce any provision of this Agreement in a court of competent jurisdiction.



TOWN OF ESTES PARK, COLORADO

By: _____

Attest:

John W. Williamson
Clerk to the Town Board



BOARD OF COUNTY COMMISSIONERS
OF LARIMER COUNTY, COLORADO

By: _____

Attest:

Debra J. Ray
Clerk to the County Board

Approved as to form:

County Attorney