

**INTERGOVERNMENTAL AGREEMENT
(Denver Tourism Improvement District)**

RECITALS

This INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the CITY AND COUNTY OF DENVER, a Colorado municipal corporation and home rule city (“City”) and the DENVER TOURISM IMPROVEMENT DISTRICT, a body corporate and politic and unit of local government pursuant to Denver Revised Municipal Code Section 20-401 (“TID” or “District”) (collectively, the “Parties”) as of the date set forth on the City’s signature page.

WHEREAS, creation of the District was approved by the City so that the District might provide the tourism improvements and services described in Ordinance No. 20170883 (the “Creation Ordinance”);

WHEREAS, an election was held on November 7, 2017 (the “District Election”) wherein the electors of the District voted to approve the levy of a one-percent (1%) tax on the purchase of lodging within the District’s boundaries (the “District Tax”) and authority to enter into a multiple-fiscal year financial obligation with the City;

WHEREAS, the Creation Ordinance provides that the District has the power to enter into a contractual multiple-fiscal year financial obligation with the City whereby the District pledges all revenue derived from the District Tax to fund tourism improvements and services, as defined by D.R.M.C. § 20-404(16);

WHEREAS, the Creation Ordinance provides that the District shall contract with the City for the collection, enforcement, and disbursement of tax revenues owed to the District;

WHEREAS, the District intends this Agreement to serve as the multiple-fiscal year financial obligation with the City and the contract with the City for the collection, enforcement, and disbursement of the District’s tax revenues, both referenced in the Creation Ordinance.

COVENANTS

NOW, THEREFORE, for and in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the City agree as follows:

AGREEMENT

Article 1. District Tax Revenue Pledge, Flow, and Use

- 1.1 All District Tax Revenues Pledged for Tourism. All amounts due and owing to the District pursuant to the District Tax are hereby pledged to fund tourism improvements and services as set forth in the Creation Ordinance.
- 1.2 Monthly Flow of District Tax Revenues. The City shall collect the revenues generated by the District Tax on behalf of the District pursuant to Article 2, below. The District Tax revenues will be collected in arrears. For example, District Tax revenues collected from lodging establishments within the District for the month of January 2018 will be remitted to the City in February of 2018. As such, the Parties agree that, for the purposes of the calculations, rights, and obligations under this Article 1, District Tax revenues collected by the City in a given month, regardless of when such taxes accrued, will be treated as the monies to be distributed in such month pursuant to the formula below.
- A. For the first thirty-six (36) months that the District Tax is remitted to the City, which may be non-consecutive, the District Tax revenues shall flow in the following manner:
- i. Subject to Section 1.2.A.iii hereof, each month during which the District Taxes are collected, the City shall retain the following amounts (collectively, the “City Financing Proceeds”):
 1. A one-percent (1%) collection fee from the gross District Tax revenues collected by the City (the “City Collection Fee”),
 2. In addition to the City Collection Fee, Five Hundred Thousand Dollars (\$500,000) (the “City Standard Monthly Retention”), up to a maximum of Three Million Eight Hundred Thousand Dollars (\$3,800,000) in a calendar year,
 3. If District Tax revenues collected by the City for any month are not sufficient to cover the City Collection Fee and City Standard Monthly Retention, then any additional amount of District Tax revenues necessary to make up for the prior months’ deficiencies until such deficiency is collected (the “City Deficiency Coverage”);
 - ii. Any District Tax revenues collected in a given month in excess of the City Financing Proceeds shall be available to the District for purposes consistent with the Creation Ordinance and this Agreement (“Excess Revenues”);
 - iii. In a calendar year, once the City has retained City Standard Monthly Retentions and City Deficiency Coverages totaling the lesser of:

(1) Three Million Eight Hundred Thousand Dollars (\$3,800,000), or

(2) an amount agreed upon in writing by the Manager of Finance by September 1 of that year,

all District Tax revenues collected by the City, not including the monthly City Collection Fee, shall be Excess Revenues available to the District;

- iv. The City and the District agree that Excess Revenues shall be used for tourism improvements and services on behalf of the District by Denver Metro Convention & Visitors Bureau (“VISIT DENVER”) as set forth in the Administration Agreement entered into by VISIT DENVER and the District as of September 7, 2017, as the same may be amended from time to time (“Administration Agreement”);
- v. The District requests that the City remit all Excess Revenues to which the District is entitled directly to VISIT DENVER for the benefit of the District.

B. For every month after the first thirty-six (36) months that the District Tax is collected by the City, whether or not consecutive, the District Tax revenues shall flow in the following manner:

- i. Subject to Section 1.2.B.iii, on a monthly basis the City shall retain the following amounts:
 - 1. The City Financing Proceeds,
 - 2. Ten percent (10%) of the gross District Tax revenues collected by the City in that given month (the “Capital Improvement Proceeds”).
- ii. Any District Tax revenues collected in a given month in excess of the City Financing Proceeds and Capital Improvement Proceeds shall be available to the District for purposes consistent with the Creation Ordinance and this Agreement (“Excess Revenues II”);
- iii. In a calendar year, once the City has retained City Standard Monthly Retentions and City Deficiency Coverages totaling the lesser of:

(1) Three Million Eight Hundred Thousand Dollars (\$3,800,000), or

(2) an amount agreed upon in writing by the Manager of Finance by September 1 of that year,

all District Tax revenues collected by the City, not including the monthly City Collection Fee, shall be Excess Revenues II available to the District;

- iv. The City and the District agree that Excess Revenues II shall be used for tourism improvements and services on behalf of the District by VISIT DENVER as set forth in the Administration Agreement.
- v. The District requests that the City remit all Excess Revenues II to which the District is entitled directly to VISIT DENVER for the benefit of the District.

1.3 City Use of District Tax Revenues. The City shall use the revenues generated by the District Tax and allocated to it in the following manners:

- A. *City Collection Fee.* Revenues collected by the City pursuant to the City Collection Fee shall be deposited to the general fund and may be used by the City for any lawful purpose.
- B. *City Standard Monthly Retention and City Deficiency Coverage.* Revenues collected by the City pursuant to the City Standard Monthly Retention and the City Deficiency Coverage shall be used by the City to help construct and finance tourism improvements and services, as defined by D.R.M.C. § 20-404(16). The City may accumulate these revenues in anticipation of such financing or construction.
- C. *Capital Improvement Proceeds.* Revenues collected by the City pursuant to the Capital Improvement Proceeds shall be used primarily for capital improvements, as defined by D.R.M.C. § 20-404(4), to the Colorado Convention Center and ancillary capital maintenance, as defined by D.R.M.C. § 20-404(5), of those capital improvements at the Colorado Convention Center. The City may accumulate these revenues in anticipation of such capital improvements or capital maintenance.

The exact capital improvements and capital maintenance that will be funded by Capital Improvement Proceeds shall be determined by the District in consultation with the City, provided for in District annual plans, as defined by D.R.M.C. § 20-404(1), and governed by agreements between the City and District that will contemplate, among other things, the exact funding procedures for such capital improvements and capital maintenance. The Executive Manager of Denver Arts & Venues, or successor position, must consent in writing to the particular capital improvements and capital maintenance to be funded with Capital Improvement Proceeds, which consent may not be unreasonably withheld.

1.4 District Use of District Tax Revenues.

- A. Pursuant to D.R.M.C. Chapter 20, Article XIII, including but not limited to D.R.M.C. §§ 20-404(16) and 20-405(b), and the Creation Ordinance, the District

shall use District Tax revenues for tourism improvements and services, as defined by D.R.M.C. § 20-404(16).

- B. The District shall provide, or contract to provide, convention and tourism marketing services in order to bring convention and leisure visitors to Denver for the economic benefit of the City, the community, and lodging businesses within the District.
- C. The District shall require that any contractor working on its behalf—such as VISIT DENVER with whom the District has entered into an Administration Agreement or any such successor or assignee—use District Tax proceeds only for allowable tourism improvements and services as set forth in the Administration Agreement, and consistent with the parameters of the agreement between the City and VISIT DENVER entered into as of January 1, 2014, and which may be found at City Clerk File No. 13-0866.
- D. The Parties acknowledge that the District’s initial plan, as defined by D.R.M.C. § 20-404(12) and approved by the Creation Ordinance, sets forth that VISIT DENVER (or any successor organization) will receive a portion of District Tax revenues to carry out tourism marketing and promotions services on behalf of the District as well as certain administrative services including planning, budgeting and reporting tasks related to such marketing and promotions activities. The Parties agree that such services rendered by VISIT DENVER to the District are permitted to be and will be paid solely out of District Tax revenues flowing to VISIT DENVER under Section 1.2 of this Article 1.

Article 2. District Tax Collection, Enforcement, and Remittance

- 2.1 District Tax Collection. The City shall collect and enforce the District Tax. The District grants the City all authority necessary to collect, enforce, manage, and remit all District Tax revenues due and owing the District as set forth in Sec. 20-416(b) D.R.M.C. and Section 12 of the Creation Ordinance. In particular, the District grants the City the authority to levy, collect, and enforce the District Tax in the same manner and fashion as the City lodger’s tax, provided for in D.R.M.C. Chapter 53, Article IV, including but not limited to, the assessment of penalties, interest, and liens for late or non-payment of the District Tax.
- 2.2 Costs of Collection. All routine costs of collection of the City shall be included in the City Collection Fee. In the event that non-routine collection matters arise on behalf of the District which are beyond the normal monthly collection activities of the City, the District shall reimburse the City from Excess Revenues or Excess Revenues II for all reasonable costs incurred by the City for such non-routine collection matters. Such costs may include, but will not be limited to, items such as costs of distraint, hearing officer costs, court costs, attorneys’ fees, and audit costs.

Article 3. Miscellaneous

- 3.1 Agreement as Complete Integration and Amendments. This Agreement is intended as the complete integration of all understandings between the Parties concerning the subject matter hereof. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory, modification, or other agreement properly executed by the Parties.
- 3.2 Mutual Cooperation. Upon completion and delivery of this Agreement, the District and the City agree that they will mutually cooperate and perform all acts necessary or appropriate to discharge all obligations contained in or contemplated by this Agreement.
- 3.3 No Third-Party Beneficiaries. The District and the City intend that this Agreement shall create no third-party beneficiary interest. The District and the City are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation constituting a different interest, and, in any event, expressly disclaim any such acts or actions.
- 3.4 No Authority to Bind City or District to Contracts. The District has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be made by the City, as required by Charter and ordinance. The City has no authority to bind the District on any contractual matters. Final approval of all contractual matters that obligate the District must be by the District as required by applicable law.
- 3.5 Annual Appropriations. All obligations of the City under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City. Failure by the City Council to appropriate funds shall not constitute a default hereunder.
- 3.6 Default Remedies. If either party to this Agreement defaults on its obligations expressly provided herein, the non-defaulting party may only seek, to the extent permitted by law, specific performance. The District and the City specifically waive the right to recover damages and attorney's fees against each other.
- 3.7 Right to Inspect Books. In addition to all rights the City has under Colorado Revised Statutes, Section 24-72-201, *et seq*, the District agrees that the City, the City's Auditor and any authorized representative shall have the right at all reasonable times and after reasonable notice to examine all books and records with respect to this Agreement. The City's right to inspect shall survive for years after the term of this Agreement.
- 3.8 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the District and the City and their respective successors and permitted assigns. This Agreement will not be binding until executed by all the Parties.

- 3.9 Severability. In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof; provided however, that if either party determines, in its sole discretion, that such invalid or unenforceable provision was material, the Parties shall be obligated to use good faith efforts to negotiate and agree upon a replacement provision that is valid and enforceable.
- 3.10 Applicable Law. This Agreement shall be governed by and construed in accordance with applicable federal law, the laws of the State of Colorado, the City Charter, the Denver Revised Municipal Code, ordinances and rules and regulations of the City.
- 3.11 Captions. The captions herein are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.
- 3.12 Modification. This Agreement may be modified, amended, changed or terminated, in whole or in part, without City Council approval unless City Council approval is required by City Charter. Any modification, amendment, change, or termination shall be in writing executed by the District and the City's Manager of Finance.
- 3.13 Waiver. The waiver of a breach of any of the provisions of this Agreement by any party shall not constitute a continuing waiver or a waiver of any subsequent breach by any other party of the same or another provision of this Agreement.
- 3.14 Venue. Venue shall be exclusive to the District Court in and for the City and County of Denver.
- 3.15 Notices. Except as otherwise expressly provided herein, all notices, certificates or other communications hereunder shall be deemed given when personally delivered or upon three business days following mailing by registered or certified mail, postage prepaid, addressed as follows:

If to the City: Mayor
City and County of Denver
1437 Bannock Street, Room 350
Denver, CO 80202

With copies to: Chief Financial Officer
City and County of Denver
201 W. Colfax Ave., Dept. 1010
Denver, CO 80202

City Attorney
City and County of Denver
201 W. Colfax Ave, Dept. 1207
Denver, CO 80202

Attn: Municipal Operations

If to the District: Denver Tourism Improvement District
1555 California Street, Suite 300
Denver, CO 80202
Phone: (303) 892-1112
Attn: President and CEO

With copies to: VP of Finance and Administration
1555 California Street, Suite 300
Denver, CO 80202
Phone: (303) 892-1112
Attn: President and CEO

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Phone: (303) 223-1100
Attn: Abby Kirkbride, Esq.

Spencer Fane
1700 Lincoln St., Suite 2000
Denver, CO 80203
Phone: (303) 839-3800
Attn: Rick Kron, Esq.

or at other such addresses as the Parties may hereafter or from time to time designate by written notice to the other party given in accordance with this Section.

- 3.16 Government Authority. The District and the City shall comply with any and all valid state, federal or local laws or regulations applicable to this Agreement, and any and all valid orders, regulations, or licenses issued pursuant to any federal, state, or local law or regulation applicable to this Agreement.
- 3.17 Assignment. Neither the District and the City shall assign any of their rights or duties, in whole or in part, under this Agreement without the prior written consent of the other party.
- 3.18 Responsibility. Each party shall be responsible for any and all suits, demands, costs, or actions proximately resulting from its own individual acts or omissions. Each party shall be liable for the errors and omissions of its agents, servants and employees, to the extent provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S. The Parties understand and agree that each is relying upon, and has not waived, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) and all other rights, immunities and protection by the Colorado Governmental Immunity Act. These rights and obligations shall survive termination of this Agreement.

- 3.19 Public Officials. No elected official, director, officer, agent, or employee of the District or the City, nor any director, officer, employee or personal representative of the District or the City shall be charged personally or held contractually liable by or to the other party under any term or provision of Agreement or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Agreement. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Parties may have under the Colorado Governmental Immunity Act, §§ 24-10-101, C.R.S., et. seq., or to any other defenses, immunities, or limitations of liability available by law.
- 3.20 Conflicts. The District represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such officer or employee or as a result of an elected or appointed position with the District such officer or employee holds. The District further agrees not to hire or contract for services any official, officer, or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9. and 1.2.12.
- 3.21 Force Majeure. No party shall be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reasons beyond the control of such party, or by reasons of any of the following occurrences; strikes, labor disputes, riots, civil disorder or commotion, war, floods, earthquakes, acts of God, explosion or similar occurrences, provided that such party shall exercise its reasonable efforts to provide the best possible alternative performance and to prevent the foregoing occurrences from obstructing full performance.
- 3.22 Nondiscrimination. In connection with the performance of this Agreement, the District and the City agree not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and the District and the City further agree to insert the foregoing provision in all subcontracts.
- 3.23 Reasonableness of Consent or Approval. Whenever under this Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of any party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.
- 3.24 Termination. The term of this Agreement shall commence on the date of execution by the City and shall remain in effect for the duration of the collection of the District Tax, unless this Agreement is terminated earlier by the giving of thirty (30) days written notice to the other party, by mutual written consent of the Parties, or by court order. Notwithstanding the foregoing, this Agreement shall not be terminated so long as City financial obligations supported by this Agreement remain outstanding. If collection of the

District Tax is suspended for a period of time, such suspension shall not terminate this Agreement. Upon resumption of collection of the District Tax, this Agreement shall be followed and be in full force and effect.

- 3.25 Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document. Facsimile signatures shall be accepted as originals. The Parties consent to the use of electronic signatures by each of the Parties. The Agreement and any other documents requiring a signature may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

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Contract Control Number: FINAN-201738282-00

Contractor Name: Denver Tourism Improvement District

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of
Denver

By _____

By _____

By _____



Contract Control Number: FINAN-201738282-00

Contractor Name: Denver Tourism Improvement District

By: Bill Nivivassi

Name: Bill Nivivassi
(please print)

Title: President
(please print)

ATTEST: [if required]

By: Walter Isenberg

Name: Walter Isenberg
(please print)

Title: Secretary / Treasurer
(please print)

