

## INTERGOVERNMENTAL AGREEMENT FOR THE MANITOU INCLINE

This Intergovernmental Agreement ("IGA"), dated this 26<sup>TH</sup> day of March 2012 (the "Effective Date"), is made by and between the City of Colorado Springs, a Colorado municipal corporation and home rule city ("Colorado Springs") and the City of Manitou Springs, a Colorado municipal corporation and home rule city

**WHEREAS**, despite being substantially privately owned with public access prohibited, the Incline is one of the most popular hikes in the region attracting an estimated minimum 350,000 user trips annually;

**WHEREAS**, on February 4, 2011, after extensive study of the Incline, the Parties approved a Manitou Incline Site Development and Management Plan, a copy of which is attached hereto as **Exhibit A** (the "Management Plan"), which sets forth a framework for the legal opening, management and public use of the Incline;

**WHEREAS**, other agreements and permits are necessary for effective public use of the Incline, including: (1) a license agreement between Colorado Springs and the operator of the COG Railway (the "COG") for use of the Incline, planned trailhead access and parking (to be executed); (2) a license agreement between Manitou Springs and the COG providing the COG additional parking spaces in exchange for the planned trailhead access and parking provided by the COG (to be executed); (3) a license agreement between Colorado Springs Utilities and Manitou Springs for trailhead parking and restroom facilities at the Barr Trail trailhead (the current access point for the Incline) (executed May 20, 2010); (4) a special use permit from the United States Forest Service (to be approved); and (5) a conditional use permit from the City of Manitou Springs (approved on March 29, 2011) (the "Conditional Use Permit") (collectively, the "Related Agreements and Permits"); (6) an Executive Agreement between Colorado Springs and Colorado Springs Utilities for the use of the Incline (executed August 29, 2011); and

**WHEREAS**, the purpose of this IGA is to allocate maintenance, management, and operational responsibilities between Colorado Springs and Manitou Springs for the Incline.

**NOW, THEREFORE**, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### SECTION I – TERM

This IGA shall commence on the Effective Date and remain in effect in perpetuity, unless sooner terminated as permitted herein.

## SECTION II – PARTY OBLIGATIONS

A. Acknowledgment. THE PARTIES ACKNOWLEDGE THAT MANY OF THE DUTIES AND OBLIGATIONS SET FORTH HEREIN ARE DEPENDENT UPON FACTORS NOT WHOLLY IN CONTROL OF EITHER PARTY, AND THAT ASCERTAINING WHETHER MANY OF THE OBLIGATIONS LISTED HEREIN HAVE BEEN COMPLIED WITH BY THE PARTIES MAY NOT BE POSSIBLE. CONSEQUENTLY, THE PARTIES AGREE TO USE REASONABLE EFFORTS TO CARRY OUT THEIR RESPECTIVE DUTIES AND OBLIGATIONS WITH THE UNDERSTANDING THAT THIS IGA IS TERMINABLE AT THE WILL OF EITHER PARTY AS SET FORTH HEREIN, AND WITH THE UNDERSTANDING THAT NEITHER PARTY IS OBLIGATED TO APPROPRIATE OR EXPEND ANY FUNDS TO MEET ITS OBLIGATIONS UNDER THIS IGA; AND WITH THE FURTHER UNDERSTANDING THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR MONETARY OR INJUNCTIVE RELIEF AND THE SOLE REMEDY FOR A BREACH OF THIS IGA SHALL BE TERMINATION. THIS SECTION II.A SHALL SUPERSEDE ANY CONFLICTING TERMS SET FORTH ELSEWHERE WITH THIS IGA, OR IN ANY OF THE REFERENCED EXHIBITS.

B. Obligations. Each Party shall provide the services set forth in the Management Plan, which are substantially as follows:

1. **Mutual Obligations**

a. This IGA is intended to inure to the benefit of the Parties and constitutes a good faith working relationship between the Parties. To that end, the Parties agree to coordinate all activities related to the management and operation of the Incline. Neither Party shall take an action that impacts the other Party without first consulting with the other Party. In the event of a dispute, the Parties agree to make good faith efforts to resolve the dispute as outlined in Paragraph IV(E) below.

b. To facilitate communication between the Parties regarding the management and operation of the Incline, the Parties agree to establish a Review Committee that will meet quarterly to discuss matters related to the management and operation of the Incline. The Parties agree to provide a written report of their activities summarizing the work completed during the last quarter such as volunteer work days, funds expended and staff time. Through the Review Committee, the Parties will work proactively to address issues as they arise and establish policies to protect the quality of life for residents, business owners and visitors in the City of Manitou Springs, protect the safety of Incline users, and protect the health of the natural environment.

## 2. Obligations of Colorado Springs

- a. General management oversight including:
  - i. Ongoing coordination with Manitou Springs;
  - ii. Special Use Permit application and annual coordination with the US Forest Service;
  - iii. Enter into and implement legal agreement with the COG for trail-head parking and access;
  - iv. Enter into and implement legal agreement with Colorado Springs Utilities; and
  - v. Apply for grants and funding in partnership with Manitou Springs.
- b. Coordinate with persons and organizations to establish a volunteer organization dedicated to supporting the Incline as follows:
  - i. Fundraising, volunteering, marketing, membership, and public outreach;
  - ii. Creation of a website for communication with the public;
  - iii. Operating and facilitating fundraising events to generate dollars that can be used as match for various grants or used for maintenance of the trail;
  - iv. Establishing incentives for Incline users to become financially invested in the Incline; and
  - v. Create information about parking to inform Incline users on available lots around Manitou Springs.
- c. Coordinate maintenance needs through volunteer projects at the Incline and Barr Trail.
- d. Coordinate volunteer Incline specific crew leaders training.
- e. Pay costs associated with providing staff time to oversee the formation of the group and ongoing success of the group.
- f. Coordinate ongoing public input with the volunteer organization, Manitou Springs, Manitou Springs Police Department and first responders.
- g. Manage and execute consultant work as necessary to carry out the Management Plan.

- h. Manage and execute construction projects.
- i. Design, create and install signage including: Safety, Rules of Use and Wayfinding at planned new trailhead (as anticipated in license agreement between Colorado Springs and the COG) (the "Future Trailhead") and Barr Parking area. Parking lot signage and any street signage should be consistent with the Comprehensive Signage Plan adopted by Manitou Springs.
- j. Operations oversight.

  - i. Development of the Future Trailhead, including:

    - 1. Design costs for any required engineering work;
    - 2. Costs associated with the development of the trailhead, to include but not limited to: the restroom, fencing, bike racks, signage, pavement stripping;
    - 3. Costs associated with providing staff time for a landscape architect and construction manager to oversee the development of the plans;
    - 4. Coordination with the Regional Building Department for necessary building permits for the restroom; and
    - 5. Ongoing utility costs for the operation of the permanent restroom.
  - ii. Incline corridor annual review and ongoing maintenance.

    - 1. Annual evaluations of the Incline to include without limitation:

      - a. Determine locations where erosion control measures are failing;
      - b. Ties that are being undercut;
      - c. Location where vegetation needs to be pruned;
      - d. Formation of unsustainable or undesirable trails; and
      - e. Evaluation of trail conditions around Colorado Springs Utilities pipe line to insure undercutting or erosion that exposes the pipe is not taking place.

2. Ongoing maintenance of the Incline to include, without limitation:

- a. Costs associated with providing materials for necessary maintenance requirements;
- b. Costs associated with providing staffing requirements for ongoing maintenance;
- c. Replacement of failing ties;
- d. Repair or replacement of drainage swales and/or improvements;
- e. Pruning of existing vegetation;
- f. Closures of unsustainable or undesirable trails;
- g. Installation of fencing if undesirable trails continue to be an issue; and
- h. Replacement or cleaning of signage at trailhead and/or along Incline.

iii. Coordinate and execute US Forest Service Special Use Permit Operational Plan, to be completed on an annual basis.

iv. Colorado Springs will provide and maintain temporary port-a-lets at base of the Incline as necessary and until permanent restroom facilities are constructed.

k. Colorado Springs is a self-insured governmental entity and will be the primary insurance carrier for the management, maintenance and operation of the Incline through its self-insurance policy.

**3. Obligations of Manitou Springs**

- a. Ongoing coordination with Colorado Springs.
- b. Apply for grants and funding in partnership with Colorado Springs.
- c. Execute and implement license agreement with COG for on-street public parking spaces in exchange for trailhead parking and access from COG.
- d. Implement parking recommendations set forth in Management Plan to the extent such recommendations can be reasonably accomplished within Manitou

Springs' current or future parking plans and to the extent the required funds are budgeted and appropriated.

e. Utilize parking fees collected at the Barr Trail Parking lot as allowed by the May 20, 2010 Barr Trail Parking Area license agreement.

f. Maintain Incline Trailhead, including regular trash removal and cleaning of planned permanent restroom facility. Maintenance and repair of capital improvements (including restrooms) at the Incline Trailhead shall be responsibility of Colorado Springs.

C. Official Opening Criteria – the parties agree that the Incline will not officially open for public recreational use until the thirteen actions items defined in the Management Plan, Section V, Page 11, are substantially completed. Decision to open the Incline for said recreational use will be mutually decided by the Parties and announced in a joint press release at a date and time of their choosing.

D. Ownership of Personal Property. A Party shall own all equipment, materials, and personal property that Party purchases, provided that if such property is intended to be permanently incorporated into improvements to the Incline (such as new steps, railroad ties, or trail material), the property shall be considered a fixture to the real property and owned by the owner of the real property, unless ownership rights are otherwise set forth in a separate agreement.

E. Order of Precedence. To the extent there is a conflict regarding the specific obligations of the Parties between the Management Plan and this IGA, the Management Plan shall be controlling.

F. Revenues and Monetization. As described in the Management Plan approved by both Parties, the legal opening of the Incline will be largely funded through voluntary grants and donations. Funds may also be allocated from municipal sources including but not limited to the City of Colorado Springs TOPS Program, Conservation Trust Funds, and parking fees from the Barr Trail Parking Lot.

The Parties agree to research and evaluate opportunities for monetizing the Incline to the mutual benefit of both Parties to include without limitation grants, donations, user fees, sponsorship fees, event fees, parking fees, concessionaire agreements, and to address the maintenance needs for the Incline and Barr Trails, parking facilities and other related infrastructure. Excess revenues may be equally split between the Parties with no restrictions on their use. Any recommended revenue sharing agreement shall be addressed in a separate intergovernmental agreement.

G. Emergency Response. The Parties shall cooperate in coordinating responses to emergencies in Manitou Springs in a manner that best serves the interest of the health, safety and

welfare of the public. To this end, the Parties shall maintain an Intergovernmental Agreement for Fire Mutual Aid between the Cities of Colorado Springs and Manitou Springs.

### **SECTION III – RELATED AGREEMENTS AND PERMITS**

A. The Parties acknowledge that the obligations set forth herein are conditional upon the Related Agreements and Permits be executed (or issued, as appropriate), and remaining in full force and effect. If any of the Related Agreements and Permits terminates, either Party may terminate this Agreement for cause as set forth herein.

B. The Parties agree the Conditional Use Permit issued to Colorado Springs by Manitou Springs was conditioned upon execution and continued effectiveness of this IGA. If this IGA is terminated, the Parties agree the Conditional Use Permit may be revoked at the will of Manitou Springs.

### **SECTION IV – GENERAL TERMS AND CONDITIONS**

A. Assignment. Neither Colorado Springs nor Manitou Springs shall assign or otherwise transfer this IGA or any right or obligation hereunder without the prior written consent of the other Party.

B. Governing Law and Venue. This IGA is subject to and shall be interpreted under the laws of the State of Colorado. Court venue and jurisdiction shall exclusively be in the El Paso County District Court for the Fourth Judicial District of Colorado.

C. Appropriation and availability of funds. In accord with the Colorado Constitution, Article X, Section 20, and the City Charters of Colorado Springs and Manitou Springs, performance of the Parties' obligations under this IGA is expressly subject to the annual appropriation of funds by the City Councils of both Colorado Springs and Manitou Springs. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the Colorado Springs's or Manitou Springs's obligations under this IGA, or appropriated funds may not be expended due to Constitutional or City Charter spending limitations, then Colorado Springs or Manitou Springs may terminate this IGA without compensation to the other Party

D. Intellectual Property Rights. All intellectual property rights currently owned by either Party shall remain the property of their current owner. Any intellectual property developed in the course of this IGA shall be owned by the party paying for or ordering its development.

E. Good Faith Dispute Resolution. In the event of a dispute under this Agreement (a "Dispute"), the Party alleging the Dispute shall provide written notice giving particulars of the Dispute to the other party (the "Notice of Dispute"). The Parties each agree to appoint a representative and to cause their respective representatives to meet as soon as possible in an effort to resolve the Dispute. The Parties shall attempt, in good faith, to resolve the Dispute in no more

than thirty (30) Business Days from the date of the Notice of Dispute. If the Parties fail to resolve the dispute, either Party may initiate termination of the Agreement as outlined in Paragraph IV(F) below.

F. Breach & Termination. Either Party may terminate this IGA for cause (which shall be as specifically set forth herein or for a material breach of any term of this IGA) upon thirty days (30) prior written notice to the other Party without compensation. Either Party may terminate this IGA for convenience upon one hundred eighty (180) days prior written notice to the other Party without compensation. No waiver of default by the Parties of any of the terms, covenants, and conditions hereof to be performed, kept, and observed shall be construed, or shall operate, as a waiver of any subsequent default of all of the terms, covenants, or conditions herein contained to be performed, kept, and observed.

G. Sole Remedy. The sole remedy for a breach of this IGA shall be termination of this IGA. Neither party shall be liable to the other for any monetary or injunctive relief.

H. Force Majeure. In the event of either Party being rendered unable wholly, or in part, by force majeure to carry out its obligations under this IGA, other than its obligations to make payments of money due hereunder, then on such Party's giving notice and full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied on, then the obligation of the Party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, as far as possible, be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, and floods.

I. Headings. The headings of the several articles and sections of this IGA are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this IGA and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

J. Integration. This IGA is a completely integrated agreement and contains the entire agreement between the Parties. Any prior written or oral agreements or representations regarding this IGA shall be of no effect and shall not be binding on Manitou Springs or Colorado Springs. Further, Manitou Springs and Colorado Springs acknowledge and agree that this is a negotiated text agreement, and that as such no term shall be construed against Colorado Springs as the author thereof.

K. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person or entity on such IGA. It



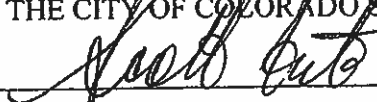
is the express intention of the Parties hereto that any person or entity, other than the Parties to this IGA, receiving services or benefits under this IGA shall be deemed to be incidental beneficiaries only.

L. Compensation. Except as otherwise stated in this IGA, neither party to this IGA shall be required to pay any compensation to the other Party or the other Party's personnel for any services rendered hereunder. Nothing in this IGA shall be construed to place the personnel of any Party under the control or employment of another Party. Each Party remains responsible for all pay, entitlement, employment decisions, and worker's compensation liabilities, for its own personnel. Nothing in this IGA is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does any Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.

M. Benefit of the Parties. This IGA is intended to inure to the benefit of the Parties and constitutes a good faith working relationship between the Parties. Any delay of approvals from other governmental or private entities that are necessary to the performance of this IGA shall not be construed against the Party required to receive such approvals and shall not be deemed as breaches of the IGA as long as the Party is acting in good faith and with reasonable efforts to attain such approvals.


N. Council Approval. This IGA has been approved by the Parties in accord with Section 29-1-203, C.R.S. as evidenced by the Colorado Springs City Council Resolution attached hereto as **Exhibit B** and the Manitou Springs City Council Resolution attached hereto as **Exhibit C**, which Resolutions authorize the signatures below.

FOR THE CITY OF COLORADO SPRINGS:

By:  this 26<sup>th</sup> day of March, 2012


Scott Hente  
President of City Council

FOR THE CITY OF MANITOU SPRINGS:

By:  this 3<sup>rd</sup> day of April, 2012

Marc A. Snyder  
Mayor

**APPROVED AS TO FORM**

  
**MUNICIPAL ATTORNEY  
CITY OF COLORADO SPRINGS**

