

**SERVICE CONTRACT BETWEEN THE TOWN OF CASTLE ROCK
AND THE DOWNTOWN MERCHANTS ASSOCIATION**

DATE: _____, 2020.

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

DOWNTOWN MERCHANTS ASSOCIATION, 18 S. Wilcox, #202, Castle Rock, CO 80104 (“DMA”).

RECITALS:

A. The Town and the DMA agree to the terms and conditions by which Town will provide funding for designated functions of the DMA; and

B. The DMA will utilize the funding provided by Town to operate and provide the services described below:

- 1) Starlight Summer Movies (up to 2)
- 2) Car Show and Car Show Street Party
- 3) Activities in the Park (up to 4 events)
- 4) Oktoberfest and Fangtastic Festival
- 5) Street Party & Concert Series (up to 4 events – including “Boots & Brews”)
- 6) Staffing and Administration

TERMS:

Section 1. Scope of Services. The DMA shall provide the services as defined in Recitals of this Service Contract. The Town’s contractual obligation under this Service Contract shall not exceed \$75,000. Town shall pay the in 2 installments; \$37,500 (50%) on or before January 31, 2021, and \$37,500 (50%) on or before July 31, 2021.

The Town Manager shall be notified in advance movies proposed to be shown as Starlight Summer Movies. In the event the DMA selects a movie that is not rated G or PG, the Town Manager reserves the right to decline to financially participate in the support of any movie the Town may find inappropriate for Town funding as determined by the Town Manager.

Section 2. Term. The term of this Service Contract shall be from January 1, 2021 to December 31, 2021.

Section 3. Assignment. This Service Contract shall not be assigned by the DMA without the written consent of the Town.

Section 4. Notice. Any notice required or permitted by this Service Contract shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Service Contract, or at such other address

as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 5. Reporting. The DMA shall submit in writing to the Town Manager, a report on its activities no later than July 31, and shall also submit a written annual report for 2021 no later than January 31, 2022. Such reports shall include, but not be limited to, financial reporting and information on Merchant Association achievements of 2021 performance objectives as outlined in their proposal attached as *Exhibit 1*.

Section 6. Prohibition Against Employing Illegal Aliens. DMA shall not knowingly employ or contract with an illegal alien to perform work under this contract. DMA shall not enter into a contract with a subcontractor that fails to certify to the DMA that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

DMA has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively. DMA is prohibited from using the E-verify program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

If DMA obtains actual knowledge that a subcontractor performing work under this Contract for services knowingly employs or contracts with an illegal alien, DMA shall:

A. Notify the subcontractor and the Town within three days that the DMA has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor if within three days of receiving notice required pursuant to this paragraph the subcontractor does not stop employee or contracting with the illegal alien; except that the DMA shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

DMA shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. §8-17.5-102(5).

If DMA violates a provision of this contract required pursuant to C.R.S. §8-17.5-102, Town may terminate the contract for breach of contract. If the contract is so terminated, the DMA shall be liable for actual and consequential damages to the Town.

Section 7. Insurance. DMA agrees to procure and maintain, at its own cost, the following policy or policies of insurance. DMA shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. DMA shall procure and maintain, and shall cause each subcontractor of the DMA in DMA's own policy the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

B. The policies required above, except Workers' Compensation insurance and Employers' Liability insurance shall be endorsed to include the Town, its officers and employees, as an additional insured. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by DMA. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The DMA shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by DMA's insurance agent as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of DMA to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by DMA to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to DMA from the Town.

E. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

Section 8. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Service Contract.

Section 9. Entire Service Contract. This Service Contract represents the entire Service Contract between the parties and there are no oral or collateral agreements or understandings. This Service Contract may be amended only by an instrument in writing signed by the parties. If any other provision of this Service Contract is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Service Contract shall continue in full force and effect.

Section 10. Waiver. A waiver by any party to this Service Contract of the breach of any term or provision of this Service Contract shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 11. Governing Law. This Service Contract shall be governed by the laws of the State of Colorado.

Section 12. Indemnification. DMA expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of the DMA or any of their employees or agents in performing work pursuant to this Service Contract. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to DMA.

Section 13. Worker's Compensation. The Merchants Association shall at its own expense keep in full force and effect during the term of this Service Contract Statutory Worker's Compensation Insurance.

Section 14. Independent Contractor. The DMA and Town hereby represent that the DMA is an independent contractor for all purposes hereunder. As such, the DMA is not covered by any worker's compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. The DMA shall not create any indebtedness on behalf of the Town.

Section 15. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Service Contract, and all rights of action relating to such enforcement, shall be strictly reserved to Town and DMA, and nothing contained in this Service Contract shall give or allow any such claim or right of action by any other third party on such Service Contract. It is the express intention of the parties that any person other than Town or DMA receiving services or benefits under this Service Contract shall be deemed to be an incidental beneficiary only.

Section 16. Default and Remedies. In the event either party should default in performance of its obligations under this Service Contract, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

David L. Corliss, Town Manager

DOWNTOWN MERCHANTS ASSOCIATION:

By: _____

Its: _____