

## **AGREEMENT**

THIS AGREEMENT (“Agreement”) is made this fifteenth day of May, 2008, by and between the Billings Chamber of Commerce/Convention & Visitors Bureau a 501 c (6) non profit corporation, with its principal place of business at 815 South 27<sup>th</sup> Street, Billings, MT 59101 (“Chamber/CVB”), and Billings Tourism Business Improvement District, a 501 c (6) nonprofit Montana corporation, with its principal place of business at 815 South 27<sup>th</sup> Street, Billings, MT 59101 (“TBID”) (Chamber/CVB and TBID are collectively referred to as the “Parties” and individually as a “Party”).

WHEREAS, on August 27, 2007 the City of Billings, by Resolution No. 07-18593, created a Tourism Business Improvement District for a 10 year duration, effective October 1, 2007.

WHEREAS, the mission of the TBID is to promote and market Billings, Montana and to promote tourism, conventions, trade shows, and generate room nights for lodging facilities in Billings by effectively marketing our region as a preferred travel destination.

WHEREAS, the mission of the Chamber/CVB is to develop a strong business climate and vibrant economy by serving the community in a leadership role thereby enhancing the quality of life.

WHEREAS, the Chamber/CVB and TBID, while separate, distinct and independent entities, have common goals and interests in the promotion, marketing and selling of visitor overnights and such goals and interests are in furtherance of the tax-exempt purposes of both Parties.

WHEREAS, the State of Montana has mandated that the director of a tourism business improvement district must be the executive director of an existing community convention and visitors bureau if one exists, and the Chamber/CVB has been such designated entity as appointed by the Billings City Council since 1987.

WHEREAS, given their common goals and interests, and their mutual desire to maximize opportunities available to them and to minimize administrative expense, the Parties wish to enter into this Agreement, by which the Chamber/CVB will provide TBID with certain staffing, office space, office equipment, office furniture, office supplies, office services, and other administrative support, and by which the Chamber/CVB may license, and TBID may accept, certain intellectual property.

NOW THEREFORE, in consideration of the premises set forth above and the promises set forth below, the sufficiency and receipt of which are hereby acknowledged, the Parties hereby agree as follows:

## I. Term and Termination

A. Term. This Agreement shall be effective as of May 15, 2008 and shall remain in full force and effect until September 30, 2017, or so long as the tourism business improvement district created by the City of Billings pursuant to Resolution No. 07-18593 is in effect, unless terminated earlier pursuant to this Agreement.

B. Termination Without Cause. Either Party may terminate this Agreement, without cause, by giving written notice to the other Party stating when, but not less than ninety (90) days thereafter, such termination shall be effective.

C. Termination for Cause. Either Party may terminate this Agreement for cause, if either Party notifies the other Party of a material breach of any provision of the Agreement. The breaching party shall have thirty (30) days following notice of the breach to cure the breach. The notice shall specify the alleged breach and the date on which termination will be effective unless such breach is cured to the satisfaction of the non-breaching party within the time allowed.

### D. Termination for Other Reason.

1. Either Party may terminate this Agreement upon thirty (30) days prior notice to the other if at any time:

- a. The City of Billings does not approve an annual work plan or budget for the tourism business improvement district that permits continuation of this Agreement as determined in the reasonable discretion of TBID.
- b. Either Party determines that its continued relationship with the other Party will threaten any relevant tax exemption that either Party now possesses or shall possess in the future.

2. This Agreement shall terminate automatically upon termination of the tourism business improvement district created by the City of Billings pursuant to Resolution No. 07-18593.

3. This Agreement may be terminated at any time by mutual written agreement of the Parties.

## II. Board Responsibilities and Relationship

The Board of Directors of each Party shall retain all governing authority of that respective Party placed in it by law and its bylaws. The Board of Directors of each Party shall represent that Party in matters relating to this Agreement and its interpretation. Each Party shall appoint a voting member from its Board of Directors to serve in an ex-officio capacity on the other Party's Board to provide regular reports and communications.

### III. Services

During the term of this Agreement, TBID engages Chamber/CVB to provide the services and functions described in this Agreement, and Chamber/CVB agrees to provide such services and functions, under the terms and conditions set forth herein. The services and functions are as follows:

#### A. Office Space, Furniture, Supplies, and Services

1. **Office Space.** Chamber/CVB shall provide TBID, at no cost to TBID, with the use of office space within the Chamber/CVB's offices currently located at 815 South 27<sup>th</sup> Street in Billings, Montana. Chamber/CVB shall have sole discretion to determine the location and amount of such office space in its premises, and reserves the right to modify or eliminate such office space on reasonable notice to TBID.

2. **Furniture, Fixtures and Equipment.** Chamber/CVB shall provide TBID, at no cost to TBID, with the use of such office equipment, office furniture, office supplies, office services, and other administrative support as may be required by TBID from time to time. Chamber/CVB shall have sole discretion to determine the office equipment, furniture, supplies, services and administrative support to be provided, and reserves the right to modify or eliminate such items on reasonable notice to TBID.

3. **Payment for Specific Items.** The financial value of such existing office space, office equipment, office furniture, office supplies, office services, and other administrative support shall be treated by the Chamber/CVB and TBID as an in-kind donation from the Chamber/CVB to TBID. If the Parties agree that specific additional office equipment, furniture, supplies or services are needed solely for the use of TBID, the cost of the same will be borne by TBID, and title to any such additional property shall be transferred to TBID. If the Parties determine that specific additional office equipment, furniture, supplies or services are needed for the mutual shared use of the Parties, the Parties shall determine a reasonable basis to share the cost and allocate ownership thereof by mutual agreement.

#### B. Professional Services and Staffing

1. **President/CEO.** The President/CEO of Chamber/CVB shall act as the President/CEO of the TBID, without charge to TBID. The President/CEO shall report to the TBID Board of Trustees and shall serve as the "Director" of the TBID funds as required by state statute (Montana Code Annotated-2007; 7-12-1121). The President/CEO shall have supervisory authority and responsibility for all staff of the Chamber/CVB, and shall have sole discretion to hire, fire and evaluate and assign duties to employees--The President/CEO will be evaluated by the Chamber/CVB Board. One member from the TBID Board may participate and have input on the President/CEO evaluation.

2. **Employee Services.** Chamber/CVB shall directly employ on site employees who shall provide full-time services to TBID. These employees shall report to the Chamber/CVB President/CEO. TBID shall reimburse Chamber/CVB for all costs and expenses related to recruiting, hiring and employing the employees, including all costs and expenses related to salary, benefits and other compensation as may be adjusted from time to time. These employees shall be subject to the employment policies of Chamber/CVB and shall be subject to its oversight and supervision. Chamber/CVB shall have authority to hire, discipline and discharge the employees.

3. Chamber/CVB Existing Employee Support. Chamber/CVB will provide certain staff time to TBID as an in-kind donation for certain activities as directed by the President/CEO of the Chamber/CVB, including government affairs, bookkeeping, event planning, and reception related activities. Chamber/CVB shall have sole discretion to determine the staff time to be provided to TBID, and reserves the right to modify or eliminate such staff time and support on reasonable notice to TBID.

Upon agreement of the Parties, existing Chamber/CVB staff salary and related benefits may be reimbursed by TBID at an agreed upon percentage, if their primary role is visitor recruitment.

4. Financial Administration. Chamber/CVB shall establish and administer accounting procedures, systems and controls, in accordance with generally accepted accounting principles, in order to develop, prepare and safekeep the financial records and books of account for the business and financial affairs of TBID. Chamber/CVB shall prepare and provide regular financial statements for the review and use of the Board of Directors of TBID at its regular Board meetings.

TBID disbursements shall be made in accordance with the Bylaws of TBID. The President/CEO shall assist TBID in development of its annual budget and workplan to present for annual approval to the City of Billings.

#### IV. Intellectual & Physical Property

A. Name and Logo. Each Party shall retain ownership and use of its own registered name, logo and any trademarks or service marks.

B. Confidential Information/Intellectual Property. During the term of this Agreement, the Parties anticipate that certain confidential information and intellectual property will be developed for purposes of the Chamber/CVB's and TBID's mission and activities. Said confidential information and intellectual property includes, but is not limited to, databases, lists, customer lists, visitor guides and publications, financial and proprietary information, concepts, documents, materials, trade secrets, business contacts, and ideas about current and future projects which the Chamber/CVB or TBID regards as confidential ("Confidential Information"). All such Confidential Information developed pursuant to the services provided under this Agreement shall be owned jointly by the Chamber/CVB and TBID.

C. Physical Property. Property purchased solely with TBID funds will be owned by TBID. Property purchased jointly by the Chamber/CVB and TBID will be owned jointly by the Chamber/CVB and the TBID and will be distributed equitably upon any separation of the Chamber/CVB and the TBID.

#### V. Insurance.

A. TBID Insurance. TBID shall procure and maintain a policy or policies of comprehensive general liability insurance coverage on behalf of the Tourism Business Improvement District, the Board, and the City of Billings, to include, without limitation, personal injury, death, and property damage, in an amount determined sufficient for such purposes by the City of Billings, as required by §7-12-1143 M.C.A.

B. Chamber/CVB Insurance. Chamber/CVB shall procure and maintain a policy or policies of comprehensive general liability insurance coverage to include, without limitation, personal injury, death, and property damage, related to or arising out of the services and functions provided to TBID under this Agreement, with a combined single limit of not less than \$1,000,000.

Chamber/CVB shall also procure and maintain a policy or policies of commercial automobile insurance covering all owned, hired and non-owned hired vehicles operated by Chamber/CVB or its employees and agents in providing the services and functions to TBID as contemplated under this Agreement, with a combined single limit of not less than \$1,000,000.

C. Proof of Coverage. Proof of the foregoing insurance coverage, as applicable, shall be provided by each Party at the commencement of this Agreement, and upon periodic request by the other Party. Each party will require its insurer to name the other party as an additional insured and to provide the other party written notification of any material change or cancellation with respect to its insurance coverage not less than 30 days prior to any such change or cancellation, and each party shall provide the other with a new proof of coverage within 30 days after any change.

## VI. Indemnification

Each Party hereby agrees to indemnify, save and hold harmless the other Party and the other Party's subsidiaries, affiliates, related entities, partners, agents, officers, directors, employees, attorneys, heirs, successors, and assigns, and each of them from and against any and all claims, actions, demands, losses, damages, judgments, settlements, costs and expenses (including reasonable attorneys' fees and expenses), and liabilities of every kind and character whatsoever, which may arise by reason of: (i) any act or omission constituting a breach or default under this Agreement by the Party or any of its officers, directors, employees, or agents in their capacity as officers, directors, employees, or agents of the Party; and/or (ii) the inaccuracy or breach of any of the representations or warranties made by the Party under this Agreement. The indemnity under this Section shall require the payment of costs and expenses by the liable Party as they are incurred. The Party seeking reimbursement or indemnity under this Section shall promptly notify the liable (other) Party upon receipt of any claim or legal action referenced in this Section. The indemnified Party shall not at any time admit liability or otherwise attempt to settle or compromise said claim, action or demand, except upon the express prior written instructions or agreement of the indemnifying Party or upon the repudiation or denial of indemnification by the indemnifying Party. For the purposes of this Section, a repudiation or denial of indemnification shall be deemed to occur if the Party seeking indemnification does not receive written confirmation of indemnification from the party from whom indemnification is sought within thirty (30) calendar days of notice of the claim, action or demand by the Party seeking indemnification. The Party seeking indemnification shall make all reasonable efforts to provide the Party from whom reimbursement is sought with all information that may be useful in determining whether indemnification is proper. The provisions of this Section shall survive any termination or expiration of this Agreement.

VII. Relationship of Parties.

In the performance of the services to be provided pursuant to this Agreement, the Parties understand and agree that Chamber/CVB and any of its employees or agents shall be, and at all times are, acting as independent contractors as to TBID. No Party shall have the power to bind or obligate the other, except as specifically provided in this Agreement. Neither this Agreement nor any activity under this Agreement is intended, nor shall it be deemed, to create a partnership, association, joint venture, or agency relationship between the Chamber/CVB and the TBID.

VIII. Notices.

Any notices required hereunder shall be in writing and shall be deemed to have been duly given when hand delivered or when deposited in the United States mail, if mailed by certified or registered mail, return receipt requested, postage prepaid, or sent by federal express or other courier service and addressed to the person(s) at the addresses set forth at the end of this Agreement or to such other person and/or address of which the receiving party has given notice pursuant to this Section. All notices shall be considered given and received on the date appearing on the return receipt thereof, or on the delivery date appearing on the records of federal express or other courier service.

IX. General Provisions.

A. Legal Capacity. The Parties each warrant to the other that it has the legal capacity to enter into this Agreement, that the execution has been duly approved by its Board of Directors and that its obligations under the Agreement do not violate its organizational document, bylaws, or any agreement to which it is a party.

B. Non-Assumption of Liabilities. Except as specifically set forth herein, Chamber/CVB shall not, by entering into and performing this Agreement, become liable for any of the existing or future obligations, liabilities, or debts of TBID by virtue of providing services to TBID under this Agreement. TBID shall not, by entering into and performing this agreement, become liable for any of the existing or future obligations, liabilities, or debts of Chamber/CVB.

C. Amendments. No amendments or additions to this Agreement shall be binding unless executed in writing and signed by both Parties.

D. Governing Law. This Agreement shall be governed by and construed according to the laws of and subject exclusively to the jurisdiction of the courts of the State of Montana. Venue for any action under this Agreement shall be in Yellowstone County, Montana.

E. Waiver of Breach. No waiver of any breach of any provision or condition of this Agreement, whether by course or dealing or otherwise, shall be effective unless evidenced by any instrument in writing duly executed by the party against whom such enforcement or waiver is sought. Waiver of breach of any term or provision of this Agreement shall not be deemed a waiver or any other breach of the same or a different provision.

F. Severability. In the event any term or provision of this Agreement is rendered invalid or unenforceable by any valid legislative or regulatory act or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

G. Headings. The paragraph headings contained in this Agreement are for reference purposes only and should not affect in any way the meaning or interpretation of this Agreement

H. Prior Agreements. This Agreement constitutes the complete agreement of the Parties, and shall supersede and render null and void all prior and contemporaneous agreements between the Parties regarding the subject matter hereof.

I. Assignment. Neither Party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which consent may be withheld in the sole discretion of a Party. This Agreement shall be binding upon and inure to the benefit of permitted assignees.

J. Attorneys' Fees. If any legal proceeding is commenced which is related to this Agreement, the losing party shall pay the prevailing party's actual attorneys' fees and expenses incurred in the preparation for, conduct of or appeal or enforcement of judgment from the proceeding.

K. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this fifteenth day of May, 2008.

“TBID”

By: \_\_\_\_\_ Address: \_\_\_\_\_  
Its: \_\_\_\_\_

“CHAMBER/CVB”

By: \_\_\_\_\_ Address: \_\_\_\_\_  
Its: \_\_\_\_\_