

AGREEMENT

THE TOWN OF ESTES PARK (“TOWN”), a local governmental entity

AND

ESTES PARK WESTERN HERITAGE, Inc.
 (“WH”), a Colorado Non-profit Corporation

Recitals

A. WHEREAS, the mission of the TOWN is to provide reliable, high-value services for the benefit of its citizens, visitors, and employees, while being good stewards of public resources and its natural setting; and

B. WHEREAS, the mission of WH is to promote the western culture and preserve the western heritage of the Estes Valley by producing and supporting activities for the education and enjoyment of its residents and visitors; and

C. WHEREAS, the TOWN produces a Professional Rodeo Cowboys Association (PRCA) - sanctioned rodeo each year; and

D. Whereas, the TOWN and WH desire to work together in fulfilling their respective missions.

Terms

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

SECTION 1. DUTIES AND RESPONSIBILITIES OF THE TOWN OF ESTES PARK

1.01 The TOWN shall maintain and operate the physical facility known as the Fairgrounds at Stanley Park (*hereinafter* Facility).

1.02 The TOWN shall provide the following support for WH:

- Use of an office, office support and supplies as specific to rodeo, phone and (1)computer at the Facility
- Sponsorship Dinner/Volunteer Banquet

1.03 The TOWN shall have financial and management responsibility for the following:

- The Estes Park Rodeo (known also as The Rooftop Rodeo and registered as PRCA rodeo 316)
 - Rodeo Pre-Show
 - Development and production of rack cards and posters
 - Support WH in scoreboard set up and teardown
 - Provide an ambulance service for the Estes Park Rodeo
 - Provide a veterinarian for the Estes Park Rodeo
 - Provide contestant purse money, as approved by Town Board, required by PRCA to host the Estes Park Rodeo
 - Queen's Dance
 - The TOWN shall consult with WH prior to choosing a stock contractor(s). This consultation is to allow both parties to understand the stock contractor's needs for the rodeo, and allow the parties to determine how those needs fit within their individual scope of duties. The TOWN shall select the contractor pursuant to its contracting policies.
- 1.04 The TOWN shall be responsible for negotiating contracts, with the exception of sponsorship agreements, for the Estes Park Rodeo, and is responsible for the Estes Park Rodeo approval process through PRCA (e.g. application and dues).
- 1.05 The TOWN shall maintain ownership of Estes Park's PRCA- 316-sanctioned rodeo.
- 1.06 The TOWN shall receive the following revenues:
- Tickets sales (not to include behind the chutes tours)
 - Vendor fees
 - Convenience fees from internet sales of Rodeo admission tickets
 - Queen's Dance
- 1.07 The TOWN reserves the right to utilize WH equipment, except for exempt items. Exempt items will be determined by WH. If any equipment item is damaged by the TOWN, it shall be repaired or replaced by the TOWN.
- 1.08 The TOWN Fairgrounds and Events Manager and the WH Board will meet annually in concurrence with the TOWN's budgeting process to identify WH and TOWN needs. Unanticipated expenditures will be reviewed on a case-by-case basis.
- 1.09 The Fairgrounds and Events Manager is an *ex officio* member of WH and participate in membership meetings of WH.
- 1.10 The TOWN shall be the owner of items and capital improvement projects funded through its Fairgrounds and Events budget.

- 1.11 The Fairgrounds and Events Manager shall outline capital improvement projects and other appropriate needs of financial assistance from the WH Board. Capital improvement projects shall be defined as a project with a value over \$5,000 and over 1 year of useful life. The majority of funding requests by the Fairgrounds and Events Manager to WH will be made once a year. The TOWN is responsible for any related project management.
- 1.12 All duties and responsibilities of the TOWN set forth in this Agreement are subject to the budgetary process of the TOWN including appropriations of sufficient funds to perform the duties and responsibilities set forth in this Section 1 and the administration of the Fairgrounds at Stanley Park by the TOWN Administrator or his/her designee.
- 1.13 The TOWN shall have the right to review WH documents and financial records.
- 1.14 All sponsorship agreements shall be reviewed by the Town prior to execution by WH to assure all PRCA policies for sponsorships are followed and to verify the Town is not being committed to exclusive/long term agreements or agreements not appropriate for the Town.

SECTION 2. DUTIES AND RESPONSIBILITIES OF WH

- 2.01 WH seeks to further its mission and the mission of the TOWN by providing funds for capital improvements, including maintenance of such improvements as appropriate, and other appropriate needs of the Facility. For projects it funds, WH shall participate in front-end planning which may include determining the objective, defining the project and identifying funding sources.
- 2.02 WH shall participate with the Fairgrounds and Events staff in strategic planning for the Facility.
- 2.03 WH shall be financially responsible for sponsoring and producing the following events associated with the Estes Park Rodeo;
 - Rodeo Parade
 - Specialty Nights at Rodeo
 - Mutton Bustin
 - Hospitality Tent (including equipment)
 - Behind the Chutes Tours
 - Calf Catch

WH shall obtain all required permits and licenses arising from its responsibilities, including Special Events Permits and Special Events Liquor License for the sale of alcohol.

- 2.04 All events conducted by WH at the Fairgrounds at Stanley Park shall be approved by the TOWN.
- 2.05 WH shall purchase all event tickets needed for sponsorships at actual ticket price. WH shall supply all items included in sponsorship packets at no cost to the TOWN.
- 2.06 WH shall provide the following financial support for the Estes Park Rodeo:
- Travel and training for WH personnel. WH shall provide a travel itinerary to the TOWN
 - Behind the Chutes Tours; responsible for all related expenses
 - Rental of the scoreboard
 - Assist with funding of equipment related to Rodeo (both anticipated and unanticipated costs)
- 2.07 WH shall be responsible for providing the following documents to the TOWN when requested:
- Exempt equipment list
 - A detailed travel calendar
 - A list of all events
 - Provide sponsorship agreements with all sponsors
 - Royalty Handbook
- 2.08 WH shall be responsible for and fund the Royalty Program.
- Royalty Handbook covers all duties, responsibilities, policies and procedures of the Royalty Program. WH shall review any proposed changes to the Handbook with the Town.
- 2.09 WH shall be entitled to collect and benefit from the following Estes Park Rodeo-generated revenues:
- Parking fees
 - Merchandise sales
 - Sponsorships
 - Behind the Chute Tours
- 2.10 WH understands that the TOWN will produce the Queen's Dance and WH will provide volunteer help at said Dance as requested and /or necessary.
- 2.11 WH shall be responsible to provide lodging for the following individuals during rodeo week as necessary: announcer, scoreboard operator, stock contractor, veterinarian, and band for Queen's Dance.

- 2.12 WH shall assist in preparing the rodeo facility for the Rodeo as requested and directed by the TOWN or its representative. This includes, but is not limited to, arena preparation (the actual ground/arena material is not included in this), set up and tear down of the chutes, fence, pens, hospitality area, arena signs and scoreboard.
- 2.13 WH shall be responsible for its website and all material therein, including any other form of electronic or social media, advertising, or other written material produced on behalf of or by WH. Due to the fact that WH is primarily associated with the Town and uses Town facilities, WH agrees that the Town shall be entitled to request removal of any inappropriate or misrepresentative content from its website, social media, or any other printed material involving the Town, the Estes Park Rodeo, or any other Town sponsored and supervised events. WH shall remove all such material upon request by the Town. The Town hereby disclaims any responsibility for or ownership of WH website, social media content, or other material produced by or on behalf of WH.
- 2.14 As soon as practical, WH shall transfer to the Town ownership of the following servicemarks registered with the United States Patent and Trademark Office: the name "Rooftop Rodeo" and the logo known as the "Bowlegged Cowboy." In exchange for said transfer, the Town shall compensate WH for its costs in registering said marks and shall grant WH a license to use said marks in support of its mission. The Town will continue to manage any and all intellectual property registrations related to the Rooftop Rodeo. The specific terms governing the transfer and licensing of said marks and the consideration therefore shall be governed by a separate agreement.
- 2.15 WH shall be responsible for providing copies of the TOWN's adopted Volunteer Manual to all of its volunteers and reviewing the Volunteer Manual with all of its volunteers at least once each year. WH agrees that its volunteers shall follow the requirements and obligations of the TOWN's adopted Volunteer Manual when volunteering for all TOWN sponsored and supervised events as listed in this Agreement.
- 2.16 WH will not engage in any activity that competes with the Estes Park Rodeo.

SECTION 3. TERM OF AGREEMENT

- 3.01 This agreement shall commence on its "effective date," and will be reviewed on an annual basis by both parties. This agreement shall continue in effect for each ensuing calendar year unless terminated by either of the parties in accordance with Section 4 below.

SECTION 4. TERMINATION

4.01 Either party may terminate this agreement by providing written notice to the other party on or before September 1 of any year with the termination to be effective at the end of the calendar year.

SECTION 5. INVALID PROVISION

5.01 Should any part of this Agreement be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect as if the invalid portion was never a part of this Agreement when it was executed. Should the severance of any part of this Agreement materially affect any other rights or obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties. Failing agreement on such amendment, either party may by notice in writing, terminate this Agreement forthwith subject to the provisions of this Agreement relating to termination.

SECTION 6. INSURANCE AND LIABILITY

6.01 The Town shall provide its Volunteer Accident Medical Plan to WH members when they are engaged in Town sponsored events which are under the supervision and control of the Town.

The following is a list of other Town sponsored and supervised events:

- Estes Park Rodeo
- Queen's Dance
- Royalty travel to other events

WH understands and agrees that all other events including, but not limited to, the following listed events are WH events, and WH is solely responsible for all liability of its volunteers and its volunteers are not volunteers of the Town for these events:

- Antique Show
- Barrel Race
- Bull Fighting
- Parade

For all WH events using Town facilities, WH agrees to insure said events and provide Certificates of Insurance to the Town pursuant to Town policies. WH shall also provide proof of Directors and Officers liability coverage.

SECTION 7. INDEMNIFICATION

7.01 WH agrees to indemnify and hold harmless the TOWN from any claims, loss, damage and/or injury caused or allegedly caused by the negligent act or omission of WH its volunteers, employees or agents. Said indemnification shall include all reasonable attorney's fees and costs incurred by the TOWN resulting from said claim, loss or damage.

SECTION 8. COLORADO GOVERNMENTAL IMMUNITY ACT

8.01 The parties hereto understand and agree that the TOWN and its officers, employees, volunteers, and agents are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time-to-time amended, or otherwise available by any other provision of law.

SECTION 9. General Provisions

9.01 *Assignment.* Neither party to the Agreement shall, directly or indirectly, assign or purport to assign this Agreement or any of its rights or obligations in whole or in part to any third party without the prior written consent of the other party.

9.02 *No Waiver.* The failure of either party to enforce at any time any of the provisions, rights, or to exercise any elections provided, shall in no way be considered to be a waiver of such provisions, rights or elections or in any way effect the validity of the Agreement. The failure to exercise by either party any of its rights herein or any of its elections under the terms or conditions herein contained shall not preclude or prejudice it from exercising the same or any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

9.03 *Complete Agreement.* This Agreement is the complete Agreement of the parties; may be amended or modified only in writing; and supersedes, cancels and terminates any and all prior agreements or understandings of the parties, whether written or oral, concerning the subject matter hereof.

- 9.04 *Choice of Law.* This Agreement shall be governed by and construed and interpreted according to the laws of the State of Colorado. It shall be binding upon and inure to the benefit of the successors of the TOWN and WH.
- 9.05 *Counterparts.* This agreement may be executed and delivered (including by facsimile or email transmission) in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.
- 9.06 *Effective Date.* This agreement is effective upon all parties hereto executing the same.
- 9.07 *Notice.* When any of the parties desire to give notice to the other, such notice must be in writing sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for giving notices:

To WH.: ESTES PARK WESTERN HERITAGE, INC.
P.O. Box 1852
Estes Park, Colorado 80517

To TOWN: TOWN OF ESTES PARK
Attn: TOWN Administrator
P O Box 1200
Estes Park, CO 80517

CC:

AUTHORITY PROVISION

Each person signing this Agreement on behalf of either party individually warrants that he/she has full legal power to execute this agreement on behalf of the party for whom he/she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

ESTES PARK WESTERN HERITAGE, INC.

By Signed 12-18-2012 _____
Gary Cleveland
Chairman of the Board
Date:

Signed 12-18-2012
J'Ann Wright
Board Secretary
Date:

TOWN OF ESTES PARK

By Signed 12-4-2012 _____
William C. Pinkham

Attest: Signed 12-4-2012
Jackie Williamson

Attachment

Items WH owns that would not be available to Town are items that are used for the rodeo hospitality tent. These items consist of item used to store, serve and prepare food. Examples would be coolers, utensils, tables, serving pans, freezer, and other associated items.