

1
2
3
4 INTERGOVERNMENTAL AGREEMENT
5 (Nordic Season Passes and Operations)
6

7 This Intergovernmental Agreement (“**Agreement**”) is dated _____,
8 2020 (“**Effective Date**”) and is between the TOWN OF BRECKENRIDGE, a Colorado
9 municipal corporation (“**Breckenridge**”) and the TOWN OF FRISCO, a Colorado municipal
10 corporation (“**Frisco**”). Breckenridge and Frisco are sometimes referred to individually as a
11 “**Party**”, or together as the “**Parties**.”
12

13 Background
14

15 Breckenridge and Frisco are both home rule municipal corporations organized and
16 existing under Article XX of the Colorado Constitution. Breckenridge owns and operates the
17 “Gold Run Nordic Center,” and Frisco owns and operates the “Frisco Nordic Center.”
18 Breckenridge and Frisco periodically review and agree upon the prices of the various types of ski
19 passes sold by their respective Nordic Center, and they do so in coordination with Breckenridge
20 Nordic Center. Although the Breckenridge Nordic Center is not a party to this Agreement,
21 Breckenridge and Frisco have agreed upon various matters related to the sale of passes and the
22 operation of their respective Nordic Center, all as more fully set forth in this Agreement.
23

24 Agreement
25

26 For and in consideration of the mutual promises and covenants contained herein, the Parties
27 agree as follows:
28

29 1. Authority. This Agreement is entered into pursuant to the authority granted by Article
30 XIV, Section 18(2)(a) of the Colorado Constitution and Part 2 of Article 1 of Title 29, C.R.S.

31 2. Intent.

32 2.1 It is the intent and purpose of this Agreement to establish a framework for
33 Breckenridge and Frisco to provide information and details regarding the logistics and operations
34 of joint Nordic efforts. The Parties believe that their cooperative management of specific Nordic
35 operations will benefit their respective residents and the many visitors who use Nordic Center
36 facilities each year.

37 2.2 The Breckenridge Nordic Center, owned and operated by Breckenridge Nordic
38 Center, L.L.C., a Colorado limited liability company, is not a party to this Agreement, nor is it a
39 third party beneficiary of this Agreement. However, Breckenridge, Frisco, and the Breckenridge
40 Nordic Center have worked together for many years, and Breckenridge and Frisco believe that it
41 would be in their interests to continue to work with Breckenridge Nordic Center. The provisions
42 of this Agreement that refer to the “Breckenridge Nordic Center” are included anticipating that a
43 companion agreement with Breckenridge Nordic Center, L.L.C., a Colorado limited liability
44 company, can be reached.

1 3. Term.

2
3 3.1 The initial term of this Agreement commences as of the Effective Date of this
4 Agreement and ends, subject to earlier termination as hereafter provided, on August 31, 2021.

5 3.2 On September 1, 2021, and on each subsequent September 1st, this Agreement
6 will automatically renew for successive terms of one year each until such time as either
7 Breckenridge or Frisco give written notice of termination in accordance with the next sentence of
8 this Section 3.2. Either Party may terminate this Agreement, without cause and without liability
9 for breach, by giving the other Party written notice of termination prior to May 31st of any
10 calendar year. Such notice must be given in the manner provided for in Section 11. Upon the
11 giving of timely notice of termination, this Agreement will terminate (and will not be renewed)
12 on the next August 31st following the giving of the notice of termination.

13 4. Description of Work to be Shared by the Parties. Unless otherwise agreed by the
14 Parties, the work to be shared by the Parties under this Agreement may be generally described
15 as follows:

16 A. Breckenridge and Frisco will share in the seasonal grooming of the paved Recreation
17 Pathway between Breckenridge and Frisco, with Breckenridge grooming from Breckenridge
18 north to Alpensee Drive and Frisco grooming from Frisco south to Alpensee Drive, or as
19 otherwise agreed upon by the Parties. Approval of Summit County Government and the United
20 States Forest Service will be sought for any changes in times of day of grooming operations.

21 B. The Parties will agree upon and publish annual Season Pass fees, which are
22 periodically reviewed and approved by Breckenridge and Frisco in coordination with
23 Breckenridge Nordic Center.

24 C. The Parties will agree upon and publish annual Punch Pass fees, which are
25 periodically reviewed and approved by Breckenridge and Frisco in coordination with
26 Breckenridge Nordic Center. Punch passes will be honored by all three Nordic Centers and
27 revenue for punch passes will be retained by the Nordic Center making the sale.

28 D. Employees of Breckenridge's Gold Run Nordic Center and Frisco's Frisco Nordic
29 Center will be issued a joint season pass. These passes are only issued to employees who work
30 for pay at one of the two Nordic Centers. No revenue is associated with these passes. Employee
31 pass holders will be instructed to sign in each time they visit a Nordic Center to ensure accurate
32 trail usage data. A Nordic Center employee pass will be terminated should employment cease for
33 any reason during the season.

34 E. The Parties may on occasion offer "Complimentary Guest/Day Passes" for marketing,
35 promotional, and service recovery purposes. These complimentary day passes will be numbered,
36 logged, and tracked by each Nordic Center for review at the end of the season. The passes will
37 indicate that they must be redeemed for trail passes at the relevant Nordic Center and will expire
38 at the end of the current season. No revenue is associated with these passes.

1 F. The Parties may on occasion offer punch passes for fundraisers and charitable causes.
2 These punch passes can only be used at the issuing Nordic Center and are non-transferable to the
3 other Nordic Center. These punch passes will be numbered, logged, and tracked by each Nordic
4 Center for review at the end of the season and will expire at the end of the current season. No
5 revenue is associated with these passes.

6 5. Description of Work by Breckenridge.

7 A. Breckenridge will manage the Nordic Season Pass Office for joint passes. To
8 facilitate an annual review and reevaluation process and to enable accurate distribution of
9 revenues, Breckenridge will maintain appropriate pass type codes in its pass management system
10 that will enable tracking of usage of joint passes. Breckenridge will produce, update as required,
11 and provide Frisco with a list of all joint pass holders for the Gold Run Nordic Center,
12 Breckenridge Nordic Center, and Frisco Nordic Center.

13 B. Breckenridge will produce the punch passes and distribute equally to all three Nordic
14 Centers. The cost to produce punch passes will be split equally between Breckenridge, Frisco,
15 and Breckenridge Nordic Center.

16 C. Breckenridge will collect revenue and track all costs associated with the production,
17 sales and distribution of the joint passes for all three Nordic Centers. These costs include, but are
18 not limited to: labor; printing of letters and forms; pass design, production and printing; and any
19 other associated costs. Revenue distribution is described below.

20 D. Breckenridge will track the transaction charges that are associated with joint season
21 pass sales. The transaction charges include credit card fees, transaction fees, administration fees,
22 and an active convenience fee for a total of 6% of sales. These transaction charges for joint
23 passes will be shared one-third per Center (1/3 to Gold Run Nordic Center, 1/3 to Breckenridge
24 Nordic Center, and 1/3 to Frisco Nordic Center).

25 E. To facilitate essential cash flow at the commencement of the season, initial
26 distributions of joint season pass revenue will be made to Frisco as follows:

27 (i) November 1 - Check request submitted for appropriate distribution of passes sold.

28 (ii) December 1 - Check request submitted for appropriate distribution of passes sold.

29 (iii) January 1 - Check request submitted for appropriate distribution of passes sold.

30 F. Breckenridge will split equally any revenue from the Breckenridge Recreation Center
31 add-on passes for the joint season passes will be split equally between Gold Run Nordic Center,
32 Breckenridge Nordic Center, and Frisco Nordic Center.

33 G. Breckenridge offers Nordic passes to part-time and temporary employees, as well as
34 full time employees (wellness pass/cafeteria plan). These passes are valid only at Gold Run
35 Nordic Center and Breckenridge Nordic Center. No revenue is associated with these passes. Pass
36 holders will be instructed to sign in each time they visit a Nordic Center to ensure accurate trail
37 usage data. A Breckenridge employee pass will be terminated should employment cease during

1 the season. Breckenridge employees can upgrade their employee pass to a joint season pass, with
2 revenue allocated to Breckenridge Nordic Center and Frisco at the end of season reconciliation.

3 6. Description of Work by Frisco.

4 A. Frisco will manage the Nordic Season Pass Office for Frisco Passes.

5 B. Frisco will produce Frisco-only Passes for its employees through its pass
6 management system.

7 C. Frisco offers Nordic passes to part-time and temporary employees, as well as full time
8 employees (wellness pass/cafeteria plan). These passes are valid only at Frisco Nordic Center.
9 No revenue is associated with these passes. Pass holders will be instructed to sign in each time
10 they visit a Nordic Center to ensure accurate trail usage data. A Frisco employee pass will be
11 terminated should employment cease for any reason during the season. Frisco employees can
12 upgrade their employee pass to a joint season pass, with revenue allocated to Gold Run Nordic
13 Center and Breckenridge Nordic Center at the end of season reconciliation.

14 7. Financial Obligations Required To Implement Agreement.

15 A. The financial obligation of each of the Parties required to pay for its share of the work
16 to be performed is subject to annual appropriation by the governing body of such Party as
17 provided in Section 12 of this Agreement

18 8. Governmental Immunity. The Parties are each relying on, and do not waive or intend
19 to waive by any provision of this Agreement, the monetary limitations (presently \$387,000 per
20 person and \$1,093,000 per occurrence) of the Colorado Governmental Immunity Act, Part 1 of
21 Article 10 of Title 24, C.R.S., as amended from time to time throughout the Term of this
22 Agreement (“**Act**”), or any other limitation, right, immunity, defense or protection otherwise
23 available to the Parties, and their respective officers, representatives, agents, and employees.

24 9. Mutual Indemnification.

25 9.1 Indemnification By Breckenridge. To the extent permitted by law if permitted at
26 all, Breckenridge will indemnify and defend Frisco, its officers, employees, insurers, and self-
27 insurance pool against all liability, claims, and demands, on account of injury, loss, or damage,
28 including, without limitation, claims arising from bodily injury, personal injury, sickness,
29 disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of
30 or in any manner connected with this Agreement, to the extent that such injury, loss, or damage
31 is caused by the negligence or intentional wrongful act or omission of Breckenridge, or any
32 officer, employee, representative or agent of Breckenridge, except to the extent such liability,
33 claim, or demand arises through the negligence or intentional wrongful act of Frisco, its officers,
34 employees, or agents, or the Frisco’s breach of this Agreement. To the extent indemnification is
35 required under this Agreement, Breckenridge agrees to investigate, handle, respond to, and to
36 provide defense for and defend against, any such liability, claims, or demands at its expense, and
37 to bear all other costs and expenses related thereto, including court costs and attorney fees.
38

1 9.2 Indemnification By Frisco. To the extent permitted by law if permitted at all,
2 Frisco will indemnify and defend Breckenridge, its officers, employees, insurers, and self-
3 insurance pool against all liability, claims, and demands, on account of injury, loss, or damage,
4 including, without limitation, claims arising from bodily injury, personal injury, sickness,
5 disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of
6 or in any manner connected with this Agreement, to the extent that such injury, loss, or damage
7 is caused by the negligence or intentional wrongful act or omission of Frisco, or any officer,
8 employee, representative or agent of Frisco, except to the extent such liability, claim, or demand
9 arises through the negligence or intentional wrongful act of Breckenridge, its officers,
10 employees, or agents, or Breckenridge's breach of this Agreement. To the extent indemnification
11 is required under this Agreement, Frisco agrees to investigate, handle, respond to, and to provide
12 defense for and defend against, any such liability, claims, or demands at its expense, and to bear
13 all other costs and expenses related thereto, including court costs and attorney fees.

14 9.3 Indemnity Subject To Act. Neither Party intends by any provision of this
15 Agreement to waive any immunity or limitation provided by the Colorado Governmental
16 Immunity Act, or any other law providing similar limitations or protections.

17 9.4 Survival. The obligation of a Party to indemnify and defend the other Party
18 pursuant to this Section 9 will survive the termination of this Agreement, and will continue to be
19 enforceable thereafter until such obligations are fully performed, subject to any applicable statute
20 of limitation or statute of repose.

21 10. Default; Resolution Of Disputes.

22 10.1 Default. A default will exist under this Agreement if either Party violates any
23 covenant, condition, or obligation required to be performed hereunder. If any Party fails to cure
24 such default within 20 business days after the other Party gives written notice of the default to
25 the Defaulting Party, then, at the Non-Defaulting Party's option, the Non-Defaulting Party may
26 terminate this Agreement. In the event of a default not capable of being cured within 20 business
27 days, a Defaulting Party will not be in default hereunder if it commences curing the default
28 within 20 business days after receipt of written notice of default from the Non-Defaulting Party,
29 and thereafter cures such default with due diligence and in good faith. Notwithstanding any
30 Party's right to terminate this Agreement for an uncured default, this Agreement is subject to the
31 rights of any Party to invoke the remaining provisions of this Section 10.

32 10.2 Negotiation. Either Party may give the other Party written notice of any dispute
33 arising out of or related to this Agreement that is not resolved in the normal course of business.
34 The Parties will attempt in good faith to resolve any such dispute promptly by negotiations
35 between the Parties' authorized representatives. Within 15 business days after receipt of the
36 notice, authorized representatives will meet at a mutually acceptable time and place, and
37 thereafter as often as they reasonably deem necessary, to exchange relevant information and to
38 attempt to resolve the dispute. If the matter has not been resolved within 60 business days of the
39 notice of dispute, or if the Parties fail to initially meet within 15 business days, either Party to the
40 dispute may initiate mediation of the controversy as provided below.

1 10.3 Mediation. If the dispute has not been resolved by negotiation as provided above,
2 the Parties will endeavor to settle the dispute by mediation with a neutral third party. If the
3 Parties encounter difficulty in agreeing on a neutral third party, they may each appoint a neutral
4 third party and such third parties will appoint a neutral third party to mediate.

5 10.4 Arbitration. Any dispute arising out of or relating to this Agreement or the
6 breach, termination, or validity hereof, which has not been resolved by the methods set forth
7 above within 60 business days of the initiation of mediation, will be finally settled by binding
8 arbitration conducted expeditiously in accordance with the commercial arbitration rules of the
9 American Arbitration Association (or other rules as may be agreed to by the Parties) by a sole
10 arbitrator. The place of arbitration will be Breckenridge, Colorado. The arbitrator is not
11 empowered to award damages in excess of compensatory damages.

12 10.5 Provisional Remedies. The procedures specified in this Section 10 are the sole
13 and exclusive procedures for the resolution of disputes among the Parties arising out of or
14 relating to this Agreement; provided, however, that a Party may seek a preliminary injunction or
15 other provisional judicial relief if, in its judgment, such action is necessary to avoid irreparable
16 damage or to preserve the status quo. Despite such action, the Parties will continue to participate
17 in good faith in the procedures specified in this Section 10.

18 10.6 Performance To Continue. Each Party is required to continue to perform its
19 obligations under this Agreement pending final resolution of any dispute arising out of or
20 relating to this Agreement.

21 10.7 Extension Of Deadlines. All deadlines specified in this Section may be extended
22 by mutual agreement.

23 10.8 Costs. Each Party will pay its own costs with respect to negotiation and
24 mediation. The prevailing Party in any arbitration or provisional judicial relief is entitled to
25 reimbursement from the other Party for all reasonable costs and expenses, including attorney fees
26 in connection with such arbitration or provisional judicial relief.

27 11. Notices. All notices required or permitted under this Agreement must be given by
28 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
29 carrier delivery, or by telecopies directed as follows:

30 If intended for Town to:

31
32 Town of Breckenridge
33 P.O. Box 168
34 150 Ski Hill Road
35 Breckenridge, Colorado 80424
36 Attn: Rick G. Holman, Town Manager
37 Telecopier number: (970)547-3104
38 Telephone number: (970)453-2251
39

40 with a copy in each case (which will not constitute notice) to:

1
2 Timothy H. Berry, Esq.
3 Timothy H. Berry, P.C.
4 131 West 5th Street
5 P.O. Box 2
6 Leadville, Colorado 80461
7 Telephone number: (719)486-1889
8 Telecopier number: (719)486-3039
9

10 If intended for Frisco, to:

11
12 Town of Frisco
13 P.O. Box 4100
14 1 Main Street
15 Frisco, CO 80443
16 Attn: Nancy Kerry, Town Manager
17 Telephone number: (970) 668-5276
18

19 with a copy in each case (which will not constitute notice) to:

20
21 Thad W. Renaud, Esq.
22 Murray Dahl Beery & Renaud LLP
23 710 Kipling Street, Suite 300
24 Lakewood, Colorado 80215
25 Telephone number: (303) 493-6676
26

27 Any notice delivered by mail in accordance with this Section 11 is deemed to have been duly
28 given and received on the second business day after the same is deposited in any post office or
29 postal box regularly maintained by the United States postal service. Any notice delivered by
30 telecopier in accordance with this Section 11 is deemed to have been duly given and received
31 upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone
32 and a copy of said notice is sent by certified mail, return receipt requested, on the same day to
33 that intended recipient. Any notice delivered by hand or commercial carrier is deemed to have
34 been duly given and received upon actual receipt. Either Party, by notice given as above, may
35 change the address to which future notices may be sent. E-mail is not a valid method for the
36 giving of notice under this Agreement.
37

38 12. Annual Appropriation.
39

40 12.1 Breckenridge Appropriation. Notwithstanding anything herein contained to the
41 contrary, Breckenridge's obligations under this Agreement are expressly subject to an annual
42 appropriation being made by the Town Council of the Town of Breckenridge in an amount
43 sufficient to allow Breckenridge to perform its obligations under this Agreement. If sufficient
44 funds are not so appropriated, this Agreement may be terminated by either Party without penalty
45 upon notice given in the manner described in Section 11. The Town's obligations under this
46 Agreement do not constitute a general obligation indebtedness or multiple year direct or indirect

1 debt or other financial obligation whatsoever within the meaning of the Constitution or laws of
2 the State of Colorado.

3 12.2 Frisco Appropriation. Notwithstanding anything herein contained to the contrary,
4 Frisco's obligations under this Agreement are expressly subject to an annual appropriation being
5 made by the Town Council of the Town of Frisco in an amount sufficient to allow the Frisco to
6 perform its obligations under this Agreement. If sufficient funds are not so appropriated, this
7 Agreement may be terminated by either Party without penalty upon notice given in the manner
8 described in Section 11. Frisco's obligations under this Agreement do not constitute a general
9 obligation indebtedness or multiple year direct or indirect debt or other financial obligation
10 whatsoever within the meaning of the Constitution or laws of the State of Colorado.

11 13. Third Parties. This Agreement does not confer upon or grant to any third party
12 any right to claim damages or to bring suit, action, or other proceeding against either
13 Breckenridge or Frisco because of any breach of this Agreement, or because of any of the terms,
14 covenants, agreements and conditions contained in this Agreement.

15 14. Waiver. The failure of either Party to exercise any of its rights under this
16 Agreement is not a waiver of those rights. A Party waives only those rights specified in writing
17 and signed by either Party waiving its rights.

18 15. Independent Contractor. In connection with this Agreement each of the Parties
19 acts as an independent contractor (and not an agent or employee of the other Party), without the
20 right or authority to impose tort or contractual liability upon the other Party.

21 16. Applicable Law. This Agreement is to be interpreted in all respects in accordance
22 with the laws of the State of Colorado.

23 17. Entire Agreement. This Agreement constitutes the entire agreement and
24 understanding between the Parties as to the subject matter of this Agreement, and supersedes
25 any prior agreement or understanding relating thereto.

26 18. Amendment. This Agreement may be modified or amended only by a duly
27 authorized written instrument executed by the Parties. No oral amendment or modification of
28 this Agreement is allowed.

29 19. Severability. If any of the provisions of this Agreement are declared by a final.
30 non-appealable judgment court of competent jurisdiction to be invalid, illegal or unenforceable
31 in any respect, the validity, legality and enforceability of the remaining provisions of this
32 Agreement will not in any way be affected or impaired thereby.

33 20. Section Headings. Section and subsection headings are inserted for convenience
34 only and in no way limit or define the interpretation to be placed upon this Agreement.

35 21. Authority. The individuals executing this Agreement on behalf of each of the
36 Parties represent to the other Party that they have all requisite powers and authority to cause the
37 Party for whom they have signed to enter into this Agreement, and to bind such Party to fully
38 perform its obligations as set forth in this Agreement.

22. No Adverse Construction. Both Parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement is not to be construed against either Party based upon authorship.

23. “Day” Defined. The term “day” in this Agreement means a calendar day, unless otherwise indicated.

24. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successor governing boards.

25. Approval By Governing Boards or Other Authority. In accordance with Section 29-1-203(1), C.R.S., this Agreement will not become effective unless and until it has been approved by the governing bodies of both Breckenridge and Frisco, or by such persons as has the power to approve this Agreement on behalf of Breckenridge and Frisco.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

TOWN OF FRISCO, a Colorado
municipal corporation

By: _____
Hunter Mortensen, Mayor

ATTEST:

Deborah Wohlmuth, CMC
Town Clerk

800-119\Nordic IGA (10-11-20)