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**May 12, 2020 Town Council Meeting**

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**RECORD OF PROCEEDINGS  
REGULAR MEETING AGENDA OF THE  
TOWN COUNCIL OF THE TOWN OF FRISCO  
MAY 12, 2020  
4:00PM**

**STARTING TIMES INDICATED FOR AGENDA ITEMS ARE ESTIMATES ONLY AND MAY  
CHANGE**

**Call to Order:**

Hunter Mortensen, Mayor

**Roll Call:**

Hunter Mortensen, Andrew Aerenon, Jessica Burley, Daniel Fallon, Andy Held, Rick Ihnken,  
and Melissa Sherburne

**Public Comments:**

Citizens making comments during Public Comments or Public Hearings should state their names and addresses for the record, be topic-specific, and limit comments to no longer than three minutes.

NO COUNCIL ACTION IS TAKEN ON PUBLIC COMMENTS. COUNCIL WILL TAKE ALL COMMENTS UNDER ADVISEMENT AND IF A COUNCIL RESPONSE IS APPROPRIATE THE INDIVIDUAL MAKING THE COMMENT WILL RECEIVE A FORMAL RESPONSE FROM THE TOWN AT A LATER DATE.

**Mayor and Council Comments:**

**Staff Updates:**

**Proclamation:**

Mental Health Awareness Month

**Consent Agenda:**

Minutes April 28, 2020 Meeting

**New Business:**

Agenda Item #1: Resolution 20-17, a Resolution Approving an Agreement with the Colorado Department of Transportation (CDOT) for the Construction of a Pedestrian and Bicycle Underpass Between the County Commons and The Peninsula Recreation Area and Authorizing the Expenditure of Funds Under the Agreement JEFF GOBLE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #2: Second Amendment to Frisco Marina Concessionaire Agreement and License for Frisco Rowing Center at Lake Dillon Staff: DIANE MCBRIDE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #3: Emergency Ordinance 20-14, an Emergency Ordinance of the Town of Frisco, Colorado, to Require Face Coverings at Certain Locations within the Town, to Strongly Encourage Face Coverings at all Other Locations Within the Town in Compliance with State of Colorado Public Health Orders, Declaring an Emergency and Providing for the Immediate Effective Date of this Ordinance STAFF: NANCY KERRY 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #4: Revocable License Agreement with SEMA Construction for the Temporary Use of Town-Owned Property at the Peninsula Recreation Area STAFF: JEFF GOBLE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #5: General Discussion / Action on COVID-19 Response STAFF: NANCY KERRY 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #6: Council Orientation 2: Open Meetings Act / Open Records Act STAFF: THAD RENAUD 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

**Adjourn:**

**TOWN OF FRISCO  
PROCLAMATION  
MENTAL HEALTH AWARENESS MONTH  
MAY 1 - 31, 2020**

WHEREAS, One in five Americans will be affected by a mental health condition in their lifetime and every American is affected or impacted through their friends and family; and

WHEREAS, mental illness is one of the leading causes of disabilities in the United States, impacting both the person with the illness and those persons who care for and love the person afflicted; and

WHEREAS, 57 million Americans have a mental disorder in any given year, but fewer than 40 percent of adults living with a mental illness, and slightly more than one-half of youth 8 to 15 years of age with a mental illness received mental health services in the last year; and

WHEREAS, the Town of Frisco acknowledges that when compared to other Colorado communities, the incidence of substance abuse and mental health indicators is elevated in our community and as a result the Town is concerned about the impacts of mental illness on the quality of life for our residents; and

WHEREAS, Mental Health Awareness month is both a national and local commitment to reducing the stigma associated with mental illness, encouraging those living with mental health conditions to get the help they need, and affirming our pledge to ensure those who need help have access to the support, acceptance, and resources they deserve; and

WHEREAS, during Mental Health Awareness month the Town of Frisco recognizes those in our community living with mental illness and substance use disorders; we pledge support for those individuals and their families; and we reaffirm our commitment to ensuring people living with mental health conditions know they are not alone;

NOW, THEREFORE, BE IT RESOLVED THAT, I, Mayor Hunter Mortensen, do hereby proclaim the month of May, 2020 as Mental Health Awareness Month, and call upon all residents of Frisco to join me in supporting the aims and goals of this effort.

DATED THIS 12<sup>th</sup> DAY OF MAY, 2020.

TOWN OF FRISCO:

\_\_\_\_\_  
Hunter Mortensen, Mayor

ATTEST:

\_\_\_\_\_  
Deborah Wohlmuth, CMC  
Town Clerk

**RECORD OF PROCEEDINGS  
MINUTES OF THE REGULAR MEETING  
OF THE TOWN COUNCIL OF THE TOWN OF FRISCO  
APRIL 28, 2020**

Mayor Wilkinson called the meeting to order at 4:00 p.m. Town Clerk Deborah Wohlmuth called the roll.

**Present:** Jessica Burley  
Dan Fallon  
Rick Ihnken  
Hunter Mortensen  
Deborah Shaner  
Melissa Sherburne  
Gary Wilkinson

**Absent:**

**Public Comments:**

There was no public comment.

**Mayor and Council Comments:**

Council members Burley and Mortensen expressed support for renewing participation in the Mountain Pac.

**Consent Agenda:**

Minutes April 14, 2020 Meeting  
Warrant List  
Purchasing Cards  
Home Rule Charter Review – Chapter 65, Building Construction  
Revocable License 311 Frisco Street

**MOTION: COUNCIL MEMBER MORTENSEN MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. SECOND, COUNCIL MEMBER BURLEY. VOTE:**

<b>BURLEY</b>	<b>YEA</b>	<b>SHANER</b>	<b>YEA</b>
<b>FALLON</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>WILKINSON</b>	<b>YEA</b>
<b>MORTENSEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

**Recognition:**

Council recognized outgoing Council Member Shaner for her dedication to the citizens of Frisco.  
Council recognized outgoing Mayor Wilkinson for his dedication to the citizens of Frisco.

**Swearing In:**

Town Clerk Deborah Wohlmuth administered the oath of office to Mayor Mortensen and Council Members Aerenson, Burley, Held and Ihnken.

**Adjourn:**

**Call to Order:**

Hunter Mortensen, Mayor

**Roll Call:**

Hunter Mortensen, Andrew Aerenson, Jessica Burley, Daniel Fallon, Andy Held, Rick Ihnken, and Melissa Sherburne

**Appointment:**

Mayor Pro-Tem

**MOTION: COUNCIL MEMBER IHNKEN MOVED TO NOMINATE COUNCIL MEMBER BURLEY AS MAYOR PRO-TEM. SECOND, COUNCIL MEMBER SHERBURNE. MOTION CARRIED UNANIMOUSLY.**

<b>AERENSON</b>	<b>YEA</b>	<b>FALLON</b>	<b>YEA</b>
<b>BURLEY</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>HELD</b>	<b>YEA</b>	<b>MORTENSEN</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

**New Business:**

Agenda Item #1: New Beer and Wine Liquor License – Snowy Summit LLC dba Colisco Wearables STAFF: DEBORAH WOHLMUTH 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Clerk Deborah Wohlmuth stated that as prescribed in State Statute, all new liquor license applications must be first submitted to the local licensing authority for approval. Supporting documentation as outlined on State form DR 8404 must accompany the application to begin the hearing process requirements. The preliminary findings have been included in this report to support proof of a completed application. This application is for a new beer and wine liquor license Snowy Summit LLC dba Colisco Wearables located at 416 Main Street Units 1,2,3,6,7,8. Applicant Lua C. Ton has filed the necessary paperwork and posted the premise in accordance with the Colorado Liquor Code. Further, notice of this application was published in a newspaper of general circulation pursuant to statutory requirements. Identogo and the Frisco Police Department have performed the necessary fingerprinting and background checks for the applicants and have found them to be satisfactory. Mayor Mortensen opened the public hearing at 5:02 p.m. There being no public comment, Mayor Mortensen closed the public hearing at 5:05 p.m.

**MOTION: COUNCIL MEMBER SHERBURNE MOVED TO APPROVE THE ISSUANCE OF A BEER AND WINE LIQUOR LICENSE FOR SNOWY SUMMIT LLC DBA COLISCO WEARABLES. LOCATED AT 416 MAIN STREET UNITS 1,2,3,6,7,8, ON THE BASIS OF THE FOLLOWING FINDINGS: THAT THE AUTHORITY (1) HAS REVIEWED THE NEIGHBORHOOD UNDER CONSIDERATION AND FINDS IT TO BE THE TOWN OF FRISCO AS A WHOLE; (2) HAS CONSIDERED THE DESIRES OF THE INHABITANTS OF THE NEIGHBORHOOD AND FINDS THAT THE INHABITANTS DESIRE AN ADDITIONAL ESTABLISHMENT THAT SERVES LIQUOR; (3) HAS REVIEWED THE NEEDS OF THE NEIGHBORHOOD FOR THE OUTLET AND FINDS THAT THE NEEDS OF THE NEIGHBORHOOD ARE NOT MET BY THE EXISTING OUTLETS; (4) HAS REVIEWED THE LOCATION OF THE PROPOSED ESTABLISHMENT AND FINDS THAT IT IS NOT LOCATED WITHIN 250 FEET OF ANY SCHOOL OR COLLEGE CAMPUS; (5) HAS REVIEWED THE QUALIFICATIONS OF THE APPLICANT AND, PURSUANT TO THE REQUIREMENTS OF THE FRISCO CODE AND COLORADO STATUTES, FIND THE APPLICANT TO BE QUALIFIED TO OBTAIN A BEER AND WINE LIQUOR LICENSE FOR SNOWY SUMMIT LLC DBA COLISCO WEARABLES SUBJECT TO THE STAFF REOPENING THE MEETING AT 7PM. SECOND, COUNCIL MEMBER AERENSON VOTE:**

<b>AERENSON</b>	<b>YEA</b>	<b>FALLON</b>	<b>YEA</b>
<b>BURLEY</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>HELD</b>	<b>YEA</b>	<b>MORTENSEN</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

Agenda Item #2: Resolution 20-14, a Resolution for the Award of Contract for the Construction of Phase Three of the Alley Paving Project to Columbine Hills Concrete, Inc. of Silverthorne, Colorado STAFF: JEFF GOBLE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Public Works Director Jeff Goble stated that this resolution requests authorization to award a construction contract to Columbine Hills Concrete, Inc. for the construction of Phase Three of the Alley Paving Project. This contract is to continue and complete the Alley Paving Project as outlined in the five-year Capital Improvements Plan adopted by Town Council in 2017. Mayor Mortensen opened the public hearing at 5:31 p.m. There being no public comment, Mayor Mortensen closed the public hearing at 5:32 p.m.

**MOTION: COUNCIL MEMBER AERENSON MOVED TO CONTINUE RESOLUTION 20-14, A RESOLUTION FOR THE AWARD OF CONTRACT FOR THE CONSTRUCTION OF PHASE THREE OF THE ALLEY PAVING PROJECT TO COLUMBINE HILLS CONCRETE, INC. OF SILVERTHORNE, COLORADO TO THE MAY 26<sup>TH</sup> MEETING. SECOND, COUNCIL MEMBER HELD. VOTE:**

<b>AERENSON</b>	<b>YEA</b>	<b>FALLON</b>	<b>NO</b>
<b>BURLEY</b>	<b>NO</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>HELD</b>	<b>YEA</b>	<b>MORTENSEN</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

Agenda Item #3: Resolution 20-15, a Resolution for the Award of Contract for the Milling and Asphalt Overlay of Windflower Lane and Belford Street Project to Columbine Hills Concrete, Inc. of Silverthorne Colorado STAFF: JEFF GOBLE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Public Works Director Jeff Goble stated that this resolution requests authorization to award a construction contract to Columbine Hills Concrete, Inc. for the milling and asphalt overlay project on Windflower Lane and Belford Street. This contract is to mill the existing and deteriorating asphalt on both Windflower Lane and Belford Street to a depth of two inches, then overlay the surface with two inches of new asphalt. The last time either of these streets has seen any sort of resurfacing was in 2010 when a slurry coat was applied. These roadway sections have since deteriorated to the point that a mill and overlay process is the most efficient and cost-effective method to restore these streets to a like new condition. Staff estimates that this work will provide at least another 10 years of serviceability before another treatment will be required. Mayor Mortensen opened the public hearing at 5:44 p.m. There being no public comment, Mayor Mortensen closed the public hearing at 5:47 p.m.

**MOTION: COUNCIL MEMBER BURLEY MOVED TO APPROVE RESOLUTION 20-15, A RESOLUTION FOR THE AWARD OF CONTRACT FOR THE MILLING AND ASPHALT OVERLAY OF WINDFLOWER LANE AND BELFORD STREET PROJECT TO COLUMBINE HILLS CONCRETE, INC. OF SILVERTHORNE COLORADO. SECOND, COUNCIL MEMBER SHERBURNE. VOTE:**

<b>AERENSON</b>	<b>YEA</b>	<b>FALLON</b>	<b>YEA</b>
<b>BURLEY</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>HELD</b>	<b>YEA</b>	<b>MORTENSEN</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

Agenda Item #4: Discussion and Possible Amendment to Resolution 20-11 Establishing Economic Relief Programs STAFF: NANCY KERRY 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Manager Nancy Kerry indicated that this is a discussion concerning possible amendments to the business assistance program. Council awarded \$500,000 on April 7 for local businesses. 107 applied and approved for \$385,000. 87% of the grants were evenly split between restaurants, retail, and health and beauty services. Staff requested clarification regarding Short Term Rental Management Companies, and whether Council wanted to employ targeted assistance to restaurants and retail stores that did not receive enough funds to cover rent for a month. Mayor Mortensen opened the public hearing at 6:08 p.m. Frisco resident and business owner Todd Altschuler encouraged Council to extend larger funds to business grant applicants. There being no further public comment, Mayor Mortensen closed the public hearing at 6:10p.m. Council directed staff to bring an additional resolution at the May 12<sup>th</sup> meeting.

**MOTION: COUNCIL MEMBER SHERBURNE MOVED TO APPROVE RESOLUTION 20-12 AMENDING RESOLUTION 20-11 IN RESPONSE TO COVID TO AMEND SECTION ONE CRITERIA ONE NO GRANT OR COMBINATION OF GRANTS SHALL EXCEED THAT BUSINESS'S MONTHLY RENT OR 10K WHICHEVER IS LESS; AND SECTION ONE**

**CRITERIA SIX CONCERNING PROHIBITION TO SHORT TERM RENTALS TO ADD THE WORDS “OR SHORT TERM RENTAL MANAGEMENT COMPANY”; AND TO DIRECT THE TOWN MANAGER TO FUND THE PROGRAM AS APPROPRIATE. SECOND, COUNCIL MEMBER BURLEY. VOTE:**

<b>AERENSON</b>	<b>YEA</b>	<b>FALLON</b>	<b>YEA</b>
<b>BURLEY</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>HELD</b>	<b>YEA</b>	<b>MORTENSEN</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

Mayor Mortensen reopened the liquor license hearing at 7:39 p.m. to verify if there were any additional public that wished to make comment on the application.

Agenda Item #5: General Discussion/Action on COVID -19 Response STAFF: NANCY KERRY  
1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Manager Nancy Kerry gave a brief overview and answered questions about the current COVID-19 situation including a business grant program update. Mayor Mortensen suggested that Council might want to consider a special meeting to discuss the Town’s vision for a summer opening.

Agenda Item #6: Council Orientation 1: (A) Ethics in Government & (B) Quasi-Judicial Decision Making STAFF: THAD RENAUD 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Attorney Thad Renaud gave a brief council orientation and answered questions regarding ethics in government and quasi-judicial decision making.

**Adjourn:**

There being no further business, the meeting adjourned at 8:45 p.m.

Respectfully Submitted,

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Deborah Wohlmuth, CMC  
Town Clerk





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MEMORANDUM

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P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: JEFF GOBLE, PUBLIC WORKS DIRECTOR**  
**RE: RESOLUTION 20-17 TAP GRANT 21778 IGA WITH CDOT FOR THE CONSTRUCTION OF THE PRA / COUNTY COMMONS PEDESTRIAN / BICYCLE UNDERPASS**  
**DATE: MAY 12, 2020**

**Summary and Background:** Back in December of last year the Town and County were approached by CDOT Region 3 and asked to apply for a Transportation Alternatives Program (TAP) grant and / or a GOCO grant to help offset the \$1.5 million cost of constructing the pedestrian underpass from the County Commons to the PRA. This extra funding was needed to keep the entire project within budget. The County applied for a GOCO grant to help fund this project but they were not selected. The Town applied for the TAP grant in January and we were awarded \$1.5 million in late February.

After the County was denied their application to GOCO, they committed \$150,000 to contribute one-half of the required TAP grant match of \$300,000. If Council approves this IGA the Town will need to contribute the remaining \$150,000. CDOT and FHWA will contribute the remaining \$1.2 million through the TAP grant.

**Analysis:** The IGA and TAP grant contract explicitly state that CDOT will be responsible for all administration, inspections and documentation the TAP grant requires, so Town or County staff will have no requirement to expend work hours administering the grant, which can be a very time consuming process as we have seen with the recently completed 2<sup>nd</sup> & Belford Project. Additionally, by accepting this grant and pledging Town funds to one-half of the match, we will end up with a very much desired and safe connection to the PRA from the south side of Town.

**Financial Impact:** During the budget process last year, the Town budgeted \$400,000 in the Capital Improvements Fund (20-2000-4992) to complete hardscaping and landscaping in the new medians and roundabouts. Later last year, Council decided to forego and revisit median & roundabout work to a later date. With this in mind and if Council decides to approve this Resolution and IGA, staff recommends we redirect \$150,000 from this line item for our portion of the matching requirement.

**Alignment with Strategic Plan:** This request aligns with the Quality Core Services, Vibrant Recreation and Sustainable Environment sections of the Strategic Plan by providing for a safer route to the PRA from the south side of Town and the Transit facilities located at the County Commons. This project will allow for more options for citizens and visitors to get to the PRA rather than by personal vehicles or by having to walk or ride across a four-lane highway. This project will also create a valuable and much needed connection between the various recreation

paths on the south end of Town and the recreation paths to the north. This project will also meet some of the needs that were outlined in the Frisco Trails Master Plan and the Paved Pathways Plan.

**Staff Recommendation:** Based on the information contained in this report, it is recommended the Town Council approve Resolution 20-17 for the IGA and TAP grant contract and redirect \$150,000 from the Capital Improvements Fund line item 20-2000-4992 to fund the grant matching requirement.

**Reviews and Approvals:** This report has been reviewed and approved by:

Thad Renaud, Town Attorney  
Bonnie Moinet, Finance Director-Approved  
Nancy Kerry, Town Manager

**TOWN OF FRISCO  
COUNTY OF SUMMIT  
STATE OF COLORADO  
RESOLUTION 20-17**

A RESOLUTION APPROVING AN AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR THE CONSTRUCTION OF A PEDESTRIAN AND BICYCLE UNDERPASS BETWEEN THE COUNTY COMMONS AND THE PENINSULA RECREATION AREA AND AUTHORIZING THE EXPENDITURE OF FUNDS UNDER THE AGREEMENT

WHEREAS, pursuant to title 29, article 1, part 2, Colorado Revised Statutes, as amended (the "Intergovernmental Relations Statute"), and article XIV, section 18 of the State Constitution, governments may contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units; and

WHEREAS, CDOT and the Town are authorized to plan for, fund and construct public transportation improvements; and

WHEREAS, in order to improve multi-modal access and the safety of the Town's pedestrian and bicycle path system, and in connection with CDOT's State Highway 9 improvement project, the Town desires that a bicycle and pedestrian underpass be constructed between the County Commons and the Town's Peninsula Recreation Area and

WHEREAS, CDOT has agreed to construct the underpass under the terms and conditions of the attached Contract.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT:

The attached Contract between the Colorado Department of Transportation and the Town (Project: NHPP 0091-044 (21778), authorizing expenditure in an amount to not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) for the construction of a bicycle and pedestrian underpass, is hereby approved, and the Mayor and Town Clerk are hereby authorized to execute the same on behalf of the Town of Frisco

INTRODUCED, READ AND ADOPTED THIS 12<sup>TH</sup> DAY OF MAY, 2020.

Town of Frisco, Colorado:

\_\_\_\_\_  
Hunter Mortensen, Mayor

ATTEST:

\_\_\_\_\_  
Deborah Wohlmuth, CMC  
Town Clerk

(Local \$CDOTWRK)  
PROJECT: NHPP 0091-044 (21778)

REGION: 3 (lsc)

## **CONTRACT**

**THIS CONTRACT**, executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the State of Colorado, for the use and benefit of the Colorado Department of Transportation (“State” or “CDOT”) and TOWN OF FRISCO, PO BOX 4100, FRISCO, Colorado, 80443, CDOT Vendor #: 0002000413 (“Local Agency”), and the State and the Local Agency together shall be referred to as the “Parties.”

## **RECITALS**

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function , GL Acct. , WBS Element or Cost Center , (Contract Encumbrance Amount: \$1,500,000.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies..
3. Section 43-2-102 and 103, C.R.S require the State to maintain state highways (including where such highways extend through a city or an incorporated town), and 43-2-135 describes certain specific responsibilities of the State and affected local entities (respectively) with respect to state highways that are also part of a local street system;
4. The Local Agency has estimated the contribution and is prepared to provide the funding required for their contribution toward the Project, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this agreement and to expend its funds for the Contribution
5. The Local Agency has funds available and desires to provide 100% of the funding for the Work.
6. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and **Exhibit B**.
7. The parties hereto desire to agree upon the division of responsibilities with regard to the project.

## **THE PARTIES NOW AGREE THAT:**

### **Section 1. Scope of Work**

The work under this Contract shall consist of 21778- Frisco- SH9 Frisco Main Street to Iron Springs.

The TAP Project (County Commons / Peninsula Recreation Area Pedestrian & Bicycle Underpass) Pedestrian Improvement project is being combined with the CDOT (NHPP 0091-044, 21778) State Highway 9 Project.

The overall scope includes construction of a steel arch pedestrian/bicycle underpass under SH9 from the Summit County Commons to the Town of Frisco’s Peninsula Recreation Area.

The Local Agency shall provide their Contribution toward the Project, in State Highway 9, Colorado, as more specifically described in **Exhibit A**.

### **Section 2. Order of Precedence**

In the event of conflicts or inconsistencies between this Contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. This Contract
2. **Exhibit A** (Scope of Work)

3. Other Exhibits in descending order of their attachment.

### Section 3. Term

This agreement shall be effective upon approval of the CDOT Chief Engineer or designee, and shall terminate on March 16, 2030, unless sooner terminated or unless performance is extended in accordance with this Contract.

### Section 4. Project Funding Provisions

- A. The Local Agency has estimated the total cost of the Contribution and is prepared to provide its funding, as evidenced by an the signing of this Contract, which expressly authorizes the Local Agency the authority to expend its Contribution toward the Project.
- B. The contribution is estimated to be \$1,500,000.00.
- C. **The maximum amount payable by the Local Agency under this contract shall be \$1,500,000.00** unless such amount is increased by an appropriate written modification to this contract executed by the Parties hereto before any increased cost is incurred
- D. The Parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination..

### Section 5. Project Payment Provisions

- A. The Local Agency will reimburse the State for incurred costs relative to the project following the Local Agency's review and approval of such charges, subject to the terms and conditions of this agreement.
- B. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:
  1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
  2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.
- C. The State will prepare and submit to the Local Agency, no more than monthly, charges for costs incurred relative to the project. The State's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format.

### Section 6. State and Local Agency Commitments

The Scope of Work (**Exhibit A**) describes the work to be performed.

- A. Design [if applicable]
  1. If the work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the State shall comply with the following requirements, as applicable:
    - a. perform or provide the Plans, to the extent required by the nature of the work.
    - b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
    - c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction.

- d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
- e. stamp the Plans produced by a Colorado Registered Professional Engineer.
- f. provide final assembly of Plans and contract documents.
- g. be responsible for the Plans being accurate and complete.
- h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.

**B. Construction [if applicable]**

1. If the work includes construction, the State shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Scope of Work (**Exhibit A**). Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement.
2. Subject to Section 5, if the State is the responsible party:
  - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the State Agency Project Engineer (SAPE), to perform that administration. The SAPE shall administer the project in accordance with this agreement, the requirements of the construction contract and applicable State procedures.
  - b. if bids are to be let for the construction of the project, the State shall, in conjunction with the Local Agency, advertise the call for bids and upon concurrence by the Local Agency will award the construction contract(s) to the low responsive, responsible bidder(s).
    - (1) in advertising and awarding the bid for the construction of a federal-aid project, the State shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the State/contractor shall incorporate Form 1273 in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).
    - (2) the Local Agency has the option to concur or not concur in the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare its concurrence or non-concurrence within 3 working days after said bids are publicly opened.
    - (3) by indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the work under this project if no additional federal-aid funds will be made available for the project.
  - c. If all or part of the construction work is to be accomplished by State personnel (i.e. by force account), rather than by a competitive bidding process, the State will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

**Section 7. ROW Acquisition and Relocation**

If the Project includes right of way, prior to this project being advertised for bids, the State will certify in writing that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114

- charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
  - No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at <http://www.coloradodot.info/business/manuals/right-of-way>.

If right of way is purchased for a state highway, including areas of influence of the state highway, the local agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

### **Section 8. Utilities**

If necessary, the State will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the responsible party will certify in writing that all such clearances have been obtained.

### **Section 9. Railroads**

In the event the Project involves modification of a railroad company's facilities whereby the work is to be accomplished by railroad company forces, the State shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the work without compliance. The State shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Prescribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

### **Section 10. Environmental Obligations**

The State shall perform all work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

### **Section 11. Maintenance Obligations**

The Local Agency will maintain and operate the improvements constructed under this agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

### **Section 12. Record Keeping**

The State shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this agreement. The State shall maintain such records for a period of three (3) years after the date of termination of this agreement or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The State shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the Local Agency and FHWA to inspect the project and to inspect, review and audit the project records.

### Section 13. Termination Provisions

This agreement may be terminated as follows:

- A. Termination for Convenience. The State may terminate this agreement at any time the State determines that the purposes of the distribution of moneys under the agreement would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this agreement, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this agreement, the State shall thereupon have the right to terminate this agreement for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this agreement shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the agreement by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the agreement had been terminated for convenience, as described herein.

### Section 14. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this agreement and to bind the Local Agency to its terms. The person(s) executing this agreement on behalf of the Local Agency warrants that such person(s) has full authorization to execute this agreement.

### Section 15. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 3, 222 S. 6th Street, Room 317, Grand Junction, CO 81501. Said Region Director will also be responsible for coordinating the State's activities under this agreement and will also issue a "Notice to Proceed" to the Local Agency for commencement of the work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 3 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to the State:  
Jason Huddle  
CDOT Region 3  
222 S. 6th Street, Room 317  
Grand Junction, Colorado 81501  
970-683-6253  
Jason.huddle@state.co.us

If to the Local Agency:  
Jeff Goble, Public Works Director  
Town of Frisco  
PO Box 4100  
Frisco, Colorado 80443  
970-668-5276  
jeffg@townoffrisco.com

### Section 16. Successors

Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.



### **Section 17. Third Party Beneficiaries**

It is expressly understood and agreed that the enforcement of the terms and conditions of this agreement and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

### **Section 18. Governmental Immunity**

Notwithstanding any other provision of this agreement to the contrary, no term or condition of this agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

### **Section 19. Severability**

To the extent that this agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the agreement, the terms of this agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

### **Section 20. Waiver**

The waiver of any breach of a term, provision, or requirement of this agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

### **Section 21. Entire Understanding**

This agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

### **Section 22. Survival of Agreement Terms**

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this agreement and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the agreement shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

### **Section 23. Modification and Amendment**

This agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this agreement shall be effective unless agreed to in writing by both parties in an amendment to this agreement that is properly executed and approved in accordance with applicable law.

### **Section 24. Disputes**

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement, which is not disposed of by agreement, will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding

under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

\* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

<p style="text-align: center;"><b>THE LOCAL AGENCY TOWN OF FRISCO</b></p> <p>By: Title:</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO Jared S. Polis, GOVERNOR</b> Colorado Department of Transportation</p> <p>By _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director</p> <p>Date: _____</p>
<p style="text-align: center;">2nd The Local Agency Signature [if Needed]</p> <p>By: Title:</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	

## **Exhibit A** **Statement of Work**

### 21778 – Frisco – State Highway 9 Project

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NHPP Project – 0091-044

#### **SCOPE OF WORK**

The TAP Project (County Commons / Peninsula Recreation Area Pedestrian & Bicycle Underpass) Pedestrian Improvement project is being combined with the CDOT (NHPP 0091-044, 21778) State Highway 9 Project.

The overall scope includes construction of a steel arch pedestrian / bicycle underpass under SH9 from the Summit County Commons to the Town of Frisco's Peninsula Recreation Area. This project will allow for safer pedestrian and bicycle travel to and from area transit stops.

Local Agency Payments shall follow the process as described in Section 5. Project Payment Provisions

The total contribution in this contract from the Local Agency includes the following sources; Local Agency 20% match for the TAP funds (\$300,000.00) and Local Agency overmatch contribution (\$1,200,000.00).

Exhibit B  
Resolution

## **Exhibit C**

### **LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency Project Manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION

**LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

Project No. NHPP 0091-044	STIP No.	Project Code 21778	Region 3
Project Location Frisco, Colorado			Date 3/12/2020
Project Description County Commons / Peninsula Recreation Area Pedestrian & Bicycle Underpass			
Local Agency Town of Frisco	Local Agency Project Manager Jeff Goble / 970-668-9151		
CDOT Resident Engineer Grant Anderson / 303-512-5601	CDOT Project Manager		

**INSTRUCTIONS:**

This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the *CDOT Local Agency Manual*.

The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.

**Note:**

Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>TIP / STIP AND LONG-RANGE PLANS</b>			
2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
<b>PROJECT DEVELOPMENT</b>			
5.1	Prepare Design Data - CDOT Form 463		X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement <ul style="list-style-type: none"> <li>• Project Development</li> <li>• Construction Contract Administration (including Fabrication Inspection Services)</li> </ul>	NA	NA
5.4	Conduct Design Scoping Review Meeting	NA	NA
5.5	Conduct Public Involvement	NA	NA
5.6	Conduct Field Inspection Review (FIR)	NA	NA
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	NA	NA
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	NA	NA
5.9	Obtain Utility and Railroad Agreements	NA	NA
5.10	Conduct Final Office Review (FOR)	NA	NA

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.11	Justify Force Account Work by the Local Agency	NA	NA
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	NA	NA
5.13	Document Design Exceptions - CDOT Form 464	NA	NA
5.14	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	NA	NA
5.15	Ensure Authorization of Funds for Construction	NA	NA
<b>PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  <div style="display: flex; justify-content: space-between;"> <div style="width: 45%; text-align: center;"> <u>Grant Anderson</u>            CDOT Resident Engineer (Signature on File)         </div> <div style="width: 45%; text-align: center;"> <u>March 12, 2020</u>            Date         </div> </div>		X
6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	-	-
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
<b>ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS</b>			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks		X
7.2	Advertise for Bids		X
7.3	Distribute "Advertisement Set" of Plans and Specifications		X
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement		X
7.5	Open Bids		X
7.6	Process Bids for Compliance		
	Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals		X
	Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence		X
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract		X
7.10	Provide "Award" and "Record" Sets of Plans and Specifications		X
<b>CONSTRUCTION MANAGEMENT</b>			
8.1	Issue Notice to Proceed to the Contractor		X
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B) • Fabrication Inspection Notifications		X
	Pre-survey • Construction staking • Monumentation		X
	Partnering (Optional)		X
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i> )		X
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )		X
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )		X
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents		X



NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." <b>Grant Anderson</b> <b>303-512-5601</b> Local Agency Professional Engineer or Phone number CDOT Resident Engineer		X
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications		X
	Construction inspection and documentation		X
	Fabrication Inspection and documentation		X
8.6	Approve Shop Drawings		X
8.7	Perform Traffic Control Inspections		X
8.8	Perform Construction Surveying		X
8.9	Monument Right-of-Way		X
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent)  Provide the name and phone number of the person authorized for this task.  <b>Grant Anderson</b> <b>303-512-5601</b> Local Agency Representative Phone number		X
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings		X
8.12	Prepare and Authorize Change Orders		X
8.13	Submit Change Order Package to CDOT		X
8.14	Prepare Local Agency Reimbursement Requests		X
8.15	Monitor Project Financial Status		X
8.16	Prepare and Submit Monthly Progress Reports		X
8.17	Resolve Contractor Claims and Disputes		X
8.18	Conduct Routine and Random Project Reviews  Provide the name and phone number of the person responsible for this task.  <b>Grant Anderson</b> <b>303-512-5601</b> CDOT Resident Engineer Phone number		X
8.19	Ongoing Oversight of DBE Participation		X
<b>MATERIALS</b>			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required <b>prior to</b> installation of steel		X
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed		X
9.3	Perform Project Acceptance Samples and Tests		X
9.4	Perform Laboratory Verification Tests		X
9.5	Accept Manufactured Products  Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices		X
9.6	Approve Sources of Materials		X
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
9.8	Approve mix designs <ul style="list-style-type: none"> <li>• Concrete</li> <li>• Hot mix asphalt</li> </ul>		X
9.9	Check Final Materials Documentation		X
9.10	Complete and Distribute Final Materials Documentation		X
<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements		X
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist		X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280		X
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements		X
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. <ul style="list-style-type: none"> <li>• Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements.</li> <li>• Complete CDOT Form 838 – OJT Trainee / Apprentice Record.</li> <li>• Complete CDOT Form 200 - OJT Training Questionnaire</li> </ul>		X
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)		X
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report		X
<b>FINALS</b>			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter		X
11.3	Advertise for Final Settlement		X
11.4	Prepare and Distribute Final As-Constructed Plans		X
11.5	Prepare EEO Certification and Collect EEO Forms		X
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications		X
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)		X
11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the CDOT Project Manager		X
11.9	(FHWA Form 47 discontinued)		N/A
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist		X

cc: CDOT Resident Engineer/Project Manager  
CDOT Region Program Engineer  
CDOT Region EEO/Civil Rights Specialist  
CDOT Region Materials Engineer  
CDOT Contracts and Market Analysis Branch  
Local Agency Project Manager



**TO: MAYOR AND TOWN COUNCIL**  
**FROM: TOM HOGEMAN, MARINA GENERAL MANAGER**  
**RE: SECOND AMENDMENT TO FRISCO MARINA CONCESSIONAIRE AGREEMENT  
AND LICENSE FOR FRISCO ROWING CENTER AT LAKE DILLON**  
**DATE: MAY 12, 2020**

**Summary & Background:** This Second Amendment to the Frisco Marina Concessionaire Agreement and License will allow Frisco Rowing Center at Lake Dillon to continue renting sculls and providing rowing instruction to the public at Frisco Bay Marina. This Second amendment extends the terms of the agreement for two additional years. This is the eleventh year of operations for Frisco Rowing Center at the Marina. Frisco Rowing Center provides all equipment and certified instructors for the business. Frisco Rowing Center provides a direct phone number for their business and does their own marketing. The Town of Frisco Marketing and Communications Department assists them with marketing as appropriate.

**Staff Analysis:** Staff feels that offering rowing activities to the general public through a concessionaire agreement and license is a prudent and economical way to offer a desired amenity. Frisco Rowing Center has operated a very successful business in the past few years and introduced rowing to many visitors and citizens. Staff believes a two-year contract with this concessionaire is practical; the concessionaire may request renewal after that term has expired and any renewal will be brought before Council for approval.

**Financial Impact:** The Frisco Rowing Center will pay a flat fee of \$2,500 per operating season for use of designated Marina space and the use of 44 storage racks. Concessionaire shall also pay the normal slip rate, the normal summer shed storage rate, and the normal winter boat storage rate. Frisco hereby waives the winter shed storage rate and the winter storage container rate. Concessionaire shall also pay normal rates for all work orders, labor, parts and supplies. Concessionaire agrees to pay DRReC directly all sums due pursuant to any permit that may be issued by DRReC to Concessionaire.

**Alignment with Strategic Plan:** Per the 2019-2020 Town of Frisco Strategic Plan, providing quality core services is the heart of the Town of Frisco. The Town recognizes the importance of its recreational opportunities as essential to the Town's vibrancy, providing unique opportunities for visitors and locals to explore, play, experience, and share with the broader community. The Rowing Center provides visitors and locals alike with the opportunity to take part in a fun, healthy, outdoor activity.

**Environmental Sustainability:** The Rowing Center has one power boat used for instruction equipped with a modern fuel efficient motor; otherwise the bulk of the activity is human powered. Rowing Center Staff take care of their space and keep it neat and free from trash.

**Staff Recommendation:** Staff recommends that Council approve the Second Amendment to the Frisco Marina Concessionaire Agreement and License between the Town of Frisco and Frisco Rowing Center at Lake Dillon for a term of two years.

**Reviews and Approvals:** This report has been reviewed and approved by:

Diane McBride, Assistant Town Manager / Director, Recreation and Culture Department  
Bonnie Moinet, Finance Director - Approved

## SECOND AMENDMENT TO FRISCO MARINA CONCESSIONAIRE AGREEMENT AND LICENSE

**THIS SECOND AMENDMENT TO FRISCO MARINA CONCESSIONAIRE AGREEMENT AND LICENSE** (this "Second Amendment"), is made and entered into as of this 12<sup>th</sup> day of May, 2020, by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation ("Frisco") and the Frisco Rowing Center at Lake Dillon, a Colorado 501(c)3 Corporation d/b/a Frisco Rowing Center ("Concessionaire")

**WHEREAS**, Frisco and Concessionaire entered into that certain Frisco Marina Concessionaire Agreement and License dated May 24, 2016; and

**WHEREAS**, Frisco and Concessionaire entered into that certain First Amendment to Frisco Marina Concessionaire Agreement and Lease dated May 22, 2018 ("First Amendment"); and

**WHEREAS**, Frisco and Concessionaire desire to amend the terms of the Agreement as set forth in this Second Amendment;

**NOW THEREFORE**, in consideration of the foregoing and of the following mutual covenants and conditions Frisco and Concessionaire agree that this First Amendment shall amend the Agreement as follows:

1. That section 4 of the Agreement is hereby amended so as to read in its entirety as follows:

4. Term, Possession and Interest. The term of this Agreement (the "Term of this Agreement") shall be from the beginning of the Dillon Reservoir's Summer of 2020 boating and water recreation season to the end of the Dillon Reservoir's Summer of 2021 boating and water recreation season, with such seasons generally beginning on June 1 of each year and ending on October 31 of each year. The term of this Agreement may be renewed upon approval of the Frisco Town Council in its sole and absolute discretion.

This Agreement merely grants to the Concessionaire the personal privilege to use the property in strict accordance with the terms of this Agreement. This Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the concessionaire. Concessionaire shall expend any time, money or labor upon the property at Concessionaire's own risk and peril.

2. That section 5(b)(i)(ii) of the Agreement is hereby amended so as to read in its entirety as follows:

5. Payments by Concessionaire.

- (b) Operating Fees.

- (i) Concessionaire shall pay a flat fee of \$2,500 per operating season for use of designated Marina space and the use of 44 storage racks. Concessionaire shall also pay the normal slip rate, the normal summer shed storage rate, and the normal winter boat storage rate. Frisco hereby waives the winter shed storage rate and the winter storage container rate. The winter storage container must be removed from the designated Marina space by May 15<sup>th</sup> each year, and may not be on site before October 15<sup>th</sup> each

year. Concessionaire shall also pay normal rates for all work orders, labor, parts and supplies. Concessionaire agrees to pay DRReC directly all sums due and owing from time to time pursuant to any permit that may be issued by DRReC to Concessionaire.

(ii) On or before the thirty-first (31<sup>st</sup>) day of October 2020 and 2021, Concessionaire shall pay to Frisco the Operating Fee that accrued during the immediately previous operating season. Non-payment of the Operating Fee shall constitute a material breach of this Agreement for which Frisco may terminate this Agreement pursuant to Section 8 herein.

3. That section 6(h)(i) of the Agreement is hereby amended so as to read in its entirety as follows:

(h) *Insurance.* During the Term of this Agreement, Concessionaire shall procure and maintain, at its own expense, the following policy or policies of insurance.

(i) Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products and completed operations. The policy shall name Frisco, its employees and agents as additional insureds and shall include severability of interests, waiver of subrogation and cross-liability endorsement provisions.

(j) Will operate per all public health/CDC guidelines with regard to social distancing, face coverings, max capacity of boats or any other requirements/recommendations dealing with communicable disease.

5. Except as otherwise provided in this Second Amendment, all capitalized terms used in this Second Amendment shall have the same meaning as provided in the Agreement.

6. Except as expressly amended by this Second Amendment, the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

TOWN OF FRISCO, a Colorado municipality      CONcessionAIRE:  
Frisco Rowing Center

By \_\_\_\_\_  
Hunter Mortensen, Mayor

By \_\_\_\_\_  
Joanne Stolen, President

Attest:  
\_\_\_\_\_  
Deborah Wohlmuth, Town Clerk



MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: NANCY KERRY, TOWN MANAGER**  
**RE: EMERGENCY ORDINANCE 20-14, FACIAL COVERINGS**  
**DATE: MAY 12, 2020**

**Summary and Background:** On April 28<sup>th</sup>, 2020 Summit County amended and restated a Public Health Order to limit the health impacts of the COVID-19 virus. This order sets forth for the requirement of face coverings and additional guidance to slow the spread of the COVID-19 virus in Summit County and in the Town of Frisco.

The Summit County order on facial coverings reads: Face Coverings: Individuals must wear face coverings that cover nose and mouth whenever: i. in indoor areas open to the general public or ii. outdoors whenever at least 6 feet of separation cannot be maintained among all individuals. In order to ensure that sufficient supplies of medical facemasks are available to health care workers, members of the public are strongly encouraged to use non-medical cloth face coverings, unless a medical face mask is medically necessary.

**Analysis:** This ordinance is in addition to those exercised by the Governor of Colorado, State of Colorado Department of Public Health and Environment, and Summit County Department of Public Health and the Centers for Disease Control and Prevention that recommends wearing face coverings in public settings to prevent the spread of COVID-19.

**Staff Recommendation:** The ordinance outlining the restrictions and the basis for supporting the health order is attached for Council's consideration.

**Reviews and Approvals:** This report has been reviewed and approved by:

Nancy Kerry, Town Manager

**Attachments:**

Attachment 1: Ordinance 20-14

Attachment 2: Summit County Public Health Order

## **Attachment 1: Ordinance 20-14**



**TOWN OF FRISCO  
COUNTY OF SUMMIT  
STATE OF COLORADO  
EMERGENCY ORDINANCE 20-14**

AN EMERGENCY ORDINANCE OF THE TOWN OF FRISCO, COLORADO, TO REQUIRE FACE COVERINGS AT CERTAIN LOCATIONS WITHIN THE TOWN, TO STRONGLY ENCOURAGE FACE COVERINGS AT ALL OTHER LOCATIONS WITHIN THE TOWN IN COMPLIANCE WITH STATE OF COLORADO PUBLIC HEALTH ORDERS, DECLARING AN EMERGENCY AND PROVIDING FOR THE IMMEDIATE EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, by Town of Frisco Ordinance No. 20-07, on March 16, 2020, the Town declared a public health emergency; to wit, the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from COVID-19 requiring emergency action, then and now, to avert danger or damage and to protect public health; and

WHEREAS, on March 10, 2020, the Governor of the State of Colorado declared a statewide state of emergency in response to coronavirus (COVID-19); and

WHEREAS, on March 14, 2020, the President of the United States declared a national emergency in response to the coronavirus (COVID-19); and

WHEREAS, the World Health Organization has declared the coronavirus (COVID-19) to be a worldwide pandemic; and

WHEREAS, the coronavirus (COVID-19) has been confirmed to exist in Summit County; and

WHEREAS, the Town Council of the Town of Frisco confirms that protecting public health is the Council's top priority, and this ordinance is adopted to limit the health impacts of COVID-19 by potentially slowing the spread of the virus; and

WHEREAS, the Town Council is empowered by Section 31-15-401(1)(b), C.R.S., "[t]o do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease" within the territorial limits of the Town of Frisco; and

WHEREAS, the United States Centers for Disease Control and Prevention recommends wearing face coverings in public settings to prevent the spread of COVID-19; and

WHEREAS, the Town Council finds and determines that the adoption of this ordinance is necessary for the promotion of health and the suppression of disease; and

WHEREAS, the Town's authority to adopt this Ordinance is in addition to those exercised by the Governor of Colorado, the State of Colorado Department of Public Health and Environment, and the County of Summit, Colorado.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THAT:

The Town of Frisco hereby adopts the following Public Health Order:

Section 1. Definitions.

For purposes of this Ordinance, "Face Covering" shall mean a uniform piece of material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands.

Section 2. Face Coverings Required.

All persons shall wear Face Coverings when entering and while inside a place of business open to the public that has posted a clearly legible sign at each entrance to the business that states that Face Coverings are required within the business.

Section 3. Face Coverings Recommended.

Consistent with the public health orders of the Colorado Governor and the related guidance from the Colorado Department of Public Health and Environment, and so long as that guidance remains in place, the Town strongly recommends that all persons wear Face Coverings in all public indoor and outdoor places where persons are unable to maintain safe physical distancing (six feet or more of separation) from others not of their own household.

Section 4. Exceptions.

Nothing herein shall require Face Coverings for the following persons:

- a. Persons under the age of two years; and
- b. Persons for whom a Face Covering would cause impairment due to an existing health condition.

Section 5. General Information Concerning Face Coverings.

Pursuant to the United States Centers for Disease Control and Prevention guidance, the public is strongly encouraged to wear cloth Face Coverings that;

- a. fit snugly but comfortably against the side of the face;
- b. are secured with ties or ear loops;
- c. include multiple layers of fabric;
- d. allow for breathing without restriction; and
- e. are able to be laundered and machine dried without damage or change to shape.

Section 6. Penalties.

Any person found to have violated any provision of Section 2 of this Ordinance shall be guilty of misdemeanor offense and shall be subject to a maximum penalty of \$50 for the first offense, \$250 for the second offense, and to the penalties set forth in Section 1-14 of the Code of Ordinances of the Town of Frisco for each offense thereafter.

Section 7. Effect of Ordinance on Other Orders.

The provisions of this Ordinance shall have no impact nor effect on the provisions or enforceability of any federal, state or Summit County regulations or orders concerning COVID-19 or the wearing of Face Coverings. In each and every instance, each such regulation or order may be enforced under applicable law in accordance with its terms, and in all cases the most restrictive provision shall apply.

Section 8. Effective Date and Time.

This Ordinance will become effective at 12:00 a.m. on May 13, 2020, and will remain in effect until 11:59 p.m. on \_\_\_\_\_, 2020.

PASSED AND APPROVED THIS 12TH DAY OF MAY, 2020.

TOWN OF FRISCO, COLORADO

\_\_\_\_\_  
Hunter Mortensen, Mayor

ATTEST:

\_\_\_\_\_  
Deborah Wohlmuth, CMC  
Town Clerk

**Attachment 2**  
**Summit County Health Order Amended**  
**May 7th**



## SUMMIT COUNTY PUBLIC HEALTH

970.668.9161 ph | 970.668.4115 f  
www.SummitCountyCO.gov

360 Peak One Dr., Ste. 230 | PO Box 2280  
Frisco, CO 80443

**MAY 7, 2020**

**AMENDED AND RESTATED STANDING PUBLIC HEALTH ORDER  
REGARDING THE COVID-19 VIRUS  
FOR SUMMIT COUNTY, COLORADO**

**1. Purpose, Effective Area.** This Amended and Restated Public Health Order is being issued to limit the health impacts of COVID-19. This Order sets forth requirements for group gatherings and additional guidance to slow the spread of COVID-19. This Order is effective within the entirety of Summit County, including all towns within the County.

**2. Effective Date and Time, Limitations.** The Public Health Order will become effective at 12:01 a.m. on May 8, 2020, unless otherwise specifically provided for herein, and will remain in effect until 11:59 p.m. May 31, 2020, unless extended, rescinded, superseded, or amended in writing.

**3. Findings and Intent.** There is clear evidence that some individuals who contract COVID-19 have no symptoms or have very mild symptoms, which means they are likely unaware they carry the virus. Because asymptomatic individuals can transmit the disease, and because evidence shows the disease is easily spread, gatherings of people facilitate transmission of COVID-19.

The Public Health Director further finds that the presence of visitors, if unregulated, will impose unnecessary burdens on the health care system, public services, first responders, food supplies and other essential services during the ongoing COVID-19 pandemic and may introduce increased illness into the community.

The Public Health Director further finds that due to the licensing requirements, certifications, standard safety precautions, and requirements for expertise imposed by the State of Colorado and other regulatory bodies upon Personal Services providers, those providers are allowed to operate as provided pursuant to this Order.

The intent of this Order is to minimize contact among individuals and their exposure of the public to COVID-19 while lifting some of the existing restrictions on social, civic, businesses and commercial activities.

**4. Legal Authority.** This Order is adopted pursuant to the legal authority set forth in sections 25-1-506 and 25-1-508, 25-1-509, Colorado Revised Statutes as well as all other

applicable laws, rules, regulations, orders and declarations. Under this authority, the Summit County Public Health Director has the duty to investigate and control the causes of the epidemic or communicable diseases and conditions affecting public health; to establish, maintain, and enforce isolation and quarantine; to exercise physical control over the property and over the persons of the people within the territorial limits of Summit County; and to prohibit the gatherings of people to protect the public health; all as the Public Health Director may find necessary for the protection of the public health. Issuance of this Order is deemed reasonable under the existing circumstances and necessary for the immediate preservation of the public health, safety and welfare.

**5. Most Restrictive Standard Controls.** To the extent any State and/or Federal orders or laws are more restrictive than what is set forth herein, such orders control. Individuals should be aware that new orders from Governor Polis and the Colorado Department of Public Health and Environment (CDPHE) are being issued on a regular basis, and all members of the public are responsible for following the Governor’s orders, CDPHE orders, and local orders. The more restrictive Summit County provisions expressly provided below shall control.

**6. Incorporation of State Orders.** All Executive Orders issued by the Governor and all CDPHE Public Health Orders are hereby adopted and deemed incorporated herein. This Amended and Restated Public Health Order is intended to clarify and harmonize this Summit County Public Health Order with all of the State’s orders.

For purposes of this order, the term “Physical Distancing Requirements” shall have the same meaning as the State defined term “Social Distancing Requirements”.

**7. Compliance with State Orders.** In order to safely open and operate, the following businesses and entities as defined by the State: Critical Businesses, Critical Government Functions, non-Critical Office-Based Businesses, Personal Services, Limited Healthcare Setting, and Non-Critical Retail must comply with all Executive Orders issued by the Governor and all CDPHE Public Health Orders applicable to such operations.

**8. Limitations on the Sale of Food and Beverages, Including Liquor, Beer and Wine, to Carry-Out and Delivery Only.**

a. In accordance with existing State of Colorado Executive and Public Health Orders, the sale of food and beverages in Summit County, including liquor, beer and wine, is limited to carry-out and delivery only, subject to all other applicable licensing and regulatory requirements.

b. For clarification, the on-site consumption of food or beverages is not prohibited at a business or institutional facility where such food or beverages is prepared for workers of the facility so long as such food or beverage is consumed at a location reasonably distant from the point of sale and all applicable Physical Distancing Requirements are followed.

**9. Limitations on Establishments Providing Retail Goods and Services.**

a. In order to discourage public gatherings and overcrowding, establishments meeting the definition of grocery, pharmacy, pet food store, or hardware store may sell only those items included in those categories; i.e., stores shall cordon off and not allow sales of items other than pharmaceuticals, groceries including essential goods and services such as cleaning products, pet food and supplies, or hardware. This provision 8(a) shall expire on May 8, 2020 at 12:01 a.m.

b. Effective April 27, 2020, pursuant to the Governor’s Order and CDPHE Orders, all establishments providing Non-Critical Retail (as defined by the State) may sell goods through delivery service, window service, walk-up service, drive-through service, drive-up service or curbside delivery.

c. Effective May 1, 2020, Non-Critical Retail (as defined by the State) may allow individual in-person shopping by appointment. Appointments shall be limited to one person at a time and establishments must follow all applicable Physical Distancing Requirements.

d. Effective May 8, 2020, Non-Critical Retail may open up to fifty percent (50%) capacity or less for in-person services if the establishments meets the following standards:

- i. All requirements in the CDPHE Amended Public Health Order 20-28 titled Safer at Home,
- ii. All requirements in the Summit County Business Physical Distancing Protocol, including posting of the Physical Distancing Protocol Form at or near the entrance of the establishment.
- iii. The number of customers in the store at any one time is limited to a maximum of 1 person per 100 square feet of retail area, and
- iv. All individuals, including customers and employees, maintain at least 6 feet of distance from one another to the greatest extent possible.

**10. Physical Distancing Protocol (formerly known as Social Distancing Protocol).**

a. Effective May 1, 2020, pursuant to the Governor’s Order and CDPHE Orders, Personal Services (as defined by the State) shall, prior to performing services, complete the online Summit County Business Physical Distancing Protocol Form (formerly titled Summit County Business Social Distancing Protocol). The completed form must be posted at or near the entrance of the Personal Services establishment and shall be easily viewable by employees, customers and others on site.

b. Critical Businesses, Critical Government Functions, Non-Critical Office-Based Businesses, Limited Healthcare Settings and Non-Critical Retail shall complete the online Summit County Business Physical Distancing Protocol form (formerly titled Summit County

Business Social Distancing Protocol) either: 1) prior to opening if allowed to open pursuant to this Order, or 2) by May 1, 2020 if already open pursuant to previous Orders.

The completed form must be posted at or near the entrance of the establishment and shall be easily viewable by employees, customers and others on site.

c. Personal Services, Critical Businesses, Critical Government Functions, Non-Critical Office-Based Businesses, Limited Healthcare Settings and Non-Critical Retail must comply with the Summit County Business Physical Distancing Protocols as well as all applicable Governor's order, CDPHE orders, DORA and State rules, regulations and guidance.

## **11. Limitations on Transportation Services.**

a. For purposes of this Order, "transportation services" shall include all transportation services open to the public including the Summit Stage, Breckenridge Free Ride, mountain shuttle services to the extent they operate in the County (*e.g.* Colorado Mountain Express, Peak 1 Express), and ride-sharing services (*e.g.* Uber, Lyft). Transportation services does not include ambulances, paratransit services (*e.g.*, Mountain Mobility), or the scheduled transport of convalescent patients and individuals with disabilities.

b. Effective April 27, 2020 the Summit Stage may resume service with buses limited to fewer than 10 passengers. The Summit County Transit Department may also maintain paratransit services.

c. All transportation services riders and operators must wear face coverings at all times and following appropriate Physical Distancing Requirements to the greatest extent possible.

d. All other transportation services including but not limited to bus services, taxis, ride-sharing services such as Uber and Lyft, and shuttle services are prohibited from operating except as necessary for good cause in order to provide transportation for those needing to leave Summit County and residents returning home to Summit County.

## **12. Limitations on Short-Term Lodging.**

a. For purposes of this Order, "short-term lodging" shall include but is not limited to campgrounds (whether private or government operated), reserved camping sites, hotels, motels, short term rentals of 30 days or less (*e.g.*, Airbnb, VRBO, timeshares, RV parks, bed and breakfasts, condo-tels, lodges and retreats).

b. All short term lodging operations are prohibited from operating from the date of this Order until May 31, 2020. Short term lodging operators must block out their online reservation calendars on all relevant platforms through May 31, 2020 in order to avoid taking



reservations for stays that would occur during the prohibited time period. This date may be extended, per the restrictions contained in any future Public Health Order.

c. All short term lodging units must be vacated through May 31, 2020.

d. Exception: If a short-term lodging unit is occupied by a local worker, that worker may remain in the unit.

e. Exception: If individual(s) are experiencing symptoms of illness, or are under a quarantine or isolation order from Summit County Public Health, or have other good cause to do so they may remain in any short term lodging unit occupied by such individual(s) and shall be exempt from the limitations set forth herein so long as such individual(s) remain in the unit.

**13. Childcare Requirements for Children of Local Workforce.** Effective May 11, 2020, childcare facilities may provide services for children of those parents or guardians allowed to work pursuant to the applicable state and local public health orders. To the extent possible, and in accordance with existing law, childcare facilities must operate under all guidance and recommendations from CDPHE regarding best practices to prevent the spread of COVID-19.

**14. Construction Site Health Protection.** All construction activities must adhere to the Summit County Building Department COVID-19 Policies and Procedures or the equivalent document within the specific jurisdiction in which construction is being performed.

**15. Isolation and Quarantine Requirements for Symptomatic Persons and Exposures**

a. For purposes of this Order, the following definitions shall apply:

i. “Self-Isolate” is specific to a person with illness and means to stay at home, maintain distance (minimum of 6 feet) away from other household members, do not share a bedroom or bathroom, wear a mask to cover your mouth and nose when in common areas within the household, and do not leave the home unless seeking medical care.

ii. “Self-Quarantine” is specific to a person who does not have symptoms but has been exposed to someone confirmed to have COVID-19 or who is experiencing symptoms, and means to stay home, do not go to public places unless seeking medical care, and avoid contact with other people until the incubation period for COVID-19 is over, for 14 days.

b. Individuals experiencing symptoms of COVID-19 must Self-Isolate as defined in Section 15(a), above, for a minimum of ten (10) days from the start of symptoms AND 72 hours until fever free (without the use of any fever-reducing medications), PROVIDED that such symptoms are significantly improving. This obligation to self-isolate includes people that have

tested positive, people awaiting their test results, and people who have symptoms but have not been tested.

c. Individuals in close contact with someone with confirmed COVID-19 disease, or a person who has symptoms consistent with COVID-19 but who has not been tested, must Self-Quarantine, as defined in Section 15(a), above, for 14 days at their place of residence. For healthcare workers and others responding to the COVID-19 pandemic, Summit County Public Health will provide more specific guidance.

d. Employers do not need to and should not require negative test results or a medical release for anyone that has completed the Self-Isolation requirements in subsection 15(b), above, or the Self-Quarantine requirements in subsection 15(c), above, each as applicable.

e. In the event an employee has confirmed COVID-19 or has symptoms but was not tested, employers should not recommend testing for any other employees as a condition of employment.

f. Employers should not otherwise require a negative test result as a condition of employment.

## **16. General Information for all Persons.**

a. Events: The Public Health Director strongly recommends that residents and visitors cancel or avoid all non-essential events, regardless of size, where appropriate Physical Distancing Requirements and preventative measures may not occur.

b. Face Coverings: Individuals must wear face coverings that cover nose and mouth whenever:

- i. in indoor areas open to the general public or
- ii. outdoors whenever at least 6 feet of separation cannot be maintained among all individuals.

In order to ensure that sufficient supplies of medical face masks are available to health care workers, members of the public are strongly encouraged to use non-medical cloth face coverings, unless a medical face mask is medically necessary.

c. Ski Areas: All ski areas in Summit County will remain closed in order to discourage residents of other counties and states from visiting Summit County.


d. Second Homes: In accordance with applicable prohibitions and recommendations from the State of Colorado, and in an effort to further prevent the spread of COVID-19 and the overwhelming of resources in Summit County, second homeowners are strongly encouraged to avoid visiting their second home unless required for Necessary Activities or Necessary Travel as defined by the State of Colorado.

e. Schools: In accordance with Governor Polis' Executive Order D 2020 007, as amended, all public and private elementary and secondary schools, including public preschools on public school campuses shall remained closed through the end of the 2019-2020 regular school year.

f. Importance of Public Actions: These actions are some of the most available and effective tools to help slow the spread of the virus in our community – and, importantly, to reduce the number of potential deaths caused by COVID-19. By slowing the spread, we have a chance to protect our family, friends, and neighbors who are at risk for severe illness. In particular, this includes all adults over age 65 and anyone with an underlying health condition.

These actions will limit the cascading impacts on critical services due to high absenteeism if large numbers of workers become ill. This Order and actions will help hospitals, first responders, and other health care services continue to provide services for those who need them (along with utilities, human services, and businesses) in the coming weeks and months. Collective action can save lives and is in support of the most vulnerable in our community. The more united we can be in preventing the spread, the greater the benefit for the whole community.

**17. Penalties.** Failure to comply with this Order is subject to the penalties contained in Section 25-1-516 and 18-1.3-501, Colorado Revised Statutes, including a fine of up to five thousand (\$5,000) dollars and imprisonment in the county jail for up to eighteen (18) months.

By:  \_\_\_\_\_  
**Amy Wineland, RN, MSN, ND, CPNP**  
**Summit County Public Health Director**  
**May 7, 2020**



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: JEFF GOBLE, PUBLIC WORKS DIRECTOR**  
**RE: REVOCABLE LICENSE AGREEMENT WITH SEMA CONSTRUCTION FOR THE TEMPORARY USE OF TOWN-OWNED PROPERTY AT THE PENINSULA RECREATION AREA**  
**DATE: MAY 12, 2020**

**Summary and Background:** SEMA Construction has been awarded the contract for constructing the final phase of CDOT's SH9 widening project, also known as the "The Gap" project. As part of the project, SEMA needs to place several temporary office trailers and have a material and equipment laydown yard somewhere near the project limits.

**Analysis:** SEMA approached the Town several weeks ago looking for a suitable area to place the temporary office trailers and the material laydown yard. Working with the Recreation Department, Public Works determined that the vacant land on the north-west corner of SH9 and Recreation Way (see Exhibit A) was a feasible location for the office trailers that would not require much grading modifications or impact the operations of the PRA / Adventure Park. We also determined the area in the far south-west corner of the "boneyard" (near the Excelsior House, see Exhibit B) would be suitable for the material and equipment laydown yard. This location will not have an adverse effect on Public Works operations. The office trailers would remain on-site until the completion of both phases of the project and would be removed in the late fall of 2021. The material and equipment laydown yard will be dismantled and removed before this winter (2020) in order to not effect snow storage operations or Nordic trails in that area. The lay down yard will be re-established in the spring of 2021 for phase two of the project. Both areas will be restored to original condition or better upon completion of the entire project.

**Financial Impact:** There will be no financial impact to the Town as any and all arising from this agreement will be borne by SEMA and these two sites will not be detrimental to the operations of the PRA / Adventure Park or Public Works.

**Alignment with Strategic Plan:** Approval of this agreement aligns with the Quality Core Services section of the Strategic Plan by partnering with SEMA to assist in constructing high quality transportation infrastructure.

**Staff Recommendation:** Based on the information contained in this report, it is recommended the Town Council approve the Revocable License Agreement with SEMA Construction for the temporary use of Town-owned property at the Peninsula Recreation Area.

**Reviews and Approvals:** This report has been reviewed and approved by:

Thad Renaud, Town Attorney  
Bonnie Moinet, Finance Director-Approved  
Nancy Kerry, Town Manager

**REVOCABLE LICENSE FOR USE OF PUBLIC RIGHT OF WAY  
OR PUBLIC PLACE**

THIS REVOCABLE LICENSE FOR USE OF PUBLIC RIGHT OF WAY OR PUBLIC is granted this \_\_\_ day of \_\_\_\_\_, 2020, (the "Effective Date") by the Town of Frisco, a home rule municipal corporation, ("Town"), whose address is 1 Main Street, Frisco, Colorado 80443, to SEMA Construction, Inc, ("Licensee") whose address is 7353 S. Eagle Street, Centennial, Colorado 800112.

A. The Town owns the right-of-way/public place which is commonly known as the [INSERT the description of street or public place] (the "Town ROW/Public Place").

B. Licensee is desirous to install and maintain all temporary BMP's, hardened surface, office/lab trailers, restrooms, fence/perimeter control if required and all items pertaining to site that SEMA Construction has disturbed. (collectively the "Private Improvements") that will encroach into the Town ROW/Public Place. Said Private Improvements and their encroachments are depicted on Exhibit A & Exhibit B attached hereto and incorporated herein by this reference.

C. Pursuant to Town Charter, the Code of the Town of Frisco ("Town Code") and the laws of the State of Colorado, the Town is vested with power and authority over the use of municipally owned streets, rights-of-way and other public places.

D. The Town is willing to grant a revocable license to Licensee to allow Licensee to install and maintain the Private Improvements as depicted in Exhibit A & B under certain circumstances and with certain conditions and stipulations.

E. The intent of this License is to authorize, on a revocable basis, the installation and maintenance of the Private Improvements within the Town ROW/Public Place without cost to the Town.

**LICENSE**

**1. Grant of Revocable License.**

The Town hereby grants to Licensee a non-exclusive and revocable authorization (the "License") to install and maintain the Private Improvements in the Town ROW/Public Place, provided, however, that as conditions precedent to the License, the Licensee shall:

(i) Prepare, at its sole expense, a survey of the area of the Town ROW/Public Place that is subject to this License, said survey to be prepared by a licensed surveyor and attached hereto as a supplement to Exhibit A hereto; and,

(ii) that Licensee shall construct and maintain the Private Improvements only within the boundaries of the area depicted on said survey as being within the Town ROW/Public Place.

The rights granted under this License are expressly subject to the rights of the public and any rights granted previously by the Town to any person. The Town may enforce this License either by seeking damages or by specific performance or through any other legal or equitable remedy available to the Town.

## **2. Design, Installation, Excavation and Maintenance**

a. The Licensee shall pay all costs of design, installation, and maintenance of the Private Improvements. Upon revocation of the License as provided herein and upon the Town's demand, Licensee shall pay all costs and perform all removal of the Private Improvements from the Town ROW/Public Place and, as applicable, shall pay all costs of and be responsible for returning the land surface to substantially the same condition that it is on the Effective Date.

b. This License shall not operate or be construed to abridge, limit or restrict the Town in exercising its right to make full use of the Town ROW/Public Place encroached upon as public thoroughfares or public places, nor shall it operate to restrict utility companies or any other licensees in exercising their rights to construct, remove, operate and maintain their installations within the Town ROW/Public Place.

c. Licensee hereby assumes full responsibility for any and all damages incurred to public facilities or utilities located within the Town ROW/Public Places due to activities authorized by this License.

d. Pursuant to Town Code, Licensee shall not install, replace or alter the Private Improvements without first obtaining the necessary permits, paying the necessary fees and posting the necessary bonds, including but not limited to building permits and excavation permits, as applicable. Licensee shall maintain the Private Improvements in a good and attractive condition during the term of the License.

e. All excavation shall be accomplished in accordance with the Town Code and the required permits. Licensee is responsible for locating all utilities prior to any excavation. The Town Manager or the Town Manager's designee, prior to excavation, shall review and approve plans and specifications governing the installation and any later replacement or alteration of the Private Improvements. Upon completion of installation and alteration, if any, a reproducible copy of the EXACT location and dimensions of the Private Improvements shall be filed with the Town Manager.

f. Licensee acknowledges that it is installing the Private Improvements at its own peril. Licensee is solely responsible for any damage to the Private Improvements caused by Town personnel, or the Town's contractors or subcontractors, in connection with conducting maintenance or emergency operations in the Public ROW/Public Place.

## **3. Repair of Damages**

Licensee shall promptly repair all damage to the Town ROW/Public Place caused by its activities. If such damage poses a threat to health, safety or welfare of the public or individuals,

the Town may cause repairs to be made at Licensees' expense unless the Licensee makes such repairs upon the Town's request.

**4. Term.**

This License shall commence on the Effective Date and shall terminate on such date as the Town may revoke this License. This License may also terminate upon Licensee's request so long as Licensee removes all Private Improvements and returns the Town ROW/Public Place to substantially similar condition as that prior to installation of the Private Improvements.

**5. Revocation.**

a. Town may revoke this License upon thirty (30) calendar days' written notice to Licensee and upon the occurrence of any one or more of the following events:

(i) Breach of this License by Licensee including, without limitation, the failure to maintain the Private Improvements in a good and attractive condition, after Licensee has failed to cure such breach for a period of thirty (30) calendar days from receipt of written notice of such breach by Licensee from Town.

(ii) A unilateral decision by the Town Council of the Town that the Town ROW/Public Place is desired or beneficial for any purpose.

b. Upon revocation, Licensee shall, at Licensee's sole cost, remove the Private Improvements and restore the Town ROW/Public Place to substantially the same condition that it is in on the Effective Date.

c. Upon revocation, this License shall terminate, be deemed null and void and of no further force and effect.

d. In the event that Licensee fails to remove the Private Improvements by the 30<sup>th</sup> day after the Town delivers notice of revocation to the Licensee, the Town may remove or cause the Private Improvements to be removed. The Town may collect the cost of removal from the Licensee and the Licensee agrees to pay such cost promptly upon written demand therefore. Licensees further agree that, upon the failure to pay such costs within thirty (30) days after written demand therefore, the Town shall have the right to file a lien, in the dollar amount of such cost, against any and all real property owned by the Licensee, which lien may be foreclosed upon in the manner provided in Colorado Statutes for the judicial foreclosure of liens.

**6. Notice.**

Every notice required or permitted hereunder shall be in writing and shall be deemed to have been fully given when delivered by hand or upon delivery when sent by overnight mail, to the party's address set forth in the introductory paragraph of this License or at such other address as a party may designate, in writing, to the other party.

**7. Indemnification.**

The Licensee expressly agrees to, and shall, indemnify and hold harmless the Town and any of its officers, agents, or employees from any and all claims, demands, damages, liability, or court awards, including costs and attorneys' fees that are incurred by the Town or that 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, partnership, or corporation, in connection with or arising out of any act, omission, error, mistake, negligence, or other fault of the Licensee or any of such Licensee's agents, partners, contractors, subcontractors, or lessees, in the installation, construction, use or maintenance of the Private Improvements. In particular and without limiting the scope of the foregoing agreement to indemnify and hold harmless, the Licensee shall indemnify the Town for all claims, damages, liability, or court awards, including costs and attorneys' fees that are incurred by the Town or that may be awarded against the Town 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, in connection with or arising out of any claim that, in whole or in part, all or any portion of the Public Improvements permitted by this License or the maintenance and/or operation of the Private Improvements and/or the Town ROW/Public Place constitutes a dangerous, hazardous, and/or unsafe condition.

In the event the Town institutes litigation against the Licensee for a breach of this License or for an interpretation of the License and the Town is the prevailing party, Licensee shall reimburse the Town for all costs related thereto including reasonable attorney fees. If the Licensee prevails, then the Town shall reimburse the Licensee for all costs related thereto including reasonable attorney fees.

**8. Competing Uses.**

The Private Improvements and the Licensee's activities within the Town ROW/Public Places shall not interfere with water facilities, sanitary or storm sewer facilities or other public use of the Town ROW/Public Places. Licensee's Private Improvements shall be maintained and altered from time to time, if necessary in the reasonable determination of the Town, so as to avoid interference with other property, uses and improvements.

**9. Miscellaneous Provisions**

a. Waiver of Breach. A waiver by any party to this License of the breach of any term or provision of this License shall not operate or be construed as a waiver of any subsequent breach by any party.

b. Binding Effect. This License shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this License except as otherwise expressly authorized herein.

c. Underlying Intent and Scope. It is the intent of this License that the Town shall incur no cost or expense attributable to or arising from the installation, construction,



maintenance, or operation of the Private Improvements authorized by this License and that, in all instances, the risk of loss, liability, obligation, damages, and claims associated with the Private Improvements shall be borne by the Licensee. This License does not confer upon the Licensee any other right, permit, license, approval, or consent other than that expressly provided for herein and this License shall not be construed to waive, modify, amend, or alter the application of any other federal, state, or local laws, including laws governing zoning, land use, property maintenance, or nuisance.

d. No Third Party Beneficiaries. Nothing contained in this License is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party. Absolutely no third party beneficiaries are intended by this License. Any third party receiving a benefit from this License is an incidental and unintended beneficiary only.

e. Governing Law, Venue, And Enforcement. This License shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this License shall be in the appropriate court for Summit County, Colorado.

f. No Waiver of Immunity. Nothing in this License is intended to waive any protection afforded to the Town by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. or any other applicable law providing immunity to the Town, its officials, officers, agents, and employees.

#### 10. **Recordation**

This License shall be recorded in the real property records of the Summit County Clerk and Recorder.

**TOWN OF FRISCO**, a Colorado Home Rule  
Municipal Corporation

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Mayor

ATTEST:

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Deborah Wohlmuth, Town Clerk

LICENSEE:

By: *Kyler DeMinck*

Print Name: Kyler DeMinck

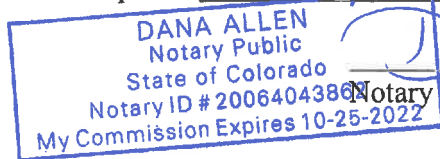
Position/Title: Project Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this 5 day of May,  
2020, by Kyler DeMinck as Project Manager of  
SEMA Construction, Inc.

WITNESS my hand and official seal.

My commission expires: 10/05/2022

 *Dana Allen*

Notes & Expectations:

- VTC/Perimeter Control and General Site Maintenance will be performed by SEMA Construction.
- SEMA will return the disturbed area to the Town of Frisco, in equal or better condition than current state.
- SEMA will removal all temporary items including fence, BMP's, restrooms, trailer's and hardened surface upon demobilizing.
- SEMA will seed the disturbed area once demobilized, with the native seed within CDOT's contract with SEMA.

-Hardened surface grading to limit tracking, Millings/base/Gravel.  
-Perimeter control as needed, Fence/BMP's

VTC Pad

Orange construction fence to protect pedestals

CDOT Office

SEMA Office

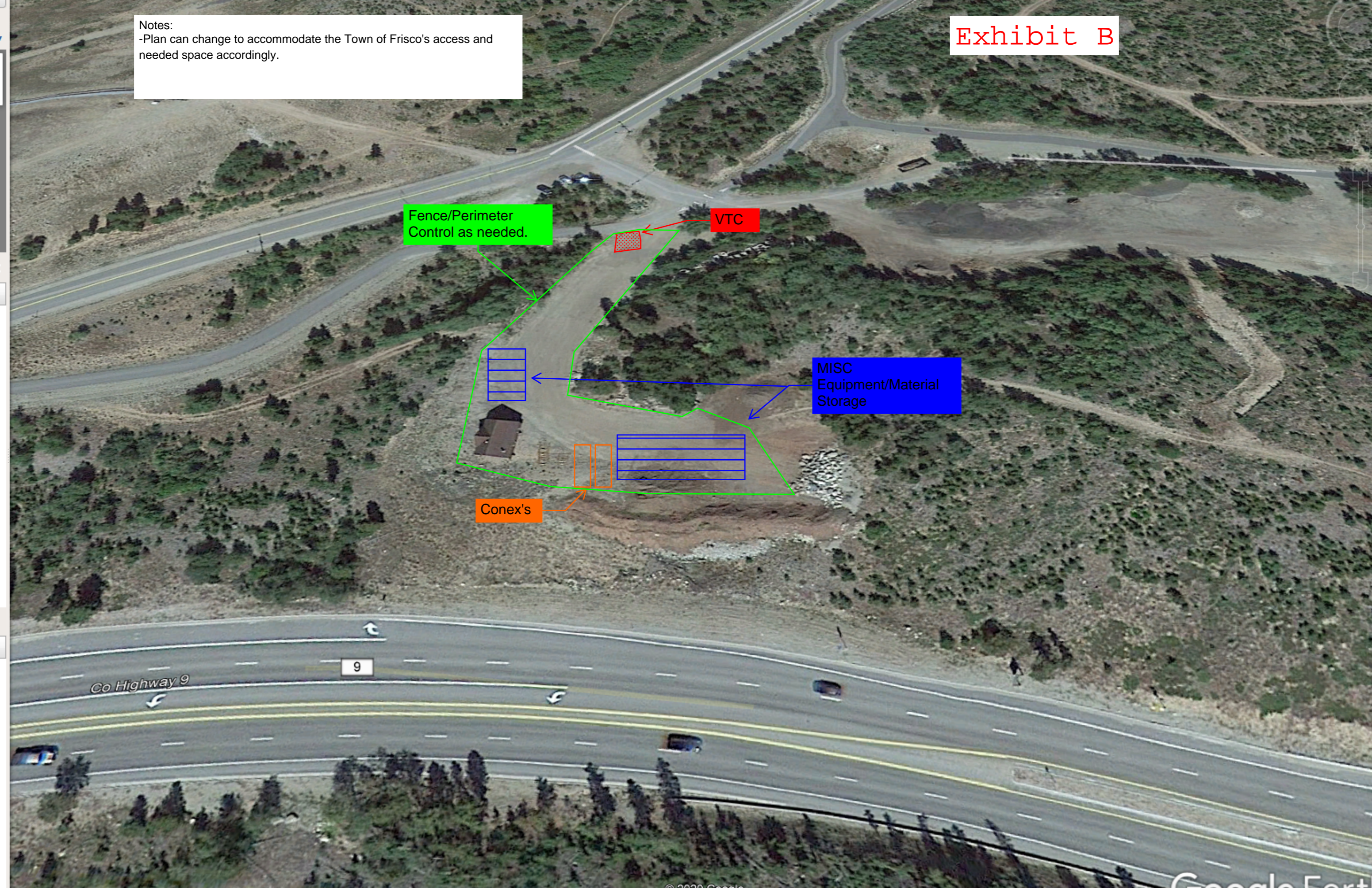
Outhouse/Restrooms

CDOT Lab



Notes:  
-Plan can change to accommodate the Town of Frisco's access and needed space accordingly.

# Exhibit B



Fence/Perimeter Control as needed.

VTC

MISC Equipment/Material Storage

Conex's

Co Highway 9

9

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
4/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> USI Insurance Services, LLC P.O. Box 7050 Englewood, CO 80155 800 873-8500	<b>CONTACT NAME:</b> Client Manager <b>PHONE (A/C, No, Ext):</b> 800 873-8500 <b>E-MAIL ADDRESS:</b> den.contractors@usi.com	<b>FAX (A/C, No):</b> 303-831-5295
	INSURER(S) AFFORDING COVERAGE	
<b>INSURED</b> SEMA Construction, Inc. 7353 S. Eagle St. Centennial, CO 80112	<b>INSURER A :</b> Greenwich Insurance Company	<b>NAIC #</b> 22322
	<b>INSURER B :</b> Allied World Assurance Company, Ltd.	<b>19489</b>
	<b>INSURER C :</b> XL Specialty Insurance Company	<b>37885</b>
	<b>INSURER D :</b> XL Insurance America, Inc.	<b>24554</b>
	<b>INSURER E :</b> <b>INSURER F :</b>	

**COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<b>CGD7409823</b>	<b>04/01/2020</b>	<b>04/01/2021</b>	EACH OCCURRENCE \$ <b>2,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>300,000</b> MED EXP (Any one person) \$ <b>10,000</b> PERSONAL & ADV INJURY \$ <b>2,000,000</b> GENERAL AGGREGATE \$ <b>4,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>4,000,000</b> \$
<b>A</b>	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<b>CAS7409824</b>	<b>04/01/2020</b>	<b>04/01/2021</b>	COMBINED SINGLE LIMIT (Ea accident) \$ <b>2,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
<b>B</b>	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB DED RETENTION \$	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<b>03122848</b>	<b>04/01/2020</b>	<b>04/01/2021</b>	EACH OCCURRENCE \$ <b>10,000,000</b> AGGREGATE \$ <b>10,000,000</b> \$
<b>C</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		<input checked="" type="checkbox"/>	<b>CWD7409822</b>	<b>04/01/2020</b>	<b>04/01/2021</b>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>1,000,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>
<b>D</b>	<b>Excess Liability</b>			<b>US00099103LI20A</b>	<b>04/01/2020</b>	<b>04/01/2021</b>	<b>\$15,000,000 Ea Occ</b> <b>\$15,000,000 Aggregate</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**RE: SEMA Project No. 102007 SH-9 Frisco Main to Iron Spgs / Town of Frisco / Right of Way Agreement**

As required by written contract or written agreement, the Town of Frisco is included as Additional Insured as respects General Liability and Auto Liability but only as respects work performed on behalf of the named insured.

<b>CERTIFICATE HOLDER</b> Town of Frisco 1 Main Street Frisco, CO 80443	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION THAT YOU ARE REQUIRED IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT TO INCLUDE AS AN ADDITIONAL INSURED PROVIDED THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS SUBSEQUENT TO THE EXECUTION OF THE WRITTEN CONTRACT OR WRITTEN AGREEMENT.	VARIOUS AS REQUIRED PER WRITTEN CONTRACT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;  
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION THAT YOU ARE REQUIRED IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT TO INCLUDE AS AN ADDITIONAL INSURED PROVIDED THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS SUBSEQUENT TO THE EXECUTION OF THE WRITTEN CONTRACT OR WRITTEN AGREEMENT.	VARIOUS AS REQUIRED PER WRITTEN CONTRACT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**AUTOMATIC ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
AUTO DEALERS COVERAGE FORM

- A. **COVERED AUTOS LIABILITY COVERAGE, Who Is An Insured**, is amended to include as an "insured" any person or organization you are required in a written contract to name as an additional insured, but only for "bodily injury" or "property damage" otherwise covered under this policy caused, in whole or in part, by the negligent acts or omissions of:
1. You, while using a covered "auto"; or
  2. Any other person, except the additional insured or any employee or agent of the additional insured, operating a covered "auto" with your permission;

Provided that:

- a. The written contract is in effect during the policy period of this policy;
  - b. The written contract was signed by you and executed prior to the "accident" causing "bodily injury" or "property damage" for which liability coverage is sought; and
  - c. Such person or organization is an "insured" solely to the extent required by the contract, but in no event if such person or organization is solely negligent.
- B. The Limits of Insurance provided for the Additional Insured shall not be greater than those required by contract and, in no event shall the Limits of Insurance set forth in this policy be increased by the contract.
- C. **General Conditions, Other Insurance** is amended as follows:

Any coverage provided hereunder shall be excess over any other valid and collectible insurance available to the additional insured whether such insurance is primary, excess, contingent or on any other basis unless the contract specifically requires that this policy be primary.

All terms, conditions, exclusions and limitations of this policy shall apply to the liability coverage provided to any additional insured, and in no event shall such coverage be enlarged or expanded by reason of the contract.

All other terms and conditions of this policy remain unchanged.



TO: Mayor and Members of the Town Council

FROM: Thad W. Renaud,  
Town Attorney

DATE: May 12, 2020

RE: Colorado Open Meetings Law

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One state statute that all local government officials should be aware of is the Colorado Open Meetings Law (§ 24-6-401 *et seq.* C.R.S.). I have prepared this memorandum on that law to assist you in considering issues as they arise in the future.

The Colorado Open Meetings Law contains as its “Declaration of Policy” that:

It is declared to be a matter of statewide concern that the formation of public policy is public business and may not be conducted in secret.

The Colorado Supreme Court has described the Open Meetings Law as “reflect[ing] the considered judgment of the Colorado electorate that democratic government best serves the commonwealth if its decisional processes are open to public scrutiny.” *Benson v. McCormick*, 578 P.2d 651, 653 (Colo. 1978).

The purpose of this memorandum is to answer the most common questions concerning the requirements of the Open Meetings Law, including:

1. Who is covered by the law?
  2. What is a “meeting?”
  3. When are “executive sessions” permitted?
  4. What happens when the law is violated?
- 
1. Who is covered by the law?

The operative provision of the Open Meetings Law states that “All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.” § 24-6-402(2)(b) C.R.S. In turn, the statute defines a “local public body” to include any board, committee, commission or other policymaking, rulemaking, advisory or formally constituted body of a political subdivision of the state, such as a municipality. § 24-6-402(1)(a), C.R.S. However, “persons on the administrative staff” of a local public body are specifically excluded from the definition of a “local public body.”

## 2. What is a “meeting?”

The statute broadly defines a “meeting” as “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.” In a recent case, the Colorado Supreme Court explained that for a gathering to be subject to the Open Meetings Law requirements “there must be a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting.” *Board of Commissioners of Costilla County v. Costilla County Conservancy District*, 88 P.3d 1188, 1194 (Colo. 2004). This holding is consistent with the provision of the Open Meetings Law that provides that the Open Meetings Law “does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.” § 24-6-402(2)(e), C.R.S.

In response to technological advances, in recent years the General Assembly amended the Open Meetings Law to include “electronic” as well as “other means” of communication under the statutory definition of a “meeting.” At the time of this writing, no reported Colorado case has discussed the requirements of public notice of an “e-mail” meeting, or the way in which an interested member of the public might be privy to such a “meeting.” Many municipal attorneys presume, however, that a serial e-mail that travels between three or more members of a local public body and discusses public business may well constitute a “meeting” for which public notice must be given.

## 3. When are “executive sessions” permitted?

Because the underlying principle of the Open Meetings Law is that the formation of public policy is public business, and therefore cannot be conducted in secret, the exceptions to the statute are limited and strictly tailored to situations where the General Assembly has determined that private discussions could serve the public interest. The statute limits private meetings, referred to “executive sessions” to the following situations:

Real and Personal Property: An executive session may be held to discuss the purchase, acquisition, lease, transfer, or sale of property interests, so long as the executive session is not held to conceal an official’s personal interest in the property. § 24-6-402(4)(a), C.R.S.

Attorney Conferences: Although the mere presence of an attorney does not justify the executive session, the governing body may call an executive session for the purpose of receiving legal advice on specific legal questions. § 24-6-402(4)(b), C.R.S.

Confidential Matters Under State or Federal Law: If any state or federal law requires confidentiality of a particular matter to be discussed, an executive session may be called. When announcing that it will go into an executive session for this purpose, the governing body must announce the specific statutory citation or rule that requires the confidentiality of the matter to be discussed. § 26-4-402(4)(c), C.R.S.

Security Arrangements or Investigations: The specialized details of security arrangements or investigations may be discussed in an executive session. § 24-6-402(4)(d), C.R.S.

Negotiations: A governing body may call an executive session to determine positions relative to matters that may be subject to negotiations, to develop a strategy for negotiations, or to instruct negotiators. § 24-6-402(4)(e).

Personnel Matters: Personnel matters may be discussed in an executive session. However, if the discussion involves a particular employee, that employee must receive advance notice and may insist that the discussion be held in an open meeting. Also, by definition, a “personnel matters” does not include discussions of any member of a local public body, any elected official, the appointment of any person to fill a vacancy in a local public body or elected office, or discussion of personnel policies that do not require the discussion of particular employees. § 24-6-402(4)(f)(I) and (II), C.R.S.

Documents Protected Under the Open Records Law: Discussions of documents protected under the mandatory non-disclosure provisions of the Open Records Act may be held in an executive session. However, discussion of documents protected under the “work product” or “deliberative process” privileges in the Open Records Act must occur in an open meeting unless an independent basis for an executive session concerning such documents exists. § 24-6-402(4)(g), C.R.S.

The statute also contains detailed provisions concerning the procedure for calling an executive session. Before going into an executive session, the governing body must first announce the topic of discussion, including a specific citation to the section of the Open Meetings Law that authorizes consideration of the announced topic in executive session, as well as “identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized.” § 24-6-402(4). An executive session may be held only after an affirmative vote of two-thirds of a quorum present at the meeting. *Id.* These procedures are of particular importance as The Colorado Court of Appeals has held that failure to comply with the procedural requirements can result in an executive session not being convened. Instead, the session is simply a part of the *open* meeting, and the record of such session is

open to public inspection under the Colorado Open Records Act. *Gumina v. City of Sterling*, 119 P.3d 527, 532 (Colo. App. 2004).

4. What happens when the law is violated?

The underlying goal of the Open Meeting Law is to create an atmosphere of openness in public matters, not to “punish” those who violate its provisions. In keeping with that philosophy, the Open Meetings Law contains no criminal sanctions for non-compliance. However, any action taken at a meeting that does not comply with the Open Meetings Law requirements is void. § 24-6-402(8), C.R.S. Courts may also enforce the requirements of the Open Meetings Law through an injunctive order. § 24-6-402(9), C.R.S. Of course, the most serious problem that can arise from an Open Meetings Act violation is the loss of confidence in the government that can arise when official actions are invalidated because laws aimed at assuring open government are violated.

In addition, after an *in camera* review of an executive session record, the court may make public any portions of the record that reveal the body getting substantially off topic or engaging in unlawful decision-making while in executive session. § 24-72-204(5.5) C.R.S.

Finally, if the court finds that a public body has violated the Open Meetings Law, it *must* award the prevailing citizen’s costs and reasonable attorney fees. *Id.* A prevailing public body, on the other hand, may only be awarded its costs and attorney fees if the court finds that the action was frivolous, vexatious, or groundless. § 24-6-402(9), C.R.S.

In conclusion, I would appreciate your noting the fact that Colorado courts have not been called upon to examine many aspects of the Open Meetings Law. Accordingly, judicial guidance when interpreting the statute is somewhat limited. This memorandum is intended to serve as a guide to some of the more fundamental aspects of the law, and I very much encourage you to consult with the Town Manager or me concerning specific questions that may arise from time to time. As always, I am happy to answer any questions or discuss further any of the issues addressed in this memorandum.

# Colorado Open Records Act

by Thad W. Renaud, Frisco Town Attorney

## SUMMARY

I would like to take this opportunity to summarize for you the current requirements of the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S., in light of changes to the legislation and technological advances such as the prevalence of electronic mail.

"Public records" are declared open for inspection "at all reasonable times" pursuant to the Colorado Open Records Act, C.R.S. § 24-72-203(1). The Act defines "public records" at C.R.S. § 24-72-202(6)(a)(I) as "... all writings made, maintained, or kept by the state, any agency, institution, or political subdivision of the state" that are "for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds." "Writings" is defined to include facsimile transmissions and e-mail correspondence.

Accordingly, should an individual request copies of all public records relating to a particular subject matter, there is a substantial likelihood that some public records would need to be disclosed *unless one of the exceptions to the Act applies*. **Because the decision as to whether a public record is subject to disclosure requires analysis of the intricate and interrelated statutory provisions, and of the various qualifications and exceptions to those provisions, it is imperative to discuss the request and the nature of the information sought with your attorney before responding to the request.** The Open Records Act balances the competing public policy interests of complete disclosure of all governmental records against personal privacy and other governmental interests in maintaining secrecy as to some records. It can, therefore, be a trap for the unwary and it is difficult, if not impossible to make broad generalizations as to the provisions of the Act.

## EXCEPTIONS TO THE MANDATORY DISCLOSURE REQUIREMENTS

The Open Records Act may generally be broken into three parts. The first part describes public records that *must* be disclosed upon request (see C.R.S. §§ 24-72-203(1)(a)

and 24-72-204(1)); the second part describes documents that *may or may not* be disclosed, depending on public interest considerations (see C.R.S. § 24-72-204(2)(a)); and the third part describes public records for which the records custodian *must deny* the right of inspection (see C.R.S. § 24-72-204(3)(a)).

Public records subject to mandatory disclosure requirements generally *do not include* criminal justice records (which records are dealt with under C.R.S. § 24-72-301 *et seq.* and are outside the scope of this presentation), some correspondence of elected officials, certain "work product" information and some documents prepared for use in the "deliberative process" by a governing body, among others. The categories of documents protected from disclosure and most relevant to the municipalities and counties are further defined below:

1. Criminal justice records. If there is a determination that disclosure, would be contrary to the public interest, the custodian of records *may* deny access to certain criminal justice records. Criminal justice records include the records of investigations conducted by the prosecuting attorney or police department, the records of the intelligence information or security procedures of the prosecuting attorney or police department or any investigatory files compiled for any other law enforcement purpose. Only those documents which remain internal investigative matters of the police department are subject to this exception. Once such records are turned over to the prosecutor's office, defense attorneys are entitled to obtain such information. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972). There are additional provisions in the state statute concerning criminal justice records, such as a provision prohibiting disclosure of the names of sexual assault victims. Police records custodians need in depth familiarization with these requirements.
2. Privileged information. C.R.S. § 24-72-204(3)(a)(IV), Inspection of records that contain privileged communications, such as those between an attorney and its client, shall be denied.
3. Documents prepared under the common law governmental or "deliberative processes" privilege. C.R.S. § 24-72-204(3)(a)(XIII). This privilege is based on the ground that "public disclosure of certain communications would deter the open exchange of opinions and recommendations between government officials, and it is intended to protect .the government's decision making process, its consultative functions, and the quality of its decisions." Colorado Springs v. White, 967 P.2d 1042 (Colo. 1998). In order to withhold disclosure of any document pursuant to this exception, the records custodian must first determine that the material is so candid or personal that public



disclosure is likely to stifle honest and frank discussion within the government.

If a request is made for records which could be classified as records prepared for use in the deliberative process, the records custodian must provide the applicant with a sworn statement listing each document withheld, explaining the privilege under which the document is being withheld and stating the reasons that disclosure would cause substantial injury to the public interest. Only documents which reflect predecisional (generated before the adoption of the decision) and deliberative ("reflective of the give-and-take of the consultative process") processes are subject to the privilege and to non-disclosure. *Id* at 1051.

4. Certain correspondence of elected officials. C.R.S. § 24-72-202. Public records generally include the correspondence, including e-mails, of elected officials except to the extent that such correspondence is either (a) work product; (b) "without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and [which] does not involve the receipt or expenditure of public funds"; or (c) from a constituent to an elected official and clearly implies by its nature or content that the constituent expects that it is confidential or a communication from an elected official in response to such communication by a constituent.

- (a) Work product; Elected officials *may* release or authorize the release of all or any part of work product prepared for them. Without such authorization, however, work product documents do not qualify as public records subject to disclosure. Before a records custodian releases correspondence from or to an elected official, the custodian must consult with the elected official to determine whether the document qualifies as a public record. C.R.S. § 24-72-203(2)(b).

Work product includes advisory or deliberative materials prepared for elected officials which express an opinion or are deliberative in nature and communicated to assist elected officials in reaching a decision within the scope of their elected position. Such items as notes and memoranda relating to or serving as background information for such decisions or preliminary drafts and discussion copies of documents that express a decision of an elected official are not required to be disclosed as public records. However, a final version of a

document expressing a final decision of an elected official would need to be disclosed, as would a final version of a document that consists solely of factual information compiled from public sources or a final fiscal or performance audit or a final accounting or final financial report.

**Because the decision as to whether a public record is subject to disclosure requires analysis of the intricate and interrelated statutory provisions, and of the various qualifications and exceptions to those provisions, it is imperative to discuss the request and the nature of the information sought with your attorney before responding to the request.**

### **MANDATORY NON-DISCLOSURE REQUIREMENTS**

Public records subject to mandatory non-disclosure requirements are described in C.R.S. § 24-72-204(3)(a). The categories of documents that must not be disclosed (unless otherwise provided by law) and that are most relevant to the municipalities and counties are further defined below:

1. Medical, mental health, sociological and scholastic achievement data on individual persons;
2. Personnel files;
3. Letters of reference;
4. Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;
5. Addresses and telephone numbers of students in any public elementary or secondary school;
6. Names, addresses, telephone numbers, and personal financial information of past or present users of public utilities, public facilities, or recreational or cultural services that are owned and operated by the state, its agencies, institutions, or political subdivisions;
7. Records of sexual harassment complaints and investigations; and
8. Records submitted by or on behalf of an applicant or candidate for an executive position as defined in section 24-72-202(1.3) who is not a finalist.

**Again, because the decision as to whether a public record is subject to disclosure or mandatory non-disclosure requires analysis of the intricate and interrelated statutory provisions, and of the various qualifications and exceptions to those provisions, it is imperative to discuss the request and the nature of the information sought with your attorney before responding to the request.**

### **ELECTRONIC MAIL**

Because the Open Records Act defines public records to include correspondence in the form of electronic mail, electronic mail must be disclosed unless it meets the criteria for an exception to the disclosure requirements. Thus, electronic mail between, from, or to employees or elected officials of the City potentially must be disclosed in response to an open records request unless such communications do not otherwise meet the definition of a public record or do meet the criteria for a particular exception.

City employees and elected officials should be conscious that all writings, including documents, communications, notes, and e-mails which memorialize meetings are available for public inspection as public records unless specifically excluded from the definition of public record or from the disclosure requirements. The Public Records Act does not, however, require retention of such notes. Thus, it may be appropriate to dispose of notes made while in attendance at meetings which are of a sensitive nature and which may be subject to public inspection if retained.

E-mail notes or communications are retrievable even if "deleted" unless the recipient undertakes steps beyond simple deletion such as emptying a trash bin. Even then, the messages may remain available on back-up system tapes, etc. Governmental employees and elected officials have a responsibility to the public to comply with the open records laws and the intent of those laws -- ensuring that public business is decided in open forums. Nonetheless, in using electronic mail, employees and elected officials need to be aware of the openness and accessibility of such communications.

In order to protect governmental entities from liability for invading the privacy rights of its employees or elected officials, Colorado enacted legislation requiring governmental entities which operate and maintain an electronic mail communications system to adopt a written policy on any monitoring of electronic mail communications and the circumstances under which it will be conducted. In addition, the policy must state that e-mail correspondence of the employee may be a public record subject to public inspection pursuant to state statute. C.R.S. §24-72-204.5. A simple example of such policy would be:

*No employee should have any expectation of privacy as to his or her Internet usage or electronic mail messages. The **[name of governmental entity here]** has*

*software and systems in place that can monitor and record all electronic mail and Internet usage, The [name of governmental entity here] reserves the right to do so at any time. The communication systems and Internet utilized by [name of governmental entity here] are intended solely for business use. Although employees are able to use personal access codes, employees should not assume that e-mail messages are personal or confidential. The [name of governmental entity here], as employer, maintains the ability to access any messages left or transmitted over the system. Electronic mail transmitted over the [name of governmental entity here]'s internet system is public information and is subject to the laws guaranteeing citizen access to public information.*

*Correspondence in the form of electronic mail may be a public record under the public records law and may be subject to public inspection under Section 24-72-204.5 of the Colorado Revised Statutes. Employees' or elected officials' electronic mail may be obtainable by a reporter and published in a newspaper. Electronic mail deleted from the mailbox of an employee or elected official will still exist in system backups for months after being deleted from the employee's mailbox and could be recovered from those backups.*

A case study in the disclosure of e-mails under the Open Records Act may be had by examining the decisions of the Colorado Court of Appeals and the Colorado Supreme Court in the "Tracy Baker Cases." Those cases are *Petition of Board of County Commissioners of the County of Arapahoe*, 95 P.3d 593 (Colo. App. 2003) and *Denver Publishing Company v. Board of County Commissioners of the County of Arapahoe*, 121 P.3d 190 (Colo. 2005). A copy of each of these cases is attached to this document for your reading pleasure.

### **COLORADO COURT OF APPEALS SAYS TRACEY BAKER E-MAILS ARE ONLY PARTIALLY PROTECTED FROM DISCLOSURE**

The media requested inspection of a private investigator's report compiled for the Arapahoe County Commissioners concerning County Clerk Tracey Baker and his assistant Leesa Sale. The report included a sexual harassment/hostile work environment investigation and contents of 570 sexually explicit and romantic e-mails between Baker and Sale. The trial court required release of the entire report, including the emails, to the media.

The trial court's order was put on hold while Baker and Sale appealed. The Colorado Court of Appeals ruled that the trial court went too far and that some of the e-mails may be protected from disclosure.

Baker and Sale argued that the e-mails were not "public records" within the meaning of CORA, but were private, personal and confidential communications whose disclosure is prohibited by the statute. Although they acknowledged that CORA's definition of "writings" includes e-mails, they argued that certain exceptions to disclosure applied to keep them private.

The Court of Appeals, however, disagreed with Baker and Sale that the emails should not be disclosed because they fall within the official correspondence exception. To fall within this exception, the Court of Appeals reasoned, the correspondence of elected officials cannot involve the receipt or expenditure of public funds. The Court of Appeals found that this exception did not apply to protect the e-mails. The e-mails were sent on an e-mail system purchased by the County for use by County employees and the e-mails were sent over county-owned computers. The county's e-mail and Internet policies contemplated some occasional use of e-mails for personal purposes, but not the volume at issue here. The Court found out that the use of this system to send sexually explicit e-mails or mail unrelated to county business was relevant to allegations that Baker misspent public funds, including improperly promoting and compensating Sale.

Baker and Sale next argued that the e-mails were protected under the "records of sexual harassment" exception. Under CORA, disclosure of sexual harassment complaints, investigations, and the results are prohibited unless disclosure can be made without disclosing the identity of the individuals involved. The Court found that the sexual harassment/hostile work environment report and e-mails that referred to the employee filing the hostile work environment complaint were protected from disclosure. However, the disclosure of e-mails not related to the county's investigation of employee complaints could be made without revealing the identity of other employees.

Lastly, Baker and Sale argued that their constitutional right to privacy should protect the e-mails that were not related to county business. The Court determined that CORA is subject to a constitutional right of privacy known as the right to confidentiality. To be protected by a right to confidentiality, the following must be answered: (1) is there a legitimate expectation of privacy? (2) is disclosure nonetheless necessary to serve a compelling state interest? (3) if so, will disclosure occur in the manner least intrusive to the right of confidentiality?

The Court of Appeals agreed with the trial court's conclusion that Baker and Sale were on notice from the County's e-mail and Internet policies that their e-mails might have to be disclosed. However, the Court disagreed that Baker and Sale were on notice that any person at any time could request and receive copies of their e-mails. Specifically, the trial court did not consider whether the e-mails concerned highly personal and sensitive information whose disclosure would be offensive and objectionable to a person of ordinary sensibilities. Moreover, the County's policies did anticipate some occasional use of e-mail for personal reasons, and did state that messages not deleted by users would be automatically purged after 90 days with no possibility of retrieval. Therefore, the Court found that Baker and Sale had a reasonable expectation under . CORA that personal, sexually explicit e-mails would be subject to more limited disclosure.

Baker and Sale next contended that disclosure of their e-mails does not serve any compelling state interest. But the Court found that disclosure could help explain why Baker promoted Sale,

why she received substantial pay raises, and why she was not terminated despite allegations of embezzlement. So e-mails related to these three government interests would not be protected.

The Court of Appeals concluded that Baker and Sale had a limited expectation of privacy, that many of the e-mails are personal and sensitive, and that there is a compelling state interest in only those e-mails relevant to Sale's promotion, salary and potential grounds for termination. As for the private e-mails that are not completely protected, the Court said that these must be disclosed in the least intrusive manner. So the Court sent the case back down to the trial court to determine whether some limited disclosure of these e-mails is appropriate, e.g., redacted or summary disclosure of the private e-mails.

### **COLORADO SUPREME SAYS TRACEY BAKER E-MAILS ARE, FOR THE MOST PART, NOT "PUBLIC RECORDS" AS DEFINED BY THE OPEN RECORDS ACT**

The Colorado Supreme Court granted certiorari (the right to bring an appeal to them) to determine the issue of whether the mandated disclosure of the e-mails pursuant to the Open Records Act was barred by Baker's and Sale's constitutional privacy rights. In fact, however, the Supreme Court never analyzed the constitutional issue because, in its words "the privacy interests raised by Baker and Sale under the circumstances of this case should have been protected through the correct application of the "public records" definition.

The Supreme Court held that it was apparent that e-mail must meet the same requirement as any other record to be deemed a "public record." To be a "public record" an e-mail message must be for use in the performance of public functions or involve the receipt and expenditure of public funds. According to the Supreme Court, "[t]he simple possession, creation, or receipt of an e-mail record by a public official or employee is not dispositive as to whether the record is a 'public record' [and] [t]he fact that a public employee or public official sent or received a message while compensated by public funds or using publicly-owned computer equipment is insufficient to make the message a 'public record.'"

In its conclusion as to the issues raised by the Baker and Sale e-mails, the Supreme Court said:

After considering the content of the e-mail messages, as required by the statute, we conclude that not all of the e-mail messages at issue here have a demonstrable connection to the performance of public functions or involve the receipt or expenditure of public funds. It is apparent that a large portion of the e-mail messages instead contain only sexually explicit exchanges between Baker and Sale. Based upon the content of the e-mails, it is clear they were sent in furtherance of their personal relationship and were not for use in the performance of the public functions of the Clerk and Recorder's Office. These messages demonstrate very private

exchanges that convey the 'every thought and feeling' of a public official that we sought to guard from disclosure in *Wick*. See *id.* At 365. The only discernable purpose of disclosing the content of these messages is to shed light on the extent of Baker and Sales' fluency with sexually-explicit terminology and to satisfy the prurient interests of the press and the public.

The Supreme Court's decision in this case emphasizes the importance determining, in the first instance, whether any given record is in fact a "public record." It also makes clear that in making that determination, one must focus on the content of the record, because it is that content that either makes the record one that addresses public business, which the public has a right to know of under the Open Records Act, or private business, of which the public has no right to know and for which an individual may have a legally protected privacy interest. It is also important to remember that the *Baker* case concerns only the disclosure requirements of the Open Records Act and does *not* affect a public employer's right to discipline its employees for misuse or abuse of e-mail systems.

### ***INSPECTION AND DISCLOSURE REQUIREMENTS***

Any letter or other written communication received by a governmental entity, including an electronic mail message, that requests access to or copies of documents should be considered an "open records request" made pursuant to the Colorado Open Records Act. This is true whether or not the communication expressly refers to the Colorado Revised Statutes, the Colorado Open Records Act, or cites a statutory provision such as C.R.S. § 24-72-201 through 206. Responding to any open records request should be considered a high priority for the governmental entity. Immediately after receiving any open records act request, the entity's attorney should be notified by telecopying/faxing a copy of the request and following up with a telephone call. It should be the entity's policy to respond within three (3) working days of the receipt of the request. Upon receipt of a copy of the open records act request, your attorney should be able to advise you on the appropriate procedure and content of the response to the request.

C.R.S. § 24-72-203(2) provides that where the department does not have possession of the records, the records custodian "shall forthwith" notify the applicant of this fact in writing if requested by the applicant and shall state in detail the knowledge of the custodian regarding the location and person in custody.

C.R.S. § 24-72-203(3) provides that where the governmental entity possesses or has control of the records, but the records are being used by the entity or one of its department or are held in storage:

1. The custodian "shall forthwith" notify the applicant of the fact in writing if requested by the applicant. C.R.S. § 24-72-203(5)(a); and

2. If requested by the applicant, the custodian shall set a "date and hour within three (3) working days at which time the records will be available for inspection." C.R.S. § 24-72-203(3)(b).

Each open records request may require coordination with the requesting party in order to determine the reasonableness of the response and the appropriate timing of the response. In many cases, the documents requested may require significant time to locate and to produce, thereby requiring a prompt response of this fact to the requesting party.

The Act generally requires that the governmental entity respond to a request in some fashion within three (3) days and it is imperative that this deadline be met. It is not necessary in some cases that the documents themselves be produced within three (3) days, depending on volume, whereabouts and copying considerations, but it is required that a response to the request be made. Because there are exceptions to the type of information which must be released, because the governmental entity may be subjected to liability for releasing information which should not be disclosed, because there are penalties associated with failing to timely respond, and because disclosure may affect current or future litigation involving the governmental entity, it is important that you involve the entity's attorney in determining:

whether the request is in fact an Open Records Act request subject to statutory disclosure requirements;

whether the documents sought are within your "custody and control" or are privileged or excepted from disclosure under the Act or other applicable law; and

how the governmental entity should coordinate or respond to the request and the delivery of copies of documents.

### **CHARGES FOR COMPLYING WITH OPEN RECORDS REQUESTS**

The Act permits a governmental entity to charge a fee not to exceed twenty-five cents per page for standard page copies or, alternatively, the actual cost for providing a copy in a format other than a standard page.

Where the request requires the manipulation of data to generate a record in a form not usually kept by the governmental entity, the entity may impose a reasonable fee not to exceed the actual cost of manipulating the data. C.R.S. § 24-72-205(3). Staff time in manipulating and generating data may be charged. If the request is for computer output other than word processing, state law allows for recovery of the incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. Therefore, charges for providing database records may



include a reasonable fee for the cost of building and maintaining the database. A sample request form and invoice is attached.

### **ENFORCEMENT OF THE OPEN RECORDS ACT**

Pursuant to C.R.S. § 24-72-204(5), any person who is denied the right to inspect a any record covered by the Open Records Act may apply to the district court for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record. Any person seeking such an order must first, however, provide written notice to the custodian (at least three (3) business days in advance of seeking the order) that the person intends to seek the order. The district court is to hold a hearing on such an application at the “earliest practical time.” Unless the court finds that the denial of inspection was proper, it shall order the custodian to permit the inspection and award court costs and reasonable attorney fees to the prevailing applicant. In contrast, in the event that the court finds that the denial of the right of inspection was proper, the court is to award the custodian his or her court costs and reasonable attorney fees only if the court finds that the application for a show cause order was frivolous, vexatious, or groundless.