

# THE TOWN OF FRISCO PARKING MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT is executed on April , 2022 by **INTERSTATE PARKING COMPANY OF COLORADO LLC** (herein called "Interstate"), and **THE TOWN OF FRISCO** (herein called "Owner").

WHEREAS, Owner owns the parking facility located at 267 Marina Rd, Frisco, CO 80443 Colorado containing approximately 321 spaces (hereinafter referred to as the "Parking Facility");

AND WHEREAS, Owner desires to engage Interstate to manage the Parking Facility and Interstate desires to manage the Parking Facility.

NOW, THEREFORE, Owner and Interstate agree as follows:

## 1 Engagement

- 1.1 Owner hereby engages Interstate, and Interstate hereby accepts engagement by Owner, to manage and maintain the Parking Facility in a first-class manner in accordance with the terms and conditions hereinafter set forth.

## 2 Term and Termination

- 2.1 (a) The term of this Agreement will commence May 1, 2022 (the "Commencement Date") and continue for a period of three (3) years thereafter through April 30, 2025 (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall extend for an additional one (1) year period (the "Renewal Term") unless either party provides advance written notice to the other at least thirty (30) days prior to the end of the Initial Term. Upon expiration of the Renewal Term, this agreement shall automatically renew for subsequent one (1) year periods (each year an "Extended Term") unless either party provides advance written notice to the other at least thirty (30) days prior to the end of the then current Extended Term. As used hereinafter, the Initial Term, Renewal Term and Extended Term shall be referred to as the "Term." Each twelve (12) month period following the Commencement Date shall be referred to as an "Operating Year" hereinafter. All of the foregoing notwithstanding, the Owner shall be entitled to terminate this Agreement for its convenience and for any or no reason whatsoever. In the event of such termination, Owner may give notice of termination to Interstate, and the Term shall terminate sixty (60) days after the date such notice is given. In the event that the Owner terminates this Agreement for its convenience during the first Operating Year, Owner shall pay to Interstate the sum of \$225,000.00 to compensate it for its capital expenditures in connection with this Agreement. In the event that the Owner terminates this Agreement for its convenience during the second Operating Year, Owner shall pay to Interstate the sum of \$150,000.00 to compensate it for its capital expenditures in connection with this Agreement. In the event that the Owner terminates this Agreement

for its convenience during the third Operating Year, Owner shall pay to Interstate the sum of \$75,000.00 to compensate it for its capital expenditures in connection with this Agreement.

(b) Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, Owner's obligations under this Agreement are subject to annual appropriation by the Town Council of the Town of Frisco. Any failure of a Town Council annually to appropriate adequate monies to finance Owner's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to Interstate of any failure to appropriate such adequate monies.

2.2 Either party will have the right to terminate this Agreement in the event the other party has failed to perform any of the terms and conditions specified herein, if said failure has been called to the attention of the responsible party in writing via certified mail and that party has not corrected said failure within fifteen days (15), or such additional time as is reasonably necessary, of its receipt of written notice. Both parties agree that if a mutually agreed upon resolution cannot be reached the matter will be taken to a binding arbitrator agreed to by both Parties.

2.3 If the whole or any portion of the Parking Facility is:

- (a) appropriated or taken under the power of eminent domain by any public or quasi public authority;
- (b) damaged or destroyed; or
- (c) is otherwise rendered unusable as a parking facility

either party may, at its option, terminate this Agreement by giving written notice to the other within 30 days after the effective date of such taking, destruction or other event and this Agreement will terminate as of the date of such taking, destruction or other event. If only a portion of the Premises is effected by such taking, destruction or other event and neither party exercises its option to terminate this Agreement, this Agreement shall not terminate but shall continue in full force and effect for the remaining portion of the Parking Facility.

2.4 If: (a) any law, or amendment of an existing law, ordinance, regulation, or zoning change comes into force, whether federal, state or municipal (including, without limitation, new tax legislation); or

- (b) there exists any restrictive condition (including, without limitation, a pandemic, gasoline rationing, gasoline shortages, construction, road work,

parking reduction regulations, price control or air quality regulations); and in the reasonable opinion of Interstate or Owner, hinders either party from carrying on its duties under this Agreement or negatively affects either parties profitability in a material way, then either party may, by written notice to the other party, request that the Management Fee under this Agreement be modified in an equitable manner by agreement between the parties. Failing agreement within 30 days of such notice either party may, without penalty, terminate this Agreement upon a further 30 days written notice to the other party. If either party does not so terminate, this Agreement will continue in full force and effect.

- 2.5 Upon the expiration or termination of the Term of this Agreement, including any extension under Section 2.1, all compensation due Interstate shall be promptly paid to Interstate in conjunction with a complete and final accounting being made to Owner by Interstate relating to all matters set forth in Section 3.2 through 3.4 hereof.

3 Management Fee:

- 3.1 As compensation for the services rendered by Interstate, Owner will pay Interstate, for revenue received in each calendar year during the Term of this Agreement (i) Seventeen Percent (17%) of the Net Revenue (defined below) generated from the Parking Facilities up to Eighty Nine Thousand Nine Hundred Sixty and 00/100 Dollars (\$89,960); and (ii) Thirty Two Percent (32%) of the Net Revenue (defined below) generated from the Parking facilities in excess of Eighty Nine Thousand Nine Hundred Sixty and 00/100 Dollars (\$89,960) and up to One Hundred Eighty Seven Thousand Fifty Two and 00/100 Dollars (\$187,052); and Fifty Percent (50%) of the Net Revenue (defined below) generated from the Parking facilities, in excess of One Hundred Eighty Seven Thousand Fifty Two and 00/100 Dollars (\$187,053).
- 3.2 As compensation for the Alternate Bid- Main Street Enforcement rendered by Interstate, Owner will pay Interstate a monthly Management Fee of One Thousand Eleven Hundred and Forty-Nine Dollars (\$1,149.00) from October through April of the calendar year. Interstate included Enforcement Services May-September in the compensation stated in section 3.1.
- 3.3 On or before the 15th day of each month from Memorial Day to Labor Day, Interstate will give Owner a statement for the preceding calendar month setting out the Net Revenue and calculation of the Management Fee for such month (the "Statement"), together with a check for the Balance of Revenue. For all other months Interstate will bill the Town a monthly Management Fee of One Thousand Eleven Hundred and Forty-Nine Dollars (\$1,149.00).

In this Agreement:

(a) "Gross Revenue" means all revenue, whether hourly, daily or monthly, collected by the Owner or Interstate in connection with the operation of the Parking Facility, excluding violation notice revenue, which will be retained by Interstate, and the value of all Gratis Parking , from the parking of vehicles in the Parking Facility and other income approved by Owner. Any Gross Revenue, if any, collected directly by Owner will be accurately reported to Interstate.

(b) "Credit Card Fees" means all transaction fees charged by a credit card processing institution for processing payments of Gross Revenue by a credit card.

(c) "Taxes" means all transaction value, sales and any other taxes, rates, charges or assessments levied, rated, charged or assessed or required to be collected or paid (or both collected and paid) in the operation of the Parking Facility.

(d) "Net Revenue" means Gross Revenue minus Credit Card Fees, the 20 Cent Convenience Fee or applicable fee charged by the Tap n Explore Programmer and or App to the Customer for Each Transaction, Taxes and any online sales commissions and fees from parking aggregators and applications in connection with Gross Revenue.

(e) "Operating Expenses" means those expenses paid by Interstate without reimbursement from Owner as listed in Schedule A. All other costs in connection with the Parking Facility are specifically excluded from the definition of Operating Expenses for the purpose of this Agreement and will be borne directly by the Owner.

(f) "Balance of Revenue" means Net Revenue less Management Fee.

3.4 Taxes, if any, separately stated as required by law, will be collected by Interstate from customers and transmitted to the taxing authority as required.

3.5 If this Agreement commences on any date other than the first of the month, then the parties will adjust all revenues, expenses, deposits and accounts receivable as of midnight the evening before the Commencement Date.

#### 4 Staff

4.1 Interstate will employ at, or in respect of, the Parking Facility a sufficient number of personnel capable of managing and maintaining the Parking Facility in accordance with the terms and conditions hereof such that the Parking Facility will be operated in a first class manner similar to other first class Parking Facility of similar type in the area. Personnel will be screened by Interstate before hiring and will be employed, disciplined, discharged, promoted and directed in the performance of their duties by Interstate. Interstate will provide all necessary executive and supervisory personnel who are not

required at the Parking Facility but are required for the proper management of the Parking Facility.

- 4.2 The number of persons employed at, or in respect of, the Parking Facility will be satisfactory to Owner and will be increased or decreased as mutually agreed to by the Owner and Interstate. All personnel will wear neat and clean uniforms. Interstate will negotiate and obtain any necessary labor agreement if applicable. Owner will have the right to require the removal from the Parking Facility of any employee whose conduct will not reasonably satisfy Owner.

## 5 Complaints

- 5.1 Interstate agrees to handle and record in a prompt and courteous manner all complaints by patrons of the Parking Facility.

## 6 Hours of Operation, Rates and Gratis Parking

- 6.1 Subject to any laws applicable to the Parking Facility, the Parking Facility will be open for business and operated by Interstate under the terms and conditions of this Agreement which may be modified at any time upon mutual written agreement between Owner and Interstate, during each calendar year of the Term.
- 6.2 Owner, in its sole discretion, may direct Interstate to provide free or discounted parking at the Parking Facility (the "Gratis Parking").
- 6.3 Rate structures can be recommended and changed at anytime by Interstate or the Owner and will be mutually agreed to by Interstate and the Owner in advance.
- 6.4 The parking facility will operate 24 hours, 7 days a week.

## 7 Compliance With Laws

- 7.1 Interstate will comply with all federal, state and municipal laws, ordinances and regulations pertaining to the Parking Facility or the business conducted therein by Interstate including, without limitation, laws relating to equal opportunity employment and federal, state and municipal tax withholding laws. Any reasonable expense incurred by Interstate by reason of this section will be included as an Operating Expense.

## 8 Maintenance and Operations

- 8.1 Interstate shall pay all Operating Expenses, as is defined herein, without reimbursement from Owner and will maintain its signage and the Interstate Equipment and Technology in good working order.

Owner agrees to pay all other expenses, excluding those included as Operating Expenses, and maintain the sidewalks and curb cuts adjacent to the Parking Facility in accordance with applicable municipal statutes. Owner agrees to perform all snow removal and litter pick and removal. Neither party is responsible for ice control and annual sweeping of the Parking Facility including adjacent sidewalks and driveways. Owner will also be responsible for all Parking Facility repairs of a structural nature, including, but not limited to: electrical, pavement repair, painting, replacement of lighting tubes and ballasts, repairs to the Parking Facility, sinkholes, and all other maintenance. Any structural, mechanical, electrical or other installations or any alterations required by statutes or regulations pertaining to air quality, environmental protection, provisions for persons with disabilities or other similar governmental requirements will be the sole responsibility of Owner. It is agreed that any actions, costs, claims, losses, expenses, and/or damages resulting from design or structural faults or defects are the responsibility of Owner.

8.2 Interstate agrees to develop and maintain, at Interstate's cost, a community parking system brand and website, known as "ParkFriscoMarina.com" with the features listed in Schedule C which is attached hereto, and to include the Parking Facility within such community parking system brand and website and Owner agrees to allow Interstate to include the Parking Facility within such marketing brand and website.

8.3 Interstate and the Owner will agree before towing any vehicle.

## 9 Gross Revenue, Cash Deposits and Disbursements and Controls

9.1 Interstate will install and maintain an accurate and efficient accounting system for Gross Revenue of the Parking Facility. All records pertaining to Gross Revenue including, without limitation, monthly parking records, coupon and validation sales, daily reports and deposit slips will be available for examination and audit to Owner and its authorized representatives upon five days written notice by Owner to Interstate.

## 10 Insurance

10.1 Interstate will obtain and maintain the following types of insurance in not less than the indicated amounts with companies authorized to do business in the state where the Parking Facility is located:

- |     |   |
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| (a) | Commercial General Liability<br>\$1,000,000 combined single limit<br>each occurrence and \$2,000,000<br>aggregate for bodily injury and<br>property damage. |
|-----|---|

- (b) Umbrella Excess Coverage. \$5,000,000
- (c) Crime Policy Limits \$250,000 employee dishonesty  
\$20,000 broad form money inside  
\$20,000 broad form money outside
- (d) Worker's Compensation Policy Limits Coverage A – Statutory  
Coverage B - \$100,000
- (e) Garage Keepers Coverage. If Interstate offers valet services in the Parking Facility it will carry Garage keepers Legal Liability insurance in coverage limits of not less than \$500,000 per occurrence.
- (f) With respect to the Commercial General Liability and Umbrella Excess Coverage, Owner shall be named as an additional insured. A copy of the endorsement shall be forwarded to Owner.
- 10.2 Owner shall maintain all-perils property damage (fire and casualty) insurance coverage on the Parking Facility in amounts to cover the replacement value of the Parking Facility.
- 11 Indemnities
- 11.1 Interstate will defend, indemnify and hold Owner harmless from and against any and all actions, costs, claims, losses, expenses and/or damages sustained by Owner attributable to the recklessness, carelessness or negligence of Interstate or any of its agents, servants, or employees from any cause, including, without limitation by specification, property damage and/or injury or death to any person or persons.
- 11.2 To the extent permitted by law, if permitted at all, Owner will defend, indemnify and hold Interstate harmless from and against any and all actions, costs, claims, losses, expenses and/or damages sustained by Interstate attributable to the recklessness, carelessness or negligence of Owner or any of its agents, servants or employees from any cause, including, without limitation by specification, property damage and/or injury or death to any person or persons.
- 11.3 To the extent permitted by law, if permitted at all, Owner will, at its own cost and expense, defend, indemnify and hold Interstate harmless from and against any and all actions, costs, claims, losses, expenses and damages sustained by Interstate and arising in connection with the existence of Hazardous Substances in or about the Parking Facility (whether or not such materials or substances were Hazardous Substances at the time they were brought upon the Parking Facility) except to the extent that such Hazardous Substances were brought upon the Parking Facility by Interstate. For the purposes of this Agreement, "Hazardous Substances" includes any substance considered hazardous or

toxic under any law or regulation now or hereafter brought into force by any governmental authority having jurisdiction over the Owner, Interstate or the Parking Facility.

- 11.4 The indemnities set out in this section will survive the expiration or earlier termination of this Agreement.

12 Security

- 12.1 Owner expressly acknowledges that Interstate's obligations in connection with the management, operation and promotion of the Parking Facility and employment of persons in connection therewith, do not include the rendition of service, supervision, or furnishing of personnel in connection with the personal safety and security of employees, tenants, customers, or other persons within and about the Parking Facility. Interstate does not have knowledge or expertise as a guard or security service, and does not employ personnel for that purpose, nor do Interstate's employees undertake the obligation to guard or protect customers against the intentional acts of third parties. Owner will determine, at Owner's discretion, whether and to what extent any precautionary warnings, security devices, or security services may be required to protect patrons in and about the Parking Facility. To the extent permitted by law, if permitted at all, Owner further agrees to indemnify and to hold harmless Interstate from and against any claims, demands, suits, liabilities, or judgments arising from Interstate's alleged failure to warn, to guard, or to protect persons in or about the Parking Facility from and against intentional threats, harm, or injury, except for such threats, harm or injury intentionally committed by Interstate or Interstate's employees, such indemnity to survive the expiration or earlier termination of this Agreement.

13 Assignment

- 13.1 Interstate will not assign its rights or delegate its duties hereunder without the prior consent of Owner which consent may withheld in Owner's sole discretion.

14 Permits and Licenses

- 14.1 The Owner represents and warrants that the Parking Facility may be used for the operation and management of a Parking Facility. Owner will apply for and secure, in its own name, all municipal permits and licenses required for the Parking Facility and carry out the responsibility under all such permits and licenses to the public and to the agencies having jurisdiction. Any expenses incurred by Owner in discharging its responsibilities under this Section will be borne by Owner.

15 Arbitration



15.1 Any controversy or claim arising out of or relating to this Agreement or the breach thereof will be settled by arbitration in the state in which the Parking Facility is located and in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction. The Owner and Interstate shall exercise reasonable good faith efforts to select a mutually agreeable single arbitrator, and they may also agree to use rules of arbitration other than those of the American Arbitration Association. The prevailing party in such arbitration action will be entitled to recover, in addition to any other remedy available to it, its reasonable attorneys' fees and costs, including, but not limited to, its reasonable collection fees and costs.

16 Attorney Fees

16.1 If a party defaults in the performance of its obligations herein described, the other party may seek appropriate legal relief and in connection therewith the prevailing party will be entitled to recover, in addition to any other remedy available to it, its reasonable attorneys' fees and costs, including, but not limited to, its reasonable collection fees and costs.

17 No Hiring of Employees

17.1 Owner agrees that neither it nor any of its affiliates or subsidiaries will employ, in any capacity, any person that Interstate has employed as a Supervisor, Manager or Assistant Manager during the term of this Agreement. This provision will survive the expiration or other termination of this Agreement for a period of one year.

18 Notices

18.1 Any notice required or permitted to be given pursuant to this Agreement shall be valid only if in writing or e mail. Any person required to give notice pursuant to this Agreement shall have the burden of proving the validity of the notice. All notices or other communications made pursuant hereto shall be deemed properly delivered, given or served when (a) one day after the date such notice is sent by Federal Express or similar one-day private carrier service, or (b) e mailed to the following e mail addresses, if provided:

If to Owner:  
Town of Frisco  
Attn: Finance Director  
1 Main Street  
Frisco, CO 80443

If to Interstate:

Interstate Parking Company of Colorado LLC  
Attn: Gareth Lloyd  
1610 Wynkoop Street, Suite 600  
Denver, Colorado 80202  
Phone: 720-646-0261  
glloyd@interstateparking.com

With a copy to:

Interstate Parking Company of Colorado LLC  
Attn: Tony Janowiec  
710 N. Plankinton Avenue, Suite 700  
Milwaukee, WI 53203  
Telephone No.: (414) 274-2861  
Email: tjanowiec@interstateparking.com

## 19 Equipment

- 19.1 Owner and Interstate acknowledge and agree that Interstate has installed or will install at the Parking Facility the technology and signage, belonging to Interstate during and after the Term of this Agreement, set forth on Schedule B with such signage and technology installed at Interstate's expense (the "Interstate Equipment").
- 19.2 Interstate shall not place or make any alterations, additions or improvements to the Parking Facility, or install or cause to be installed any exterior signs or lighting without the prior written approval of Owner. Interstate shall present to Owner a site plan for the Parking Facility and plans and specifications for such work at the time approval is sought. Interstate shall be responsible for and shall pay all costs, fees, and charges of every kind due or resulting from any alterations, additions, or improvements to the Parking Facility, and shall indemnify and hold Owner harmless from and against any liability or damages in connection with any such alterations, additions or improvements. Interstate shall not install or construct any structures on the Parking Facility other than the associated signage.

- 19.3 Upon termination of this Agreement, Interstate shall remove all signage, sign posts and equipment used in conjunction with Interstate business and any improvements installed by Interstate and, if Interstate fails or refuses to do so, Owner may remove all of such items and store them, and, if Interstate does not claim them within fifteen (15) days, dispose of such items, without any liability for loss or damage to same.
- 20 Modification
- 20.1 This Agreement will constitute the entire agreement between the parties hereto, and it may not be amended except in a written document signed by each party.
- 21 Severability
- 21.1 In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.
- 22 Benefits and Burdens
- 22.1 The terms and conditions hereof will be binding upon and will inure to the benefit of Owner, Interstate and their respective successors and assigns.
- 23 Independent Contractor
- 23.1 Interstate is an independent contractor; nothing herein will be construed to create a fiduciary relationship, partnership, joint venture or other business relationship between the parties.
- 24 No Agency
- 24.1 This Agreement does not constitute a lease, a partnership or an agency and nothing contained in this Agreement is to be construed as constituting one party the agent of the other or to limit in any manner, either party in the carrying out of its own respective business or activities.
- 25 Governing Law
- 25.1 This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

\_IN WITNESS WHEREOF, Owner and Interstate have caused this Agreement to be executed as of the date first set forth above.

**OWNER:**

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

**ATTEST:**

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

**INTERSTATE:**  
**INTERSTATE PARKING COMPANY OF COLORADO LLC,**

By: \_\_\_\_\_  
Name: Gareth James Lloyd, Executive Vice President and Operating Partner

## SCHEDULE A

### LIST OF OPERATING EXPENSES

- (i) Wages of personnel assigned to the Parking Facility, supervisors, ambassadors, maintenance, clerical and audit staff including worker's compensation insurance, unemployment insurance, social security tax, and health insurance
- (ii) Business license required by the Town
- (iii) All costs of Interstate's license plate recognition-based compliance system including hardware, software, licensing fees and costs of processing and collections
- (iv) Interstate's costs of its owned vehicle
- (v) Cost of development and ongoing maintenance of "ParkFriscoMarina.com" website
- (vi) Ticket supply, cards and decals
- (vii) Marketing and advertising
- (viii) Postage and invoicing
- (ix) Project management, ongoing monitoring and programming of the ParkFriscoMarina tap n explore and our app
- (x) Uniforms
- (xi) Data processing
- (xii) Accounting, including costs of internal audits, if applicable and monthly reporting
- (xiii) Bank fees
- (xiv) Employee costs including recruitment, hiring, training and background checks
- (xv) Cost of the Interstate Equipment/Technology including maintenance, repairs and replacements as needed
- (xvi) Town approved ParkFriscoMarina logo

## SCHEDULE B

### INTERSTATE EQUIPMENT

- Wayfinding, pricing and other parking related signage
- All related costs of installation of equipment
- License Plate recognition software including hand helds and portable printers
- Tap n Explore and APP
- ParkFriscoMarina vehicle
- Tailored website geared to advertise your parking opportunity
- 5 solar powered payment kiosks

If Interstate installs additional equipment or other property owned by Interstate during the Term of this Agreement, Interstate shall notify Owner in writing and such additional property belonging to Interstate shall be added to this Schedule B.

## SCHEDULE C

### PARKFRISCOMARINA BRANDING AND WEBSITE FEATURES

PARKFRISCOMARINA branding to be included in signage and marketing material:

#### Website Basic Features to Include:

- Interactive map
- Information pages including information on parking basics
- Interstate e mail address responded to by our 24/7 Customer Care Center
- Link to online citation payment website
- Integration of Survey Monkey (or comparable web based survey program) survey forms as may be created for customer surveys by Interstate
- Capability to host compatible informational videos, notices, advertisements and presentations as may be created by Interstate or Owner
- Listing of special event parking information including event information and links to event websites, if applicable
- Designed with basic SEO maximization features
- Link or integration with online prepaid parking platforms
- Rate structures and hours of operation
- License Plate Recognition Interface
- Direct link to Town's website if so desired