

MEMORANDUM OF UNDERSTANDING (MOU)
Among
SUMMIT COUNTY, COLORADO, And
THE TOWNS OF BRECKENRIDGE, DILLON, FRISCO, AND SILVERTHORNE,
COLORADO

I. Parties

- a. **THIS MEMORANDUM OF UNDERSTANDING** (this “Agreement”) is made and entered into this 7th of January 2021, among SUMMIT COUNTY, COLORADO (the “County”), a body corporate and politic and political subdivision of the State of Colorado (the “State”), and THE TOWNS OF BRECKENRIDGE, DILLON, FRISCO, and SILVERTHORNE, COLORADO (the “Towns” or individually as a “Town”), home rule municipalities and political subdivisions of the State regarding the distribution of funds associated with the State of Colorado Small Business Relief Program. The County and the Towns are referred to collectively herein as “the Parties” or individually as “a Party.”

II. Background and Purpose

- a. Pursuant to title 29, article 1, part 2, Colorado Revised Statutes (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 any such contract may provide for the joint exercise of the function, service or facility.
- b. The first case of a respiratory disease spreading from person to person caused by the novel coronavirus SARS-CoV-2 was discovered in Summit County on March 5, 2020. The disease has been named “coronavirus disease 2019” (abbreviated “COVID-19”) and poses a serious public health risk.
- c. The President of the United States has declared a National Emergency and the Governor of the State of Colorado has declared a State of Emergency related to the presence of COVID-19. The County initially declared a Local Disaster Emergency on March 12, 2020, and later adopted the Board of County Commissioner Resolution 2020-18, extending the declaration of a Local Disaster Emergency.
- d. Since March, 2020, the Colorado Department of Public Health and Environment (“CDPHE”) and the Summit County Public Health Director has issued a number of Public Health Orders that have placed various restrictions on local business including restaurants, lodging, and in-person retail.

- e. As a result of these public health orders, many local businesses have faced unique challenges and additional financial obligations and have suffered severe declines in revenue.
- f. During the first extraordinary session of the seventy-second general assembly, Senate Bill 20B-001, codified in C.R.S. § 24-32-129 et seq (the “Act”), was enacted, in part, to establish a small business relief program (the “Program”). The purpose of the Program is to provide relief payments to qualifying small businesses.
- g. This Agreement specifies the terms under which the County will allocate the funds to the Towns and unincorporated Summit County to distribute to eligible businesses within their boundaries.

III. Definitions – All terms defined in the Act shall carry the same meaning within this Agreement

IV. Allocation of Program Funds

- a. The Act appropriates \$37 million dollars to the Colorado State Division of Local Governments (the “Division”) for the Program. The Division is to set aside ten percent of the program funds to be distributed to “high need” counties with a population less than 100,000. The amount of funding per local government cannot be determined until after all applications are received on January 8, 2020. The Division and eligible local governments may use up to five percent of the appropriated amount for operating and administrative costs.
- b. The County will submit an application on behalf of the Parties to participate in the Program. The Parties recognize that the amount of funds available for distribution from the County are contingent upon total demand, based on the number of applications received by the Department of Local Affairs.
- c. The County will allocate one prorated share to each Town and one prorated share to the unincorporated portion of Summit County of the total amount of the State appropriated Program Funds distributed to Summit County.
- d. The amount of each prorated share will be determined by the number and size of eligible businesses that applied for relief payments located within each Town or in unincorporated Summit County.

- e. Each Town shall distribute relief payments to eligible small businesses situated within their geographic boundary and the County will distribute relief payments to eligible small businesses situated within unincorporated Summit County.

V. Responsibility of Towns

- a. Each Town shall be responsible for establishing a process for small businesses to apply for and demonstrate eligibility for relief payments. Each Town shall accept applications for relief payments from small businesses within their geographic boundaries.
- b. Each Town shall determine eligibility for relief payments pursuant to the Act and the requirements set forth in section VII below for every application it receives from a business within its geographic boundary.
- c. Each Town shall provide relief payments to eligible small businesses within their geographic boundary by February 21, 2021 in the least costly and most expeditious manner possible.
- d. Each Town shall determine the relief payment amount for each eligible business within its geographic boundary pursuant to the Act and section VIII below.
- e. Each Town shall collect sufficient information from small business applicants to issue an Internal Revenue Service Form 1099 ("Form 1099") to each eligible small business to which it distributes a relief payment.
- f. Each Town shall provide a Form 1099 to each eligible small business to which it distributes a relief payment.
- g. Each Town shall retain all records in compliance with any State issued guidance regarding the Program. Towns shall be responsible for providing such information in the event of an audit. Towns shall be prepared to provide a report to the Division describing how funds were distributed to eligible small businesses and how much of its prorated share of the County's allocation was used for administrative costs, and how the money for administrative costs were spent.

VI. Responsibility of County

- a. The County shall be responsible for announcing Program availability to all Summit County businesses (including businesses located within each Town)

and to communicate the eligibility criteria with direction that applications for funding be submitted to the appropriate Town.

- b. The County shall allocate program funds pursuant to section IV above to each Town and to itself for relief payments to eligible businesses within Town boundaries and within unincorporated Summit County.
- c. The County shall be responsible for establishing a process for small businesses in unincorporated Summit County to apply for and demonstrate eligibility for relief payments. The County shall accept applications for relief payments from small businesses within their geographic boundaries.
- d. The County shall determine eligibility for relief payments pursuant to the Act and the requirements set forth in section VII below for each application it receives from businesses within unincorporated Summit County.
- e. The County shall determine the relief payment amount for eligible businesses within unincorporated Summit County pursuant to the act and section VII below.
- f. The County shall provide relief payment to eligible small businesses within unincorporated Summit County by February 21, 2021 in the least costly and most expeditious manner possible.
- g. The County shall collect sufficient information from small business applicants to issue an Internal Revenue Service Form 1099 to each business to which it distributes a relief payment.
- h. The County shall provide a Form 1099 to each eligible small business to which it distributes a relief payment.
- i. The County shall retain all records in compliance with any State issued guidance regarding the Program. The County shall be responsible for providing such information in the event of an audit. The County shall be prepared to provide a report to the Division describing how funds were distributed to eligible small businesses and how much of its prorated share of the County's allocation was used for administrative costs, and how the money for administrative costs were spent.

VII. Program Eligibility

- a. The following types of businesses are eligible for relief payments:
 - 1. Restaurants

2. Bars (includes establishments like a Winery, Brewery, Distillery, etc.)
 3. Caterers
 4. Movie Theatres
 5. Gyms & Recreation Centers
- b. In order to receive a relief payment, a small business applicant must provide documentation to the Town in which it is situated, or the County if it is situated in unincorporated Summit County, that it meets the following criteria:
1. A minimum of 20% revenue loss since March 26, 2020 due to the restrictions imposed on the business under the Governor's Executive Order D 2020 017, ordering Coloradoans to stay at home, and the CDPHE Amended Public Health Order 20-24 implementing stay at home requirements, OR that the business opened between January 1, 2020 and March 26, 2020.
 2. Currently operating within Summit County's geographic boundary.
 3. Valid business license and in good standing with issuing agency or a Certificate of Good Standing.
 4. Verification of Colorado Income Tax Account Number or Tax Exempt Certificate number.
 5. An NAICS code indicating the business operates within an eligible industry.
 6. An affirmation of intent to operate in the state for at least six months.
 7. An affirmation that the business is in compliance with all public health orders.
 8. Qualifies as a "Small Business" by meeting the following criteria:
 - a. Has its headquarters and is doing business in Colorado,
 - b. Has at least one full-time employee, OR, is a sole proprietorship, and
 - c. For a small business that was operating before January 1, 2020, had annual receipts of less than \$2.5 million for the 2019 calendar year, and
 - d. For a small business that began operating on or after January 1, 2020, and on or before March 26, 2020, had annual receipts of less than \$2.5 million.
- c. Any of the following criteria renders a business ineligible:
1. Permanently closed businesses that do not have an intent to reopen, or
 2. The business has applied for or received any other relief payment from the Arts Relief Program created in C.R.S. 24-48.5-316.
 3. Has operated in violation of any State or local PHO in effect on or after December 10, 2020.

VIII. Relief Payment Tiers

- a. Eligible small businesses may receive relief payments as follows, reduced as necessary by the eligible local government to avoid exceeding the total amount allocated to the County pursuant to the Act:
 - 1. For an eligible small business that had less than \$500,000 in receipts in the 2019 calendar year, a relief payment of up to \$3,500;
 - 2. For an eligible small business that had \$500,000 or more but less than \$1 million in receipts in the 2019 calendar year, a relief payment of up to \$5,000; and
 - 3. For an eligible small business that had \$1 million or more but less than \$2.5 million of receipts in the 2019 calendar year, a relief payment of up to \$7,000.

IX. Amendment and Termination of Agreement

- a. The term of this Agreement shall begin when the County and one or other Party has executed this Agreement. No Party shall be bound by this Agreement until the Party has signed this Agreement.
- b. The term of this Agreement shall end after record retention requirements pursuant to state issued guidance have expired.

- X. Execution and Performance of Agreement in Accordance with Law.** Each Party hereby represents to each other Party that it has executed this Agreement in accordance with applicable law. Each Party shall perform their respective obligations and expend any funds derived hereunder in accordance with all applicable laws, rules and regulations, including but not limited to the Act and this Agreement.

- XI. Indemnification.** All actions or omissions by any Party, including their respective representatives, employees, agents, volunteers or officials, shall be the sole responsibility of the respective Party. Accordingly, each Party shall fully indemnify, to the extent permissible under Colorado law, all other Parties for any damages, claims, costs, expenses, cause of action or liability of any manner, including without limit reasonable attorney's fees, arising out of or relating to the acts or omissions of such Party. The Parties understand and agree that liability for claims for injuries to persons or property arising out of the actions or omissions of any Party is controlled and limited by the provisions of the Colorado Governmental Immunity Act ("Immunity Act"), title 24, article 10, Colorado Revised Statutes, as now or hereafter amended and that the Parties do not intend to waive by any provision of this Agreement the liability limitations or any other right, immunity or protection afforded by the Immunity Act or as may otherwise be afforded by law. The indemnity obligations of this Section shall survive the termination of this Agreement. Indemnity obligations of any designee of the County shall be governed by separate agreement.

XII. Dispute Resolution

- a.** The Parties shall attempt to informally resolve all disputes and claims arising from or related to this Agreement, beginning first with discussions among affected Town(s) and County staff, and if not resolved, escalating to discussions between the applicable Town Manager(s) and County Manager, and ultimately to the Town Council(s) and Board of County Commissioners. Disputes with any designee of the County shall be governed by separate agreement.
- b.** Any and all disputes and claims arising from or related to this Agreement that are not resolved pursuant to Section (a), above shall thereafter be submitted to mediation. The affected Parties shall share equally the mediator's fees and costs associated with the mediation, and each Party shall pay its own fees, costs, and expenses related to the mediation. If the dispute is not resolved by mediation, any affected Party may commence a Court proceeding, with jurisdiction and venue residing exclusively in the Summit County District Court. Each Party waives its right to have such dispute decided by jury trial. The prevailing Party(s) shall be awarded its reasonable attorneys' fees, costs, and expenses, including any attorneys' fees, costs, and expenses incurred in collecting or executing upon any judgment, order, or award.
- c.** In the event that a Party defaults in the performance of any of the duties and responsibilities under this Agreement, the non-defaulting Party shall be limited to the remedies of specific performance and mandamus. Prior to exercising such remedies, the non-defaulting Party shall give written notice to the defaulting Party of the nature of the claimed default and declare that such default must be cured within thirty (30) days from the date notice is given.

XIII. Parties in Interest - Nothing expressed or implied herein is intended or shall be construed to confer upon any person other than the Parties any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the Parties.

XIV. No Personal Liability. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of an elected or appointed official, officer, agent, servant or employee of any Party in his or her individual capacity.

XV. Notices. Except as otherwise provided in this Agreement, all notices or other communications by any Party shall be in writing, shall be given in a reasonable time and shall be deemed given when actually received. Notice to the Parties shall be given to the address listed on Exhibit A, attached and incorporated herein, and may also be delivered in electronic form by electronic mail to the addresses listed on Exhibit A.

XVI. Severability.- If any clause, provision, subsection, or Section of this Agreement shall be held to be invalid, illegal or unenforceable for any reason, the Agreement shall be reformed to the extent necessary to reflect the intent and purpose of the original agreement or the Parties may terminate this Agreement.

XVII. Interpretation. Because this Agreement is the result of mutual negotiation and

drafting, in the event this Agreement is deemed to be ambiguous or vague, the Parties agree that the rule of construction that “ambiguities shall be construed against the drafter” shall not apply. In the event of any conflict between the Act, the Intergovernmental Relations Statute or any other law with respect to the exercise of any such power, the provision that permits the broadest exercise of the power consistent with the limitations set forth in this Agreement shall control. The laws of the State shall govern the construction and enforcement of this Agreement.

XVIII. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement. Electronic or scanned signatures shall be valid and acceptable for all purposes.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties effective as of the date set forth above.

Entered into by:

Town of Silverthorne

By: 

Name: Ryan Hyland

Title: Town Manager

Date: 1/7/2021

Town of Frisco


By: 

Name: Nancy Jolley

Title: Town Manager

Date: 1/7/2021

Town of Breckenridge

By: 

Name: RICK HOLMAN

Title: TOWN MANAGER

Date: 01-07-21

Town of Dillon

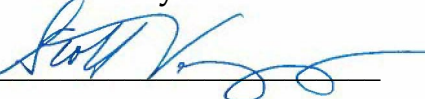
By: 

Name: Nathan Johnson

Title: Town Manager

Date: 1-7-2021

Summit County

By: 

Name: Scott Vargo

Title: County Manager

Date: 1/07/2021