



February 14, 2023

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Town of Frisco  
PO Box 4100  
1 Main Street  
Frisco, CO 80443  
Attn: Mayor Hunter Mortensen

**VIA EMAIL**

Re: Retention of Winthrop & Weinstine, P.A.

Dear Mayor Mortensen:

Thank you for the opportunity to represent Town of Frisco. Our goal is to provide high quality legal counsel and advocacy. To that end, we find it helpful to confirm the terms of the Firm's engagement.

Winthrop & Weinstine, P.A. has been engaged to represent Town of Frisco ("Frisco"). We have been engaged to represent the Client(s) only, not any other person, firm or entity, including controlled or affiliated persons, firms or entities. Our representation will be with respect to advice related to development of affordable housing project through an agreement to be negotiated with a LIHTC developer. This engagement is for the above-described matter or transaction only, and the engagement is limited in maximum attorneys fees to the amount of Thirty Thousand Dollars (\$30,000.00). If, in the future, you request that we undertake additional work and we agree to do so, a subsequent engagement letter will govern that work.

In order for the Firm to represent you effectively, we expect you to:

- Promptly provide clear direction and all documents required for this matter;
- carefully review the advice, information, and any materials we provide to you and let us know if you think there is any additional relevant information; and
- safeguard all relevant communication and documents, including electronic communications with us.

Certain terms of our engagement are set forth in the attached Exhibit A, which is entitled "Winthrop & Weinstine Terms of Engagement." Exhibit A carefully is an important part of this engagement letter; you should review it carefully.

### **Termination of Representation**

Consistent with our ethical obligations, we reserve the right to terminate the engagement if our invoices are not paid when due, if retainer amounts are not paid if and when requested, if we do not receive a reasonable level of cooperation and assistance from you, and as otherwise permitted under the Rules of Professional Conduct. If we terminate the engagement, we will do so in accordance with the Rules of Professional Conduct. You may terminate the engagement at any time by notifying the Firm in writing of your desire to do so. In either case, you will be responsible for all legal fees for work performed and expenses incurred before the date of termination.

When our engagement has been completed or terminated, we will no longer monitor your matter or inform you of: (i) changes in law or developments affecting your circumstances; or (ii) renewal dates, notice dates or deadlines.

### **Technology and Information Security**

We intend to use email, smart phones, tablets, cloud-based applications and third-party file sharing services. Consistent with our ethical obligations, we will endeavor to take reasonable information security precautions at all times; however, there is some inherent risk in the use of current technology. By engaging us, you consent to our use of these technologies and you agree to provide us written guidance if you require any special information security measures.

### **Electronic Files**

We maintain our client files electronically. With few exceptions, we do not keep separate paper files. We will scan received documents to our electronic file for that matter and only keep the electronic version. Unless you instruct us otherwise, once such documents have been scanned to our electronic file, we will destroy paper documents received by us. If you send paper documents that need to be maintained as originals, we will ordinarily scan those to your client file and return the original to you for safe keeping. Alternatively, you may request that we maintain such originals while your matter is pending. If we agree to do that, we will make appropriate arrangements to maintain those original documents.

### **Conflicts of Interest**

Given the nature of our practice, we may from time to time represent your competitors or advance positions on issues that are inconsistent with your positions. This may include, for example, representing different clients engaged in the same or related areas of technology, businesses or industries in unrelated matters. You agree that we may simultaneously represent other clients in unrelated matters whose interests may be economically adverse to you or whose positions on legal matters may be inconsistent with yours.

Professional Rules permit a law firm to represent one client on a matter which is adverse to another client under certain conditions and subject to certain limitations. For example, we could be

engaged to represent your landlord or lender in a negotiation over a lease or loan or a vendor in a lawsuit over a product dispute while at the same time representing you in an unrelated lawsuit against a third party. Such concurrent representation requires informed consent, confirmed in writing. We will not undertake such representation unless we reasonably believe that we will be able to fully and properly represent you and we have obtained your informed consent. Further, we will not reveal confidential information we have received from and about you to the other client or use information received from you to your disadvantage.

Professional Rules permit a law firm to represent a client in a matter that is adverse to a former client of the firm without consent of the former client if, among other things, the matters are not substantially related. When this engagement has been completed (as reasonably determined by the Firm), and assuming the Firm is not then representing you on any other matters, we will consider you a former client for this purpose.

### **Records Retention**

The Firm has a records retention policy (the "Policy"). Pursuant to the Policy, the standard retention period for client records six (6) years from the end of the calendar year in which work on your matter was completed. When your file becomes eligible for disposition, we will notify you in writing. You may choose to take possession of the file at your expense or to have us securely destroy your file. If we do not receive specific instructions from you, we will securely destroy your file.

### **Acknowledgement**

If any part of this letter is inconsistent with your understanding, please let me know me. If this description of the engagement is consistent with your understanding, please sign and return a copy of this letter to me.

Again, we appreciate the opportunity to represent you in this matter.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Jon L. Peterson

The undersigned consents and agrees to the foregoing.

Town of Frisco  
January 28, 2023  
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Date: \_\_\_\_\_

TOWN OF FRISCO

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

ATTEST:

\_\_\_\_\_  
Stacey Nell, Town Clerk

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## **EXHIBIT A**

### **WINTHROP & WEINSTINE, P.A. TERMS OF ENGAGEMENT:**

#### **FEES**

Our fees will be based on an hourly rate, in some cases adjusted to reflect the complexity, urgency, novelty and/or value of the work to be performed. While we cannot precisely determine in advance the amount of time that will be required to complete our representation, we will use our best judgment to determine the most economical assignment of attorneys and staff. The lawyer primarily responsible for this engagement will be Jon L. Peterson, whose time on this matter will be billed at the hourly rate of \$710.<sup>1</sup> If necessary, other attorneys and paralegals, whose time is billed at different hourly rates, may perform tasks in connection with this engagement. The rates of lawyers and paralegals in the Firm are subject to change. Billed time includes all time spent on the representation including, without limitation, conferences, telephone calls, preparation and review of documents, correspondence, legal research and the like. Client(s) shall (each, if more than one) be responsible for all applicable sales, use, excise or similar taxes.

#### **EXPENSES**

We may incur various expenses in providing services. Client(s) will (each, if more than one) be responsible for reimbursing the Firm for all of our out-of-pocket expenses and disbursements, including such items as expert fees, deposition transcript charges, outside delivery charges, travel and lodging. If any of such out-of-pocket expenses and disbursements are expected to be substantial, we may ask you to advance sums to us before we incur the expenses and make the disbursements or to pay the expenses and disbursements directly. We may also provide internal services such as document production (including copying and printing), internal delivery services and other internal services. Client(s) will (each, if more than one) be responsible for payment of such services at our customary rates.

#### **PAYMENT TERMS**

The Firm bills on a monthly basis for fees and expenses. Payment is due upon receipt of invoice. Failure to make timely payment may result in termination of the representation. Our invoices may contain privileged information. Please treat invoices as confidential.

#### **INTEREST ON PAST DUE ACCOUNTS**

The Firm reserves the right to charge interest on amounts due and owing for more than thirty days. Simple interest, at the rate of 8%, will accrue on all amounts due and owing for more than thirty days. Any interest charged to your account will be reflected on subsequent invoices and/or statements. By entering into this engagement, you acknowledge and agree to this term.

#### **RETAINER**

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<sup>1</sup> The Firm reserves the right to adjust fees, and typically does so annually on the first of the year.

We reserve the right to request that additional sums be paid to the Firm as a retainer (either in addition to retainer amounts already paid or as a new retainer) should it appear to us to be necessary or appropriate to cover fees and expenses. Failure to provide such retainer may result in termination of representation. Interest will not be paid on retainer amounts.

## **EXHIBIT B**

### **JOINT REPRESENTATION CONFLICTS AND OTHER CONSIDERATIONS**

This Exhibit confirms certain aspects of a joint representation which we have discussed with you. Conflicts of interest can arise when a law firm represents more than one client in a matter. We have discussed the advantages and disadvantages in our common representation of you in this matter. As discussed, although each of you may have individual claims, defenses and interests in the matter, there appear to be significant common interests and common questions of law and fact. Advantages include efficiency, avoiding duplication of effort and potentially reduced fees. Disadvantages include potential conflicts of interest and potential loss of the attorney-client privilege. After considering the advantages and disadvantages you have advised the Firm that you wish the Firm to handle representation for all of the Clients. Because we are being asked to represent all of you, we must ask you to agree to the joint representation and to waive any potential conflicts of interest in our joint representation, as described below.

The Firm can only carry out this common representation if there is no concealed information as among the Clients regarding any matters relating to this representation. In other words, each of you is entitled to all of our advice and communications with any of the rest of you. In that regard, however, please understand that the attorney-client privilege may not exist between commonly represented clients, so if a dispute arises between you, the privilege likely will not protect your communications about this engagement with the Firm.

Rules of Professional Conduct require a law firm to obtain client consent with respect to certain aspects of a joint representation. In requesting this consent, we assure you that: (i) we reasonably believe that we will be able to provide competent and diligent representation to each Client without our representation of one of you being materially limited by our representation of the others; and (ii) we will not use confidential information regarding any of you to the disadvantage of that client.

We ask each of you to acknowledge and confirm that:

- (a) The Firm will jointly represent you in connection with the matter;
- (b) None of you will use the fact of the Firm's representation of you as a basis to claim a conflict of interest on the part of the Firm or to seek disqualification of the Firm in representing the others in connection with the matter;
- (c) The Firm may share client confidential information relating to the matter regarding each of you with the others, but as indicated above, the Firm will not use client confidential information regarding any one of you to your disadvantage; and
- (d) In the event the Firm determines that continued joint representation may violate applicable Rules of Professional Conduct, or if any one of you decides that some client confidential information material to the joint representation should be kept from the others, or if any one of you should decide that you no longer wish to have the Firm continue to represent you, the Firm may withdraw from the joint representation in total or with respect to one or more of you and, further,

in the event that the Firm withdraws from representing \_\_\_\_\_, the Firm may continue to represent \_\_\_\_\_ in this matter. **[Include this phrase only in consultation with the GC]**

Each Client will be responsible for the payment of all amounts due and payable to the Firm and/or the full amount of any retainer payments requested by the Firm. Of course, you are free to agree among yourselves to an allocation of such amounts. As an accommodation to you, the Firm may accept separate payments from each of you of the allocated amount you agree to. However, if one or more of you fails to pay his, her or its allocated amount, the others will be responsible for the unpaid amount and the Firm may withdraw from representing all of you.

This Exhibit is a supplement to and does not limit the terms of the engagement letter.



