

Attachment 3

Agreement Between Summit County and the Town of
Frisco to Implement 5-Star Program

**Memorandum of Understanding
Between The Summit County Board of Health,
The Board of County Commissioners of Summit County, Colorado
And The Town of Frisco, Regarding the
Colorado 5 Star Program**

I. Parties

- a. This Memorandum of Understanding (hereinafter referred to as “MOU”) is made and entered into by and between Board of Health for Summit County, Colorado (acting by and through the Summit County Public Health Director) and the Board of County Commissioners of Summit County (collectively referred to as the “County”) and the Town of Frisco, Colorado, a home-rule municipality (the “Town”). The County and Town may be referred to herein as a “Party” or the Parties”.

II. Background and Purpose

- a. The State of Colorado, through the Colorado Department of Public Health and the Environment (“CDPHE”), has released the parameters of a new program, called the “5 Star Certified Business Variance Program” (“5 Star Program”) which is designed to assist businesses in the state who are implementing COVID-19 safety measures beyond what is already required by public health orders and guidelines. The 5 Star Program allows businesses meeting the criteria to operate at less restrictive levels and the provisions of the 5 Star Program are deemed incorporated herein. The 5 Star Program is implemented through the county in which the business is located, and the County is coordinating with CDPHE in order to implement the program as quickly as possible.
- b. Since the beginning of the COVID-19 pandemic in early March, 2020, 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. CDPHE and the Governor of the State of Colorado have also imposed additional restrictions on local businesses, all of which have had a deleterious effect on local businesses.
- c. The County has initiated a COVID-19 5 Star Certified Business Variance program that would allow local restaurants with excellent pandemic-related health and safety practices and operations to operate at a level of decreased restrictions.
- d. As required by the 5 Star Program, the County has formed the requisite Administrative Committee that will advise the County and Town in the development, administration and coordination of the 5 Star Program.

- e. The Town currently regulates the restaurants within the Town under various Town regulatory systems and is therefore well-suited to assist in the implementation of the 5 Star Program as well as monitor ongoing compliance with the 5 Star Program in cooperation with the County as provided for herein.
- f. In order to assist Town businesses' continued operations during the pandemic and to ensure appropriate implementation of the 5 Star Program, the County wishes to delegate to the Town the implementation and management of certain portions of the 5 Star program within the incorporated areas of the Town as set forth herein.

III. General Provisions

a. Responsibilities of Town:

- i. The Town shall implement and administer the 5 Star Program, including certifying businesses for participation in the program in accordance with all applicable CDPHE and Summit County orders, rules, regulations and program guidelines.
- ii. The Town staff administering the 5 Star Program within the incorporated area of the Town. The Town shall provide such reports and information to the County as required by the 5 Star Program rules and regulations or as may be deemed necessary by the Public Health Director.
- iii. The Town shall be responsible for enforcing the requirements of the 5 Star Program and other applicable public health rules, regulations and orders with an initial emphasis on education to gain compliance. The Town shall provide the first written warning citation to any business that is demonstrated by competent evidence to not be in compliance with the requirements of the 5 Star Program after being informed of a violation and failing to cure such violation. The Town acknowledges that only one written warning to a business under the 5 Star Program and that any subsequent enforcement action based on competent evidence of a violation must result in revocation of the 5 Star Program certification for the business.
- iv. The Town shall refer recommendations for certification revocations along with all relevant evidence and information to the Summit County Public Health Director or her designee for a final determination regarding a revocation in accordance with any applicable rules, regulations or policies.
- v. The Town shall cooperate with the County, Administrative Committee and CDPHE as needed and required in order to implement and administer the Program.

b. Responsibility of County:

- i. The County shall provide training to Town staff regarding the 5 Star Program inspection process and consult with the Town as requested regarding the requirements of the 5 Star Program and public health orders.
- ii. The County be responsible for the final certification revocation determination of a business in consideration of the Town recommendation.
- iii. The County shall cooperate with the Town, Administrative Committee and CDPHE as needed and required in order to implement and administer the Program.

IV. Term and Termination

- a. The MOU will remain in effect until terminated in writing by the County or Town.
- b. If the Town terminates its participation, the County may assume the Town's responsibilities set forth herein to the extent the County's limited resources will allow and in its sole discretion.

V. Point of Contact

- a. The Point of Contact for the County is:

Name: Dan Hendershott
Email: Dan.Hendershott@summitcountyco.gov
Telephone: (970)668-4073
Address: PO Box 5660, Frisco, CO 80443

- b. The Point of Contact for the Town is:

Name: Nancy Kerry
Email: NancyK@TownOfFrisco.com
Telephone: 970-406-2988
Address: PO Box 4100, Frisco, CO 80443
Physical: 1 Main Street, Frisco, CO 80443

VI. Miscellaneous

- a. Nothing herein shall constitute or be construed to create or suggest any type or kind of employment, partnership, joint venture, or other legal relationship, express or otherwise, between the parties.

- b. Liability - Each Party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents.
- c. No Third Party Rights - This MOU does not and shall not be deemed to confer upon any third party any benefit or right to claim damages to bring suit, or other proceeding against either the County or Town because of any term contained in this Agreement.
- d. No Assignment - This MOU is for specific actions predicated upon each Town's special abilities or knowledge, and no Town shall assign this MOU in whole or in part without prior written consent of County.
- e. Amendment - Any Party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU that are mutually agreed upon by and between the Parties to this MOU, shall be incorporated by written instrument and effective when executed and signed by all Parties to this MOU.
- f. Indemnification and Insurance - To the extent permitted by law, if permitted at all, each Party shall indemnify and hold harmless each other Party from and against all claims, damages, losses, and expenses arising out of or resulting from acts or omissions of that Party, the Party's sub-contractors or otherwise arising out of the performance of obligations set forth herein. Each Party shall maintain insurance up to the amounts prescribed in the Colorado Governmental Immunity Act.
- g. Severability - If any of the provisions of this MOU shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire MOU, but rather the entire MOU shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the party shall be construed and enforced accordingly, to effectuate the essential intent and purposes of this MOU.
- h. Enforcement and Waiver - The failure of either party in any one or more instances to insist upon strict performance of any of the terms and provisions of this MOU, shall not be construed as a waiver of the right to assert any such terms and provisions on any future occasion or of damages caused thereby.
- i. Interpretation - The validity, interpretation and effect of this MOU shall be determined under Colorado law. All actions arising directly or indirectly as a result or in consequence of this Agreement shall be instituted and litigated only in courts having situs in Summit County, Colorado. Any provision

found to be invalid or unenforceable shall have no effect upon the validity of any other section of this contract.

- j. Governmental Immunity - No Party intends to waive by any provision of this Agreement the monetary limits or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or any other provision of law.
- k. Execution by Counterparts; Electronic Signatures - This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Contract. Only the following two forms of electronic signatures shall be permitted to bind the Parties to this MOU: (1) Electronic or facsimile delivery of a fully executed copy of a signature page; (2) The image of the signature of an authorized signer inserted onto PDF format documents. All documents must be properly notarized, if applicable. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§24-71.3-101 to -121.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized representatives on the dates appearing beneath their respective signatures.

TOWN OF FRISCO, CO

BOARD OF COUNTY
COMMISSIONERS OF SUMMIT
COUNTY

By: Nancy Kerry 10/6/2020
Nancy Kerry, Town Manager

By: Scott Vargo
Scott Vargo, County Manager

SUMMIT COUNTY BOARD OF HEALTH

By: Amy Wineland
Amy Wineland, Public Health Director