

TOWN OF FRISCO

AND

COLORADO DEPARTMENT OF TRANSPORTATION

WORK FORCE HOUSING PLANNING AGREEMENT

Dated as of _____, 2022

WORK FORCE HOUSING PLANNING AGREEMENT

THIS WORK FORCE HOUSING PLANNING AGREEMENT and any amendments hereto made in accordance herewith (as from time to time amended and supplemented in accordance herewith, this “Agreement”), is made by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation (the “Town”), and the STATE OF COLORADO acting by and through the COLORADO DEPARTMENT OF TRANSPORTATION, Property Management division (“CDOT” or “State”).

Recitals

This Agreement is made with respect to the following facts:

A. CDOT and Town previously entered into a Work Force Housing Planning Agreement dated September 9, 2020, PO 471001650 that expired on December 31, 2021 and was amended by the First Amendment to Work Force Housing Planning Agreement dated January 31, 2021 (collectively, the “Expired Agreement”).

B. As detailed in the Expired Agreement, CDOT owns a tract of undeveloped land within the Town that is described as Lots 18 through 24, Block 12, Frisco Town Subdivision, also known as 619 Granite Street, Frisco, Colorado, and that consists of approximately 24,500 square feet of land (the “Property”); and

C. Pursuant to the Expired Agreement, CDOT and the Town desired to jointly plan for, and potentially construct, a residential housing project on the Property for purposes of Town and State work-force housing (the “Project”);

D. Pursuant to this Agreement, the parties desire to continue the planning process for the Project;

E. Subject to various applications and approvals required by the Town Code, and assuming the use of the density bonus incentive provided in the Town Code in connection with deed-restricted affordable housing, the Town anticipates that the Property could be developed to reasonably accommodate between twenty and twenty-five (20 and 25) residential units; and

F. The purpose of this Agreement is to provide for a cooperative effort in which:

- (i) CDOT and the Town will jointly undertake all actions necessary or desirable, under the Town Code and any other applicable state or local law, to obtain the approval of a residential development project on the Property for work-force housing;
- (ii) Pursuant to the Expired Agreement, CDOT and the Town caused eighty percent (80%) of the construction drawings to be created for the approved Project;

- (iii) Pursuant to this Agreement, CDOT and the Town shall complete the final 20% of the construction drawing to be created for the approved Project; and
- (iv) CDOT and the Town will obtain construction cost estimates for the Project in order that the parties may consider entering into an agreement concerning construction of the Project; and

G. After construction costs estimates for the Project have been obtained, each party shall determine, in its sole and absolute discretion, whether the Project should be built on the Property; and

H. If each party determines that the Project should be built, the parties will negotiate in good faith with the goal of entering into an agreement concerning the allocation of the costs of construction of the Project between the parties, as well as the ownership, upon completion, of the various residential units to be constructed as part of the Project.

Agreement

NOW, THEREFORE, in consideration of the premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the previous recitals are incorporated as part of the agreement of the parties and the parties hereto agree as follows:

SECTION 1 DEFINITIONS.

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Agreement” has the meaning set forth in the first paragraph of this Agreement. References to Sections and Exhibits are to this Agreement unless otherwise qualified.

“Business Day” means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.

“CORA” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.

“Effective Date” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement.

“Expired Agreement” means the Work Force Housing Planning Agreement dated September 9, 2020, PO 471001650, between CDOT and the Town that expired on December 31, 2021 and was amended by the First Amendment to Work Force Housing Planning Agreement dated January 31, 2021.

“Notice Address” means the appropriate address for notice set forth below, as amended from time to time:

Town: Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Community Development Director

With a Copy to:

Thad W. Renaud, Esq.
Murray Dahl Beery & Renaud LLP
710 Kipling Street, Suite 300
Lakewood, CO 80215

CDOT: Colorado Department of Transportation
Property Management Program Manager
2829 West Howard Place
Denver, CO 80204

“Project” has the meaning set forth in Recital C and Section 2.02.

“Property” means the real property described as Lots 18-24, Block 12, Frisco Town Subdivision, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto.

“State Fiscal Year” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

“Town Code” means the Code of Ordinances of the Town of Frisco.

SECTION 2 JOINT PLANNING EFFORTS FOR THE PROPERTY.

Section 2.01 Designation of Representative. Each party has designated an individual to act as its representative under this Agreement, and such individual has the authority to make any and all decisions, and to take any and all actions, that may be made or taken under this Agreement by the party represented. Until changed by written notice to the other party, the Town’s designated representative shall be the Frisco Town Manager, and CDOT’s designated representative shall be David Fox, Property Management Deputy Program Manager.

Section 2.02 Cooperative Planning. CDOT and the Town shall cooperate in jointly preparing and presenting to appropriate local and state authorities (including authorities of the Town of Frisco and State of Colorado), all plans, plats, drawings and other descriptive or supportive materials that are necessary or desirable for approval of the Project under applicable law. The Project is the development of the Property into residential units for the purpose of work-force housing. The exact nature of the Project shall be as determined by the designated representatives of the parties, and as set forth in the approvals, if any, of the various applications for land use or construction made pursuant to this Agreement. Promptly after final approval of

the Project in accordance with this Agreement, the parties shall cooperate in having the final 20% of construction drawings and specifications prepared for the Project, which is included as part of the costs in Section 2.09 and, thereafter, shall further cooperate in having construction cost estimates for the Project prepared based on such drawings.

Section 2.03 Sharing of Expenses and Engagement of Consultants. Without limiting the generality of Section 2.02 above, CDOT and the Town agree that they shall, subject to the limitations set forth in Sections 2.05 and 2.09 and 5.02:

- (i) share equally in all costs and expenses incurred under this Agreement, except for internal personnel and administrative costs and expenses of the respective parties; and

- (ii) engage, through the bidding or other procurement process set forth in the Town Code, and share equally in the cost of, such professional consultants or other contractors as may be necessary or desirable to make application(s) for the Project or to prepare materials or documents pursuant to this Agreement. Such professional consultants or contractors will include, but not necessarily be limited to, consulting planners, architects and engineers. Every engagement of any such consultant or contractor shall be by written agreement between the consultant/contractor and the Town that that has been approved pursuant to the law or policy of the Town and subject to the limitations of Section 5.02, after written consent is provided by CDOT's Property Management Program Manager to the Town's entering into the agreement. To that end, CDOT shall participate, and the parties shall cooperate, in the selection process for consultants and contractors to be engaged by the Town pursuant to this Agreement. Such consultants and/or contractors that shall work on the Property shall:

- (a) comply with all insurance obligations required by CDOT's Risk Management section;
- (b) secure, prior to the effective date of such subcontract, and maintain at all times during the term of such subcontract, at their sole expense, all licenses, certifications, permits, and other authorizations required to perform their obligations under such subcontract, and shall ensure that all employees, agents and subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to the subcontract; and
- (c) agree to indemnify, save, and hold harmless CDOT, its employees, agents and assignees (collectively, the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by such consultant and/or contractor, or its employees, agents, subcontractors, or assignees in connection with the subcontract.

Section 2.04 Scope of Project. Without any obligation on the part of either party to agree to construct any part of the Project, CDOT and the Town agree that the planning and application(s) for the Project shall include only that number of dwelling units, and that mix of dwelling unit sizes, to be allocated to each party that each party reasonably expects to have the individual capacity to finance for construction.

Section 2.05 Development Approvals Required. CDOT and the Town shall jointly process all applications required for the planning of the Project through the Town as required by the Town's ordinances and regulations, and through the state as required by Colorado law or regulation, including, but not limited to, the following:

- (i) Sketch plan procedures found in Chapter 180 of the Town Code;
- (ii) Development plan procedures found in Chapter 180 of the Town Code;
- (iii) Preliminary Plat procedures found in Chapter 180 of the Town Code; and
- (v) Comply with the State Buildings Program Code Compliance Procedures per the Office of the State Architect's Requirements.

For applications required by the Town Code, the Town Planning Department shall provide all internal personnel and administrative resources necessary to process the application, and the Town shall pay all fee and charges in connection with the application, if any. For applications required by state law, CDOT shall provide all internal personnel and administrative resources necessary to process the application, and CDOT shall pay all fees and charges in connection with the application, if any, which is subject to the limitation in Section 2.09.

Section 2.06 Development Approvals Generally. The Town agrees reasonably to cooperate with CDOT with respect to application for any permits or approvals required by the Town, and any permits or approvals required from any other governmental agency; provided, however, that all applications for such permits and approvals are in compliance with the applicable ordinances and regulations, approved plans and specifications, and all applicable codes. Nothing contained herein shall be construed to obligate the Town to issue any permit or approval necessary in connection with respect to the Project, and the Town may issue any such permit or approval in its sole discretion, in accordance with applicable Town ordinances and the Town Code. Any approval of the applications listed in Section 2.05 above will not be unreasonably withheld or conditioned. CDOT understands and agrees, however, that the Town's consideration and decision with respect to any application that CDOT and the Town may file in order to obtain approval of the Project will be a quasi-judicial decision. Accordingly, in the event that the Project has not received full development approval consistent with this Agreement as it relates to the development plan and preliminary plat, whether due to political opposition, initiative, referendum, litigation or any other cause, after a minimum of two (2) good faith efforts to obtain such approval, then CDOT and the Town shall have the right to terminate this Agreement by written notice to the other party. In the event of such termination, the Town and CDOT shall perform all obligations owed to third parties under agreements entered into pursuant to this Agreement, but shall otherwise owe no other or further duties, each to the other, and shall

make no claim for damage or reimbursement for expenses incurred under this Agreement, or otherwise in connection with the Project.

Section 2.07 Determination as to Construction, and Negotiation of Construction Agreement. After receipt of cost estimates for construction of the Project, CDOT and the Town shall promptly determine, in their respective sole and absolute discretion, whether to construct the Project. In the event each party desires to construct the Project, CDOT and the Town shall negotiate in good faith with the goal of entering into a separate agreement executed in accordance with Section 5.01 or an amendment to this Agreement executed in accordance with Section 4.12 that equitably allocates between the parties the ownership of the dwelling units to be constructed, and the costs of construction of the dwelling units.

Section 2.08 Formula for Cost Allocation Under Potential, Future Agreement. For purposes of the allocation of costs and ownership of residential units under a future agreement between the parties, if any, concerning construction of the Project, a per-dwelling unit construction cost shall be determined on a square footage basis by dividing the sum of all project costs, by the combined total square footage of all dwelling units to be constructed as part of the Project. The resulting per square foot cost shall be applied to the square footage of the particular dwelling unit(s) to be owned by a party, to determine that party's allocation of construction cost for that unit. For purposes of this section, the terms "all project costs" shall include the fair market value of the land on which the Project is constructed, all costs and expenses (except internal personnel and administrative costs and expenses) incurred by the parties in making applications pursuant to this Agreement, and all costs of construction of the Project. For purposes of this section and the agreement contemplated herein, CDOT shall receive a credit toward its allocated costs and expense in an amount equal to the fair market value of the Property.

Section 2.09 Costs and Expenses of Planning for the Project. Each party shall provide such personnel and other internal administrative resources as reasonably necessary to cooperate in the joint planning effort under this Agreement, and each party shall solely bear the costs and expenses of the internal personnel and other administrative resources it has provided hereunder. Except as may be expressly otherwise provided in this Agreement, CDOT and the Town shall share equally in the payment of all other costs and expenses incurred under this Agreement, up to the aggregate sum of Thirty-Seven Thousand Nine Hundred Dollars (\$37,900.00). The parties agree that attorney's fees shall not be subject to this Section 2.09 and that such attorney's fees shall be borne by the party incurring such obligations. The parties agree that they shall not, without additional written agreement approved in accordance with §4.12, incur costs and expenses under this Agreement in excess of said amount, and each party agrees that it has duly appropriated the sum of Eighteen Thousand Nine Hundred Fifty Dollars (\$18,950.00) for expenditure under this Agreement as of the Effective Date. The parties agree that each party shall, within thirty (30) days of written invoice therefor, promptly reimburse the other party for its share of any expenses incurred under and in accordance with this Agreement.

SECTION 3 RESTRICTIONS ON ASSIGNMENT AND TRANSFER

Section 3.01 Limitation on Assignment. Neither CDOT nor the Town will assign its rights or delegate its duties and obligations pursuant to this Agreement without the prior written consent of the other party, which may be withheld in the other party's sole and absolute discretion. Any purported assignment without such consent will be null and void.

SECTION 4 MISCELLANEOUS.

Section 4.01 Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when given by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, or dispatched by electronic mail, telegram or telecopy (if confirmed promptly telephonically), addressed to the appropriate Notice Address or at such other address or addresses as any party hereto designates in writing to the other party hereto.

Section 4.02 Waiver. No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, will constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either party by giving notice to the other party may, but will not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver will affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

Section 4.03 TABOR. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, CDOT's and the Town's obligations under this Agreement that extend beyond December 31, 2020, are subject to annual appropriation. Any failure of a party annually to appropriate adequate monies to finance the party's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. A party shall promptly give notice to the other party of any failure to appropriate such adequate monies.

Section 4.04 Titles of Sections. Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

Section 4.05 Applicable Law; Binding Effect. The laws of the State of Colorado will govern the interpretation and enforcement of this Agreement. This Agreement will be binding on and inure to the benefit of the parties hereto, and their successors and assigns, subject to the limitations on assignment of this Agreement set forth in Section 3.01.

Section 4.06 Further Assurances. The parties hereto agree to execute such documents, and take such action, as may be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

Section 4.07 Time of Essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 4.08 Counterparts. This Agreement may be executed in several counterparts, each of which together will be an original and all of which will constitute but one and the same instrument.

Section 4.09 Authority. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations have been duly authorized.

Section 4.10 Entire Understanding. This Agreement represents the complete integration of all understandings between the parties related to the Project, and all prior representations and understandings related to the Project, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

Section 4.11 Digital Signatures. If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

Section 4.12 Modification. Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

Section 4.13 Statutes, Regulations, Fiscal Rules, and Other Authority. Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

Section 4.14 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

Section 4.15 CORA Disclosure. To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

Section 4.16 Effective Date. This Agreement shall not be valid or enforceable until the Effective Date. CDOT shall not be bound by any provision of this Agreement before the

Effective Date, and shall have no obligation to pay for any work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Agreement.

Section 4.17 Initial Term. The parties' respective performances under this Agreement shall commence on the Effective Date and shall terminate on June 30, 2022 (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Agreement.

Section 4.18 Early Termination in the Public Interest. CDOT is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, CDOT, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a CDOT right to terminate for convenience.

(i) Method and Content. CDOT shall notify Town of such termination in accordance with §4.01. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

(i) Obligations and Rights. Upon receipt of a termination notice for termination in the public interest, the Town and CDOT shall perform all obligations owed to third parties under agreements entered into pursuant to this Agreement, but shall otherwise owe no other or further duties, each to the other, and shall make no claim for damage or reimbursement for expenses incurred under this Agreement, or otherwise in connection with the Project.

Section 4.19 Breach of Contract. In the event of a breach of contract, the aggrieved party shall give written notice of breach to the other party. If the notified party does not cure the breach of contract, at its sole expense, within 30 days after the delivery of written notice, the party may exercise any remedy at law and equity for that party. Notwithstanding any provision of this Agreement to the contrary, CDOT, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of CDOT; or if Town is debarred or suspended under §24-109-105, C.R.S., CDOT, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

Section 4.20 Dispute Resolution

(i) Initial Resolution. Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated representatives shall be referred in writing to a senior departmental management staff member designated by CDOT and a senior manager designated by Town for resolution.

(ii) Resolution of Controversies. If the initial resolution described in §4.20(i) fails to resolve the dispute within 10 Business Days, Town shall submit any alleged breach of this Agreement by CDOT to the Procurement Official of CDOT, as described in §24-

101-301(30), C.R.S., for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (collectively, the “Resolution Statutes”), except that if Town wishes to challenge any decision rendered by the Procurement Official, Town’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Town pursues any further action as permitted by such statutes. Except as otherwise stated in this section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

Section 4.21 Jointly Drafted; Rules of Construction. The parties hereto waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document, and hereby state their mutual intent that any ambiguities in this Agreement shall be construed in a manner that best meets the intent and purpose of the parties hereto in entering into this Agreement.

Section 4.22 No Third-Party Beneficiaries. No third-party beneficiary rights are created in favor of any person not a party to this Agreement it being the intent of the parties hereto that they be and remain the sole beneficiaries of this Agreement.

SECTION 5 COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics. All references to “State” in this Section shall mean “CDOT”.

Section 5.01 **STATUTORY APPROVAL. §24-30-202(1), C.R.S.** This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Agreement shall not be valid until it has been approved by the State’s Chief Information Officer or designee.

Section 5.02 **FUND AVAILABILITY. §24-30-202(5.5), C.R.S.** Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

Section 5.03 **GOVERNMENTAL IMMUNITY.** Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State’s risk management statutes, §§24-30-1501, *et seq.* C.R.S. 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, protections, or other provisions, contained in these statutes.

Section 5.04 **INDEPENDENT CONTRACTOR.** Town and CDOT shall perform their respective duties hereunder as an independent contractor, each to the other, and not as an employee, one to the other. Neither Town nor any agent or employee of Town shall be deemed to be an agent or employee of the State. Neither the State nor any agent or employee of the State

shall be deemed to be and agent or employee of the Town. Town shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. State shall not have authorization, express or implied, to bind the Town to any agreement, liability or understanding, except as expressly set forth herein. **Town and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Town or any of its agents or employees. Town shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Town shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents. State and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the Town and the Town shall not pay for or otherwise provide such coverage for State or any of its agents or employees. State shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. State shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the Town, and (iii) be solely responsible for its acts and those of its employees and agents.**

Section 5.05 **COMPLIANCE WITH LAW.** Town shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

Section 5.06 **CHOICE OF LAW, JURISDICTION, AND VENUE.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

Section 5.07 **PROHIBITED TERMS.** Any term included in this Agreement that requires the State to indemnify or hold Town harmless; requires the State to agree to binding arbitration; limits Town's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

Section 5.08 **SOFTWARE PIRACY PROHIBITION.** State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Town hereby certifies and warrants that, during the term of this Agreement and any extensions, Town has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Town is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

Section 5.09 **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.**
§§24-18-201 and 24-50-507, C.R.S. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Town has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Town's services and Town shall not employ any person having such known interests.

IN WITNESS WHEREOF, the Town and CDOT have caused these presents to be executed by their duly authorized officers, as of the date first above written.

TOWN OF FRISCO

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

Hunter Mortensen, Mayor

STATE OF COLORADO
Jared S. Polis, Governor
Department of Transportation
Shoshana M. Lew, Executive Director

By: Stephen Harelson, P.E., Chief Engineer

Date: _____

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Office of the State Controller, Controller Delegate

Effective Date: _____