

***THE JUNE 11, 2019 COUNCIL PACKET MAY BE VIEWED
BY GOING TO THE TOWN OF FRISCO WEBSITE.***

**RECORD OF PROCEEDINGS
WORK SESSION MEETING AGENDA OF THE
TOWN COUNCIL OF THE TOWN OF FRISCO
JUNE 11, 2019
4:00PM**

Agenda Item #1: Summit Stage Update from Kent Willis 4:00pm

Agenda Item #2: Deed Restriction / Covenant Amendment 4:30pm

Agenda Item #3: Consideration of Entering An Intergovernmental Agreement (IGA) Between Summit County and Town of Frisco, Joining Other Towns in Summit County Regarding the Implementation of Fire Restrictions Throughout Summit County, Colorado and Amending Town Code to Align with New County Process 5:30pm

**RECORD OF PROCEEDINGS
REGULAR MEETING AGENDA OF THE
TOWN COUNCIL OF THE TOWN OF FRISCO
JUNE 11, 2019
7:00PM**

**STARTING TIMES INDICATED FOR AGENDA ITEMS ARE ESTIMATES ONLY AND
MAY CHANGE**

Call to Order:

Gary Wilkinson, Mayor

Roll Call:

Gary Wilkinson, Jessica Burley, Daniel Fallon, Rick Ihnken, Hunter Mortensen, Deborah Shaner, and Melissa Sherburne

Public Comments:

Citizens making comments during Public Comments or Public Hearings should state their names and addresses for the record, be topic-specific, and limit comments to no longer than three minutes.

NO COUNCIL ACTION IS TAKEN ON PUBLIC COMMENTS. COUNCIL WILL TAKE ALL COMMENTS UNDER ADVISEMENT AND IF A COUNCIL RESPONSE IS APPROPRIATE THE INDIVIDUAL MAKING THE COMMENT WILL RECEIVE A FORMAL RESPONSE FROM THE TOWN AT A LATER DATE.

Mayor and Council Comments:

Staff Updates:

Consent Agenda:

- Minutes May 28, 2019 Meeting
- Alpine Fishing Adventures Concessionaire Contract and Lease Agreement – First Amendment - For Guided Fishing Tours at the Frisco Bay Marina
- Adventure Paddle Tours Concessionaire Agreement and License for Guided Kayak and Stand Up Paddleboard Tours and Lessons
- Resolution 19-22, a Resolution Allowing the Mayor and Town Clerk to Execute Any and All Documents Necessary to Effectuate the Council Chambers Audio-Visual Upgrades for a Total Cost not to exceed \$110,278.00 Including Electrical Work, Carpet Replacement, Dais Remodel, Information Systems Infrastructure, Audio Visual Equipment, and Labor

New Business:

Agenda Item #1: First Reading Ordinance 19-08, an Ordinance Authorizing a Second Amendment to the Agreement Concerning the Sale of Certain Real Property Owned by the Town and Legal Described as Lots 3 and 4, Block 11, Frisco Townsite, also Known as 518 Main Street and as the “Staley House” Property STAFF: THAD RENAUD 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #2: Consideration of Financial Contribution to Summit County for Cost of Clearing 6-Miles of the Ten Mile Canyon Recreation Path STAFF: NANCY KERRY 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #3: Resolution 19-23, a Resolution of the Town of Frisco, Colorado Adopting the Adopt-A-RecPath Program STAFF: DIANE MCBRIDE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #4: Solarize Summit Rebate Program - \$1,500 per HH STAFF: NANCY KERRY 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #5: First Reading Ordinance 19-09, an Ordinance Amending Chapter 110 of the Code of Ordinances of the Town of Frisco, Concerning the Licensing of Businesses, to Adopt a New Article IV Concerning the Licensing and Regulation of Businesses that Provide Dockless Shared Mobility Devices STAFF: THAD RENAUD 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Agenda Item #6: Fieldhouse Feasibility Study Update and Results STAFF: DIANE MCBRIDE 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Old Business:

Agenda Item #7: Second Reading Ordinance 19-07, Establishing, Pursuant to Section 171-11 of the Code of Ordinances of the Town of Frisco, the Plant Investment Fees, Capital EQR Schedules, Delivery Charges, Flat Rates, and Usage Fees to be Charged in Connection with the Town's Water System STAFF: BONNIE MOINET 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Adjourn:



MEMORANDUM

P.O. Box 4100 U FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: KATIE KENT, PLANNER
RE: DEED RESTRICTED COVENANTS
DATE: JUNE 11, 2019

Summary:

This work session serves as an opportunity for the Town Council to discuss potential revisions to the Town of Frisco's Residential Housing Restrictive Covenant and Notice of Lien document. The purpose of the work session is to evaluate an alternative method for calculating permitted resale price. If determined to be appropriate by the Town Council, the Town's existing deed restrictions could be amended to adopt an alternative methodology for calculating the allowable maximum resale price, and the alternative methodology could also be used in new deed restrictions for affordable workforce housing developments moving forward. Further modifications are proposed as clean-up items and also discussed in this report to receive Town Council feedback.

Town Staff notes that the goal of any modification to the deed restrictions shall be to keep the buyer's price in the same or similar affordable range as when the unit was previously purchased, allow the seller flexibility in price allowing for competition among sellers and encourage capital investment while also promoting upkeep and maintenance of the units. Any modifications approved will not be automatic changes to deed restrictions, property owners would be required to opt-in to the proposed new covenant.

Background:

For reference, Article II of the Residential Housing Restrictive Covenant states:

"The purpose of this Restriction is to restrict ownership, occupancy and sale of the Property in such a fashion as to provide, on a permanent basis, moderately priced housing to be occupied by Resident Eligible Households, which Resident Eligible Households, because of their income, may not otherwise be in a position to afford to purchase, own, and occupy other similar properties, and to help establish and preserve a supply of moderately priced housing to help meet the needs of the locally employed residents of Summit County."

“Affordable Housing” is defined in Frisco Town Code 180-9.3 as:

Affordable Housing - A dwelling unit that is restricted in perpetuity to occupancy by individuals meeting the income limitations and occupancy standards as established from time to time by the Town or the Summit Combined Housing Authority. Occupancy standards include requirements for primary residency and local employment.

Article VIII, Resale of the Property

Maximum Resale Price has come before Town Council in 2015 and again in 2018. While some deed restriction language differs, the majority of deed restrictions within the Town of Frisco, including Peak One Neighborhood, state:

- A. *The Maximum Resale Price of a Property shall be equal to the sum of:*
- (1) *The lesser of:*
 - a. *the Purchase Price paid by the Owner for the Property, plus an increase of three percent (3%) of such Purchase Price per year (prorated at the rate of 1/12 for each whole month) from the date of the Owner's purchase of the Property to the date of the Owner's execution of the listing contract, such percentage increase to not be compounded annually; or*
 - b. *the Purchase Price paid by the Owner for the Property, plus a percentage increase equal to the percentage increase in the Area Median Income from the date of the Owner's purchase of the Property to the date of the Owner's execution of the listing contract (prorated at the rate of 1/12 for each whole month), such percentage increase to not be compounded annually.*
 - (2) *Plus the amount of any commission payable to the SCHA.*

At the October 13, 2015 Town Council Meeting (Minutes attached as Exhibit A), the Council passed a motion indicating that annual appreciation will be calculated at 3% per year for all time periods when Area Median Income (AMI) change is either zero or negative. This is currently utilized for resale calculations. Following the 2015 Town Council decision, the Town of Frisco began using the below calculation for maximum resale price on new covenants:

8.3. Maximum Resale Price.

- A. *The Maximum Resale Price of a Property shall be equal to the sum of:*
- (1) *the Purchase Price paid by the Owner for the Property;*
 - (2) *plus an increase of three percent (3%) of such Purchase Price per year (prorated at the rate of 1/12 for each whole month) from the date of the Owner's purchase of the Property to the date of the Owner's execution of the listing contract, such percentage increase to not be compounded annually;*
 - (3) *plus the amount of any commission payable to the SCHA.*

Town Staff proposes the following Maximum Resale Price:

- A. If the Owner lists the unit for sale with a contracted realtor with the Summit Combined Housing Authority (SCHA), the Owner may add the amount paid in sales commission, up to two percent (2%), to the Maximum Resale Price.
- B. The Maximum Resale Price of a Property shall be no greater than the sum of:
- (1) The Purchase Price paid by the Owner of the Property as identified on closing documents at the time of purchase by Owner-Seller; and
 - (2) three-percent (3%) increase of Purchase Price per year from the date ownership transferred at the close of escrow to the date of Owner-Seller's transfer of ownership to new Buyer of Property; such percentage increase shall be calculated as simple interest, not to be compounded annually and will be prorated at the rate of 1/12th for each whole month of ownership; and
 - (3) the cost of Permitted Capital Improvements as approved by the Town of Frisco; and
 - (4) the cost of real estate commission as negotiated by the Seller if the Owner lists the unit for sale with a private real estate broker (as opposed to a contracted realtor with the Summit Combined Housing Authority (SCHA), (not to exceed the total sum calculation of this section); and
 - (5) the total sum of B.(1) through B.(4) in this paragraph shall be no greater than the most current (at time of sale) published Summit County AMI Maximum Sales Price for the Seller's Household size as qualified at the time Owner-Seller purchased the home (*for example, at the time Owner-Seller purchased their home they were qualified as a 2-bedroom household at 80% AMI; at the time of Resale, the maximum sales price shall be no greater than the sum of B.(1) through B.(4), not to exceed 2-bedroom household at 80% AMI as identified on Summit County AMI Maximum Sales Price at the time the home closes escrow on resale*). **At the owner's discretion, the maximum resale price is not required to be less than the purchase price paid by the owner of the property as identified on closing documents at the time of purchase by Owner-Seller.**

This proposed resale price meets the goal of keeping the buyer's price in the same or similar affordable range as when the unit was previously purchased, allow the seller flexibility in price allowing for competition among sellers and encourage capital investment promoting upkeep and maintenance of the units.

Additional points for the Town Council to consider:

- Other jurisdictions within Summit County are occasionally beginning to utilize a two percent (2%) increase of purchase price. Staff thinks that since deed restricted owners in Frisco originally purchased the properties with the potential to receive up to a three percent (3%) increase of purchase price, then reducing the potential percent increase from three percent (3%) to two percent (2%) takes away property owner's rights from when they originally purchased the property.
- Recent history has shown that when owners know they will not get the return on investments they make on the property (permitted capital improvements) they are allowing the unit's quality to deteriorate. By providing the option of permitted capital improvements in all deed restricted units, owners are more likely to invest in their property knowing that they may get a return on it during the resale.
- Concern has been raised within the Summit County community that when real estate commissions are restricted within the covenants, sellers are choosing to sell by owner since they do not want to lose money in the resale paying for real estate commission costs. This is resulting in problems between buyers and sellers during sales not having guidance from realtors who can explain the covenants and address other concerns.
- Whereas the AMI and the assumptions made off it may lead the maximum sales price to increase or decrease, this is what also happens to the general market. Owning a home does not guarantee an owner that they will make money during the resale. The goal is to ensure that the buyer's price is in the same or similar affordable range. If a unit was originally sold to a 100% AMI, then the goal is to continue to allow it to be affordable to future buyers at the 100% AMI.
- No matter what the maximum resale price is, it is the maximum; not the required. If a seller cannot find a buyer that can qualify at the AMI level for the price they want to sell it at, they will have to lower the sale price.

Permitted Capital Improvements

Town Staff recommends that the following paragraph be added to restricted covenants:

Article I, Definitions:

"Permitted Capital Improvements" means those improvements to a Unit performed by the Owner, which shall qualify for inclusion within the calculation of Maximum Resale Price if such improvements are set forth in the PCI schedule contained in the Frisco Housing Guidelines, and if the Owner furnishes the Town or its designee with the following information:

- i. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;*
- ii. Affidavit verifying the receipts are valid and correct receipts tendered at the time of purchase; and*
- iii. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town for the Permitted Capital Improvements.*

Create new paragraph and insert in as Section 8.4:

Allowance for Permitted Capital Improvements. Subject to the limitations of this Section, for the purpose of determining the Maximum Resale Price in accordance with this Covenant, the Owner may add to the amount specified in Section 8.3 above, the cost of approved and Permitted Capital Improvements ("PCI"), as set forth in the PCI schedule maintained by the Town, as such schedule is amended from time to time.

It should be noted that at this time the Town of Frisco does not have housing guidelines. This is a document that the Town should have, and Staff is currently working on. An example of Silverthorne's Housing Guidelines is attached as Exhibit B to show what the document could contain. Summit County, along with the towns of Breckenridge, Silverthorne and Dillon, are currently working on housing guidelines for their jurisdictions and Frisco staff will be attending meetings among jurisdictions to ensure that relevant information is incorporated within the housing guidelines.

Within the Housing Guidelines document, Permitted Capital Improvements (PCI) will be summarized. The description of qualifying permitted improvements will include a depreciation schedule. "Miller Ranch Permitted Capital Improvement Summary" is attached as Exhibit C to show an exhibit of what the regulation of PCI's may look like.

In addition to changes to Maximum Resale Value and Permitted Capital Improvements, Town Staff proposes the following clean-up items to the Town of Frisco's Residential Housing Restrictive Covenant and Notice of Lien document:

Article I, Definitions.

C. "Eligible Household" means a household earning not more than One Hundred percent (100%) of the AMI and that has been approved by either the SCHA or the Town so as to allow for the execution by the SCHA or Town of the form of approval set forth in Section 5.3 of this Restriction. A household's income for purposes of determining whether such household meets this definition of eligibility shall be determined at the time of purchase or, if applicable, commencement of leasehold occupancy. For purposes of the determination of the number of people that constitute a household under this definition, any Resident or Dependent spouse of a Resident who is pregnant at the time of the determination of whether a household meets the income limitation provided in this definition shall be deemed to be two (2) people.

Some covenants in Peak One Neighborhood have been revised to permit an eligible household to earn an additional ten percent (10%) above the AMI established for that property. For example, some Category 1 (80% AMI) units have been permitted to have an eligible household qualify up to ninety percent (90%) AMI. Not all properties have this ten percent (10%) increase and one property was found to have a fifty percent (50%) increase. This AMI increase in eligible households has been referred to as the "gap" or "spread".

To standardize deed restrictions, Town Staff would recommend a twenty percent (20%) increase to the eligible household definition within all covenants. If a property has already been approved a ten percent (10%) increase they will only get an additional ten (10%) increase. This gap allows qualifying buyers to utilize a portion of their income to pay for needs which the AMI sales price numbers do not take into

account such as monthly payments for educational loans, childcare, etc. The twenty percent (20%) spread acknowledges the fact that AMIs criteria is perpetrated based on variables. Allowing a twenty percent (20%) fluctuation in eligible household aids in alleviating these.

M. "Purchase Price" shall mean all consideration paid by the purchaser to the seller for the Property, but shall EXCLUDE any proration amounts, taxes, costs and expenses of obtaining financing, cost of furnishings or personal property, lenders fees, title insurance fees, closing costs, inspection fees, real estate purchase and/or sales commission(s) or other fees and costs related to the purchase of the Property but not paid directly to Seller.

The definition of "Purchase Price" has not been followed by the Summit County Housing Authority (SCHA) for resale calculations as they do not have the ability to exclude the proration amounts, taxes, costs and expenses of obtaining financing, cost of furnishings or personal property, lenders fees, title insurance fees, closing costs, inspection fees, real estate purchase and/or sales commission(s) or other fees and costs related to the purchase of the Property but not paid directly to Seller. Without these specific costs, they cannot deduct them from the purchase price. Instead, resale calculations are based off the purchase price as stated through the Summit County Assessor's property information records.

The proposed change removes the exclusions associated with purchase price.

M. Purchase Price shall mean all consideration paid by the purchaser to the seller for a Unit as defined in the Guidelines

O. "Resident" means a person and his or her Dependents, if any, who (i) at the time of purchase of a Unit and all times during ownership or occupancy of the Property, earns his or her living from a business operating in Summit County, by working at such business an average of at least 30 hours per week on an annual basis, or (ii) is a person who is approved, in writing, by SCHA or the Town/County which approval shall be based upon criteria including, but not limited to, total income, percent of income earned within Summit County, place of voter registration, place of automobile registration, and driver's license address and other qualifications established by the SCHA or the Town from time to time. (Compliance with each of these criteria is not necessary; in certifying Residents, the SCHA or the Town shall consider the criteria cumulatively as they relate to the intent and purpose of this Restriction). A person over 65 years of age shall remain a Resident regardless of his or her working status, so long as he or she has owned and occupied the Property, or other real property within Summit County that is deed restricted for affordability, for a time period of not less than seven (7) years. The term "business" as used in this Article I, Subsection M, and Section 5.1.B. shall mean an enterprise or organization providing goods and/or services, whether or not for profit, and shall include, but not be limited to, educational, religious, governmental and other similar institutions.

The Town of Frisco Community Development Staff receives requests from prospective buyers requesting to be approved due to extenuating circumstances. Over the past twelve months, these requests have included ownership of other properties within the United States, high educational loans that limit what they can afford to pay in a mortgage, work at

Henderson Mill outside of Summit County limits, and a veteran who is not employed within the County. Since the Town does not have standard policies to allow deviations, the requests have all been denied. Until such time as the Town has policies in place to allow deviations, Town Staff requests the language as stated below be deleted as Town Staff does not ever find a reason to grant these requests.

(ii) is a person who is approved, in writing, by SCHA or the Town/County which approval shall be based upon criteria including, but not limited to, total income, percent of income earned within Summit County, place of voter registration, place of automobile registration, and driver's license address and other qualifications established by the SCHA or the Town from time to time. (Compliance with each of these criteria is not necessary; in certifying Residents, the SCHA or the Town shall consider the criteria cumulatively as they relate to the intent and purpose of this Restriction)

Housing Guidelines: The Town of Frisco does not have housing guidelines in place. An example of Silverthorne's Housing Guidelines is attached as Exhibit B to show what the document could contain. Summit County along with the towns of Breckenridge, Silverthorne and Dillon are currently working on housing guidelines for their jurisdictions and Frisco staff will be attending meetings among jurisdictions to ensure that relevant information is incorporated within the housing guidelines. Topics to be included in the housing guidelines may include:

- Permitted Capital Improvements – a list of what improvements will qualify as a permitted capital improvement, including but not limited to energy efficiency upgrades.
- Annual monitoring requirements
- Exceptions to Occupancy Requirements
- Clarification on when annual AMI goes into effect and a thirty (30) day time period in which owners and sellers may utilize the old or new AMI numbers.
- “Spread” or “Gap” defined for eligible households if Town Council chooses to support a 10%, 20% or 30% increase.

Recommendation: The deed restriction provisions proposed should be looked at in terms of the overall and long-term applicability to the community and not with regard to one circumstance.

Financial Impact: The proposed modifications to the Town of Frisco's Residential Housing Restrictive Covenant and Notice of Lien document do not have direct financial impact to the Town of Frisco. However, the intent of modifying the maximum resale calculation and allowing permitted capital improvements shall have financial considerations to homeowners of deed restricted units.

Council Strategic Plan Relevance: The 2019-2020 Strategic Plan, adopted May 28, 2019, includes the strategic priority of “Inclusive Community”. Within this priority, it is noted:

Description: An inclusive community includes families of all backgrounds and income levels, where diverse interests and ideas are welcomed; a community striving to ensure there are a variety of housing options, childcare, and educational opportunities for its residents; a community where vibrancy abounds and its leaders consider the impact of their decisions from social equity, environmental, and economic perspectives.

Additionally, it is stated:

Goal: Strengthen Affordable Housing Deed Restrictions Covenants

- Ø Present options to Town Council considering alternatives and impacts*
- Ø Adopt optional program for residents in deed restricted housing*

The proposed modifications to the Town of Frisco's Residential Housing Restrictive Covenant and Notice of Lien document enhance the inclusive community priority through ensuring the Town maintains a variety of housing options for its residents. The proposed modifications are consistent with the Strategic Plan and the Town Council's priorities.

Reviews and Approvals: This report has been reviewed by:

Nancy Kerry, Town Manager
Bonnie Moinet, Finance Director - Approved

Attachments:

- Exhibit A, October 13, 2015 Meeting Minutes
- Exhibit B, Silverthorne's Housing Guidelines
- Exhibit C, Miller Ranch Permitted Capital Improvement Summary
- 2018 Summit County Area Median Income (AMI)
- Redlined Version of proposed changes

**RECORD OF PROCEEDINGS
MINUTES OF THE REGULAR MEETING
OF THE TOWN COUNCIL OF THE TOWN OF FRISCO
OCTOBER 13, 2015**

Mayor Wilkinson called the meeting to order at 7:00 p.m.

Present:

Kim Cancelosi
Dan Kibbie
Hunter Mortensen
Larry Sawyer
Gary Wilkinson

Absent:

Kathleen Bartz
Tom Connolly

Public Comment:

There was no public comment.

Council Comment:

Council member Sawyer complimented the construction crews working on Main Street.

Proclamation:

Mayor Wilkinson proclaimed October 2015 National Community Planning Month.

Consent Agenda:

Minutes September 22, 2015 Meeting
Priority Trails In and Around Frisco – 5 Year Implementation Plan – Phase II

**MOTION: COUNCIL MEMBER SAWYER MOVED TO APPROVE THE CONSENT AGENDA.
SECOND, COUNCIL MEMBER CANCELOSI. VOTE:**

BARTZ	ABSENT	MORTENSEN	YEA
CANCELOSI	YEA	SAWYER	YEA
KIBBIE	YEA	CONNOLLY	ABSENT
WILKINSON	YEA	MOTION CARRIED.	

New Business:

Agenda Item #1: Planning File No. 271-15-AP: An Appeal of the Planning Commission Decision to Deny a Development Application for a Proposed Detached Garage with an Upper Story Dwelling Unit (Planning File No. 197-15-DA), Located at 310B Creekside Drive / Lot 3-B, Provost Townhouses STAFF: BILL GIBSON 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Senior Planner Bill Gibson stated that Gavin Keiner, (“applicant for appeal”) is requesting that the Town Council overturn the Planning Commission’s September 3, 2015, decision to deny a development application for a proposed detached garage with an upper story dwelling unit (Planning File #197-15-DA), located at 310B Creekside Drive / Lot 3-B, Provost Townhouses. The Planning Commission denied the

development application with a finding that the proposed projections into the bulk plane did not provide substantial architectural relief in conformance with the standards of the Residential Overlay District. Mayor Wilkinson opened the public hearing at 7:05 p.m. The applicant spoke in support of his appeal. Neighbor Mark Sabatini spoke in support of revisiting zoning code regarding this request. There being no public comment, Mayor Wilkinson closed the public hearing at 7:35 p.m.

MOTION: COUNCIL MEMBER SAWYER MOVED TO ADOPT THE RECOMMENDED FINDINGS, SPECIAL AND STANDARD CONDITIONS, SET FORTH IN THE STAFF MEMORANDUM TO COUNCIL DATED OCTOBER 13, 2015, AND REVERSE, THE PLANNING COMMISSION DECISION OF SEPTEMBER 3, 2015, TO DENY THE DEVELOPMENT APPLICATION/REQUEST FOR A PROPOSED DETACHED GARAGE WITH AN UPPER STORY DWELLING UNIT LOCATED AT 31B CREEKSIDE DRIVE / LOT 3-B, LOT 3-B, PROVOST TOWNHOUSES. SECOND, COUNCIL MEMBER MORTENSEN. VOTE:

BARTZ	ABSENT	MORTENSEN	YEA
CANCELOSI	YEA	SAWYER	YEA
KIBBIE	NO	CONNOLLY	ABSENT
WILKINSON	YEA	MOTION CARRIED.	

Agenda Item #2: First Reading, Ordinance 15-08, an Ordinance Levying General Property Taxes for the Year 2015 to Help Defray the Cost of Government for the Town of Frisco, Colorado for the 2016 Budget Year STAFF: BONNIE MOINET 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Finance Director Bonnie Moinet indicated that this ordinance allows the Town to levy general property taxes for the year 2015 to help defray the cost of government for the Town of Frisco for the 2016 budget year. Pursuant to Section 39-1-111.5, C.R.S., if a local government needs property tax to balance its proposed budget, the Town Council, through an official action, must set and certify a mill levy by ordinance or resolution. It must then certify the mill levy to the Board of County Commissioners. The mill levy has to be certified to the BOCC by December 15. Mayor Wilkinson opened the public hearing at 7:42 p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 7:43 p.m.

MOTION: COUNCIL MEMBER MORTENSEN MOVED TO APPROVE ON FIRST READING ORDINANCE 15-08, AN ORDINANCE LEVYING GENERAL PROPERTY TAXES FOR THE YEAR 2015 TO HELP DEFRAY THE COST OF GOVERNMENT FOR THE TOWN OF FRISCO, COLORADO FOR THE 2016 BUDGET YEAR. SECOND, COUNCIL MEMBER SAWYER. VOTE:

BARTZ	ABSENT	MORTENSEN	YEA
CANCELOSI	YEA	SAWYER	YEA
KIBBIE	YEA	CONNOLLY	ABSENT
WILKINSON	YEA	MOTION CARRIED.	

Agenda Item #3: First Reading, Ordinance 15-09, Appropriating Sums of Money to the Various Funds and Spending Agencies, in the Amount and for the Purposes as Set Forth Below for the Town of Frisco, Colorado for the 2016 Budget Year STAFF: BONNIE MOINET 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Finance Director Bonnie Moinet indicated that this ordinance appropriates sums of money to various funds and spending agencies. An appropriation is the legal spending limit authorizing the expenditures set forth in the budget by the governing board. The Town Council through an official action must enact the

appropriation, by ordinance or resolution. The budget is merely a fiscal plan for the coming year, while the appropriation is the legal authority to spend the money. Mayor Wilkinson opened the public hearing at 7:45 p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 7:46 p.m.

MOTION: COUNCIL MEMBER MORTENSEN MOVED TO APPROVE ON FIRST READING ORDINANCE 15-09, AN ORDINANCE APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS AND SPENDING AGENCIES, IN THE AMOUNT AND FOR THE PURPOSES AS SET FORTH BELOW, FOR THE TOWN OF FRISCO, COLORADO FOR THE 2016 BUDGET YEAR. SECOND, COUNCIL MEMBER SAWYER. VOTE:

BARTZ	ABSENT	MORTENSEN	YEA
CANCELOSI	YEA	SAWYER	YEA
KIBBIE	YEA	CONNOLLY	ABSENT
WILKINSON	YEA	MOTION CARRIED.	

Agenda Item #4: Consideration and Possible Action on the Interpretation of Certain Provisions, Concerning Resale, of the Town's Form of Affordable Housing Covenant
STAFF: THAD RENAUD 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Attorney Thad Renaud indicated that staff proposed revised maximum resale price for Town of Frisco deed restriction covenants at a previous meeting. As a result, staff requires interpretation of existing deed restrictions where there is a zero or negative AMI in which case staff's recommendation is to refer to the maximum increase of 3% of purchase price. Mayor Wilkinson opened the public hearing at 7:49 p.m. The Executive Director of the Housing Authority, Jennifer Kermode expressed concern if the Town does not have two formulas. There being no public comment, Mayor Wilkinson closed the public hearing at 8:03 p.m.

MOTION: COUNCIL MEMBER SAWYER MOVED TO ADVISE THE SUMMIT COMBINED HOUSING AUTHORITY THAT THE TOWN'S OFFICIAL INTERPRETATION OF SECTION 8.3 OF ITS AFFORDABLE HOUSING COVENANT CONCERNING MAXIMUM RESALE PRICE IS THAT WHEN THE AMI YEAR OVER YEAR IS NEGATIVE OR ZERO, SECTION 8.3.1.A IS THE ONLY INFLATOR AND IN THAT INSTANCE SUBSECTION B IS NOT CONSIDERED BECAUSE THE CACLUCLATION CANNOT BE COMPLETED. SECOND, COUNCIL MEMBER CANCELOSI. VOTE:

BARTZ	ABSENT	MORTENSEN	YEA
CANCELOSI	YEA	SAWYER	YEA
KIBBIE	YEA	CONNOLLY	ABSENT
WILKINSON	YEA	MOTION CARRIED.	

Adjourn:

There being no further business, the meeting adjourned at 8:03 p.m.

Respectfully Submitted,

Deborah Wohlmuth, CMC
Town Clerk



COMMUNITY DEVELOPMENT DEPARTMENT

970.262.7360
www.silverthorne.org

601 Center Circle. PO Box 1309
Silverthorne, CO 80498

SILVERTHORNE HOUSING GUIDELINES

1. General. These Guidelines are intended to supplement the Restrictive Covenant for the Smith Ranch Development (the "Covenant"). These Guidelines may be updated by the Town as necessary, and the current version of these Guidelines shall always control over any prior version. In the event of any conflict between these Guidelines and the Covenant, the Covenant shall control. Capitalized words in this document are defined in the Covenant.

2. Annual Verification. The Town shall verify the use and occupancy of a Unit.

a. No later than November 1st of each year, every Owner shall submit a sworn affidavit, on form provided by the Town, verifying that the Unit is occupied in accordance with the Covenant. The affidavit shall be accompanied by the following supporting documentation:

- 1) Copies of two forms of identification, one with a photo of the Owner(s) and one with a street address of the Owner(s). Acceptable forms of identification include a valid driver license, passport, state-issued photo ID card; as well as a current utility bill or a tax bill.
- 2) Verification of current employment and employment during the prior year. This includes a standard form provided by the Town, and supporting information such as paystubs with employer's name, address and contact information;
- 3) Signed authorization allowing the Town to discuss employment details with the Owner's employer.

Other documents that may be required:

- 4) The Owner's federal and state income tax return (all pages) from the prior year, together with an executed Internal Revenue Service Form 8821 or equivalent;
- 5) Copy of business licenses, where applicable, for self-employed or work from home employees;
- 6) If the Unit was leased during the prior year, copies of all leases of the Unit during the prior year; and
- 7) If the Unit was leased during the prior year, the information set forth in subsections 1-3 above, for each Authorized Lessee.
- 8) Information, documents, or certificates, which the Town reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of the Covenant.

3. Exceptions to Occupancy Requirements. The owner of a unit may request an exception to the occupancy restrictions of the Covenant through the following process:

a. Within 30 days of failing to meet the requirements of the Covenant, the owner requesting an exception must provide a narrative explaining the need for the exception, as well as supporting written evidence confirming the reason for the request, including, but not limited to, the following:

- 1) A former employer's documentation of involuntary unemployment
- 2) Confirmation of employment requiring a relocation
- 3) Military duty
- 4) Leave of Absence or sabbatical
- 5) Humanitarian volunteering, fellowships, or scholarships
- 6) Care of ailing family members

b. The decision regarding the request for an exception to the occupancy requirements of the Covenant shall be made by the Silverthorne Community Development Department within 30 days of the submitted written request and all supporting documentation.

c. If the exception is granted, the Community Development Department may impose specific conditions of approval, and shall fix the duration of the term of such exception.

4. Permitted Capital Improvements (PCI Schedule). The Permitted Capital Improvements are improvements that qualify to be included in the resale price.

a. For purposes of determining Maximum Resale Price, Permitted Capital Improvements include only the following:

- 1) Solar panels or cells.
- 2) Approved building additions.
- 3) Fencing of private yards, or fencing to enclose a front porch or exterior patio.

All improvements must have received the written approval of the Smith Ranch Neighborhood HOA, and, where applicable, approved permits from the Town of Silverthorne.

b. The following improvements will **not** be considered Permitted Capital Improvements:

- 1) Jacuzzis, saunas, or steam showers.
- 2) Repair, replacement, or maintenance of existing fixtures, appliances, plumbing and mechanical fixtures.
- 3) Painting.
- 4) Decorative items, including light fixtures and window coverings.
- 5) Replacement or new installation of the following: carpet and carpet pad; hardwood, wood laminate, or tile floors and base; baseboard, window casing and interior doors; kitchen or bathroom countertops, bathtub surround, or built-in closets.
- 6) Creation of additional parking/paving on a lot.

c. The amount added to the Maximum Resale Price for Permitted Capital Improvements shall not exceed 5% of the Initial Purchase Price paid by the Owner selling the Property over a cumulative 10 year period. The same 5% limit on such Permitted Capital Improvements shall apply for each successive 10 year period of ownership.

d. Every owner is responsible for ensuring that a Unit is in good condition at the time of resale, with reasonable wear and tear acceptable. This obligation includes, but is not limited to, cleaning, painting, making necessary improvements to maintain plumbing and mechanical fixtures, all appliances, and flooring.

e. If a Unit is not in good condition at resale, the Town has the right to bring the Unit into saleable condition and collect the costs of taking such efforts.

5. Priority. At the time of sale or resale of a Unit in the Smith Ranch Development, priority shall be given to the following categories:

a. Individuals currently working or living in the Town of Silverthorne. Employment must be for at least 30 hours per week on an annual basis to qualify. Employment or residing within the Town of Silverthorne must also be for at least one continuous year prior to the date of application to qualify.

b. Eligible Households whose incomes do not exceed ten percent (10%) of the AMI targeted for each Unit.

c. Each priority category is of equal weight or value.

6. Multiple Qualified Bids at Resale. An Owner is required to notify the Town in writing of the intent to sell. The Unit must be listed for sale a minimum of 10 calendar days.

a. If one qualified bid is received from a Qualified Occupant equal to the Maximum Resale Price for the Unit, the Unit shall be sold to such bidder at the Maximum Resale Price.

b. If two or more non-contingent bids equal to the Maximum Resale Price are received, the winning bid shall be selected according to the priority set forth above in Section 5 and in the Covenant.

c. In the event more than one non-contingent bid is of equal priority, the winning bid shall be selected by lottery conducted by the Town, and the Unit shall be sold to the winner of such lottery at the Maximum Resale Price.

d. If an Owner receives multiple bids that are below the Maximum Resale Price, the Owner must notify the Town of his intent to either sell to the highest bidder, or remove the Unit from the market.

e. Per the Covenant, the Town and not the Owner shall be responsible for administration of such sales preferences and lotteries, if effectuated, and the costs related thereto.

7. Lotteries. Lotteries shall be conducted by the Town. The term 'ticket' includes a paper lottery ticket, or another form of single entry into the lottery.

a. The date of the lottery will be set once each applicant has been qualified by the Town or the SCHA.

b. Each qualified applicant will receive one entry ticket to the lottery.

c. Applicants with incomes at 100% AMI or less qualify to purchase units targeted for 80% AMI, 100% AMI, or 120 % AMI. Applicants with incomes between 100% AMI and 120% AMI qualify to purchase units targeted for 100% AMI and 120% AMI. Applicants with incomes above 120% AMI can only purchase units targeted for 120% AMI. Applicants with incomes above 140% AMI do not qualify.

d. If an applicant requires an ADA unit, they will be given first priority for ADA Units that are or become available. The applicant requesting an ADA unit must submit an affidavit from a treating physician that substantiates the need for the ADA unit.

e. Qualified applicants that meet the priority criteria listed in Section 5 above will receive one additional ticket or entry per priority category. As an example, an applicant whose income does not exceed 10% of the AMI target for a Unit, and who also has worked or lived in Silverthorne for at least a year, will receive 3 tickets for the lottery.

f. A numbered list will be generated based on the order that tickets are chosen randomly. Tickets will be chosen until all tickets are gone. If a qualified applicant has multiple tickets in the drawing, only the first draw of that applicant's name will be on the list. The remaining tickets with that applicant's name can be discarded.

g. Each qualified applicant selected in the lottery will have 10 days from the date of the lottery to execute a Purchase and Sale Agreement, including the deposit of earnest money to secure contract performance.

h. Failure to reach a contract for purchase within the allotted time frame will void that application, and the name(s) will be removed from the list.

i. At such point, the next qualified applicant on the list generated by the lottery will be offered the purchase opportunity of the unit.

8. Amendments to the Restrictive Housing Covenant for Smith Ranch, Filing I.

- Section 5.8 of the Covenant was amended by Town Council on February 13, 2019 to allow Owners to own other developed residential property outside of the State of Colorado. The First Amendment to the Restrictive Covenant and Notice of Lien for Smith Ranch Development was recorded under Reception Number 1191373.
- Section 7.1 of the Covenant was amended by Town Council on March 27, 2019 to correct a scrivener's error to state that in no event shall any Household consist of a group of more than three (3) persons unrelated by blood, adoption, legal custody, or marriage. The Second Amendment was recorded under Reception Number 1194286.

9. Appreciation Limiting Promissory Note and Deed of Trust. Section 5.4 of the Restrictive Housing Covenant for Smith Ranch requires that purchasers of units execute an Appreciation Limiting Promissory Note together with an Appreciation Limiting Deed of Trust. The form for each of those documents is hereby attached as **Exhibit A** and **Exhibit B**.

10. Housing Policies. These policies apply to all deed-restricted developments within the Town of Silverthorne.

a. In the event that the Restrictive Housing Covenant has the 'lesser-of' formula (as is the case for Solarado), and the AMI has decreased, the owner of the unit will have to sell per the terms of the Covenant, and is allowed to incur a loss or obtain no gain.

b. Co-signers of any application for a deed restricted unit are required to income qualify, and are counted as part of the household qualifying to purchase a unit, unless such co-signer is not on the title to the Unit.

EXHIBIT A
APPRECIATION LIMITING PROMISSORY NOTE
SMITH RANCH DEVELOPMENT
(the "Note")

Date

FOR VALUE RECEIVED, _____ (the "Maker"), jointly and severally, if more than one, promises to pay to the order of the TOWN OF SILVERTHORNE, P.O. Box 1309, Silverthorne, CO 80498 ("Town"), fifteen (15) days after written demand for payment ("Due Date"), all sums that become due to Town from Maker after the date of this Note under the "Restrictive Covenant and Notice of Lien for Smith Ranch Development", Town of Silverthorne, Summit County, Colorado," dated May 23, 2018 and recorded June 14, 2018, under Reception No. 1172266 of the records of the Clerk and Recorder of Summit County, Colorado.

This Note shall not bear interest until the Due Date. If this Note is not paid on or before the Due Date, it shall thereafter bear interest at the rate of eighteen percent (18%) per annum from the Due Date until fully paid.

The Maker and any surety, guarantor, and endorser of this Note, jointly and severally, hereby waive notice of, and consent to any and all extensions of this Note or any part thereof without notice and each hereby waives demand, presentment for payment, notice of nonpayment and protest, and any and all notice of whatever kind or nature.

No waiver by the Town of any one or more of the terms and conditions herein contained shall be deemed a waiver of the other terms and conditions herein contained; nor shall any such waiver be considered for any reason as continuing or perpetual in nature.

This Note is secured by a deed of trust on the following real property located in the Town of Silverthorne, Summit County, Colorado:

Example: Lot _____, Smith Ranch, Filing No. 1, according to the plat thereof recorded June 14, 2018 under Reception No. 1172264 of the records of the Clerk and Recorder of Summit County, Colorado.

Also known as: _____

The undersigned hereby acknowledges receipt of a true copy of this Note.

Maker

Maker

IF THIS FORM IS USED IN A CONSUMER CREDIT TRANSACTION, CONSULT LEGAL COUNSEL

EXHIBIT B

THIS IS A LEGAL INSTRUMENT - IF NOT UNDERSTOOD, LEGAL, TAX, OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING

DEED OF TRUST
(SMITH RANCH DEVELOPMENT)

THIS DEED OF TRUST is made this _____ day of _____, 2019 between

(Borrower), whose address is _____ and the
Public Trustee of the County in which the Property (see paragraph 1) is situated (Trustee); for the benefit
of the TOWN OF SILVERTHORNE (Lender), whose address is P.O. Box 1309, Silverthorne, CO 80498.

Borrower and Lender covenant and agree as follows:

1. **Property in Trust.** Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the following described property located in the County of Summit, State of Colorado:

Legal Description: (example: Lot 5, Smith Ranch Filing No.1)

Address: (example: 39 Haymaker Street)

2. **Note; Other Obligations Secured.** This Deed of Trust is given to secure to Lender Borrower's obligations as set forth in the Appreciation Limiting Promissory Note of even date herewith. Without limiting the generality of the preceding sentence, this Deed of Trust secures Borrower's obligations to Lender as set forth in the Restrictive Housing Covenant and Notice of Lien for Smith Ranch Development, Silverthorne, Summit County, recorded on June 14, 2018 under Reception No. 1172266 of the records of the Clerk and Recorder of Summit County, Colorado.

3. **Title.** Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date.

4. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.

5. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any prior deed of trust and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust by Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this paragraph if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.

6. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on Leasehold. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership, or occupancy of the Property.

7. **Protection of Lender's Security.** Except when Borrower has exercised Borrower's rights under paragraph 6 above, if the Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in prior lien, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to:

- a. any general or special taxes or ditch or water assessments levied or accruing against the Property;
- b. the premiums on any insurance necessary to protect any improvements comprising a part of the Property;
- c. sums due on any prior lien or encumbrance on the Property;
- d. if the Property is a leasehold or is subject to a lease, all sums due under such lease;
- e. the reasonable costs and expenses of defending, protecting, and maintaining the Property and Lender's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney in the employment of the Lender or holder of the certificate of purchase;
- f. all other costs and expenses allowable by the evidence of debt or this Deed of Trust, and
- g. such other costs and expenses which may be authorized by the court of competent jurisdiction.

Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Such amounts shall be payable upon notice from the Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any actions hereunder.

8. **Borrower Not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.

9. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

10. **Remedies Cumulative.** Each Remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Note and this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 18 Transfer of the Property; Assumption. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

12. **Notice.** Except for any notice required by law to be given in another manner: (a) any notice to Borrower provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such notice by first-class mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be effective upon (1) delivery to Lender or (2) mailing such notice by first-class mail, addressed to Lender at Lender's address stated herein or at such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower and Lender when given in any manner designated herein.

13. **Governing Law; Severability.** The Note and this Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other provisions of the Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

14. **Acceleration: Foreclosure: Other Remedies.** Except as provided in paragraph 18 Transfer of Property; Assumption, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, or upon any default in a prior lien upon the Property, (unless Borrower has exercised Borrower's rights under paragraph 5 above), at Lender's option, all of the sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give notice to Borrower of Borrower's rights as provided by law. Trustee shall record a copy of such notice as required by law. Trustee shall advertise the time and place of the sale of the Property, for not less than four weeks in a newspaper of general circulation in each county for which the Property is situated, and shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcel as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not be obligatory upon the Purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order; (a) to all reasonable costs and expenses of the sale, including but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

15. **Borrower's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payment due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

16. **Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of Trust and shall produce for Trustee the Note. Borrower shall pay all costs of recordation and shall pay the statutory Trustee's fees. If Lender shall not produce the Note as aforesaid, the Lender, upon notice in accordance with paragraph 12 (Notice) from Borrower to Lender, shall obtain, at Lender's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.

17. **Waiver of Exemptions.** Borrower hereby waives all right of homestead and any other exemptions in the Property under state or federal law presently existing or hereafter enacted.

18. **Transfer of Property; Assumption.** The following events shall be referred to herein as a "Transfer": (1) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower, (v) the reorganization, liquidation or dissolution of the Borrower. Not to be included as a Transfer are (x) the creation of the lien or encumbrance subordinate to this Deed of Trust, (y) the creation of a purchase money security interests for household appliances, or (z) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event of each and every transfer:

- a. All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).
- b. If a Transfer occurs and should Lender not exercise Lender's option pursuant to this paragraph 18 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with Transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging the Borrower's liability hereunder for the obligations hereby secured.
- c. Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be estopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

19. **Borrower's Copy.** Borrower acknowledges receipt of a copy of the Note and this Deed of Trust.

EXECUTED BY BORROWER:

STATE OF COLORADO)
)ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before this _____ day of _____, 20__ by
_____ and
_____.

Witness my hand and official seal.

My commission expires: _____

Notary Public



Miller Ranch Permitted Capital Improvement Summary

As with the October 26, 2010 approved Miller Ranch Housing Guidelines, the process for submitting Permitted Capital Improvements (PCI) includes the information below:

B. Permitted Capital Improvements shall be approved by the Program Administrator and calculated in accordance with the Eagle County Guidelines, except as expressly provided herein and in the Miller Ranch Deed Restriction.

1. The Owner may also add as a Permitted Capital Improvement, the cost of permanent improvements constructed or installed as a result of a capital improvement as applied to individual units required or imposed by any governmental agency, or required by special assessment by a Condominium or Townhome Association for such permanent improvements for the proportionate amount of the expense, provided that written certification and documentation from such agency or association is provided to the Program Administrator. Association assessments for regular maintenance items or replacement of existing items will not be included.

In reference to the Eagle County Affordable Housing Guidelines: Administrative Procedures amended September 18, 2018:

4.2.6 Increases to Base Price and Permitted Capital Improvements

Certain improvements to a unit may be included in a unit’s Maximum Resale Price. The following table outlines the costs that may be included in an owner’s base price, items which will not be considered Permitted Capital Improvements, items which will be allowed as Permitted Capital Improvements and depreciated on a five year schedule and items which will be allowed as Permitted Capital Improvements and depreciated on a twenty year schedule.

<p><u>Items included in Base Price</u></p> <ul style="list-style-type: none"> • Purchase price, including garage, lot premium, heating systems and water heaters <p>The following items may be included in base price with the written approval of the Program Administrator prior to the commencement of the work:</p> <ul style="list-style-type: none"> • Structural addition or addition of livable space including bathrooms, bedrooms, exterior door, interior doors, baseboard, window casing, insulation and plumbing (excluding fixtures) • Modifications or improvements to accommodate a person with a disability as defined in the Americans with Disabilities Act of 1990 • Roof replacement 	<p><u>Items which are NOT Permitted Capital Improvements</u></p> <ul style="list-style-type: none"> • All work performed without the issuance of a building permit • Jacuzzis, saunas, steam showers, hot tubs, etc. • Maintenance of existing fixtures, appliances, plumbing, mechanical systems, painting, cleaning, etc. and improvements to existing fixtures • Decorative items including window coverings, lamps and lighting not affixed to walls or ceilings, bath towel bars and hooks, etc. • Interior paint • Cost of tools • Equipment Rental • Removable items not attached to the unit
<p><u>Items depreciated on 5 year schedule</u></p> <ul style="list-style-type: none"> • Replaced appliances • Washer and dryer (including stackable) • Carpet upgrades including pad • Permanent fitted window blinds 	<p><u>Items depreciated on 20 year schedule</u></p> <ul style="list-style-type: none"> • Flooring and countertop upgrades including hardwood, stone, slate, granite, marble, tile, etc. • Light fixtures (electrical fixtures & wiring) • Plumbing fixtures including sinks and toilets



<ul style="list-style-type: none">• Garage door openers• Gutters and downspouts• Security system• Electric fireplace• Exterior paint• Ceiling fans• Storm doors• Laminate flooring• Building permit fees• Improvements for health and safety protection	<ul style="list-style-type: none">• Cabinets including vanities• Closet organization systems• Trees and permanent landscaping including sod, concrete pads, concrete pavers, etc.• Outdoor decks• Irrigation system• Fencing• Gas fireplace• Windows• Solar Panels• Asphalt roof shingles (single family & duplex)
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Unless otherwise identified in the recorded deed restriction, the actual costs of Permitted Capital Improvements made to a unit shall not exceed 10% of the Initial Sales Price for a five-year term, regardless of changes in ownership. For every subsequent five-year period, an additional 10% of the value of the unit at the beginning of that five-year period may be added as Permitted Capital Improvements. The five-year period for Permitted Capital Improvements shall not reset merely upon resale. No costs incurred in one five year term may be rolled into a different five year term.

For an owner to request that Permitted Capital Improvements be added to the Maximum Resale Price, he or she must comply with the following:

- a. Upon completion of the work, Program Administrator requests the following:
 - i. Legible copies of receipts and invoices
 - ii. Proof of payment by a third party
 - iii. Owners must retain original receipts and invoices
- b. In calculating the costs allowed as Permitted Capital Improvements, only the owner's actual out of pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to owner's labor, or that of their employees or business, or to any appreciation in the value of these improvements.
- c. If an owner pays cash for improvements, the owner must provide third party documentation of payment. An owner must have an invoice for improvements, but if no such documentation of proof of cash payment can be produced, the Program Administrator can inspect the improvement completed in the unit. Up to 75% of documented invoice value may be included after an inspection, subject to depreciation, at the Program Administrator's sole discretion.
- d. Work that requires and is performed without the issuance of all required building permits or property owners' association approval will not be included as a Permitted Capital Improvement.
- e. The value of the Permitted Capital Improvements will be added to the appreciated value of the unit at the time of sale. No appreciation is allowed on Permitted Capital Improvements.
- f. Other improvements to the Affordable Housing unit are allowed, but adjustments to the Maximum Resale Price will only be given for Permitted Capital Improvements.

If a Permitted Capital Improvements or an improvement included in the base price of the unit is removed or is no longer operational, the actual cost of the improvement shall be deducted from the base price or Permitted Capital Improvement schedule. No other



categories or types of expenditures may qualify as Permitted Capital Improvements unless pre-approved in writing by the Program Administrator.

5 Year Depreciation Schedule

% of Cost	Months	Years
75%	Up to 12 months	Up to 1 year
50%	12-36	2-3
25%	36-60	3-5
0%	60+	5+

20 Year Depreciation Schedule

% of Cost	Months	Years
100%	Up to 24 months	Up to 2 years
90%	24-48	2-4
80%	48-72	4-6
70%	72-96	6-8
60%	96-120	8-10
50%	120-144	10-12
40%	144-168	12-14
30%	168-192	14-16
20%	192-216	16-18
10%	216-240	18-20
0%	240+	20+

Program Administrator may accelerate depreciation or exclude items if damaged beyond ordinary depreciation.

Estimated value for Developer-installed appliances in Miller Ranch properties:

Top-Freezer Refrigerator	\$769	GE 18.1 Cu. Ft.
Top-Freezer Refrigerator	\$829	GE 21 Cu. Ft.
Built-in Dishwasher	\$309	GE
Free-Standing Electric Range	\$449	GE 30"
Range Hood	\$109	GE Standard
Washer	\$499	GE 3.7 Cu. Ft. stainless steel capacity
Electric Dryer	\$399	GE 6.0 Cu. Ft. capacity DuraDrum
Stackable Washer and Electric Dryer	\$1,349	GE Unitized Spacemaker
Microwave	\$335	GE Space Saving



**OWNER'S AFFIDAVIT REGARDING CAPITAL IMPROVEMENTS
AT MILLER RANCH**

The undersigned, _____,
being of lawful age and having been duly sworn, upon personal knowledge states
and alleges as follows:

1. I am the Owner of property located at the following street address:
_____.

2. I verify and acknowledge that the receipts and proof of payment
submitted with this Affidavit represent the actual costs expended for Improvements
to my home located at the address above and that the receipts are valid and correct
receipts tendered at the time of purchase.

3. I verify and acknowledge that true and correct copies of any building
permit or certificate of occupancy required to be issued by the Eagle County
Building Division with respect to the Improvements have been submitted with this
Affidavit.

I declare under penalty of perjury that I have read this Affidavit and the
statements contained in it are true and correct to the best of my knowledge.

Date: _____

Signature of Owner

State of _____)
) ss.
County of _____)

The foregoing was subscribed and sworn to before me this ____ day of
_____, 20__, by _____.

Witness my hand and official seal.
My commission expires:_____.

Notary Public

SCHA 2019 SUMMIT COUNTY AREA MEDIAN INCOME (AMI)

Figures in RED are directly from HUD 4/24/2019; other numbers have been extrapolated

AMIs

Household size	HUD EXTREMELY LOW			HUD LOW	TRUE	90%	100%	110%	120%	140%	160%
	INCOME	50%	60%	INCOME	80%						
1 person	\$18,750	\$31,200	\$37,440	\$49,950	\$49,920	\$56,160	\$62,400	\$68,640	\$74,880	\$87,360	\$99,840
1.5 person	\$20,075	\$33,425	\$40,110	\$53,500	\$53,480	\$60,165	\$66,850	\$73,535	\$80,220	\$93,590	\$106,960
2 person	\$21,400	\$35,650	\$42,780	\$57,050	\$57,040	\$64,170	\$71,300	\$78,430	\$85,560	\$99,820	\$114,080
3 person	\$24,100	\$40,100	\$48,120	\$64,200	\$64,160	\$72,180	\$80,200	\$88,220	\$96,240	\$112,280	\$128,320
4 person	\$26,750	\$44,550	\$53,460	\$71,300	\$71,280	\$80,190	\$89,100	\$98,010	\$106,920	\$124,740	\$142,560
4.5 person	\$28,460	\$46,350	\$55,620	\$74,175	\$74,160	\$83,430	\$92,700	\$101,970	\$111,240	\$129,780	\$148,320
5 person	\$30,170	\$48,150	\$57,780	\$77,050	\$77,040	\$86,670	\$96,300	\$105,930	\$115,560	\$134,820	\$154,080
6 person	\$34,590	\$51,700	\$62,040	\$82,750	\$82,720	\$93,060	\$103,400	\$113,740	\$124,080	\$144,760	\$165,440
7 person	\$39,010	\$55,250	\$66,300	\$88,450	\$88,400	\$99,450	\$110,500	\$121,550	\$132,600	\$154,700	\$176,800
8 person	\$43,430	\$58,850	\$70,620	\$94,150	\$94,160	\$105,930	\$117,700	\$129,470	\$141,240	\$164,780	\$188,320

Rentals

Maximum affordable monthly rent

Assumes affordability = 30% of monthly household income

Maximum affordable monthly rent amounts should also include the following utilities: electric, gas, water, sewer, trash, & snow removal

Unit Size	HUD EXTREMELY LOW			HUD LOW	TRUE	90%	100%	110%	120%	140%	160%
	INCOME	50%	60%	INCOME	80%						
Studio (1 person)	\$468.75	\$780.00	\$936.00	\$1,248.75	\$1,248.00	\$1,404.00	\$1,560.00	\$1,716.00	\$1,872.00	\$2,184.00	\$2,496.00
1 bed (1.5 person)	\$501.88	\$835.63	\$1,002.75	\$1,337.50	\$1,337.00	\$1,504.13	\$1,671.25	\$1,838.38	\$2,005.50	\$2,339.75	\$2,674.00
2 bed (3 person)	\$602.50	\$1,002.50	\$1,203.00	\$1,605.00	\$1,604.00	\$1,804.50	\$2,005.00	\$2,205.50	\$2,406.00	\$2,807.00	\$3,208.00
3 bed (4.5 person)	\$711.50	\$1,158.75	\$1,390.50	\$1,854.38	\$1,854.00	\$2,085.75	\$2,317.50	\$2,549.25	\$2,781.00	\$3,244.50	\$3,708.00
4 bed (6 person)	\$864.75	\$1,292.50	\$1,551.00	\$2,068.75	\$2,068.00	\$2,326.50	\$2,585.00	\$2,843.50	\$3,102.00	\$3,619.00	\$4,136.00

For Sale

Maximum Monthly Principal & Interest Payment

Based on the affordable monthly rent amounts above, less a \$350 allowance to cover taxes, insurance, and HOA dues

Unit Size	HUD EXTREMELY LOW			HUD LOW	TRUE	90%	100%	110%	120%	140%	160%
	INCOME	50%	60%	INCOME	80%						
Studio (1 person)	\$118.75	\$430.00	\$586.00	\$898.75	\$898.00	\$1,054.00	\$1,210.00	\$1,366.00	\$1,522.00	\$1,834.00	\$2,146.00
1 bed (1.5 person)	\$151.88	\$485.63	\$652.75	\$987.50	\$987.00	\$1,154.13	\$1,321.25	\$1,488.38	\$1,655.50	\$1,989.75	\$2,324.00
2 bed (3 person)	\$252.50	\$652.50	\$853.00	\$1,255.00	\$1,254.00	\$1,454.50	\$1,655.00	\$1,855.50	\$2,056.00	\$2,457.00	\$2,858.00
3 bed (4.5 person)	\$361.50	\$808.75	\$1,040.50	\$1,504.38	\$1,504.00	\$1,735.75	\$1,967.50	\$2,199.25	\$2,431.00	\$2,894.50	\$3,358.00
4 bed (6 person)	\$514.75	\$942.50	\$1,201.00	\$1,718.75	\$1,718.00	\$1,976.50	\$2,235.00	\$2,493.50	\$2,752.00	\$3,269.00	\$3,786.00

Maximum Sales Prices

Assumes interest rate of 5.70%, 30 year loan term, and 90% loan-to-value (Interest rate is the FHLMC 10-year trailing average for 2009-2018)

Unit Size	HUD EXTREMELY LOW			HUD LOW	TRUE	90%	100%	110%	120%	140%	160%
	INCOME	50%	60%	INCOME	80%						
Studio (1 person)	\$22,733	\$82,319	\$112,183	\$172,056	\$171,912	\$201,776	\$231,641	\$261,505	\$291,370	\$351,099	\$410,827
1 bed (1.5 person)	\$29,075	\$92,967	\$124,962	\$189,046	\$188,950	\$220,944	\$252,938	\$284,933	\$316,927	\$380,915	\$444,904
2 bed (3 person)	\$48,338	\$124,914	\$163,297	\$240,256	\$240,064	\$278,448	\$316,831	\$355,215	\$393,598	\$470,365	\$547,132
3 bed (4.5 person)	\$69,205	\$154,826	\$199,192	\$287,996	\$287,924	\$332,290	\$376,656	\$421,022	\$465,388	\$554,119	\$642,851
4 bed (6 person)	\$98,543	\$180,431	\$229,918	\$329,035	\$328,892	\$378,379	\$427,866	\$477,352	\$526,839	\$625,813	\$724,787

Effective 4/24/2019

THESE FIGURES ARE SUBJECT TO CHANGE WITHOUT NOTICE

**RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF LIEN
FOR UNIT __, OF _____,
TOWN OF FRISCO,
SUMMIT COUNTY COLORADO**

This Residential Housing Restrictive Covenant and Notice of Lien for Unit __, of _____, _____, Summit County, Colorado, (this "Restriction,") is made this ____ day of _____, 20__, by _____, a (hereinafter referred to as "Declarant").

RECITALS:

WHEREAS, Declarant is the Owner of that certain real estate located in the County of Summit, State of Colorado, and legally described as follows: Unit __, of _____, _____, according to the plat thereof now on file in the Office of the Clerk and Recorder for Summit County, Colorado, under Reception No. _____ (hereinafter referred to as the "Property"); and

WHEREAS, pursuant to the terms of the approval of the _____ Development Application, Declarant is required to execute and record this Restriction.

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that the Property shall hereafter be held, sold, and conveyed subject to the following covenants, restrictions, and conditions, all of which shall be covenants running with the land, and which are for the purposes of ensuring that the Property remains available for purchase and occupation by persons residing and working in Summit County, Colorado, as moderately priced housing, and protecting the value and desirability of the Property, and which covenants, restrictions, and conditions shall be binding on all parties having any right, title, or interest in the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of the Owner of the Property, the Summit Combined Housing Authority, the Town, and Declarant.

ARTICLE I
DEFINITIONS

- 1.1. Definitions. The following words, when used in this Restriction, shall have the following meanings and the use of capitalization or lower case letters in references to the following terms shall have no bearing on the meanings of the terms:

A. "Area Median Income" or "AMI" means the median annual income for Summit County, Colorado, (or such next larger statistical area calculated by HUD that includes Summit County, Colorado, if HUD does not calculate the area median income for Summit County, Colorado, on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD (or any successor index thereto acceptable to the Town or SCHA in its reasonable discretion). If current AMI data pertaining to the date of sale of the Property is not yet available as of the date the sale price is calculated, then the most recent data published by HUD shall be used in its place.

B. "Dependent" shall mean a person, including a spouse of, a child of, a step-child of, a child in the permanent legal custody of, or a parent of, a Resident, whose principal place of residence is in the same household as such Resident, and who is financially dependent upon the support of the Resident. Dependent shall also include any person included within the definition of "Familial Status" as defined in 42 U.S.C. § 3602(k), as amended.

C. "Eligible Household" means a household earning not more than _____ percent (_____%) of the AMI and that has been approved by either the SCHA or the Town so as to allow for the execution by the SCHA or Town of the form of approval set forth in Section 5.3 of this Restriction. A household's income for purposes of determining whether such household meets this definition of eligibility shall be determined at the time of purchase or, if applicable, commencement of leasehold occupancy. For purposes of the determination of the number of people that constitute a household under this definition, any Resident or Dependent spouse of a Resident who is pregnant at the time of the determination of whether a household meets the income limitation provided in this definition shall be deemed to be two (2) people.

D. "First Mortgage" means a Mortgage which is recorded senior to any other Mortgage against the Property to secure a loan used to purchase Property.

E. "Frisco Housing Guidelines" means the administrative rules, regulations, policies, and standards adopted by the Town, as amended from time to time, and maintained by the Frisco Community Development Department.

E. "Household" means one or more persons who intend to live together in the premises of a dwelling unit as a single housekeeping unit, but does not mean a group of four (4) or more persons unrelated by blood, adoption or marriage.

F. "HUD" means the U.S. Department of Housing and Urban Development.

G. "Maximum Resale Price" means that maximum Purchase Price that shall be paid by any purchaser of the Property, other than the initial purchaser who acquires the Property from Declarant, as determined in accordance with the provisions of Section 8.3 of this Restriction. The Maximum Resale Price is not a guaranteed price, but merely the highest price an Owner may obtain for the sale of the Property.

H. "Mortgage" means a consensual interest created by a real estate mortgage, a deed of trust on real estate, or the like.

I. "Mortgagee" means any grantee, beneficiary, or assignee of a Mortgage.

J. "Owner" means the record owner of the fee simple title to the Property.

K. ~~"Permitted Improvements" means such additions and/or improvements as are allowed and may be approved by the SCHA or the Town.~~

~~"Permitted Capital Improvements" means those improvements to a Unit performed by the Owner, which shall qualify for inclusion within the calculation of Maximum Resale Price if such improvements are set forth in the PCI schedule contained in the Frisco Housing Guidelines, and if the Owner furnishes the Town or its designee with the following information:~~

~~i. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;~~

~~ii. Affidavit verifying the receipts are valid and correct receipts tendered at the time of purchase; and~~

~~iii. True and correct copies of any building permit or certificate of occupancy required to be issued by the Town for the Permitted~~

L. "Purchase Money Mortgage" means a Mortgage given by an Owner to the extent that it is: (a) taken or retained by the seller of the Property to secure all or part of the payment of the Purchase Price; or (b) taken by a person who by making advances, by making a loan, or by incurring an obligation gives value to enable the Owner to acquire the Property if such value is in fact so used.

M. "Purchase Price" shall mean all consideration paid by the purchaser to the seller ~~for a unit as defined in the Guidelines, for the Property,; but shall EXCLUDE any proration amounts, taxes, costs and expenses of obtaining financing, cost of furnishings or personal property, lenders fees, title insurance fees, closing costs, inspection fees, real estate purchase and/or sales commission(s) or other fees and costs related to the purchase of the Property but not paid directly to Seller.~~

N. "Qualified Owner" means natural person(s) that meet(s) the definitions of both a Resident and an Eligible Household, or non-qualified Owner under Section 5.1.B., qualified and approved by SCHA or the Town in such manner that will allow SCHA or the Town to execute, on an instrument of conveyance, a copy of the language set forth in Section 5.3 below .

O. "Resident" means a person and his or her Dependents, if any, who (i) at the time of purchase of a Unit and all times during ownership or occupancy of the Property, earns his or her living from a business operating in Summit County, by working at such business an average of at least 30 hours per week on an annual basis,; ~~or (ii) is a person who is approved, in writing, by SCHA or the Town/County which approval shall be based upon criteria including, but not limited to, total income, percent of income earned within Summit County, place of voter registration, place of automobile registration, and driver's license address and other qualifications established by the~~

~~SCHA or the Town from time to time. (Compliance with each of these criteria is not necessary; in certifying Residents, the SCHA or the Town shall consider the criteria cumulatively as they relate to the intent and purpose of this Restriction).~~—A person over 65 years of age shall remain a Resident regardless of his or her working status, so long as he or she has owned and occupied the Property, or other real property within Summit County that is deed restricted for affordability, for a time period of not less than seven (7) years. The term “business” as used in this Article I, Subsection M, and Section 5.1.B. shall mean an enterprise or organization providing goods and/or services, whether or not for profit, and shall include, but not be limited to, educational, religious, governmental and other similar institutions.

P. “Resident Eligible Household” shall mean an Eligible Household that includes at least one Resident.

Q. "SCHA" means the Summit Combined Housing Authority.

R. "Town" means the Town of Frisco, State of Colorado.

S. “Transfer” or “transferred” means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee’s sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of the Property is transferred and the Owner obtains title.

ARTICLE II

PURPOSE

The purpose of this Restriction is to restrict ownership, occupancy and sale of the Property in such a fashion as to provide, on a permanent basis, moderately priced housing to be occupied by Resident Eligible Households, which Resident Eligible Households, because of their income, may not otherwise be in a position to afford to purchase, own, and occupy other similar properties, and to help establish and preserve a supply of moderately priced housing to help meet the needs of the locally employed residents of Summit County.

ARTICLE III

RESTRICTION AND AGREEMENT BINDS THE PROPERTY

This Restriction shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by, the SCHA and its successors and assigns, including, without limitation the Town/County, and this Restriction shall bind Declarant and all subsequent Owners of the Property. Each Owner, upon acceptance of a deed to the Property, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner period of ownership of the Property. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate

by this reference, the covenants contained in this Restriction, even without reference to this Restriction in any document of conveyance.

ARTICLE IV
NATURAL PERSONS

Other than use by the SCHA or the Town, the use and occupancy of the Property shall be limited exclusively to housing for natural persons who meet the definition of Resident and Eligible Household.

ARTICLE V
OWNERSHIP RESTRICTIONS

5.1. Ownership and Occupancy Obligation.

A. Except as provided in Section 5.1.B. or Article VI hereof, ownership of the Property is hereby limited exclusively to Eligible Households that include at least one Resident.

B. Upon the written consent of SCHA or Town, which consent may be recorded, a non-qualifying natural person or entity that owns and/or operates a business located in Summit County may purchase the Property; provided, however, that by taking title to the Property, such Owner shall be deemed to agree to the rental restrictions set forth herein, and further that any Owner who does not qualify as a Resident Eligible Household shall rent the Property to a Resident Eligible Household as more fully set forth in Section 7.1 of this Restriction, and shall not occupy or use the Property for the Owner's own use or leave the Property vacant.

5.2. Sale and Resale. In the event that the Property is sold, resold, transferred and/or conveyed without compliance with this Restriction, SCHA or the Town shall have the remedies set forth herein, including, but not limited to, the rights set forth in Section 8.5. Except as otherwise provided herein, each and every conveyance of the Property, for any and all purposes, shall be deemed to include and incorporate the terms and conditions of this Restriction.

5.3. Compliance. Any sale, transfer, and/or conveyance of the Property shall be wholly null and void and shall confer no title whatsoever upon the purported transferee unless (i) there is recorded in the real property records for Summit County, Colorado, along with the instrument of conveyance evidencing such sale, transfer or conveyance, a completed copy of the "Notice of Lien and Memorandum of Acceptance of Residential Housing Restrictive Covenant for Unit _____, of _____, Summit County, Colorado" attached hereto as Exhibit A, which copy is executed by the transferee and acknowledged by a Notary Public, and (ii) the instrument of conveyance evidencing such sale, transfer, and/or conveyance, or some other instrument referencing the same, bears the following

language followed by the acknowledged signature of either the director or some other authorized representative of the SCHA or by the Mayor of the Town , to wit:

"The conveyance evidenced by or referenced in this instrument has been approved by the Summit Combined Housing Authority or Town of Frisco as being in compliance with the Residential Housing Restrictive Covenant for Unit ___ of _____, _____, Summit County, Colorado, recorded in the records of Summit County, Colorado, on the ____ day of _____, 20__, at Reception No. _____."

Each sales contract, or lease as the case may be, for the Property shall also (a) recite that the proposed purchaser has read, understands and agrees to be bound by the terms of this Restriction; and (b) require the proposed purchaser and/or lessee to submit such information as may be required by the Town/County or the SCHA under its rules and regulations or policies adopted for the purpose of ensuring compliance with this Restriction.

5.4. Refinance Restriction. The Owner shall not encumber the Property in an amount in excess of the Purchase Price.

ARTICLE VI
ORIGINAL SALE OF THE PROPERTY

6.1 Initial Purchase Price. Except as may be permitted under Section 5.1.B. above, upon completion of construction by the Declarant, the Property shall be sold to initial purchasers who qualify as a Resident and an Eligible Household at a Purchase Price that shall be determined by the SCHA or the Town as follows:

- (a) The number of bedrooms within the Property shall be determined and that number of bedrooms shall, in turn, determine the size of the household for which the Area Median Income shall be determined as follows: (i) for a one-bedroom dwelling unit, a 1.5 person household; (ii) for a two-bedroom dwelling unit, a 3 person household; (iii) for a three-bedroom dwelling unit, a 4.5 person household; and (iv) for a four-bedroom unit, a 6 person household;
- (b) The Area Median Income for a household of a size determined in accordance with subpart (a) above shall be determined;
- (c) The amount of Area Median Income determined in accordance with subpart (b) above shall be divided by twelve (12), and the number derived shall then be multiplied by .30 to determine the total dollar amount available to the household on a monthly basis for the payment of principal,

interest, taxes, insurance and homeowner's association dues in connection with the purchase of the Property;

- (d) The amount of \$350 shall be subtracted from the total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (c) above) in order to determine the total dollar amount available to the household on a monthly basis for the payment of principal and interest on a mortgage loan for purchase of the Property;
- (e) The total dollar amount available to the household on a monthly basis (as determined in accordance with subpart (d) above) shall be used to determine the Purchase Price, through extrapolation, by determining the maximum loan amount that said dollar amount will support, assuming a mortgage loan with a standard amortization schedule, a term of thirty (30) years (360 months), an annual interest rate of ___% and a 90% loan to value ratio; and
- (f) The interest rate to be used to perform the calculation described in subpart (e) above shall be the greater of: (1) the actual interest rate obtained by the Eligible Household for purchase of the Property with a mortgage loan with a term of thirty (30) years; and (2) the interest rate determined by calculating, from data published by the Federal Home Loan Mortgage Corporation, the average interest rate, for the preceding ten (10) calendar years, for a thirty-year fixed rate loan, and adding thereto 1.5%.

ARTICLE VII

USE RESTRICTIONS

7.1. Occupancy. Except as otherwise provided in this Restriction, the Property shall, at all times, be occupied as a principal place of residence by an Owner, or, if applicable, an Authorized Lessee, (along with his or her Dependents) who, at the time of purchase, or in the case of an Authorized Lessee at the time of occupancy, of the Property, qualified as a Resident and Eligible Household. In the event that any Owner ceases to occupy the Property as his or her principal place of residence, or any non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B. leaves the Property unoccupied by a Resident Eligible Household for a period of 90 consecutive days, the Owner of the Property shall, within 10 days of ceasing such occupation, notify the SCHA of the same and the Property shall, within 30 days of the Owner having vacated or left vacant the Property make the Property available for purchase pursuant to the terms of this Restriction. Any Owner who fails to occupy his or her Property for a period of 90 consecutive days shall be deemed to have ceased to occupy the Property as his or her principal place of residence; however, an Owner who has established the Property as his or her principal place of residence shall not be considered to have ceased occupancy of the Property during such period of time as the Owner is serving on active duty with the United States Armed Services.

7.2. Rental. Under no circumstances shall the Property be leased or rented for any period of time without the prior written approval of the SCHA or the Town, which approval may be conditioned, in the SCHA's or Town's sole and absolute discretion, on the lease or rental term being limited to a twelve (12) month period either consecutively or in the aggregate during the Owner's ownership of the Property. In the event that the Property, or any portion thereof, is leased or rented without compliance with this Restriction, such rental or lease shall be wholly null and void and shall confer no right or interest whatsoever to or upon the purported tenant or lessee. Any rental approved by the SCHA or the Town shall be to a Resident Eligible Household at such rental rates as shall be established by the SCHA and approved by the Town, or as may be established by the Town from time to time, and, if no such rental rates have been established, at a monthly rental rate that shall not exceed one-hundred percent (100%) of the most recent Fair Market Rent amounts published by the U.S. Department of Housing and Urban Development (or any successor index thereto acceptable to SCHA or the Town in its reasonable discretion) (such lessee being referred to herein as an "Authorized Lessee").

7.3 Involuntary Sale Upon Change in Residence. In the event Owner changes residence or ceases to utilize the Property as his or her exclusive and permanent place of residence, or in the event any non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B. leaves the Property unoccupied by a Resident Eligible Household for a period of 90 consecutive days, as determined by the SCHA or the Town, the Property shall be offered for sale pursuant to the provision of Article VIII of this Restriction. The SCHA may further require the Owner to rent the Property in accordance with the provisions of Article X below.

7.4 Ownership Interest in Other Residential Property. Except with respect to a non-qualified Owner permitted to purchase the Property as set forth in Section 5.1.B., if at any time the Owner also owns any interest alone or in conjunction with others in any other developed residential property, the Owner shall immediately list such other property interest for sale and sell his or her interest in such property. In the event said other property has not been sold by the Owner within one hundred (120) days of its listing required hereunder, then the Owner shall immediately list the Property for sale pursuant to the provisions of this Restriction. It is understood and agreed between the parties hereto that, in the case of an Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties which constitute inventory in such Owner's business shall not constitute "other developed residential property" as that term is used in this Article.

ARTICLE VIII

RESALE OF THE PROPERTY

8.1. Resale. The Property shall not be transferred subsequent to the original purchase from the Declarant except upon full compliance with the procedures set forth in this Article VIII.

8.2. Notice. In the event that an Owner shall desire to Transfer his Property, or in the event that an Owner shall be required to Transfer his Property pursuant to the terms of this Restriction, he shall notify the SCHA, or such other person or entity as may be designated by the Town, in writing of his intention to Transfer his Property. The Property may be offered, advertised, or listed for sale by such Owner at such Owner's sole cost and expense, in any manner in which such Owner may choose. An Owner may list the Property for sale through SCHA for a commission equal to 2.0% of the sales price. The Property shall not, however, be sold, transferred and/or conveyed to any person, entity, or entities, (i) other than a Resident Eligible Household, or non-qualified buyer under Section 5.1.B., qualified and approved by the SCHA or the Town in such a manner as will allow the SCHA or the Town to execute the approval set forth in Section 5.3 of this Restriction (a "Qualified Buyer"), and (ii) for consideration to be paid by such qualified Resident Eligible Household that exceeds the Maximum Resale Price as such is determined pursuant to the provisions of this Article VIII.

8.3. Maximum Resale Price.

~~A. The Maximum Resale Price of a Property shall be equal to the sum of:~~

- ~~(1) the Purchase Price paid by the Owner for the Property;~~
- ~~(2) plus an increase of three percent (3%) of such Purchase Price per year (prorated at the rate of 1/12 for each whole month) from the date of the Owner's purchase of the Property to the date of the Owner's execution of the listing contract, such percentage increase to not be compounded annually;~~
- ~~(3) plus the amount of any commission payable to the SCHA.~~

A. If the Owner lists the unit for sale with a contracted realtor with the Summit Combined Housing Authority (SCHA), the Owner may add the amount paid in sales commission, up to two percent (2%), to the Maximum Resale Price.

B. The Maximum Resale Price of a Property shall be no greater than the sum of:

- (1) The Purchase Price paid by the Owner of the Property as identified on closing documents at the time of purchase by Owner-Seller; and
- (2) three-percent (3%) increase of Purchase Price per year from the date ownership transferred at the close of escrow to the date of Owner-Seller's transfer of ownership to new Buyer of Property; such percentage increase shall be calculated as simple interest, not to be compounded annually and will be prorated at the rate of 1/12th for each whole month of ownership; and
- (3) the cost of Permitted Capital Improvements as approved by the Town of Frisco; and

- (4) the cost of real estate commission as negotiated by the Seller if the Owner lists the unit for sale with a private real estate broker (as opposed to a contracted realtor with the Summit Combined Housing Authority (SCHA), (not to exceed the total sum calculation of this section); and
- (5) the total sum of A. (1) through A. (4) in this paragraph shall be no greater than the most current (at time of sale) published Summit County AMI Maximum Sales Price for the Seller's Household size as qualified at the time Owner-Seller purchased the home (for example, at the time Owner-Seller purchased their home they were qualified as a 2-bedroom household at 80% AMI; at the time of Resale, the maximum sales price shall be no greater than the sum of A.(1) through A.(4), not to exceed 2-bedroom household at 80% AMI as identified on Summit County AMI Maximum Sales Price at the time the home closes escrow on resale). At the owner's discretion, the maximum resale price is not required to be less than the purchase price paid by the owner of the property as identified on closing documents at the time of purchase by Owner-Seller.

C.B. Owner shall be responsible for ensuring that at resale the Property is clean, the appliances are in working order, and that there are no health or safety violations regarding the Property.

C.D. No Owner shall permit any prospective buyer to assume any or all of the Owner customary closing costs or accept any other consideration which would cause an increase in the Purchase Price above the bid price so as to induce the Owner to sell to such prospective buyer.

8.4 Allowance for Permitted Capital Improvements. Subject to the limitations of this Section, for the purpose of determining the Maximum Resale Price in accordance with this Covenant, the Owner may add to the amount specified in Section 8.3 above, the cost of approved and Permitted Capital Improvements ("PCI"), as set forth in the PCI schedule maintained by the Town, as such scheduled is amended from time to time.

8.4 Non-Qualified Transferees. In the event that title to the Property vests in individuals and/or entities who are not a Qualified Buyer (hereinafter "Non-Qualified Transferee(s)") by descent, by foreclosure and/or redemption by any lien or mortgage holder (except any holder of a HUD - insured First Mortgage), or by operation of law or any other event, SCHA or the Town may elect to notify the non-qualified transferee that it must sell the Property in accordance with Section 8.5. The non-qualified transferee shall not: (i) occupy the Property; (ii) rent all or any part of the Property, except in strict compliance with this Restriction; (iii) engage in any business activity on or in the Property; (iv) sell or otherwise Transfer the Property except in accordance with this Restriction; or (v) sell or otherwise Transfer the Property for use in trade or business.

8.5 Sales to Preserve as Affordable Housing.

A. In the event the Property is occupied, transferred or leased in violation of this Restriction, SCHA or the Town may, at its sole discretion, notify an Owner that it must immediately list the Property for sale (including the execution of a listing contract with, and the payment of the specified fees) by SCHA. The highest bid by a Qualified

Owner for not less than ninety-five percent (95%) of the Maximum Sale Price shall be accepted by the Owner; provided, however, if the Property is listed for a period of at least ninety (90) days and all bids are below ninety-five percent (95%) of the Maximum Sale Price, the Property shall be sold to a Qualified Owner that has made the highest offer for at least the appraised market value of the Property, the reasonableness of which appraisal shall be determined by SCHA or the Town in its reasonable good faith judgment.

B. If required by SCHA or the Town, the Owner shall: (i) consent to any sale, conveyance or transfer of such Property to a Qualified Owner; (ii) execute any and all documents necessary to do so; and (iii) otherwise reasonably cooperate with SCHA or the Town to take actions needed to accomplish such sale, conveyance or transfer of such Property. For this purpose Owner constitutes and appoints SCHA and the Town as its true and lawful attorney-in-fact with full power of substitution to complete or undertake any and all actions required under this Section 8.5.B. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Owner specifically agrees that all power granted to SCHA and the Town under this Restriction may be assigned by either of them to their respective successors or assigns.

C. In order to preserve the affordability of the Units for persons of low to moderate income, SCHA or the Town, or their respective successors, as applicable, shall also have and are hereby granted the right and option to purchase the Property, exercisable within a period of fifteen (15) calendar days after notice is sent by SCHA or the Town to the Owner that requires the Owner to sell the Property pursuant to this Section 8.5. SCHA or the Town shall complete the purchase of the Property within thirty (30) calendar days after exercising its option hereunder for a price equal to the lesser of the appraised market value of the Property, the reasonableness of which appraisal shall be determined by SCHA or the Town in its reasonable good faith judgment, or the Maximum Sale Price. SCHA or the Town may assign its option to purchase hereunder to an eligible purchaser which, for the purpose of this Section 8.5(c), shall be a Qualified Owner.

D. In all situations in which the provisions of this Section 8.5 apply, SCHA or the Town may alternatively require the Owner to rent the Property to a Resident Eligible Household in accordance with the requirements and limitations of this Restriction.

ARTICLE IX **FORECLOSURE**

9.1 Release. Subject to the process and rights set forth in this Article IX below, this Restriction shall be deemed released as to the Property in the event of (i) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Property in connection with a foreclosure by the holder of a HUD-insured or other First Mortgage, or (ii) the acceptance of a deed in lieu of foreclosure by the holder of a HUD-insured or other First Mortgage. This Restriction shall also automatically terminate and be released as to the Property upon the assignment to HUD of an HUD-insured mortgage encumbering the

Property. The Town, in its sole discretion, may elect to release a Property from this Restriction in the event of (1) the issuance of a public trustee's deed, sheriff's deed or similar conveyance of the Property in connection with a foreclosure of the Town's lien, as defined in Section 9.2, or (2) the acceptance of a deed in lieu of foreclosure by the Town in connection with the Town's Lien. If the Town chooses to terminate this Restriction with respect to a particular Property, the Town shall record a document referencing such termination in the real property records of the County. Any and all claims of the Town available hereunder against the Owner personally shall survive any release or termination of this Restriction.

9.2 Lien.

A. The SCHA and the Town shall have, and are hereby granted, a lien against the Property ("SCHA's Lien" or "Town's Lien") to secure payment of any amounts due and owing the SCHA or the Town pursuant to this Restriction including: the SCHA's or the Town's sale proceeds and/or amounts due to the SCHA or the Town in the event of a foreclosure of a First Mortgage and to secure the obligations to the SCHA or the Town hereunder. The SCHA's Lien and the Town's Lien on the Property shall be superior to all other liens and encumbrances except the following:

- (1) liens and encumbrances recorded prior to the recording of this Restriction and Agreement;
- (2) real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing districts;
- (3) liens given superior priority by operation of law; and
- (4) the lien of any First Mortgage against the Property.

B-A. Recording of this Restriction constitutes record notice and perfection of the SCHA's Lien and the Town's Lien. No further recordation of any claim of lien is required. However, the SCHA or the Town may elect to prepare, and record in the Office of the County Clerk and Recorder of the County, a written notice of lien. By virtue of the SCHA's Lien or the Town's Lien, the SCHA or the Town shall have the rights granted a lienor under C.R.S. 38-38-101 *et seq.*, and the SCHA or the Town shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, to cure and redeem in foreclosure of the Property, as provided by C.R.S. 38-38-101 *et seq.* In addition, unless otherwise instructed by the SCHA or the Town in writing, the Owner shall sign, acknowledge, and cooperate in SCHA's or the Town's recording in the County Clerk and Recorder's Office immediately subsequent to the recording of the First Mortgage, a notice of the SCHA's Lien or the Town's Lien, substantially in the form attached hereto as Exhibit A, in order to assure that the SCHA or the Town receives notice in the event of the foreclosure of the First Mortgage pursuant to this Article. The notice shall not alter the priority date of the SCHA's Lien or the Town's Lien as established herein.

C. The sale or other transfer of the Property shall not affect the SCHA's Lien or the Town's Lien. No sale or deed in lieu of foreclosure shall relieve the Owner from

continuing personal liability for payment of his or her obligations hereunder. The SCHA's Lien or the Town's Lien does not prohibit actions or suits to recover sums due pursuant to this Restriction and Agreement, or to enforce the terms of this Restriction, or to prohibit the SCHA or the Town from taking a deed in lieu of foreclosure.

9.3 SCHA's and Town's Option to Redeem and to Buy.

A. Foreclosure/SCHA's or Town's Option to Redeem. In the event of a foreclosure, the SCHA and the Town shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of the Property that are junior to the First Mortgage (as provided in C.R.S. §38-38-101 *et seq.*, or any succeeding statute). The SCHA and the Town shall have a right of redemption, and such other rights as a lienor in foreclosure, as its interest appears, in accordance with Colorado law governing foreclosure. The SCHA's Lien and the Town's lien is created pursuant to Section 9.2 above.

B. Deed in lieu of Foreclosure/Option to Buy. In the event that the First Mortgagee takes title to the Property by deed in lieu of foreclosure, the SCHA and the Town shall have an option to buy the Property ("Option to Buy") exercisable in accordance with this paragraph. Within three (3) days after the First Mortgagee's first attempt to secure a deed in lieu of foreclosure, the Owner shall deliver written notice to the SCHA and the Town of such intent to Transfer title. The SCHA or the Town may exercise its Option to Buy by tendering the Deed In Lieu Price (as defined below) to the First Mortgagee, within thirty (30) days from and after vesting of title to the Property in the First Mortgagee by deed in lieu of foreclosure ("Deed in Lieu Option Period"). Upon receipt of the Deed in Lieu Price, the First Mortgagee shall deliver to the SCHA or the Town a special warranty deed conveying fee simple title in and to the Property, in which event this Restriction and Agreement shall remain valid and in full force and effect. The Deed in Lieu Price shall be equal to: (i) the amounts unpaid pursuant to the First Mortgage note; (ii) any other reasonable costs incurred by the First Mortgagee that directly relate to the deed in lieu of foreclosure; and (iii) any additional reasonable costs incurred by the First Mortgagee during the Deed in Lieu Option Period that are directly related to maintenance of the Property. The First Mortgagee shall convey only such title as it received through the deed in lieu of foreclosure and will not create or suffer the creation of any additional liens or encumbrances against the Property following issuance of the deed in lieu of foreclosure to the First Mortgagee. The First Mortgagee shall not be liable for any of the costs of conveyance of the Property to the SCHA, the Town, or its designee; *however*, the First Mortgagee shall cooperate with the SCHA or the Town in calculating the Deed in Lieu Price and in the execution of the Option to Buy.

C. Upon Exercising Option. In the event that the SCHA or the Town obtains title to the Property pursuant to this Article, the SCHA, the Town or its designee may sell the Property to a Qualified Buyer, or rent the Property to third parties until such time that the Property can be sold to a Qualified Buyer. The SCHA's or the Town's subsequent sale of the Property in these circumstances shall not be subject to the Maximum Sale Price restrictions set forth in Article VIII hereof.

D. Release upon Electing Not to Exercise Options. In the event that the SCHA or the Town does not exercise its Option to Redeem as described in this Article or its Option to Buy as described above, as applicable, within the time periods set forth in this Article, this Restriction shall automatically terminate and shall be of no further force and effect, and the SCHA and the Town shall prepare and execute a release of this Restriction and, within thirty (30) days of such termination, cause such release to be recorded in the records of the Clerk and Recorder of the County. Notwithstanding the foregoing, any and all claims of the SCHA and the Town available hereunder against the Owner personally shall survive any release or termination of this Restriction.

9.4 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Article IX shall be unlawful or void for violation of: (1) the rule against perpetuities or some analogous statutory provision; (2) the rule restricting restraints on alienation; or (3) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Restriction, or (y) the period of the lives of the current duly elected and seated board of directors of the SCHA, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

ARTICLE X **ENFORCEMENT**

10.1 Enforcement of This Restriction. The Declarant and each Owner hereby grants and assigns to SCHA or the Town the right to review and enforce compliance with this Restriction. Compliance may be enforced by SCHA or the Town by any lawful means, including without limitation, seeking any equitable relief (including, without limitation, specific performance and other equitable relief as set forth in Section 10.2 below), as well as a suit for damages; provided, however, in the event the Property is financed by a HUD-insured First Mortgage and is sold in violation of Section 8.3 hereof, such enforcement shall not include:

- A. acceleration of a mortgage;
- B. voiding a conveyance by an Owner;
- C. terminating an Owner's interest in the Property; or
- D. subjecting an Owner to contractual liability.

Notwithstanding the foregoing, in no event shall SCHA or the Town have any equitable remedies (including, but not limited to, the right to sue for specific performance or seek other equitable relief as set forth in Section 10.2) or the right to sue for damages if the Owner of the Property that was financed with a HUD-insured First Mortgage breaches or violates the terms, covenants and other provisions of Section 8.3 hereof and if to do so would violate any existing or future requirement of HUD, it being understood, however, that in such event, SCHA or the Town shall retain all other rights and remedies hereunder

for enforcement of any other terms and provisions hereof, including, without limitation: (i) the right to sue for damages to reimburse SCHAs or the Town, or its agents, for its enforcement costs and to require an Owner to repay with reasonable interest (not to exceed ten percent (10%) per annum) any assistance received in connection with the purchase of the Property; (ii) the right to prohibit an Owner from retaining sales or rental proceeds collected or received in violation of this Restriction; and (iii) the option to purchase granted to SCHAs or the Town in Section 8.5(c) hereof. Venue for a suit enforcing compliance shall be proper in Summit County, Colorado and service may be made or notice given by posting such service or notice in a conspicuous place on the applicable Property. As part of any enforcement action on the part of SCHAs or the Town, the applicable Owner shall pay all court costs and reasonable legal fees incurred by SCHAs or the Town, or its agents, in connection with these claims, actions, liabilities or judgments, including an amount to pay for the time, if any, of SCHAs or the Town's or its agents, attorney spent on such claims at the rates generally charged for similar services by private practitioners within the County.

10.2 Injunctive and other Equitable Relief. Declarant and each Owner agree that in the event of Declarant's or Owner's default under or non-compliance with the terms of this Restriction, SCHAs or the Town shall have the right to seek such equitable relief as it may deem necessary or proper, including, without limitation, the right to: (a) seek specific performance of this Restriction; (b) obtain a judgment from any court of competent jurisdiction granting a temporary restraining order, preliminary injunction and/or permanent injunction; and (c) set aside or rescind any sale of the Property made in violation of this Restriction. Any equitable relief provided for in this Section 10.2 may be sought singly or in combination with such legal remedies as SCHAs or the Town may be entitled to, either pursuant to this Restriction, under the laws of the State of Colorado or otherwise.

ARTICLE XI **GENERAL PROVISIONS**

11.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act, Declarant, the SCHAs, and the Town shall not discriminate on the basis of race, creed, color, sex, national origin, familial status or disability in the lease, sale, use or occupancy of the Property.

11.2 Rules, Regulations, and Standards. The SCHAs shall have the authority to promulgate and adopt such rules, regulations and standards as it may deem appropriate, from time to time, for the purpose of carrying out its obligations and responsibilities described herein, all of which rules, regulations and standards, and any amendments thereof, shall be subject to approval of the Town.

11.3 Waiver of Exemptions. Every Owner, by taking title to the Property, shall be deemed to have subordinated to this Restriction any and all right of homestead and any other exemption in, or with respect to, such Property under state or federal law presently existing or hereafter enacted.

11.4 Enforcement. Except as otherwise provided herein, the SCHA, the Town, the Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, and reservations imposed by the provisions of this Restriction and shall be entitled to specific enforcement of the same. Failure by any party described in this paragraph to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right by such party or any other party to do so thereafter.

11.5 Expenses of Enforcement. In the event that any party entitled to enforce the terms of this Restriction shall be required to bring any action as the result of any breach of the terms of this Restriction by any Owner, the party bringing such action shall be entitled to recover from and against the Owner in breach of these Restrictions, in addition to any and all other remedies available at law or in equity, reasonable attorney's fees and costs incurred in the enforcement of these Restrictions and in the bringing of such action, and the party against whom such fees and costs are awarded shall be personally liable for the payment of such fees and costs, and such award and judgment shall constitute a lien against the Property owned by the party in breach of these Restrictions which lien may be enforced by foreclosure of the defaulting Owner's Property in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado or elimination of Owner's resale gain on the Property.

11.6 Severability. Invalidation of any one of the covenants or restrictions contained herein by judgment or Court order shall in no way affect any other provisions, it being the intent of the Declarant, SCHA and Town that such invalidated provision be severable.

11.7 Term. The restrictions contained herein shall run with the land and bind the land for a term of 99 years from the date that this covenant is recorded, after which time the terms of this Covenant shall be automatically extended for successive periods of 10 years.

11.8 Amendment. This restriction may be amended only by an instrument recorded in the records of Summit County executed by the Town and the then-Owner of the Property.

11.9 Successor to SCHA. In the event that, at any time during the duration of this Restriction, the SCHA ceases to exist, all reference in this Restriction to SCHA shall, thereafter, mean the Town its successors, assigns, or any other entity designated by the Town to administer or enforce the provisions hereof, or to perform the functions of the SCHA as described herein.

11.10 No Third Party Beneficiaries. This Restriction is made and entered into for the sole protection and benefit of the SCHA, the Town and the Owner. Except as otherwise specifically provided for herein, no other person, persons, entity or entities, including without limitation prospective buyers of the Property, shall have any right of action with respect to this Restriction or right to claim any right or benefit from the terms provided in this Restriction or be deemed a third party beneficiary of this Restriction.

11.11 Non-Liability. SCHA and Town and their respective employees, members, officers and agents shall not be liable to any Owner or third party by virtue of the

exercise of their rights or the performance of their obligations under this Restriction. The parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Restriction, the monetary limitations or any other rights, immunities or protections afforded by the Governmental Immunity Act, CRS §§ 24-10-101, et seq., as they may be amended, or any other limitation, right, immunity or protection otherwise available to the parties.

11.12 Exhibits. All exhibits attached hereto are incorporated herein and by this reference made part hereof.

11.13 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and use of the singular shall include the plural and vice versa.

11.14 Personal Liability. Each Owner shall be personally liable for any of the transactions contemplated herein, jointly and severally with his or her co-owners.

11.15 Further Actions. The Owner and Owner's successors and assigns agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Restriction or any agreement or document relating hereto or entered into in connection herewith.

11.16 Notices. Any notice, consent or approval which is required or permitted to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Restriction. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:

To the Town:

Town of Frisco
Attn: Town Manager
P.O. Box 4100
Frisco, CO 80443

To the Summit Combined Housing Authority:

Summit Combined Housing Authority
P.O. Box 188
Breckenridge, CO 80424

To the Owner:

To be determined pursuant to the Notice of Lien and Memorandum of Acceptance (as shown on Exhibit A) recorded with respect to each transfer of the Property.

11.17 Choice of Law. This Covenant and each and every related document shall be governed and construed in accordance with the laws of the State of Colorado.

11.18 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

11.19 Headings. Article and Section headings within this Restriction are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

11.20 Signatures. Signatures to this Restriction may be in counterparts and by facsimile or scanned emailed document.

11.21 Approval. Wherever an approval is required by the SCHA or the Town, in all instances approval by the Town shall be deemed sufficient. Town “approval” shall mean approval by the Town Manager or his or her designated representative.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has set its hand unto this Restriction this _____ day of _____, 20__.

_____, a

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me as of the ____ day of _____, 20__, by _____ as _____ of _____, a _____.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

DRAFT

EXHIBIT A

**NOTICE OF LIEN AND MEMORANDUM OF ACCEPTANCE
OF RESIDENTIAL HOUSING RESTRICTIVE COVENANT AND NOTICE OF
LIEN FOR UNIT __, OF _____,**

**_____ ,
SUMMIT COUNTY, COLORADO**

WHEREAS, _____ [Buyer Name] _____, the
“Buyer” is purchasing from _____ [Seller Name] _____,
the “Seller,” at a price of \$ _____ [purchase price amount] _____, real property
described _____ as: _____ [Legal
Description] _____, according to the plat recorded under
Reception No. _____, in the real property records of the County
of Summit, Colorado (the “Property”); and

WHEREAS, the Seller of the Property is requiring, as a prerequisite to the sale
transaction, that the Buyer acknowledge and agree to the terms, conditions and
restrictions found in that certain instrument entitled “Residential Housing Restrictive
Covenant and Notice of Lien for Unit __, of _____,
Town/County, Colorado”, recorded on _____, 20__, under Reception No.
_____, in the real property records of the County of Summit, Colorado (the
“Restrictive Covenant”).

NOW, THEREFORE, as an inducement to the Seller to sell the Property, the
Buyer:

1. Acknowledges that Buyer has carefully read the entire Restrictive
Covenant, has had the opportunity to consult with legal and financial counsel concerning
the Restrictive Covenant and fully understands the terms, conditions, provisions, and
restrictions contained in the Restrictive Covenant.

2. States that the Notice to Buyer should be sent to:

3. Directs that this Notice be placed of record in the real estate records of the
County of Summit, Colorado and a copy provided to the Summit County Housing
Authority and the Town of Frisco (as defined in the Restrictive Covenant).

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the _____ day of _____, 20__.

BUYER(S):

Print Name(s): _____

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, by _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

Affordable Housing Restrictive Covenant Discussion



PRESENTED TO FRISCO TOWN COUNCIL
JUNE 11, 2019

WORK SESSION

BY:
KATIE KENT, PLANNER
NANCY KERRY, TOWN MANAGER

Discussion Agenda



- Goals of Restrictive Covenants
- The Issue of Area Median Income (AMI)
- Concerns with Covenant Restrictions
- Proposed *Voluntary* Amendments to Covenants
- Variety of Examples Applying Recommendations
- Summary and Direction Requested

Goals of Restrictive Covenants

- In general, goals of Affordable Housing Programs are designed to:
 - meet the Council's Inclusive Community priorities,
 - attract and retain working community members,
 - mitigate the scarcity of affordable housing which results in the loss of community members
- Covenants (deed restrictions) are intended to protect the affordability of homes receiving taxpayer assistance

Area Median Income

Area Median Income (AMI)



AMI is a numeric value determined by the U.S. Department of Housing and Urban Development (HUD) released annually to communities

- HUD uses the five-year estimates of the American Community Survey — a national survey similar to the Census — to measure *household* income. They begin with the median income for a family of four.
- Values are based on variety of data points collected between 3-7 years in arrears leading to multi-year lag in the data estimates
- AMI is used throughout the U.S. in affordable housing programs to qualify recipients for government assistance in renting or purchasing homes
- AMI has inherent flaws due to numerous variances
- Locally, and for purposes of today's discussion, AMI is used to qualify buyers for reduced price housing
- Affordable housing programs, and "affordability" figures were not designed to take into account individual financial constraints

2019 SUMMIT COUNTY AREA MEDIAN INCOME (AMI)
Figures include and exclude for both all county and non-county areas

AMI	2017		2018		2019		2020		2021		2022	
	Income	%	Income	%	Income	%	Income	%	Income	%	Income	%
Household AMI												
1 person	\$17,007	107.0%	\$17,445	107.2%	\$18,027	109.7%	\$18,745	110.6%	\$19,500	113.4%	\$20,297	118.5%
2 persons	\$29,076	183.8%	\$29,710	185.8%	\$30,400	188.8%	\$31,140	191.8%	\$31,930	194.8%	\$32,770	197.8%
3 persons	\$35,429	220.6%	\$36,292	225.2%	\$37,160	229.8%	\$38,030	234.4%	\$38,900	239.0%	\$39,770	243.6%
4 persons	\$41,782	261.4%	\$42,645	266.0%	\$43,510	270.6%	\$44,370	275.2%	\$45,230	279.8%	\$46,090	284.4%
5 persons	\$48,135	302.2%	\$49,000	306.8%	\$49,860	311.4%	\$50,720	316.0%	\$51,580	320.6%	\$52,440	325.2%
6 persons	\$54,488	343.0%	\$55,350	347.6%	\$56,210	352.2%	\$57,070	356.8%	\$57,930	361.4%	\$58,790	366.0%
7 persons	\$60,841	383.8%	\$61,700	388.4%	\$62,560	393.0%	\$63,420	397.6%	\$64,280	402.2%	\$65,140	406.8%
8 persons	\$67,194	424.6%	\$68,050	429.2%	\$68,910	433.8%	\$69,770	438.4%	\$70,630	443.0%	\$71,490	447.6%
9 persons	\$73,547	465.4%	\$74,400	470.0%	\$75,260	474.6%	\$76,120	479.2%	\$76,980	483.8%	\$77,840	488.4%
10 persons	\$79,900	506.2%	\$80,750	510.8%	\$81,610	515.4%	\$82,470	520.0%	\$83,330	524.6%	\$84,190	529.2%
Market												
Median affordable monthly rent												
Assumed affordability = 30% of household income												
Minimum affordable monthly rent (income divided by 3.33)												
1 person	\$5,103		\$5,235		\$5,367		\$5,499		\$5,631		\$5,763	
2 persons	\$8,712		\$8,902		\$9,092		\$9,282		\$9,472		\$9,662	
3 persons	\$10,629		\$10,848		\$11,067		\$11,286		\$11,505		\$11,724	
4 persons	\$12,546		\$12,775		\$13,004		\$13,233		\$13,462		\$13,691	
5 persons	\$14,463		\$14,700		\$14,937		\$15,174		\$15,411		\$15,648	
6 persons	\$16,380		\$16,620		\$16,860		\$17,100		\$17,340		\$17,580	
7 persons	\$18,297		\$18,540		\$18,783		\$19,026		\$19,269		\$19,512	
8 persons	\$20,214		\$20,460		\$20,706		\$20,952		\$21,198		\$21,444	
9 persons	\$22,131		\$22,380		\$22,629		\$22,878		\$23,127		\$23,376	
10 persons	\$24,048		\$24,300		\$24,552		\$24,804		\$25,056		\$25,308	
For Sale												
Minimum housing allowance (Market Payment)												
Based on the affordable monthly rent amount shown, less 50% of the amount over basic allowance and 50% AMI												
1 person	\$2,551		\$2,617		\$2,683		\$2,749		\$2,815		\$2,881	
2 persons	\$4,356		\$4,451		\$4,546		\$4,641		\$4,736		\$4,831	
3 persons	\$5,314		\$5,424		\$5,534		\$5,644		\$5,754		\$5,864	
4 persons	\$6,272		\$6,384		\$6,496		\$6,608		\$6,720		\$6,832	
5 persons	\$7,230		\$7,344		\$7,458		\$7,572		\$7,686		\$7,800	
6 persons	\$8,188		\$8,304		\$8,420		\$8,536		\$8,652		\$8,768	
7 persons	\$9,146		\$9,264		\$9,382		\$9,500		\$9,618		\$9,736	
8 persons	\$10,104		\$10,224		\$10,344		\$10,464		\$10,584		\$10,704	
9 persons	\$11,062		\$11,184		\$11,306		\$11,428		\$11,550		\$11,672	
10 persons	\$12,020		\$12,144		\$12,268		\$12,392		\$12,516		\$12,640	
Market Rate Prices												
Based on the affordable monthly rent amount shown, less 50% of the amount over basic allowance and 50% AMI												
1 person	\$11,522		\$11,712		\$11,902		\$12,092		\$12,282		\$12,472	
2 persons	\$19,424		\$19,824		\$20,224		\$20,624		\$21,024		\$21,424	
3 persons	\$23,276		\$23,776		\$24,276		\$24,776		\$25,276		\$25,776	
4 persons	\$27,128		\$27,628		\$28,128		\$28,628		\$29,128		\$29,628	
5 persons	\$30,980		\$31,480		\$31,980		\$32,480		\$32,980		\$33,480	
6 persons	\$34,832		\$35,332		\$35,832		\$36,332		\$36,832		\$37,332	
7 persons	\$38,684		\$39,184		\$39,684		\$40,184		\$40,684		\$41,184	
8 persons	\$42,536		\$43,036		\$43,536		\$44,036		\$44,536		\$45,036	
9 persons	\$46,388		\$46,888		\$47,388		\$47,888		\$48,388		\$48,888	
10 persons	\$50,240		\$50,740		\$51,240		\$51,740		\$52,240		\$52,740	

THESE FIGURES ARE SUBJECT TO CHANGE WITHOUT NOTICE

TOF definition of “Affordable Housing”

Affordable Housing ,

“A dwelling unit that is restricted in perpetuity to occupancy by individuals meeting the income limitations and occupancy standards as established from time to time by the Town or the Summit Combined Housing Authority. Occupancy standards include requirements for primary residency and local employment.”

Concerns with Current Covenants

Problematic Covenant Language



The Maximum Resale Price of a Property shall be equal to the sum of:

The lesser of:

- a. the Purchase Price paid by the Owner for the Property, **plus an increase of three percent (3%) of such Purchase Price per year** (prorated at the rate of 1/12 for each whole month) from the date of the Owner's purchase of the Property to the date of the Owner's execution of the listing contract, such percentage increase to not be compounded annually;

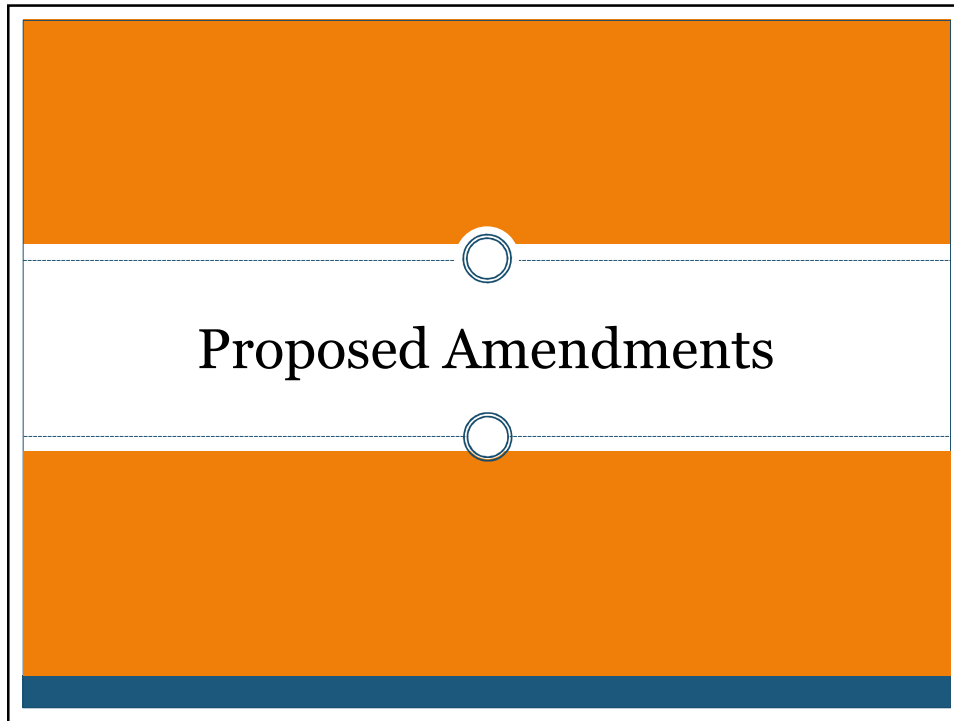
OR

- b. the Purchase Price paid by the Owner for the Property, **plus a percentage increase equal to the percentage increase in the Area Median Income (AMI)** from the date of the Owner's purchase of the Property to the date of the Owner's execution of the listing contract (prorated at the rate of 1/12 for each whole month), such percentage increase to not be compounded annually.

Concerns with Covenant Restrictions



- The “lessor of” language combined with AMI’s occasional *declining value* even in a ‘good market,’ results in the exact same houses for sale at the same time selling for substantially different amounts controlled by the Town’s constraints on resale price, not the market.
- Some homeowners are not investing in their home to maintain or improve it because **some, but not all**, are prevented from capturing *any portion* of the cost of improvements; the rationale for ‘some, not all,’ calculation is elusive
- Some homeowners are selling furniture at excessive prices to get around the loss of what would be rationale equity growth (in this ‘good market’)
- Unintended consequences have resulted in residents selling homes to friends, buying it back, reselling it, avoiding the use of realtors, which is not the goal of the affordable housing projects/programs



Proposed Amendments

Issues and Proposed Solutions

Issue or Concern	Proposed Amendment
Sellers required to sell far below purchase prices due to “lessor of” interpretation	Eliminate “paragraph b”: <i>percentage increase</i> of AMI and “lessor of” language
Loss of focus on the buyer’s qualification and affordability	Cap “Maximum sale price” within a range for same household of seller’s qualified home (e.g.: 80% AMI buyer, 80% AMI at the time of resale) with few exceptions
Avoiding the use of realtor creates potential for “behind the sale” deals circumventing program goals	Allow seller to add up to 2% realtor commission above “maximum sale price” IF seller uses approved SCHA realtors
Inequity of capital improvements	Allow <i>permitted</i> capital improvements including energy efficiency (e.g.: solar)
AMI inequities and flaws	Set “Max Sale Price” within approved range between 10%, 20%, or 30% of buyer’s AMI
‘Required’ sale price below purchase price when qualified buyers available	Seller not required to sell below purchase price, but cannot sell for higher than purchase price

Goals of Proposed Amendments to Restrictive Covenants

- Keep buyer's price in similar affordable range as when the unit was previously purchased
- Encourage capital investment while promoting upkeep and maintenance of units
- Allow seller flexibility to allow for competition among sellers
- Enhance Frisco as an inclusive community that allows for residents of various income levels

Application of Proposed Amendments

- Seller's Purchase price,
 - + • Equity shall not exceed 3% per year (not compounded)
 - + • Permitted capital improvements
 - + • Cost of realtor's commission
 - = • **Maximum Sales Price** (max is not guaranteed)
 - + • Plus 2% realtor's commission *if* using SCHA
- Validate Buyer's AMI Cap (w/in 10%, 20%, or 30% range)*

Resident Feedback

Feedback	Response
Some prefer a 2% guaranteed equity growth (County and others are using this formula)	Some current TOF homeowners have 3% now, reducing to 2% reduces what they have relied on when home purchased
Prefer 30% buyer's AMI range for maximum sale price cap	Staff recommends 10% or 20% range (1) 30% would result in 190% AMI for some and eliminate all lower AMI incomes (2) 20% would resolve most concerns w/ AMI (3) most current covenants allow 10%
Proposed amendments may not resolve individual homeowner's income and interests to buy-up	Gov't entities develop policies on broad perspectives and program goals, not individual impacts; 14 th Amendment requires equal treatment & application of programs /policies
Want to use their own realtor or for sale by owner	Proposal allows for this option <i>within</i> the max sales' price – however, using SCHA's approved realtor would be <i>in addition to</i> max sales' price
Max sales price too high for buyer	Max sales price is not guaranteed; sellers must be willing to sell for what the market will bear

Examples

Peak One Neighborhood Affordability Categories



Peak One Neighborhood

- Category 3 (120% AMI) 3 Bedrooms
- Purchase Date: October 29, 2010 (8 years, 7 months)
- Purchase Price: \$359,900
- Capital Improvements: \$35,990 (2011)

Current Resale Calculation

Lesser of:
\$453,509.99
or
\$367,853.79
+
\$35,990 PCI

\$403,843.79
+ commission to SCHA

Purchase Price paid by owner plus an increase of a fixed 2% per year

+ \$359,900
+ \$62,407
+ \$35,990 PCI
+ \$7,198 R.E. Commission

= \$465,495

2019 Town of Frisco proposed Maximum Resale Calculation

2019
Maximum Sales Price
For 3 BR 120% AMI

\$465,388

Peak One Neighborhood

- Category 2 (100% AMI) 2 Bedrooms
- Purchase Date: February 14, 2011 (8 years, 3 months)
- Purchase Price: \$244,300

Current Resale Calculation	Purchase Price paid by owner plus an increase of a fixed 2% per year	2019 Town of Frisco proposed Maximum Resale Calculation
Lesser of: \$304,764 or \$249,591 + commission to SCHA	+ \$244,300 + \$40,309 + \$4,886 <small>R.E. Commission</small> <hr style="width: 50%; margin: 0 auto;"/> = \$289,495	2019 Maximum Sales Price For 2 BR 100% AMI \$316,831

Peak One Neighborhood

- Category 3 (120% AMI but covenant states eligible household = 130%)
- 3 Bedrooms
- Purchase Date: July 13, 2012 (6 years, 9 months)
- Purchase Price: \$372,900
- Capital Improvements: \$37,290 (2015)

Current Resale Calculation	Purchase Price paid by owner plus an increase of a fixed 2% per year	2019 Town of Frisco proposed Maximum Resale Calculation
\$449,307.21 + \$37,290 PCI <hr style="width: 50%; margin: 0 auto;"/> \$486,597.21 + commission to SCHA	+ \$372,900 + \$50,938 + \$37,290 PCI + \$7,458 <small>R.E. Commission</small> <hr style="width: 50%; margin: 0 auto;"/> = \$468,586	2019 Maximum Sales Price For 3 BR 120% AMI \$465,388

Peak One Neighborhood

- Category 3 (120% AMI but covenant states eligible household = 130%)
- 3 Bedrooms
- Purchase Date: March 7, 2014 (5 years, 2 months)
- Purchase Price: \$428,900

<p style="text-align: center;">Current Resale Calculation</p> <p style="text-align: center;">\$495,422 + commission to SCHA</p>	<p style="text-align: center;">Purchase Price paid by owner plus an increase of a fixed 2% per year</p> <p style="text-align: center;">\$428,900 + \$44,348 + \$8,578 R.E. Commission</p> <hr style="width: 80%; margin: 0 auto;"/> <p style="text-align: center;">= \$481,826</p>	<p style="text-align: center;">2019 Town of Frisco proposed Maximum Resale Calculation</p> <p style="text-align: center;">2019 Maximum Sales Price For 3 BR 120% AMI</p> <p style="text-align: center;">\$465,388</p>
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Peak One Neighborhood

- Category 3 (120% AMI but covenant states eligible household = 130%)
- 3 Bedrooms
- Purchase Date: July 23, 2015 (3 years, 10 months)
- Purchase Price: \$446,900

<p style="text-align: center;">Current Resale Calculation</p> <p style="text-align: center;">\$459,815 + commission to SCHA</p>	<p style="text-align: center;">Purchase Price paid by owner plus an increase of a fixed 2% per year</p> <p style="text-align: center;">\$446,900 + \$34,232 + \$8,938 R.E. Commission</p> <hr style="width: 80%; margin: 0 auto;"/> <p style="text-align: center;">= \$490,070</p>	<p style="text-align: center;">2019 Town of Frisco proposed Maximum Resale Calculation</p> <p style="text-align: center;">2019 Maximum Sales Price For 3 BR 120% AMI</p> <p style="text-align: center;">\$465,388</p>
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Peak One Neighborhood

- Category 3 (120% AMI but covenant states eligible household = 170%)
- 3 Bedrooms
- Purchase Date: December 9, 2016 (2 years, 6 months)
- Purchase Price: \$449,587

Current Resale Calculation	Purchase Price paid by owner plus an increase of a fixed 2% per year	2019 Town of Frisco proposed Maximum Resale Calculation
\$483,306 + commission to SCHA	\$449,587	2019 Maximum Sales Price For 3 BR 120% AMI
	+ \$22,479	
	+ \$8,992 R.E. Commission	
	= \$481,058	\$465,388

Condos off Main

- 110% AMI
- 2 Bedrooms
- Purchase Date: January 16, 2015 (4 years, 4 months)
- Purchase Price: \$285,000

Current Resale Calculation	Purchase Price paid by owner plus an increase of a fixed 2% per year	2019 Town of Frisco proposed Maximum Resale Calculation
\$321,338 + commission to SCHA	\$285,000	2019 Maximum Sales Price For 2 BR 110% AMI
	+ \$24,225	
	+ \$5,700 R.E. Commission	
	= \$314,925	\$355,215

Boulevard Bend

- 110% AMI
- 2 Bedrooms
- Purchase Date: October 10, 2012 (6 years, 7 months)
- Purchase Price: \$269,950

Current Resale Calculation		Purchase Price paid by owner plus an increase of a fixed 2% per year		2019 Town of Frisco proposed Maximum Resale Calculation
\$323,265 + commission to SCHA		\$269,950		2019 Maximum Sales Price For 2 BR 110% AMI
	+	\$35,542		
	+	\$5,399 R.E. Commission		
	=	\$310,891		\$355,215

Royal Glen Condos

- 80% AMI
- 2 Bedrooms
- Purchase Date: December 1, 2017 (1 year, 5 months)
- Purchase Price: \$191,450

Current Resale Calculation		Purchase Price paid by owner plus an increase of a fixed 2% per year		2019 Town of Frisco proposed Maximum Resale Calculation
Shall not exceed the greater of: <small>1. The lesser of the price paid by the owner for the unit, plus commission of three percent (3%) of said purchase price, or the price in any year of 80% of the market value of the unit, less the total of the following purchase related fees to the date of the owner's acquisition: the closing expenses, and purchase taxes to the extent assessed at that time; and</small> <small>2. The purchase price paid by the owner, for that unit, plus a percentage (to be specified in the purchase agreement) of the then market value less the total of the owner's purchase related fees to the date of the owner's acquisition of the unit, plus the amount of the listing commission of the rate of 3% for each whole month, and fractional increase or not be compounded annually.</small>		\$191,450		2019 Maximum Sales Price For 2 BR 80% AMI
\$199,587	+	\$5,426		
	+	\$3,829 R.E. Commission		
	=	\$200,705		\$240,064

LakePoint Towers



- Six employee units - 100% AMI
- Combination of 1 and 2 Bedrooms
- No Maximum Resale Value Calculation (can sell at any price that find a 100% AMI qualified buyer for)
- Units can also be owned by non-qualifying owners as long as they are occupied by qualifying residents

Since there is no maximum resale calculation (except limited by AMI), the owners of these properties may not desire to opt-in to a covenant that would limit their resale calculation.

In September 2018, a 2 bedroom unit sold at \$315,500. The proposed Town of Frisco resale calculation would allow up to \$332,553, which demonstrates the 100% AMI is what limits the resale value.



Summary



Summary



In an effort to resolve a number of concerns and issues with current covenant restrictions, staff proposes a *volunteer* “Opt-In” new covenant restriction that will:

- ✦ Keep buyer’s price in similar affordable range as when the unit was previously purchased
- ✦ Encourage capital investment while promoting upkeep and maintenance of units
- ✦ Allow seller flexibility to set sale price within ranges
- ✦ Strengthen Frisco as an inclusive community that allows for residents of variety of incomes

Council Direction Requested



Staff requests Town Councils direction regarding:

- Removal of problematic language in paragraph “b” -- the “lessor of,” and “average percentage” of AMI;
- Authorizing a “maximum resale price” not to exceed (within specific range) the buyer’s AMI maximum price?
- Allowing permitted capital improvements to include solar array panels and other large-expenditure improvements to reduce energy usage (staff will bring back a list);
- Allowing up to 2% real estate commission to be added to maximum resale price, *provided* use approved SCHA realtor;

Council Direction Requested



- Setting Buyer's qualified AMI income range – at 10% (current); 20% (recommended); or 30%
- Allowing proposed changes to definitions as stated in the Staff Report;
- Support development of Town of Frisco Housing Guidelines?



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: NANCY KERRY, TOWN MANAGER
RE: CONSIDERATION OF ENTERING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN SUMMIT COUNTY AND TOWN OF FRISCO, JOINING OTHER TOWNS IN SUMMIT COUNTY REGARDING THE IMPLEMENTATION OF FIRE RESTRICTIONS THROUGHOUT SUMMIT COUNTY, COLORADO AND AMENDING TOWN CODE TO ALIGN WITH NEW COUNTY PROCESS
DATE: JUNE 11 , 2019

Summary and Background: Currently, each Town in Summit County and Summit County itself have their own procedures for entering and exiting fire restrictions although the criteria, policies, and implementation of fire bans typically occur in similar fashion within similar time frames.

For the past several months, representatives from Summit County, each Town, Fire Districts, USFS, and emergency personnel have been meeting to determine if an opportunity exists to enter into an IGA streamlining the policies, and process for entering and exiting fire ban periods to make it seamless for the agencies and ensuring all public messaging and information is unified.

As a result of these meetings, the attached IGA has been drafted, and adopted by the Summit County Board of Commissioners. The attached IGA has been reviewed by the Town of Frisco Town Attorney and includes his recommended amendments ensuring the Town reserves the right to enter and exit fire restrictions at its sole discretion.

Analysis: The purpose of the proposed Intergovernmental Agreement (IGA) is to memorialize the parties' agreement to cooperate in the development and implementation of uniform fire restrictions in Summit County and the Towns, which will promote uniform messaging to locals and visitors alike.

The Fire Restriction Process: The County will use the criteria and process as explained in the attached IGA "Exhibit A" to determine when conditions warrant entering Stage 1 or Stage 2 Fire Restrictions. Should more information be needed to make a determination, the County may also use the criteria and process explained in the attached IGA "Exhibit B."

Stage 1: When the County enters Stage 1 Fire Restrictions, notice will be given within 24 hours to the Towns. After adopting the IGA, the Towns, at their discretion may also enter into Stage 1 Restrictions. Stage 1 permitted and prohibited activities are further outlined in IGA"Exhibit C."

Stage 2: When the County is in Stage 1 Fire Restrictions and determines the need to enter Stage 2, notice will be given within 24 hours to the Towns. After adopting the IGA, the Towns, at their discretion may also enter into Stage 2 Restrictions. Stage 2 prohibited activities are further outlined in IGA"Exhibit C."

Any changes to Exhibit C shall be made by mutual agreement between the Parties and then incorporated into the Agreement.

Financial Impact: There is no financial impact to the Town of Frisco by adopting the attached IGA between Summit County and the Towns. However, there may be costs associated with entering and exiting Stage 1 and Stage 2 fire restrictions as it relates to staffing, inspection, and enforcement.

Alignment with Strategic Plan: The criteria for entering/exiting Stage 1 and Stage 2 aligns with Town Council's Strategic Priority, Sustainable Environment.

Staff Recommendation: It is the recommendation of the Town Manager that the Council provide direction to the Town Attorney and Town Manager to bring forward the IGA and necessary amendments to the Town's Code in order to align with the new county process.

Attachments:

1. Intergovernmental Agreement (IGA) Regarding The Implementation Of Fire Restrictions In Summit County, Colorado; Attachment includes Exhibits "A," "B," and "C"

Reviews and Approvals:

This report has been written by Nancy Kerry, Town Manager.
Reviewed by Bonnie Moniet, Finance Director - Approved

Attachment 1

Intergovernmental Agreement
Between Summit County and
Towns within Summit County

Including Exhibits A, B, and C

INTERGOVERNMENTAL AGREEMENT
REGARDING THE IMPLEMENTATION OF FIRE RESTRICTIONS IN SUMMIT
COUNTY, COLORADO

This Intergovernmental Agreement Regarding the Implementation of Fire Restrictions in Summit County, Colorado (“IGA”), is hereby made and entered into this ____ day of _____, 2019, by and between the Towns of Breckenridge, Blue River, Dillon, Frisco, Montezuma and Silverthorne (the “Towns”) and Summit County Government (the “County”) regarding the implementation of fire restrictions in Summit County, Colorado. The Towns and County shall hereafter be referred to together as the “Parties,” or individually as a “Party.”

RECITALS

WHEREAS, fire restrictions are necessary to protect the public health, safety and welfare of the residents of Summit County;

WHEREAS, Article XIV, Section 18(2)(a) of the Colorado Constitution and Part 2, Article 1, Title 29, C.R.S., encourage and authorize the use of intergovernmental agreements for the efficient and economical provision of governmental services;

WHEREAS, the State of Colorado has by statute expressly granted the Parties authority to ban open fires and fireworks to a degree and manner it deems necessary to reduce the danger of wildfires § 30-15-401(1)(n.5) and (n.7), C.R.S., § 31-15-601(1)(j) C.R.S.;

WHEREAS, the Parties believe that the cooperative regulation of implementing fire restrictions in their respective municipalities will provide an efficient and effective means of implementing and enforcing said restrictions.

NOW, THEREFORE, in consideration of the premises and of the respective covenants and undertakings of the parties hereto, the Parties agree as follows:

A. **Purpose**. The purpose of this IGA is to memorialize the Parties’ agreement to cooperate in the development and implementation of uniform fire restrictions in Summit County and the Towns. The County and Towns reserve the right to enter and exit fire restrictions at their sole discretion.

B. **Fire Restriction Process**. The County will use the criteria and process attached hereto as Exhibit A and incorporated herein by this reference, to determine when conditions warrant entering Stage 1 or Stage 2 Fire Restrictions. Should more information be needed to make a determination, the County may also use the criteria and process attached hereto as Exhibit B and incorporated herein by this reference, to determine when conditions warrant entering Stage 1 or Stage 2 Fire Restrictions.

When the County enters Stage 1 Fire Restrictions, notice will be given within 24 hours to the Towns. The Towns, at their discretion, may then enter into Stage 1 Restrictions as well, following

any required processes for the implementation. Stage 1 permitted and prohibited activities are further outlined in Exhibit C.

When the County is in Stage 1 Fire Restrictions and enters Stage 2 Fire Restrictions, notice will be given within 24 hours to the Towns. The Towns, at their discretion, may then enter into Stage 2 Restrictions as well, following any required processes for the implementation. Stage 2 prohibited activities are further outlined in Exhibit C.

Any changes to Exhibit C shall be made by mutual agreement between the Parties and then incorporated into this Agreement.

C. Adoption of Ordinances or Resolutions. The Parties shall each consider the adoption of such ordinances or resolutions as may be necessary to implement the intent and provisions of this IGA. Each Party reserves the right to adopt such ordinances, rules or regulations as it may deem appropriate or necessary, in its sole discretion.

D. Participation. The Parties agree that participation in this IGA is voluntary. The Parties may withdraw from this IGA at any time.

E. General Provisions.

1. Entire Agreement. This IGA constitutes the entire agreement and understanding between the Parties on the subject matter hereof, and supersedes any prior agreements or understandings relating to the subject matter of this IGA, except for other written agreements and understandings referred to herein.

2. Modifications. No modification or waiver of this IGA, or modification of any covenant, condition, or provision herein contained, shall be valid unless said modification is approved by each of the Parties in writing.

3. Severability. All agreements and covenants contained herein are severable, and in the event that any such agreement or covenant is held invalid, by a court of competent jurisdiction, this IGA shall be interpreted as if such invalid agreement or covenant were not contained herein.

4. Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights and actions relating to such enforcement shall be strictly reserved to the Parties and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits arising from the performance of this IGA shall be deemed to be an incidental beneficiary only.

5. Applicable Law; Governing Law; Venue. The Parties shall endeavor to adhere to all applicable federal, state, and local laws, rules, and regulations that have been or may hereafter be established. This IGA shall be interpreted in all respects in accordance with the laws of the State of Colorado. Venue for any action concerning this IGA or the matters provided for herein shall be proper solely in the Summit County District Court.

6. Governmental Immunity. No Party hereto intends to waive, expressly or implicitly, by any provision of this IGA, 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., as amended from time to time, or any other privilege or immunity provided by law.

7. Appropriation of Funds.

a. Notwithstanding anything herein to the contrary, the obligations of each individual Party under this IGA shall be, where appropriate, subject to the annual appropriation, by that Party's governing body, of funds sufficient to meet those obligations provided herein. In the event that sufficient funds are not so appropriated by any Party, as required hereunder, this IGA may be terminated by any Party. Upon the termination of this IGA by one Party, this IGA shall continue as to the other Parties, unless otherwise agreed by the other Parties.

b. No obligation provided in this IGA is intended to or shall be interpreted to constitute a multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

8. Obligations. Except as otherwise stated herein, each Party is required to carry out and perform all the obligations of a Party under this IGA independently of the actions of any and all other Parties. No Party shall be responsible or liable for the failure of any other Party to perform its obligations herein.

9. Waiver. The failure of any Party to exercise any of its rights under this IGA shall not be deemed to be a waiver of any rights provided for under this IGA.

10. Attorney's Fees. If an action is brought to enforce this IGA, the prevailing party shall be entitled to reasonable attorney's fees and costs.

11. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this IGA.

12. Binding Effect. This Agreement is binding upon and inures to the benefit of the Parties and their respective successor governing boards.

13. Approval by Governing Boards or other Authority. In accordance with Section 29-1-203(1), C.R.S., this IGA will not become effective unless and until it has been approved by the governing bodies of each of the Towns and the County, or by such persons as has the power to approve this IGA on behalf of each of the Towns and the County.

14. Counterparts. This IGA may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto, through their authorized representative, have executed this **Intergovernmental Agreement Regarding the Implementation of Fire Restrictions in Summit County, Colorado** effective on the date first written above.

**BOARD OF COUNTY COMMISSIONERS
SUMMIT COUNTY, COLORADO**

**TOWN OF BRECKENRIDGE,
COLORADO**

By: Scott Vargo, County Manager

By: Rick G. Holman, Town Manager

TOWN OF DILLON, COLORADO

TOWN OF FRISCO, COLORADO

By: Tom Acre, Town Manager

By: Nancy Kerry, Town Manager

TOWN OF SILVERTHORNE, COLORADO

TOWN OF BLUE RIVER, COLORADO

By: Ryan Hyland, Town Manager

By: Michelle Eddy, Town Manager

TOWN OF MONTEZUMA, COLORADO

By: Lesley Davis, Mayor

Exhibit A

PROCESS FOR IMPLEMENTING FIRE RESTRICTIONS

- **ERC 90-96% LAST 5 DAYS WITH REPRESENTATIVE SIG GROUPS**
 - **HIGH HUMAN CAUSED RISK**
- **LIVE FUEL MOISTURES ARE AT OR APPROACHING HISTORIC THRESHOLDS**
- **NO SIGNIFICANT RELIEF IN FIRE WEATHER FORECAST DURING THE NEXT 7 DAYS**



ALL CRITERIA ARE MET, IMPLEMENT STAGE I RESTRICTIONS



THREE ELEMENTS ARE PRESENT, STRONGLY CONSIDER STAGE I RESTRICTIONS.



LESS THAN THREE ELEMENTS ARE PRESENT, NO FIRE RESTRICTIONS

- **ERC GREATER THAN 97% LAST 5 DAYS WITH REPRESENTATIVE SIG GROUPS**
 - **HIGH HUMAN CAUSED RISK**
- **LIVE FUEL MOISTURES WELL BELOW HISTORIC THRESHOLDS**
- **NO SIGNIFICANT RELIEF IN FIRE WEATHER FORECAST DURING THE NEXT 7 DAYS**



ALL CRITERIA ARE MET, IMPLEMENT STAGE II RESTRICTIONS



THREE ELEMENTS ARE PRESENT, STRONGLY CONSIDER STAGE II RESTRICTIONS.



LESS THAN THREE ELEMENTS ARE PRESENT, REMAIN AT STAGE I RESTRICTIONS

- High human Caused Risk may include Holidays, Special Events or High Visitation levels to certain areas
- Stage III-Area Closures are extremely rare events, and will only be implemented in extraordinary situations after significant interagency coordination.

Exhibit B

Summit County Board of County Commissioners Fire Restriction Reference

STAGE 1

- **HUMAN CAUSED RISK IS MODERATE OR HIGH OVER THE NEXT 14 DAYS**
(May include Holidays, Special Events or High Visitation levels to certain areas)
- **REGIONAL PREPAREDNESS LEVEL**
- **LIVE FUEL MOISTURES ARE AT OR APPROACHING HISTORIC THRESHOLDS**
- **NO SIGNIFICANT RELIEF IN FIRE WEATHER FORECAST DURING THE NEXT 7 DAYS**
- **AN ENERGY RELEASE COMPONENT (ERC) OF 80% OR GREATER TRENDING UPWARDS WITH REPRESENTATIVE SPECIFIC FUEL MODELS**
- **AN ADJECTIVE RATING OF MODERATE OR HIGHER BY LOCAL FIRE AGENCIES**



FOUR OR MORE ELEMENTS
PRESENT, STRONGLY CONSIDER
STAGE I RESTRICTIONS

THREE ELEMENTS
PRESENT, CONSIDER
STAGE I RESTRICTIONS

NO ELEMENTS
PRESENT, NO FIRE
RESTRICTIONS

STAGE 2

- **HUMAN CAUSED RISK IS HIGH OR EXTREME OVER THE NEXT 14 DAYS**
(May include Holidays, Special Events or High Visitation levels to certain areas)
- **REGIONAL PREPAREDNESS LEVEL OF 5**
- **LIVE FUEL MOISTURES WELL BELOW HISTORIC THRESHOLDS**
- **NO SIGNIFICANT RELIEF IN FIRE WEATHER FORECAST DURING THE NEXT 7 DAYS**
- **AN ENERGY RELEASE COMPONENT (ERC) GREATER THAN 90% TRENDING UPWARDS WITH REPRESENTATIVE SPECIFIC FUEL MODELS**
- **AN ADJECTIVE RATING OF VERY HIGH BY LOCAL FIRE AGENCIES**



FOUR OR MORE ELEMENTS
PRESENT, STRONGLY CONSIDER
STAGE II RESTRICTIONS

THREE ELEMENTS
PRESENT, CONSIDER
STAGE II RESTRICTIONS.

NO ELEMENTS
PRESENT, REMAIN AT
STAGE I RESTRICTIONS

STAGE 3

AREA CLOSURES ARE EXTREMELY RARE EVENTS, AND WILL ONLY BE IMPLEMENTED IN EXTRAORDINARY SITUATIONS AFTER SIGNIFICANT INTERAGENCY COORDINATION

Exhibit C

STAGE 1 FIRE RESTRICTIONS

Permitted Activities:

During Stage 1 Fire Restrictions, to reduce the danger of wildfires, only open fires and activities that meet the following criteria are permitted:

1. Fires on private property will be allowed under Stage 1 Restrictions under the following conditions:
 - a. The fire is contained to a commercially designed and manufactured outdoor fireplace or portable outdoor fireplace (see definitions below) that is assembled, located, and operated in accordance with the manufacturer's instructions. Any device that meets this criteria will also be equipped with a protective screen that reduces the spread of embers;
 - b. The area directly underneath the fire is barren;
 - c. The fire is at least fifteen (15) feet from any flammable material and/or structure; AND
 - d. The size of the fire is no larger than (3) feet wide and (2) feet tall.
2. Any fire within a designated dispersed camping site or picnic area is permitted, but must be contained within a permanent metal fire ring.
3. Use of a gas, charcoal and/or wood pellet grill is permitted.
4. Commercial sale of firewood and/or charcoal is permitted.
5. Pile burns with the appropriate permits from the local fire protection district and department of environmental health are permitted.
6. The occurrence of any permissible fire, as detailed above, must also include the following safety measures:
 - a. Be constantly attended by a responsible adult;
 - b. Be extinguished and cool to the touch prior to leaving unattended;
 - c. Have available for immediate utilization a minimum of:
 - i. (1) one portable fire extinguisher with a minimum 2A10BC rating; **OR**
 - ii. A minimum 5gallon water container; **OR**
 - iii. A charged garden hose shall be available for immediate utilization.
7. Any fire contained within a fireplace, stove, wood burning stove, or pellet stove designed for and

located within a fully enclosed permanent structure is permitted.

8. Fires caused or administered by any Federal, State, or local officer or member of an organized rescue or firefighting force in the performance of an official duty are permitted.
9. Smoking outdoors is permitted so long as the individual is at least (3) feet away from natural vegetation and/or flammable materials.
10. Operation of a chainsaw is permitted as long as the operator is equipped with a minimum 2A 10BC classified dry chemical fire extinguisher available for immediate use.
11. The outdoor use of any open flame torch device is permitted under the following conditions:
 - a. Device is at least fifteen (15) feet away from natural vegetation and/or flammable materials; AND
 - b. A minimum 2A 10BC classified dry chemical fire extinguisher is available for immediate use.
12. Inflation or propulsion of a hot air balloon is permitted.
13. Use of an “off-highway vehicle” in compliance with C.R.S. 33-14.5-101 *et. seq.* and Summit County Ordinance 2010-09 is permitted.

Prohibited Activities:

Any activity or open fire that does not specifically adhere to the criteria listed directly above shall be prohibited during Stage 1 Fire Restrictions including, but not limited to the following:

1. The use and/or sale of recreational fireworks and tracer ammunition, including recreational use of any projectile containing explosive material, incendiary material, or other chemical substance;
2. The use and/or sale of recreational explosives, including explosive targets;
3. Disposal of any burning object outdoors, including without limitation, any cigarette, cigar or match.

STAGE 2 FIRE RESTRICTIONS

Permitted Activities:

During Stage 2 Fire Restrictions, to reduce the danger of wildfires, only open fires and activities that meet the following criteria are permitted.

1. Use of a gas grill is permitted.
2. Any fire contained within a fireplace, stove, wood burning stove, or pellet stove designed for and located within a fully enclosed permanent structure is permitted.
3. Smoking outdoors is permitted so long as the individual is at least (3) feet away from natural vegetation and/or flammable materials.
4. Operation of a chainsaw is permitted as long as the operator is equipped with a minimum 2A 10BC classified dry chemical fire extinguisher available for immediate use.
5. The outdoor use of any open flame torch device is permitted under the following conditions:
 - a. Device is at least fifteen (15) feet away from natural vegetation and/or flammable materials; AND
 - b. A minimum 2A 10BC classified dry chemical fire extinguisher is available for immediate use.
6. Use of an “off-highway vehicle” is permitted under the following conditions:
 - a. Off-highway vehicle **MUST** remain on the surface of a designated “off-highway vehicle route”; AND
 - b. If parked:
 - i. Off-highway vehicle must be located in a barren area within (10) feet of the designated off-highway vehicle route; AND/OR
 - ii. Off-highway vehicle must be located in a designated off-highway vehicle “staging area”.

Prohibited Activities:

Any activity or open fire that does not specifically adhere to the criteria listed directly above shall be prohibited during Stage 2 Fire Restrictions including, but not limited to the following:

1. Fires on private property.

2. Fires in designated dispersed camping or picnic areas.
3. Use of a charcoal and/or wood pellet grill.
4. The use and/or sale of ANY explosives, including explosive targets (commercial applications will be reviewed on a case by case basis and may receive special permits from the local fire protection district and Sheriff or local police chief with jurisdiction).
5. Commercial sale of firewood and/or charcoal.
6. Inflation or propulsion of a hot air balloon.
7. Use of any projectile containing explosive material, incendiary material, or other chemical substance, including tracer ammunition.
8. Any type of fireworks display.
 - a. This restriction includes previously licensed professional fireworks displays.
9. Pile burns (regardless of previously issued permits by the local fire protection district and department of environmental health);
10. Operating or using any internal or external combustion engine without a spark arresting device properly installed, maintained and in effective working order meeting either USDA Forest Service Standard 5100-1a (as amended) OR appropriate Society of Automotive Engineers (SAE) recommended practice J335 (b) and J350 (a). 36 CFR § 261.52(j) and 43 CFR § 9212.1(h)

Exemptions will be considered for persons with a permit specifically authorizing the otherwise prohibited act or any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.

DEFINITIONS

Barren – an area lacking any type of combustible material and incapable of sustaining fire.

Charcoal Grill – a metal appliance designed to cook food through heat produced by charcoal briquettes. Unlike a gas grill, this device does not have mechanical on/off capabilities.

Designated Dispersed Camping Site – a designated area, located in the backcountry and managed by the USFS, that is specifically designated for camping and equipped with a metal fire ring.

Explosives – a reactive substance that contains a great amount of potential energy that can produce an explosion if released suddenly, usually accompanied by the production of light, heat, sound, and pressure.

Explosive Target – used for recreational purposes, these reactive targets comprise a combination of oxidizers and a fuel that is supplied as two separate components and mixed together by the user. Once subjected to the force of a high-velocity bullet impact, an explosion occurs.

Fireplace – a fireproof compartment located in a permanent structure that is connected to a chimney that vents heat and smoke vertically out of the structure.

Fireworks – any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and that meets the definition of articles pyrotechnic, permissible fireworks or display fireworks as defined in C.R.S. § 24-33.5-2001.

Flammable Material – Material that ignites easily and burns rapidly with a flame,

Off-highway Vehicle - any self-propelled vehicle which is designed to travel on wheels or tracks in contact with the ground, which is designed primarily for use off of the public highways, and which is generally and commonly used to transport persons for recreational purposes. (C.R.S. 33-14.5-101(3))

Off-highway Staging Area - any parking lot, trail head, or other location to or from which any off-highway vehicle is transported by truck, trailer, or other motor vehicle so that it may be placed into operation or removed from operation. (C.R.S. 33-14.5-101(7))

Off-highway Vehicle Route - any road, trail, or way owned or managed by the state or any agency or political subdivision thereof or the United States for off-highway vehicle travel. (C.R.S. 33-14.5-101(4))

Permanent Structure – any structure that is designed or intended for support, enclosure, shelter or protection of person, animals or property having a permanent roof that is supported by columns or walls.

Smoking – a practice in which a substance is burned and the resulting smoke is inhaled by an individual.

Stove – a portable or fixed apparatus that furnishes heat for warmth or cooking.

Tracer Ammunition – bullets or cannon caliber projectiles that are built with a small pyrotechnic charge in their base. Ignited by the burning powder, the pyrotechnic composition burns very brightly, making the projectile trajectory visible to the naked eye.

Wood Pellet Grill – outdoor cookers that combine elements of charcoal smokers, gas grills, and kitchen ovens. Fueled by wood pellets, they utilize an electronic control panel to automatically feed fuel pellets to the fire, regulate the grill's airflow, and maintain consistent cooking temperatures.



MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: VANESSA AGEE, MARKETING AND COMMUNICATIONS DIRECTOR
RE: MARKETING AND EVENTS DEPARTMENT STAFF REPORT
DATE: JUNE 11, 2019

Public Information: The Marketing and Events Department worked in collaboration with Public Works and Community Development on outreach regarding flood preparedness in Frisco. Messaging included information about Ten Mile Creek monitoring, sand bag availability and debris removal. The Summit Daily, Channel 9 and Channel 7 picked up this story.

There were numerous mentions on social media and in industry forums regarding Frisco's pledge to go 100% renewable. Here is one example.

Vanessa Agee participated in the full-scale countywide emergency exercise on May 30. The exercise scenario involved a fictional mine spill near Montezuma, chosen because of poor communications in that area. Many local agencies and federal agencies participated in the exercise.

Destination PR/Media Coverage: There has been a tremendous amount of BBQ Challenge coverage due to the BBQ preview event we held in Denver in May in partnership with our PR company. This coverage, along with Marina coverage, sets up Frisco as "open for the summer", which is an especially vital message during this unusually snowy spring.

- The Colorado BBQ Challenge was included in Westword's article, "The Ten Best Food Festivals in Colorado This Summer." Westword.com receives 1.46 million unique monthly visitors.
- As a result of the BBQ preview event held in Denver in May, the Colorado BBQ Challenge was included in 5280's roundup of "38 Fantastic Foodie Events Coming to Colorado in June." 5280.com receives 292,640 unique monthly visitors.
- The Colorado BBQ Challenge was included in Barbecue Bible's list of "Barbecue Festivals You Can't Miss This Summer." BarbecueBible.com is nationally renowned BBQ expert Steven Raichlen's site, which has 268,350 unique monthly visitors.

- As a result of hosting the writer at the BBQ preview event in Denver, 303 Magazine posted a feature on the Colorado BBQ Challenge- “COLORADO BBQ CHALLENGE RETURNS TO FRISCO FOR FATHER’S DAY WEEKEND.” The article included this gem: *“Last year Denver started its own massive festival in the parking lot of the Bronco’s Stadium that attracted fine pitmasters and plenty of pig and whiskey-fueled debauchery — enough to warrant a second go. But for something with a whole lot more tradition and a far better view the 2019 Colorado BBQ Challenge will return to the town of Frisco for its 26th incarnation. . . While you certainly can’t go wrong doing your ‘cue in Denver, there’s an aura and a history to be found in Frisco that makes the flavor just that much juicier.”* 303 Magazine serves as a cultural source for people who pursue power careers, healthy habits, outdoor activity, fine dining, mellow lounges and current trends by providing a portrait of lifestyle in Denver and its surrounding areas. It receives 45,683 unique monthly visitors.
- AAA Colorado included the BBQ Challenge in their e-newsletter to 235,000 opted in members/subscribers.
- The Colorado BBQ Challenge was included on The Denver Post’s “Your ultimate guide to every don’t-miss Colorado summer festival and event in 2019” both online and in their Sunday print edition. The Denver Post print edition has a daily readership of 556,000 and online receives 4,772,816 unique monthly visitors.
- Also as a result of the Denver BBQ preview event, the Colorado BBQ Challenge was included in DiningOut’s story: “10 Can’t-Miss Foodie Events this June to Kick off Summer.” DiningOut online sees 2,760 unique monthly visitors.
- Honest Cooking ran a feature on the BBQ Challenge: “Things you Must Try at Frisco’s BBQ Challenge.” Honest Cooking is an international online culinary magazine which covers cooking and baking, recipes, food news, culinary travel, and culinary culture in general. It reaches 520,000 unique monthly visitors.
- The Timberline Cruiser Regatta at the Frisco Bay Marina was included in “What’s in good taste in June,” a food, drink and event roundup from **In Good Taste Denver.** In Good Taste Denver is a review blog covering restaurants, theater, movies, travel and events happening around Denver. The site receives 10,225 unique monthly visitors.
- The Frisco Bay Marina’s Rock the Dock party was included in the calendar section of 5280’s June issue. 5280 has a print circulation of 90,000.

Special Events: Frisco hosted Town Clean Up Day under mostly snowy skies. Tonnage amounts are not in yet from Clean Up Day, but we estimate that 200 attendees made it out to clean up (about half the amount seen during better weather years).



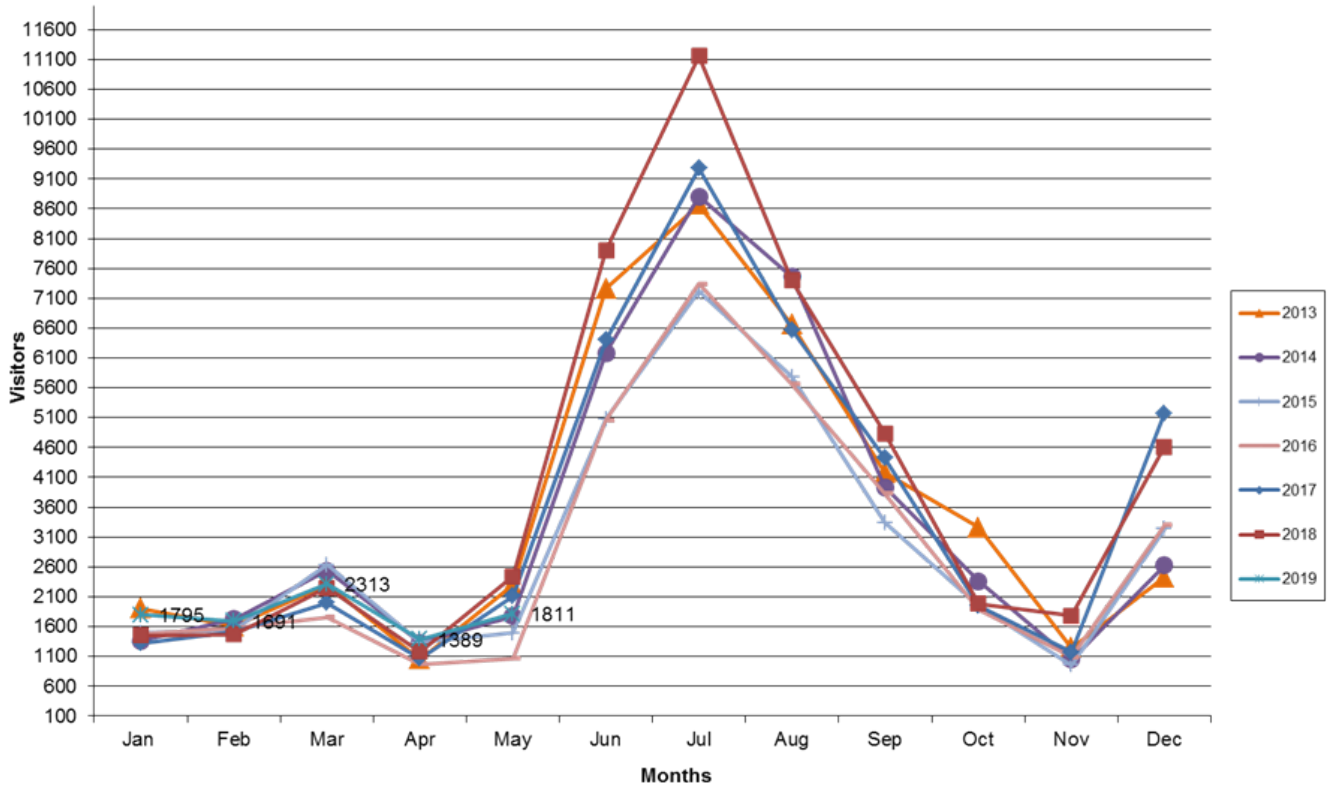
Frisco/Copper Visitor Information Center: Visitor Information Center numbers for May 2019

- The Information Center saw 1,811 visitors in May 2019 (2,436 in May 2018). This is likely due to a very snowy May.
- The Information Center answered 146 phone calls in May 2019 (186 in May 2018).
- Public computer use- 27 in May 2019 (43 in May 2018)
- Restroom usage
 - Men's restroom usage May 1-31, 2019: 2,501
 - Women's restroom usage May 1-31, 2019: 2,765
- Water bottle pledge and giveaway- 64 for the month of May at the Visitor Information Center.
- As part of the Frisco Parks Master Plan process, Tasha Wilson guided a brainstorm session regarding how to effectively create a sense of connection and community in the park spaces behind the Visitor Information Center and the former community center. Nine mental health and planning professionals gathered to discuss their personal experiences and helped to define what community connectedness and belonging look and feel like in public spaces. These definitions influenced the options presented at the park-side meeting held on Wednesday, May 29.
- As part of the Colorado Tourism Office Leadership Journey Program, Tasha Wilson is leading a group of representatives from across the state of Colorado in connecting the visitor/welcome/information center industry within the state. Currently, this industry does not have an active professional network or communicate regularly. On May 21, representatives from each Colorado travel region met to discuss potential communication tools that could be

used to connect the industry. This group of representatives will continue to work together until a communication/connection/networking plan is implemented.

- Guest comment highlights: “What a great town”, “Lovely and helpful”, “Great info”, “Beautiful town”, “Very Helpful”, “Wow!”

Walk in Visitors 2013-2019



Report Criteria:

Business.License status = "Active"

Business.Year opened = "May 2019"

Business Owner.Sequence number = 1

in or out City	Business Name	Name	Location	Location City	Business Telephone 1	Business Activity
In	All Flooring Design	Strauss, Stephanie	842 North Summit Boulevard #24	Frisco	970-547-8311	Retail - HomeImprove
In	Condo Owner Paul H Gibson	Gibson, Paul	208 Creekside Drive	Frisco	314-324-7323	Vacation Rentals
In	Mollify Massage	Powell, Molly	700 Main Street #2B	Frisco	312-813-5320	Health/Beauty
In	Pavys Food Truck	Pavlushik, Joseph	710 Main Street	Frisco	712-251-2169	Temporary
Out	Black Diamond Builders	Black Diamond Builders	172 Discovery Road	Breckenridge	970-389-1625	Retail - HomeImprove
Out	Boy Scouts of America	Ashline, Micheal	1325 West Walnut Hill Lane	Irving	972-580-2492	Retail - Clothing
Out	Carpenter Construction	Carpenter, Richard	720 Front Street	Fairplay	970-485-0698	Retail - HomeImprove
Out	Colorado Drywall Supply	Colorado Drywall Supply	4760 Holly Street	Denver	303-297-0401	Retail - HomeImprove
Out	Coriolis Consulting	Penza, Daniel	36 Wedge Way	Columbine Valley	303-835-4334	Retail - HomeImprove
Out	CPI Automation & Control Solutio	Barr-Thorp Electric Company	6051 Washington Street Unit D	Denver	303-623-5313	Retail - HomeImprove
Out	Emerald C.M.	Emerald C.M.	13275 East Fremont Place St3 30	Centennial	303-341-7242	Retail - HomeImprove
Out	Engineering Services & Products	Engineering Services & Products	1395 John Fitch Boulevard	South Windsor	860-528-1119 x1341	Retail - HomeImprove
Out	EP Holdings	Krantz, Eric	30442 Esperanza	Rancho Santa Margarita	949-713-4600	Retail - General
Out	HRB Supply	H&R Block	One H&R Block Way	Kansas City	816-854-4241	Retail - Office
Out	Louis Plumbing	Louis, Christopher	7846 South Kearney Court	Centennial	303-796-7250	Retail - HomeImprove
Out	Lozier Corporation	Lozier Corporation	6336 Pershing Drive	Omaha	402-457-8000	Retail - HomeImprove
Out	Mc2 Enterprises	McGinnis, Donald	3660 East 40th Avenue	Denver	720-941-6100	Retail - General
Out	Oxbow Green	Greenwood, Kim	292 Green Mountain Drive	Breckenridge	970-406-0468	Retail - HomeImprove
Out	Poshmark	Poshmark	203 Redwood Shores Parkway Fl	Redwood City	650-549-9028	Retail - Clothing
Out	Reliance Electric	Reliance Electirc	1065 West Utah Avenue	Hildale	435-874-1250	Retail - HomeImprove
Out	Sabco General Contractors	Angelo, Steve	1559 South Lininger Drive	Golden	720-827-5100	Retail - HomeImprove
Out	SD Bullion	Wall, Tyler	5151 Monroe Street Suite 107	Toledo	800-294-8732	Retail - General
Out	Tree of Life Wellness Systems	Nelson, Todd	12600 West Colfax Avenue Suite	Lakewood	303-969-3052	Health/Beauty
Out	WRK Services	Knorr, William	8890 Federal Drive Unit 54D	Federal Heights	303-877-3166	Retail - General

**RECORD OF PROCEEDINGS
MINUTES OF THE REGULAR MEETING
OF THE TOWN COUNCIL OF THE TOWN OF FRISCO
MAY 28, 2019**

Mayor Wilkinson called the meeting to order at 7:00 p.m. Town Clerk Deborah Wohlmuth called the roll.

Present: Jessica Burley
Dan Fallon
Rick Ihnken
Hunter Mortensen
Deborah Shaner
Melissa Sherburne
Gary Wilkinson

Absent:

Public Comment:

Frisco resident Dave Owens spoke in support of the Unified Development Code sign regulations. He suggested that the Town needs to regulate removal of freestanding signs.

Council Comment:

Mayor Wilkinson thanked everyone for their participation in the Town's Clean Up Day. He also reminded the audience to remember Mental Health Awareness Month, and utilize the resources available in Summit County.

Council member Shaner asked the audience to be mindful of dogs on leashes regulations as summer begins.

Consent Agenda:

- Minutes May 14, 2019 Meeting
- Warrant List
- Purchasing Cards

MOTION: COUNCIL MEMBER MORTENSEN. MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. SECOND, COUNCIL MEMBER SHERBURNE. VOTE:

BURLEY	ABSENT	SHANER	YEA
FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	YEA
MORTENSEN	YEA	MOTION CARRIED.	

New Business:

Agenda Item #1: Resolution 19-20, Adopting the Frisco Strategic Plan STAFF: NANCY KERRY
1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4)

MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Manager Nancy Kerry stated that Town Council held a two-day workshop in April, reviewing the list of priorities and goals to be accomplished during the next 12 to 18 months. Council identified five high-priority goals which include: Inclusive Community, Thriving Economy, Vibrant Recreation, Sustainable Environment, and Quality Core Services; actions to achieve those goals; and timelines by which they intend the work to be completed. Council discussed social media strategies to increase viewer numbers; citizen participation in a citizen academy. Council directed staff to provide council with the timeline for consultant use. They requested that a subtitle in vibrant recreation be changed from waterfront marina to Frisco Bay Marina; and replace the word drainage with the word damage in the narrative regarding the water treatment plant. Council complimented staff on the strategic plan. Mayor Wilkinson opened the public hearing at 7:55 p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 7:56 p.m.

MOTION: COUNCIL MEMBER MORTENSEN MOVED TO APPROVE RESOLUTION 19-20, ADOPTING THE FRISCO STRATEGIC PLAN. SECOND, COUNCIL MEMBER FALLON. VOTE:

BURLEY	YEA	SHANER	YEA
FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	YEA
MORTENSEN	YEA	MOTION CARRIED.	

Agenda Item #2: First Reading Ordinance 19-07, Establishing, Pursuant to Section 171-11 of the Code of Ordinances of the Town of Frisco, the Plant Investment Fees, Capital EQR Schedules, Delivery Charges, Flat Rates, and Usage Fees to be Charged in Connection with the Town's Water System STAFF: BONNIE MOINET 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Finance Director Bonnie Moinet stated that the Town last completed a water rate study in May of 2006, effective in January 2007. This study covered a ten year period beginning in 2007 and remained in effect through 2016. Rates have remained unchanged for over two years. In 2018, Council directed staff to conduct a new five-year study and present various rate alternatives to Council. The Council has held three work sessions on this subject matter. One on November 27, 2018, at which time the Council asked staff to return with more in-depth analysis and recommendations, which was provided during the February 12, 2019 work session. Due to the complexity of the analysis, and the various options to consider, Council requested additional information, which was provided during the April 23, 2019 work session. During the April work session, Council provided direction to implement "Alternative 3", which was identified as the option to meet the goals of the Water Efficiency Plan, encourage conservation, sustain the infrastructure of the water system, and provide a sustainable revenue for the water system based on number of EQRs. Staff presented several worksheets, demonstrating financial impacts of the proposed optional rate structures. All of the options maintain the Water Fund balance at approximately \$2,000,000 year-over-year. The adoption of the Water Efficiency Plan and the addition of conservation programs have led to increases in capital project needs and ongoing revenue. These projects and programs were not known at the time of 2019 budget

preparation but are reflected in the projections. Council directed staff to implement alternative 3. Council directed staff to implement a 5% flat rate rather than a graduated rate effective October 1. Council directed staff to increase tap fees to \$5000 effective January 1, 2020 with a 10% annual increase beginning October 1, 2020. Council requested that staff provide information regarding the Colorado Water Conservation Board to local businesses for funding opportunities. Mayor Wilkinson opened the public hearing at 8:44 p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 8:54 p.m.

MOTION: COUNCIL MEMBER SHANER MOVED TO APPROVE ON FIRST READING ORDINANCE 19-07, ESTABLISHING, PURSUANT TO SECTION 171-11 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, THE PLANT INVESTMENT FEES, CAPITAL EQR SCHEDULES, DELIVERY CHARGES, FLAT RATES, AND USAGE FEES TO BE CHARGED IN CONNECTION WITH THE TOWN'S WATER SYSTEM WITH DIRECTION TO SECTION 2 PLANT INVESTMENT FEES AS DESCRIBED BY THE MAYOR AND CHANGES TO MINIMUM DELIVERY AND SERVICE FEES AND USAGE RATES TO SET AN ANNUAL INCREASE OF 5%. SECOND, COUNCIL MEMBER BURLEY. VOTE:

BURLEY	YEA	SHANER	YEA
FALLON	NO	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	YEA
MORTENSEN	YEA	MOTION CARRIED.	

Old Business:

Agenda Item #3: Second Reading Ordinance 19-05, an Ordinance Amending Chapter 130 of the Code of Ordinances of the Town of Frisco, Concerning Parks, by Amending Section 130-12, Concerning the Use of Motorized Vehicles in Town Parks, Open Space, Recreation Areas, and Pathways STAFF: THAD RENAUD 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Attorney Thad Renaud stated that this ordinance amends Chapter 130 specifically regulating e-bikes to class one (pedal assist only with guvnor not to exceed 20mph), matching Summit County's regulations. Mayor Wilkinson opened the public hearing at 8:59 p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 9:00 p.m.

MOTION: COUNCIL MEMBER IHNKEN MOVED TO APPROVE ON SECOND READING ORDINANCE 19-05, AN ORDINANCE AMENDING CHAPTER 130 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING PARKS, BY AMENDING SECTION 130-12, CONCERNING THE USE OF MOTORIZED VEHICLES IN TOWN PARKS, OPEN SPACE, RECREATION AREAS, AND PATHWAYS. SECOND, COUNCIL MEMBER SHANER. VOTE:

BURLEY	YEA	SHANER	YEA
FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	YEA
MORTENSEN	YEA	MOTION CARRIED.	

Agenda Item #4: Second Reading Ordinance 19-06, an Ordinance Amending Chapter 13 of the Code of Ordinances of the Town of Frisco, Colorado, Concerning the Management of the Town Cemetery, by Repealing Section 13-21, Concerning the Rates and Charges for Lots and Burials; and by Renumbering Existing Section 13-22 Concerning Winter Burials STAFF: DEBORAH WOHLMUTH 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Clerk Deborah Wohlmuth stated that this ordinance moves rates and charges from the Cemetery Code to the cemetery rules and regulations, allowing Council to pass future rates via resolution requiring one meeting as opposed to ordinance requiring two readings. Additionally, this ordinance renumbers the chapter to reflect the change. Ms. Wohlmuth indicated that the resolution concerning the cemetery rules and regulations update include: Increases to Excavation Fees to reflect actual costs incurred by the Public Works Department for labor and equipment; Changes to dates of Winter Burials to reflect winter weather occurring through May 15th, and the impact that winter conditions have on winter burials/excavations; Additional \$250 labor fee for work occurring after 3pm or on Saturdays in order to account for unscheduled Public Works labor; Additional \$250 monument placement fee in order to account for unusual labor costs incurred as a result of winter conditions; Modified interment and marker placement notification requirements; Clarification regarding allowed monuments; and clarification regarding approved burial containers. Mayor Wilkinson opened the public hearing at 9:04 p.m. County resident Joanie Merrick 101 CR 1040 asked Council to consider having a memorial wall or brick walkway for people that are not buried in the Frisco Cemetery. There being no further public comment, Mayor Wilkinson closed the public hearing at 9:06 p.m.

MOTION: COUNCIL MEMBER MORTENSEN MOVED TO APPROVE ON SECOND READING ORDINANCE 19-06, AN ORDINANCE AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, COLORADO, CONCERNING THE MANAGEMENT OF THE TOWN CEMETERY, BY REPEALING SECTION 13-21, CONCERNING THE RATES AND CHARGES FOR LOTS AND BURIALS; AND BY RENUMBERING EXISTING SECTION 13-22 CONCERNING WINTER BURIALS; AND TO APPROVE RESOLUTION 19-21, A RESOLUTION ADOPTING THE TOWN OF FRISCO CEMETERY RULES AND REGULATIONS DATED MAY 28, 2019. SECOND, COUNCIL MEMBER SHERBURNE VOTE:

BURLEY	YEA	SHANER	YEA
FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	YEA
MORTENSEN	YEA	MOTION CARRIED.	

Adjourn:

There being no further business, the meeting adjourned at 9:06 p.m.

Respectfully Submitted,

Deborah Wohlmuth, CMC
Town Clerk



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: JENN SHIMP, GUEST SERVICES MANAGER
**RE: ALPINE FISHING ADVENTURES CONCESSIONAIRE CONTRACT AND LEASE AGREEMENT
– FIRST AMENDMENT - FOR GUIDED FISHING TOURS AT THE FRISCO BAY MARINA**
DATE: JUNE 11, 2019

Summary: The guided fishing tours contract with Alpine Fishing Adventures at the Frisco Bay Marina expired in 2018. A First Amendment is attached for your review. This concessionaire amendment will allow Alpine Fishing Adventures to offer guided fishing tours, fly fishing trips, ice fishing trips, and fishing charters at the Frisco Bay Marina. Alpine Fishing Adventures will remit a portion of their revenues to the Town and will pay normal rates for slip and storage fees. Concessionaire is responsible for obtaining required operating permits from other entities and providing proof of such compliance to the Town of Frisco. The proposed amendment is for a two season term of June 11th, 2019, to May 31, 2021, which includes both summer and winter operations.

Background: In 2017, Council approved the Frisco Bay Marina Concessionaire Agreement with Alpine Fishing Adventures. Mr. Randy Ford is the owner, operator and a guide for Alpine Fishing Adventures. The concessionaire provides their own direct phone number and web page maintenance and conducts their own marketing. Mr. Ford has secured and holds a current Dillon Reservoir Recreation Committee (DRReC) permit for these fishing tours and trips. Mr. Ford's vessel will be stored at the Marina; he will store his accessory equipment in an on-site shed and off premises. Concessionaire has requested that the term of the Agreement commence for two seasons in order to allow business continuity and planning for the 2019 and 2020 operating seasons. A two season agreement is typical for other concessionaires operating out of the Frisco Bay Marina.

Staff Analysis: Staff feels that offering guided fishing tours, fly fishing trips, ice fishing trips, and fishing charters to the general public through a concessionaire agreement is a prudent and economical way to offer a desired amenity. This service has been an opportunity to expose new customers to Lake Dillon and the other amenities offered at the Marina.

Recommendation: On that basis, staff recommends the Town Council approve the Alpine Fishing Adventures Concessionaire First Amendment for guided fishing services.

Financial Impact: Alpine Fishing Adventures pays full price for all services at the Marina including slip, mooring, and storage fees. The Town also receives 4% of gross revenue collected. Total revenue collected from Alpine Fishing Adventures in 2017 was \$1,778.24 and in 2018, it was \$4,038.19.

Reviews and Approvals: This report has been reviewed and approved by:

Diane McBride, Assistant Town Manager/Recreation and Culture Director
Bonnie Moinet, Finance Director – Approved

FIRST AMENDMENT TO FRISCO MARINA CONCESSIONAIRE AGREEMENT AND LICENSE

THIS FIRST AMENDMENT TO FRISCO MARINA CONCESSIONAIRE AGREEMENT AND LICENSE (this "First Amendment"), is made and entered into as of this 11th day of June, 2019, by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation ("Frisco") and Alpine Fishing Adventures, a Colorado limited liability company ("Concessionaire").

WHEREAS, Frisco and Concessionaire entered into that certain Frisco Marina Concessionaire Agreement and License dated May 23, 2017; and

NOW THEREFORE, in consideration of the foregoing and of the following mutual covenants and conditions Frisco and Concessionaire agree that this First Amendment shall amend the Agreement as follows:

1. That section 1 (h) of the Agreement is hereby amended so as to read in its entirety as follows:
 1. (h) uphold and support applicable programs and policies of Frisco, including the 2018 Frisco Bay Marina and Waterfront Park Master Plan, while serving as a representative of Frisco.
2. That the first paragraph of section 4(a)(i) of the Agreement is hereby amended so as to read in its entirety as follows:
 4. Term, Possession and Interest. The term of this Agreement (the "Term of this Agreement") shall be from the commencement of this agreement June 11th, 2019 to May 31st, 2021. The term of this Agreement may be renewed upon approval of the Frisco Town Council in its sole and absolute discretion.
3. That section 5 of the Agreement is hereby amended so as to read in its entirety as follows:
 5. Payments by Concessionaire.
 - (a) Reporting Requirements.
 - (i) On or before the twenty-second (22nd) day of December, Concessionaire shall submit to the Town of Frisco's Finance Director a report of Concessionaire's gross revenues collected during the immediately previous operating season from its Services and any retail sales allowed under this Agreement ("Gross Revenues Collected"). Concessionaire shall include with each report a signed statement affirming the completeness and accuracy of such report. Such statement may be prepared and certified to be true and correct by Concessionaire's bookkeeper; provided, however, that if the Finance Director has a reasonable objection to the use of Concessionaire's bookkeeper to prepare such statement, Concessionaire will engage an independent

certified public accountant or other qualified person acceptable to the Finance Director to prepare and certify such statement.

(b) Operating Fees.

- (i) Concessionaire shall pay to Frisco (the "Operating Fee"):
- Four percent (4%) of all Gross Revenues collected and,
 - Normal slip rate and,
 - Normal trailer storage rate and,
 - Normal winter boat storage rates and,
 - Shed fees.

Concessionaire shall also pay normal rates for all work orders, labor, parts and supplies. Concessionaire agrees to pay DRReC directly all sums due and owing from time to time pursuant to any permit that may be issued by DRReC to Concessionaire.

(ii) On or before the twenty-second (22nd) day of December, Concessionaire shall pay to Frisco the Operating Fee that accrued during the immediately previous operating season. Non-payment of the Operating Fee shall constitute a material breach of this Agreement for which Frisco may terminate this Agreement pursuant to Section 8 herein.

4. Except as otherwise provided in this First Amendment, all capitalized terms used in this First Amendment shall have the same meaning as provided in the Agreement.
5. Except as expressly amended by this First Amendment, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TOWN OF FRISCO
A Colorado municipality

CONCESSIONAIRE:
Alpine Fishing Adventures, a
Colorado limited liability company

By: _____
Gary Wilkinson, Mayor

By: _____
Randy Ford, Manager

Attest:

Deborah Wohlmuth, CMC Town Clerk



TO: MAYOR AND TOWN COUNCIL
FROM: JENN SHIMP, GUEST SERVICES MANAGER
**RE: ADVENTURE PADDLE TOURS CONCESSIONAIRE AGREEMENT AND LICENSE FOR
GUIDED KAYAK AND STAND UP PADDLEBOARD TOURS AND LESSONS**
DATE: JUNE 11, 2019

Summary Statement: This Concessionaire Agreement and License will allow Mr. Kyle McKenzie, a sole proprietor operating as Adventure Paddle Tours, to operate guided stand up paddleboard (SUP) and Kayak tours and lessons from the Frisco Bay Marina for the Town of Frisco. Kyle owns his own equipment but pays full price for use of marina storage racks, slip, storage shed, as well as 4% of gross revenues to the Town of Frisco.

Background: This is the ninth year Mr. McKenzie will be providing guided kayak and SUP tours and lessons at the Frisco Bay Marina. Mr. McKenzie owns multiple kayaks and SUP's and currently operates tours during the day for approximately 2 to 2.5 hours each. Mr. McKenzie has secured a Dillon Reservoir Recreation Committee (DRReC) permit for these kayak and SUP tours and lessons. Mr. McKenzie's boats will be stored at the Marina; he will store his accessory equipment in an on-site shed and off premises.

Staff Analysis: Staff feels that offering kayak and SUP guided tours and lessons to the general public through a concessionaire agreement and license is a prudent and economical way to offer a desired amenity. This service is an opportunity to expose customers to Lake Dillon and the other amenities offered at the Marina in a guided format.

Recommendation: Staff recommends that Council approve the Marina Concessionaire Agreement and License between the Town of Frisco and Adventure Paddle Tours.

Financial Impact: Adventure Paddle Tours pays full price for all services at the Marina including slip, mooring, and storage fees. The Town also receives 4% of gross revenues collected. Total revenue collected from Adventure Paddle Tours in 2017 was \$1,982.44 and in 2018, it was \$3,056.09.

Reviews and Approvals: This report has been reviewed and approved by:

Diane McBride, Assistant Town Manager/Recreation and Culture Director
Bonnie Moinet, Finance Director - Approved
Nancy Kerry, Town Manager - Approved

FRISCO MARINA CONCESSIONAIRE AGREEMENT AND LICENSE

This Frisco Marina Concessionaire Agreement and License (this "Agreement") is made and entered into this 11th day of June, 2019 by and between Adventure Paddle Tours., a Colorado corporation and the Town of Frisco, a Colorado home rule municipal corporation ("Frisco").

WHEREAS, the Frisco Bay Marina (the "Marina") is a facility proudly operated by Frisco pursuant to a special use permit (the "Permit") from the Dillon Reservoir Recreation Committee ("DRReC") and a lease (the "Denver Water Lease") from the City and County of Denver acting by and through its Board of Water Commissioners ("Denver Water"); and

WHEREAS, Frisco operates the Marina, including the provision of boat slips and launching, trailer storage, marketing, winterizing and winter storage but wishes to contract out the provision of certain other services; and

WHEREAS, it is the goal of the Frisco Town Council to provide visitors and citizens with a quality experience in terms of courteous and friendly service associated with water-related activities; and

WHEREAS, Concessionaire provides kayaking and stand-up paddleboard ("SUP") lessons and tours.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, Concessionaire and Frisco hereby agree as follows:

1. Guided Kayak and Stand up Paddleboard Tours. Concessionaire shall have the right and obligation to provide guided kayak and SUP tours to the public at the Marina ("Tour Operations"), under the terms of this Agreement.

2. Service Standards. Concessionaire agrees that in conducting its Tour Operations it shall adhere to the following service standards adopted by the Frisco Town Council. Concessionaire shall:

(a) do nothing to jeopardize, and shall always act in compliance with, the Permit and the Denver Water Lease;

(b) operate in accordance with all applicable state and local government regulations, and in a professional manner and provide quality service and equipment to all users;

(c) ensure that its Tour Operations are conducted in a timely manner, including but not limited to, arriving promptly daily to accommodate those customers scheduled for tour activities during the Term of this Agreement (defined in paragraph 3 below);

(d) ensure that its employees provide courteous and friendly service to all patrons without regard to age, race, color, sex, sexual orientation, disability, religion or political affiliation;

(e) work cooperatively with and support Frisco and DRReC whenever appropriate with respect to mutually beneficial programs;

(f) maintain any portion of the Marina that it uses in a generally good appearance, keeping it clean, tidy and free of debris in order to project a professional image at all times and maintain all rental equipment and boats in properly functioning order, and;

(g) abide by any parking restrictions at the Marina, both for concessionaire-owned vehicles and those vehicles belonging to customers of concessionaire, to allow for the orderly flow of traffic throughout the Marina; and

(h) uphold and support applicable programs and policies of Frisco, including the 2018 Frisco Bay Marina and Waterfront Park Master Plan, while serving as a representative of Frisco.

(i) will maintain operating standards as written in this agreement while understanding that the 2018 Frisco Bay Marina and Waterfront Park Master Plan will be implemented and as such the marina will be under construction during the terms of this agreement.

(i) work with and uphold Town of Frisco's policies to operate sustainably and utilize such equipment, standards, and materials to reduce, reuse, and recycle all items.

These standards of service shall hereinafter be referred to as the "Service Standards".

3. Term, Possession and Interest. The term of this Agreement (the "Term of this Agreement") shall be from the date first written above to September 30th, 2021. The term of this agreement may be renewed upon approval of the Frisco Town Council in its sole and absolute discretion.

This Agreement merely grants to the Concessionaire the personal privilege to use the property in strict accordance with the terms of this Agreement. This Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the concessionaire. Concessionaire shall expend any time, money or labor upon the property at Concessionaire's own risk and peril.

4. Payments by Concessionaire.

(a) Reporting Requirements.

(i) Before 5 p.m. on September 30th during the term of this Agreement, Concessionaire shall submit to the Town of Frisco's Finance Director a report of Concessionaire's gross revenues collected during the previous season from its Tour Operations and any retail sales allowed under this Agreement ("Gross Revenues Collected"). Concessionaire shall include with each report a signed statement affirming the completeness and accuracy of such report. Such statement may be prepared and certified to be true and correct by Concessionaire's bookkeeper; provided, however, that

if the Finance Director has a reasonable objection to the use of Concessionaire's bookkeeper to prepare such statement, Concessionaire will engage an independent certified public accountant or other qualified person acceptable to the Finance Director to prepare and certify such statement.

The Finance Director shall have the right at any time upon 15 days' written notice to audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating to Gross Revenues Collected from operations at the Frisco Bay Marina. Concessionaire, on the 16th day after written notice of the request to audit, shall make all such documents available for examination at the main offices of the Town of Frisco.

If Town determines after an audit that the Gross Revenues Collected for any reporting period as shown by Concessionaire's report(s) have been understated by more than three percent (3%), Concessionaire shall pay to Town the cost of such audit, the amount of any deficiency and interest, at the rate of 1.5% per month, on such amount. The Town's right to perform such an audit shall expire three (3) years after Concessionaire's certified reports have been delivered to the Town.

If the audit conducted by the Finance Director shows that the Concessionaire's Gross Revenues Collected reports have been understated more than three percent (3%), Concessionaire shall have the right to have an independent audit conducted at its expense. Such audit shall be completed within thirty (30) days from the date Concessionaire is notified of the results of the Finance Director's audit. The Finance Director and the independent auditor shall attempt to reconcile any discrepancies between the two audits. If the Finance Director and the independent auditor are unable to reconcile any such discrepancies, either party may enforce its right or remedies under this section by appropriate judicial action as provided by law.

Concessionaire expressly agrees that Finance Director may inspect any sales tax return or report and accompanying schedules and data which Concessionaire may file with Town pursuant to the Town's Retail Sales Tax Ordinance and Concessionaire waives any claim of confidentiality which it may have in connection therewith.

(b) Operating Fees.

(i) Concessionaire shall pay 4% of all Gross Revenues Collected (the "Operating Fee") to Frisco. Concessionaire agrees to pay full price for all service work, Slips, Moorings, Dry Storage, Shed fees, and Winter Storage of equipment. Concessionaire agrees to pay DRReC directly all sums due and owing from time to time pursuant to any permit that may be issued by DRReC to Concessionaire.

(ii) On or before the 30thth day of September, Concessionaire shall pay to Frisco the Operating Fee that accrued during the immediately previous operating season. Non-payment of the Operating Fee shall constitute a material breach of this Agreement for which Frisco may terminate this Agreement pursuant to Section 7 herein. The payments required by this section shall be referred to herein as the "Operating Fee".

5. Concessionaire's Specific Responsibilities. Concessionaire shall be responsible for the following:

(a) *Generally.* Concessionaire shall monitor its Operations, meet monthly with Frisco staff to assure continued coordination of activities, and work toward the accomplishment of Frisco's Service Standards. Concessionaire shall designate a person to serve as the primary contact with Frisco. Until such designation is changed in writing, Kyle McKenzie shall be such contact.

(b) *Safety.* In addition to undertaking such safety measures as are normal and customary in the kayak tour industry, Concessionaire shall provide any safety measures reasonably required by Frisco from time to time.

(c) *Daily Operation.* During the Term of this Agreement, Concessionaire shall schedule its Tour Operations for 6am to 6:30 pm during marina operating season. The length of the daily services also may be longer or shorter depending on weather conditions, at Concessionaire's discretion, and reservations may be taken at various hours outside these daily hours of operations for special events. Concessionaire shall be available by phone at all other times to accommodate Concessionaire's customers and shall make such phone number available to the Marina Staff. Concessionaire shall meet guests at location and provide clear directions to guests upon reservation for meeting location.

(d) *Financial records.* Concessionaire shall maintain complete and accurate financial records and information with respect to its Operations and shall retain all such records and information for no less than three years from their date of origination. Concessionaire shall make such records and information available for inspection by Frisco upon request.

(e) *Permits.* Concessionaire is responsible for obtaining all permits required by DRReC, Fire Department, Health Department, and any other governing agencies. Concessionaire shall provide proof of such permitting to the Finance Director for the Town of Frisco prior to commencing Operations for the Term of this Agreement.

(f) *Janitorial Services and Trash Removal* Concessionaire shall provide at its sole cost and expense: (1) Cleaning services for the leased grounds and any other portion of the Frisco Bay Marina that is used by concessionaire from time to time in connection with its tour operations; (2) Regular trash removal for waste created in connection with tour operations. Concessionaire is encouraged to engage in the recycling of any waste so created.

(g) *Premises.* The concessionaire shall provide, at its sole cost and expense equipment necessary or desirable to effectively provide its tour operations within the Frisco Bay Marina and Dillon Reservoir, including but not limited to boats and boating equipment.

(h) *Employees.* Concessionaire shall provide such employees for the Operations as it deems necessary. Such employees shall wear uniforms or other forms of identification to clearly indicate their association with concessionaires tour operations. All employee benefits, including FICA and worker's compensation insurance, shall be provided and paid for by Concessionaire.

(i) The Concessionaire hereby certifies that at the time of executing this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that it will participate in either the E-Verify Program or Department Program as those terms are defined in C.R.S. §§ 8-17.5-101(3.7) and (3.3), respectively, (the "Programs") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(ii) The Concessionaire shall not knowingly employ or contract with an illegal alien to perform the work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Concessionaire that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

(iii) The Concessionaire has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

(iv) The Concessionaire is prohibited from using the Programs procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(v) If the Concessionaire obtains actual knowledge that a subcontractor performing the work under this Agreement knowingly employs or contracts with an illegal alien, the Concessionaire shall: (a) notify the subcontractor and Frisco within three (3) days that the Concessionaire has actual knowledge that the subcontractor is knowingly employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice, required pursuant to C.R.S. § 8-17.5-102(2)(III)(A), the subcontractor does not stop employing or contracting with the illegal alien; except that the Concessionaire shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) The Concessionaire shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

(vii) Any violation of the provisions of this paragraph shall be deemed to be a material breach of this Agreement and Frisco may immediately terminate this Agreement for cause based on such violation. If this Agreement is so terminated, the Concessionaire shall be liable for actual and consequential damages to Frisco pursuant to C.R.S. § 8-17.5-102(3) and Frisco shall notify the office of the Secretary of State of such violation/termination.

(i) *Office equipment.* Concessionaire shall provide all office equipment necessary to effectively provide its Operations, including but not limited to, register, credit card system and radio and telephone lines.

(j) *Insurance.* During the Term of this Agreement, Concessionaire shall procure and maintain, at its own expense, the following policy or policies of insurance.

(i) Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products and completed operations. The policy shall name Frisco, its employees and agents as additional insureds and shall include severability of interests, waiver of subrogation and cross-liability endorsement provisions.

(ii) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of six hundred thousand dollars (\$600,000) disease – policy limit, and six hundred thousand dollars (\$600,000) disease – each employee.

(iii) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of Concessionaire's owned, hired and non-owned vehicles assigned to or used in performance of services under this Agreement. The policy shall contain a severability of interests provision.

(iv) Every policy required under this Section 5(j) shall be primary insurance and any insurance carried by Frisco, its officers or its employees or carried by or provided through any insurance pool of Frisco, shall be excess and not contributory insurance to that provided by Concessionaire. Concessionaire shall be solely responsible for any deductible losses under any policy required above. Any insured policy required under this Agreement shall be written by a responsible company.

(v) Prior to commencement of this Agreement, concessionaire shall provide Frisco with a certificate of insurance completed by Concessionaire's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Frisco.

(vi) Concessionaire shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Section 5(j) by reason of Concessionaire's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of Concessionaire to procure or maintain policies providing

the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which Frisco may immediately terminate this Agreement or, at its discretion, Frisco may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Frisco shall be repaid by Concessionaire to Frisco upon demand.

(vii) Concessionaire will notify Frisco of any accident, claim or potential claim involving Concessionaire or its Operations within twenty-four (24) hours of such accident or of learning of such claim or potential claim.

(l) *Signage.* Concessionaire shall provide on-site signage for its Operations at the Marina, which signage shall be subject to Frisco's sign code and to Frisco's prior approval as operator of the Marina, which approval shall not be unreasonably withheld.

6. Frisco's Specific Responsibilities. Frisco shall provide the following services or property to the Concessionaire:

(a) *Marketing.* Frisco shall review and shall have the right to approve all advertising and promotional events, races and special programs that Concessionaire wishes to conduct.

(b) *Inquiries.* Any telephone inquiries regarding Concessionaire received by Frisco employees shall be directed to Concessionaire at 970-281-2234 or at info@adventurepaddletours.com. Anyone making an in-person inquiry regarding Concessionaire at a Frisco office shall be directed to Concessionaire's location where he or she will be met by Concessionaire.

7. Termination.

(a) Either party may terminate this Agreement by written notice to the other in the event that the other party is in breach of any of its obligations hereunder. A party shall be deemed to be in breach if it fails to remedy any default or failure to perform hereunder within fifteen (15) days after written notice from the other party of such default or failure or, in the event such default or failure is non-monetary and cannot be remedied within fifteen (15) days, if the party in breach fails to initiate such cure within fifteen (15) days after notice from the other party or fails diligently to pursue such cure thereafter.

(b) Without limiting Frisco's right to declare and give notice of a default or failure to perform by Concessionaire based on Frisco's reasonable determination that Concessionaire is in default or has failed to perform its obligations under this Agreement, including but not limited to, complying with all of the Service Standards and paying fees in a timely manner, Concessionaire shall be deemed to be in breach if Frisco has received three or more written complaints within any twelve month period concerning any similar default or failure to perform by Concessionaire. In the event of a breach based upon Frisco's receipt of three or more written complaints as described herein, Concessionaire shall be deemed to be in breach without the need for Frisco to provide written notice of a default or failure to perform, provided that Frisco has provided Concessionaire with a copy of each of the first two written complaints within seven days

of Frisco's receipt thereof. After receipt of the third such written complaint, Frisco may terminate this Agreement.

(c) The foregoing notwithstanding, this Agreement shall terminate at such time as the Permit is terminated by DRRcC or the Denver Water Lease is terminated by Denver Water and the terminated Permit or Denver Water Lease is not reissued or renewed for a succeeding period on terms substantially similar to the existing terms of the Permit and the Denver Water Lease.

(d) Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20.

8. Remedies. Any of the foregoing remedies shall not preclude the pursuit of any other remedies herein provided or any other remedies provided by law, nor shall any remedy constitute a forfeiture or waiver of any fees owed to Frisco or to any damages occurring to Frisco by reason of the violation of any of the terms or provisions herein contained.

9. Indemnification.

(a) Concessionaire agrees to indemnify and hold harmless Frisco, its officers, employees and insurers from and against all liability, claims and demands, on account of injury, loss or damage, including without limitation claims arising from bodily injury, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, mistake, negligence, or other fault of the Concessionaire, or of any subcontractor of the Concessionaire, or any officer, employee, representative or agent of the Concessionaire or of any subcontractor of the Concessionaire, or any employee of any subcontractor of the Concessionaire. The Concessionaire agrees to investigate, handle, respond to and provide defense for and defend against, any such liability claims or demands at the sole expense of Concessionaire or, at the option of Frisco, agrees to pay for, or reimburse Frisco for, the defense costs incurred by Frisco in connection with any such liability, claims or demands. Concessionaire also agrees to bear all other costs and expenses related thereto, including court costs and reasonable attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. The obligations of Concessionaire shall not extend to any injury, loss or damage which is caused solely by the act, omission or other fault of Frisco, its officers or its employees.

(b) The parties hereto understand and agree that Frisco is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$350,000) per person and \$990,000 per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., CRS., as from time to time amended, or otherwise available to Frisco, its officers or its employees.

10. Assignment. Concessionaire shall not voluntarily, by operation of law or otherwise, assign, encumber or otherwise transfer its rights under this Agreement or any interest herein without the prior written consent of Frisco in each instance. Frisco may withhold such consent in its sole and absolute discretion. Any transfer without Frisco's prior written consent shall constitute a default under this Agreement and shall be void

and shall confer no rights upon any third party. Without limiting the generality of the foregoing, if Concessionaire is not a natural person, any change in the parties controlling Concessionaire on the date hereof, whether by sale of stock or other ownership interest, or otherwise, and any merger, dissolution, consolidation or other reorganization of Concessionaire, shall be deemed a transfer. Every assignment of this Agreement to which Frisco consents shall be by an instrument in writing pursuant to which the assignee expressly agrees for the benefit of Frisco to assume, perform and observe all of the Concessionaire's obligations under this Agreement. The consent by Frisco to a transfer shall not relieve Concessionaire from primary liability hereunder (which shall be joint and several with any assignees or other transferees) or from the obligation to obtain the express consent in writing of Frisco to any further transfer.

11. Notice. Whenever a provision is made in this Agreement for notice of any kind, such notice shall be in writing and signed by or on behalf of the party giving the same, and it shall be deemed sufficient notice if personally delivered to the other party or if sent by certified mail, postage prepaid, to the addresses set forth below for the parties or to such other address as either party may furnish by notice.

FRISCO
Town of Frisco
PO Box 4100
Frisco, CO 80443
Attention: Finance Director

CONCESSIONAIRE
Adventure Paddle Tours
PO BOX 453
Silverthorne, CO 80498
Attention: Kyle McKenzie

13. Entire Agreement. Except as otherwise expressly provided herein, this Agreement sets forth the entire agreement of the parties and supersedes all prior negotiations and understandings.

14. Relationship of Parties. Frisco and Concessionaire agree that nothing in this Agreement is intended to create, nor shall be deemed, held or construed as creating, any partnership, joint venture, employer/employee or other relationship between them other than that of Concessionaire as Frisco's independent contractor. Concessionaire shall at all times control the means and manner by which Concessionaire performs the work under this Agreement, subject to Frisco's right to monitor, evaluate and improve such work.

15. No Third Party Beneficiary. No term or provision of this Agreement is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party hereto, and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

16. Amendments. This Agreement may only be amended, supplemented or modified in a written document signed by both parties.

17. Colorado Law. This Agreement is to be governed by the laws of the State of Colorado.

18. Counterparts. This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TOWN OF FRISCO, a Colorado municipality

CONCESSIONAIRE:

By _____
Gary Wilkinson, Mayor

By _____
Kyle McKenzie, Owner

Attest:

Deborah Wohlmuth, Town Clerk



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL

FROM: DEBORAH WOHLMUTH, TOWN CLERK

RE: RESOLUTION 19-22, A RESOLUTION ALLOWING THE MAYOR AND TOWN CLERK TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE COUNCIL CHAMBERS AUDIO-VISUAL UPGRADES FOR A TOTAL COST NOT TO EXCEED \$110,278.00 INCLUDING ELECTRICAL WORK, CARPET REPLACEMENT, DAIS REMODEL, INFORMATION SYSTEMS INFRASTRUCTURE, AUDIO VISUAL EQUIPMENT, AND LABOR

DATE: JUNE 11, 2019

Summary: This resolution authorizes expenditures for the council chamber audio visual upgrades, and allows the Town to enter into a contract with Valhalla Integration. The scope of work includes updating, replacing, and adding audio, video, and control components. Additional costs include electrical work, carpet replacement, dais remodel, information systems infrastructure, and labor. The project is planned to be completed on or before July 19, 2019.

Background: Town Council determined that Council Chambers has not had any infrastructure or presentation updates in many years, and approved a capital request for \$80,000 in the 2018 budget. Permanent presentation hardware is nonexistent, and existing equipment is not user friendly. Council Chambers is in need of updates in order to accommodate presenters with more advanced audio/video needs, updated lighting and digital recording of meetings

Staff Analysis: Pursuant to Chapter 9 of the Town Code a Request for Proposals was produced and published in September of 2018 with a due date of October 17, 2018. Four bids were received by the deadline, they are listed below:

5280 Digital = \$67,035.00
AV Systems = \$37, 190.82
Beacon Communications = \$74,032.00
Valhalla Integration = \$79,500.70

A staff committee consisting of the Town Manager, end users (Clerk, CDD, PD), Public Works, and IT interviewed four vendors, deciding that the presentation of Valhalla Integration most aligned with the committee's vision and goals. IT staff articulated that the equipment Valhalla recommended is higher end technology than any other proposal, having a longer lifespan, and allowing scalability if Council decides to add streaming video of Council meetings in the future.

Valhalla Integration provided an amended scope of work addressing the committees desired revisions to the equipment proposal at a hard cost of \$92,278.00. Additional costs for electrical work, carpet replacement, dais remodel, information systems infrastructure, and labor are estimated at \$18,000.

After staff analysis of the bids and interviews with all four vendors, it is our recommendation to accept the proposal from Valhalla Integration for a cost not to exceed \$92, 278.00.

Recommendation: On that basis, staff recommends the Town Council make a motion to adopt the attached Resolution, 19-22, A RESOLUTION ALLOWING THE MAYOR AND TOWN CLERK TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE COUNCIL CHAMBERS AUDIO-VISUAL UPGRADES FOR A TOTAL COST NOT TO EXCEED \$110,278.00 INCLUDING ELECTRICAL WORK, CARPET REPLACEMENT, DAIS REMODEL, INFORMATION SYSTEMS INFRASTRUCTURE, AUDIO VISUAL EQUIPMENT, AND LABOR

Financial Impact: Passage of the recommended motion to purchase the listed equipment will result in a total cost of \$110,278.00. The amount budgeted in the 2018 budget for this purchase was \$80,000 from the Capital Improvement Fund, Capital Equipment Purchases (20-2000-4101), leaving an unfunded balance of \$30,278.00. The 2019 budget includes \$170,000 for information systems technology related projects. All IT capital projects have been completed at this time under budget, with \$49,000 remaining in the line item. Staff requests use of these dollars to complete the audio-visual upgrades.

Reviews and Approvals: This report has been reviewed and approved by:

Bonnie Moinet, Finance Director -
Nancy Kerry, Town Manager – Approved

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
RESOLUTION 19-22**

A RESOLUTION ALLOWING THE MAYOR AND TOWN CLERK TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE COUNCIL CHAMBERS AUDIO-VISUAL UPGRADES FOR A TOTAL COST NOT TO EXCEED \$110,278.00 INCLUDING ELECTRICAL WORK, CARPET REPLACEMENT, DAIS REMODEL, INFORMATION SYSTEMS INFRASTRUCTURE, AUDIO VISUAL EQUIPMENT, AND LABOR

WHEREAS, the Town Council has determined that Council Chambers has not had any infrastructure or presentation updates in many years. Permanent presentation hardware is nonexistent, and existing equipment is not user friendly. Council Chambers is in need of updates in order to accommodate presenters with more advanced audio/video needs, updated lighting and digital recording of meetings; and

WHEREAS, there are sufficient sums of money budgeted in the Capital Improvement Fund for this purchase; and

WHEREAS, the Town of Frisco released a competitive bid process for the council chambers audio visual project to include update, replace, and add audio, video, and control components on September 21, 2018, with proposals from qualified firms due on October 17, 2018; and

WHEREAS, the Town of Frisco received four (4) bids for the council chambers audio visual upgrades in October 2018, ranging in price from \$37,190.82 to \$79,500.73; and

WHEREAS, a staff committee interviewed all four vendors, deciding that the recommend equipment as well as the presentation of Valhalla Integration most aligned with the committee's vision; and

WHEREAS, Valhalla Integration provided an amended scope of work addressing the committees desired revisions to the equipment proposal at a hard cost of \$92, 278.00; and

WHEREAS, additional costs for electrical work, carpet replacement, dais remodel, information systems infrastructure, and labor are estimated at \$18,000; and

WHEREAS, the Town of Frisco recommends Valhalla Integration for the council chambers audio visual upgrade at a hard cost of \$92, 278.00; and

WHEREAS, the Town of Frisco recommends Valhalla Integration for the council chambers audio visual upgrade at a hard cost of \$92, 278.00;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THAT:

The Mayor and Town Clerk are hereby authorized to execute any and all documents necessary to effectuate the council chambers audio-visual upgrades for a total cost not to exceed \$92,278.00 including electrical work, carpet replacement, dais remodel, information systems infrastructure, audio visual equipment, and labor estimated at approximately \$18,000; and

The attached Contract for Services between the Town and Valhalla Integration is hereby approved and the Town Mayor and Town Clerk are hereby authorized to execute the same on behalf of the Town of Frisco for a total cost not to exceed \$92, 278.00 (ninety two thousand two hundred seventy-eight and 00/100 dollars).

INTRODUCED, READ, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THIS 11TH DAY OF JUNE, 2019.

TOWN OF FRISCO:

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

CONTRACT FOR GOODS AND/OR SERVICES

THIS AGREEMENT ("Agreement"), made this 11th day of June, 2019, between the Town of Frisco, a Colorado home rule municipal corporation, hereinafter referred to as "FRISCO" and Valhalla Integration, as an independent contractor, hereinafter referred to as "CONTRACTOR," provides as follows:

ARTICLE I **SCOPE OF SERVICES**

Section 1.1 Services: CONTRACTOR agrees to perform the work, personal services and/or furnish the necessary equipment, supplies or materials in accordance with and/or as described in Attachment A hereto, hereinafter referred to as the "Project." Attachment A hereto is hereby incorporated by reference and made a part of this Agreement.

Section 1.2 Scope of Services: FRISCO agrees to retain CONTRACTOR to complete the Project. CONTRACTOR shall commence work upon direction to proceed and complete the Project on or before July 19, 2019. Additional services beyond those listed in Attachment A, if requested, shall be provided only when authorized in writing by FRISCO.

Section 1.3 Independent Contractor: CONTRACTOR shall at all times control the means and manner by which CONTRACTOR performs the work, subject to FRISCO's right to monitor, evaluate and improve such work. CONTRACTOR shall at all times be and act as an independent contractor and not as an employee of FRISCO.

Section 1.4 Warranty of Contractor: CONTRACTOR warrants that title to all services, materials and equipment covered and paid for under this Agreement will pass to FRISCO either by incorporation in the Project or upon the receipt of payment by CONTRACTOR, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no services, materials or equipment paid for under this Agreement will have been acquired by CONTRACTOR, or by any other person performing services at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by CONTRACTOR or such other person.

ARTICLE II **ADMINISTRATION OF THIS AGREEMENT**

Section 2.1 Project Performance: In consideration of the compensation provided for in this Agreement, CONTRACTOR agrees to perform or supply the Project, in accordance with generally accepted standards and practices of the industry, and warrants all materials incorporated in the Project to be free from defect of material or workmanship and conform strictly to the specifications, drawings or samples specified or

furnished. This Section 2.1 shall survive any inspection, delivery, acceptance or payment by FRISCO.

Section 2.2 Oversight: All of the work associated with the Project shall be performed under the direction of Deborah Wohlmuth, Town Clerk, it is expressly understood and agreed that some of the work may have commenced prior to the formal execution of this Agreement, in which event such work is incorporated into the Project and is deemed to have been and is authorized by this Agreement.

Section 2.3 Ownership and Use of Documents:

(a) Any documents prepared by CONTRACTOR, and copies thereof furnished to other parties are for use solely with respect to this Project. They are not to be used by any other contractor or subcontractor on other projects or for additions to this Project outside the scope of the work without the specific written consent of FRISCO. Other contractors and subcontractors are authorized to use and reproduce applicable portions of the documents prepared by the CONTRACTOR appropriate to and for use in the execution of their work under this Agreement. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the documents prepared by CONTRACTOR.

(b) CONTRACTOR, and any subcontractor or supplier or other person or organization performing or furnishing any work for the Project under a direct or indirect contract with FRISCO (i) shall not have or acquire any title to or ownership rights in any of any documents (or copies of documents) prepared in connection with the Project by a design professional and (ii) shall not reuse any of such documents or copies for extensions of the Project or any other project without written consent of FRISCO and the design professional and specific written verification or adaption by the design professional.

(c) Notwithstanding the provisions of Sections 2.3(a) and (b) above, FRISCO reserves the right to utilize any documents generated in connection with the Project by CONTRACTOR for other projects, provided that CONTRACTOR is not held liable for future project applications other than the Project described pursuant to this Agreement. FRISCO shall not convey any such documents generated by CONTRACTOR to a third party or use any such documents in a manner adverse to the CONTRACTOR.

Section 2.4 Insurance:

(a) CONTRACTOR agrees to procure and maintain, at its own cost, the following policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by CONTRACTOR under this Agreement or arising as a result of this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law.

(b) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall name FRISCO, its employees and agents as additional insureds and shall include the following provisions: (i) severability of interest; (ii) waiver of subrogation; and (iii) cross liability endorsement.

(c) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of SIX HUNDRED THOUSAND DOLLARS (\$600,000) each accident, SIX HUNDRED THOUSAND DOLLARS (\$600,000) disease - policy limit, and SIX HUNDRED THOUSAND DOLLARS (\$600,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this Section 2.4(c).

(d) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of CONTRACTOR's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If CONTRACTOR has no owned automobiles, the requirements of this Section 2.4(d) shall be met by each employee of CONTRACTOR providing services to FRISCO under this Agreement.

(e) The insurance policies required by Sections 2.4(a), (b) and (d) shall name FRISCO, its employees and agents as additional insureds. No additional insured endorsement to a policy shall contain any exclusion for bodily injury or property damage arising from completed operations.

(f) Every policy required under this Section 2.4 shall be primary insurance, and any insurance carried by FRISCO, its officers, or its employees, or carried by or provided through any insurance pool of FRISCO, shall be excess and not contributory insurance to that provided by CONTRACTOR. CONTRACTOR shall be solely responsible for any deductible losses under any policy required above. All insurance policies must be written by a reputable insurance company with a current Best's Insurance Guide Rating of A- or better and authorized to do business in the State of Colorado.

(g) Prior to commencement of this Agreement, CONTRACTOR shall provide FRISCO with a certificate of insurance completed by CONTRACTOR's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide

that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to FRISCO. The completed certificate of insurance shall be sent to:

Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Deborah Wohlmuth, Town Clerk

(h) CONTRACTOR shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of CONTRACTOR's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of CONTRACTOR to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which FRISCO may immediately terminate this Agreement, or at its discretion FRISCO may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by FRISCO shall be repaid by CONTRACTOR to FRISCO upon demand, or FRISCO may withhold the cost of the premiums from any monies due to CONTRACTOR from FRISCO.

(i) The parties hereto understand and agree that FRISCO is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$387,000 per person and \$1,093,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to FRISCO, its officers, or its employees.

Section 2.5 Indemnification:

(a) CONTRACTOR shall indemnify and hold harmless FRISCO and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from this Agreement, provided that any such claim, damage, loss or expense (1) is attributable to copyright infringement, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor of CONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any person described in this Section 2.5(a).

(b) In any and all claims against FRISCO or any of its agents or employees by any employee of CONTRACTOR, any subcontractor of CONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose act any of them may be liable, the indemnification obligation under this Section 2.5 shall not be

limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's or workman's compensation actions, disability benefit acts or other employee benefit acts.

Section 2.6 Subcontractor: CONTRACTOR shall, as soon as practicable after the signing of this Agreement, notify FRISCO in writing for FRISCO's approval, of any subcontractors who may be involved in the Project and the general scope of work to be performed by each subcontractor.

Section 2.7 Termination of Agreement:

(a) This Agreement may be terminated by either party upon thirty (30) days' written notice, provided that such termination is based upon a substantial failure by the other party to perform in accordance with the terms in this Agreement. Failure to proceed in a timely manner, and/or deviation from the aforesaid Agreement without prior written approval of FRISCO, shall constitute authority for issuance of a termination notice, except wherein circumstances beyond the control of CONTRACTOR shall warrant alteration, adjustment or deviation from this Agreement. In the event of termination, FRISCO will pay CONTRACTOR for all services performed to date of termination. If payment is otherwise due upon completion, FRISCO will pay CONTRACTOR for the pro rata value of the completed portion of the Project that will be incorporated into the Project. FRISCO will require the release of all lien rights as a condition of such payment.

(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, FRISCO's obligations under this Agreement are subject to annual appropriation by the Town Council of FRISCO. Any failure of a Town Council annually to appropriate adequate monies to finance FRISCO'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 CONTRACTOR of any failure to appropriate such adequate monies.

Section 2.8 Binding Effect: FRISCO and CONTRACTOR each bind itself, its successors and assigns to the other party to this Agreement with respect to all rights and obligations under this Agreement. Neither FRISCO nor CONTRACTOR shall assign or transfer its interest in this Agreement without the written consent of the other.

Section 2.9 Notice and Communications: Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand-delivery shall be utilized. Facsimile and/or e-mail addresses are provided for convenience only.

FRISCO:

Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Deborah Wohlmuth
Electronic mail:
deborahw@townoffrisco.com

CONTRACTOR:

Valhalla Integration Division
7661 Shaffer Pkwy
Littleton, CO 80127
Attn: Adam Weisgerber
Electronic mail:
adamw@valhallaintegration.com

ARTICLE III **RESPONSIBILITIES OF FRISCO**

Section 3.1 Project Materials: FRISCO shall make available data related to the Project, including design specifications, drawings and other necessary information. Data so furnished to CONTRACTOR shall be furnished at no cost, and shall be returned to FRISCO at the earliest possible time.

Section 3.2 Access to Property and Records: FRISCO shall provide CONTRACTOR with access to public property as required and necessary to complete the contract. To the extent required by law, FRISCO and CONTRACTOR agree to make this Agreement and any related records available for public disclosure pursuant to any open records law, including, without limitation, the Colorado Open Records Act, C.R.S. §§ 24-72-101, *et seq.* CONTRACTOR agrees to hold FRISCO harmless from the disclosure of any records that FRISCO reasonably believes it is legally required to disclose.

Section 3.3 FRISCO's Representative: FRISCO shall designate, in writing, a representative who shall have authority to act for FRISCO with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define FRISCO's policies and decisions with respect to materials, equipment, elements and systems pertinent to CONTRACTOR's services.

Section 3.4 Verbal Agreement or Conversation: No verbal agreement or conversation with any officer, agent or employee of FRISCO, either before, during or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever under the terms of this Agreement.

ARTICLE IV **COMPENSATION FOR SERVICES**

Section 4.1 Compensation: CONTRACTOR shall be compensated for services as described in Attachment B hereto. Attachment B hereto is hereby incorporated by reference and made a part of this Agreement.

Section 4.2 Payment: FRISCO shall pay CONTRACTOR monies due under this Agreement within thirty (30) days after invoice date, provided such amounts are not in dispute or the subject of setoff.

ARTICLE V
PROHIBITION ON EMPLOYING OR CONTRACTING WITH ILLEGAL
ALIENS

Section 5.1 The CONTRACTOR hereby certifies that at the time of executing this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that it will participate in either the E-Verify Program or Department Program as those terms are defined in C.R.S. §§ 8-17.5-101(3.7) and (3.3), respectively, (the “Programs”) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Section 5.2 The CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform the work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Section 5.3 The CONTRACTOR has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

Section 5.4 The CONTRACTOR is prohibited from using the Programs procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

Section 5.5 If the CONTRACTOR obtains actual knowledge that a subcontractor performing the work under this Agreement knowingly employs or contracts with an illegal alien, the CONTRACTOR shall: (a) notify the subcontractor and the FRISCO within three (3) days that the CONTRACTOR has actual knowledge that the subcontractor is knowingly employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice, required pursuant to C.R.S. § 8-17.5-102(2)(III)(A), the subcontractor does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Section 5.6 The CONTRACTOR shall comply with any reasonable request by the Colorado Department of Labor and Employment (the “Department”) made

in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

Section 5.7 Any violation of the provisions of this paragraph shall be deemed to be a material breach of this Agreement and FRISCO may immediately terminate this Agreement for cause based on such violation. If this Agreement is so terminated, the CONTRACTOR shall be liable for actual and consequential damages to FRISCO pursuant to C.R.S. § 8-17.5-102(3) and FRISCO shall notify the office of the Secretary of State of such violation/termination.

ARTICLE VI
MISCELLANEOUS

Section 6.1 Colorado Law: This Agreement is to be governed by the laws of the State of Colorado.

Section 6.2 Amendments; Change Orders: This Agreement may only be amended, supplemented or modified in a written document signed by both parties.

Section 6.3 Counterparts: This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

Section 6.4 No Third Party Benefit: This Agreement is between FRISCO and CONTRACTOR and no other person or organization shall be entitled to enforce any of its provisions or have any right under this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and executed this Agreement the day first written above.

FRISCO

By: _____
Name: Gary Wilkinson
Title: Mayor

Attest:

Deborah Wohlmuth, Town Clerk

CONTRACTOR

By: _____
Name: _____
Title: _____

ATTACHMENT A SCOPE OF WORK

Client: Town of Frisco Project: Town of Frisco - Council Chambers AV Upgrade	
Project Contact	Billing Contact
Company Name: Town of Frisco Contact: Deborah Whitehead Address: 1 East Main Street City, State, Zip: Frisco, CO 80443 Phone: Fax: Email: deborah.w@townoffrisco.com	Company Name: Contact: Address: City, State, Zip: Phone: Fax: Email:



Valhalla by RSI
 7661 Shaffer Parkway
 Littleton, CO 80127
 (303) 277-9983
www.ValhallaIntegration.com

Location	Equipment	Sales Tax	Labor	Misc.	Total
Council Chambers	\$64,592.17	\$0.00	\$11,628.48	\$117.53	\$76,338.18
Town Hall Foyer	\$607.59	\$0.00	\$637.55	\$1.39	\$1,246.53
Other Labor and Expenses	\$869.37	\$0.00	\$15,828.80	\$0.00	\$17,706.17
Total	\$66,069.13	\$0.00	\$28,094.78	\$118.92	\$94,272.83

Council Chambers

Description	Manufacturer	Model No.	Qty	Unit Price	Ext Price	Ext Labor	Total
AUDIO							
Speaker - 6" In-Ceiling, Commercial Series, Wide Coverage, Extended Bass	JBL Pro	CONTROL 47 CT	8	\$225.23	\$1,801.84	\$441.04	\$2,242.88
Accessory - Microphone to DANTE Interface	RDL	AV-DIN4	4	\$62.22	\$2,488.88	\$441.04	\$3,089.92
TestaFORTE D8P fixed I/O server with 12 analog inputs, 8 analog outputs, 8 channels of 24-bit USB audio, 32 x 32 channels of Dante™, Acoustic Echo Cancellation (AEC) technology (all 12 inputs), 2 channel VoIP and standard FXO telephone interface.	Bimp	TEIRA FORTE-DAN-VT	1	\$2,472.76	\$2,472.76	\$443.80	\$2,916.56
1 LAN Patch Cable				\$3.33		\$3.33	
1 LAN Patch Cable							
Wireless - Standard ULX Series Combination System	Shure	ULX8124/85	1	\$997.42	\$997.42	\$137.93	\$1,135.25
1 Liberty AV/HMIC-005				\$1.40		\$13.12	
Cable - 5' XLR Male to Female, Microphone							
Amplifier - 40H, 200W Analog Power Amplifier, 70V/100V	Crown	DC14200	1	\$1,570.00	\$1,570.00	\$110.26	\$1,680.26
Mic - 5" Shock Mounted Goose-neck, Cardioid, Surface Mount Pre-amplifier	Shure	MX405/C	15	\$296.42	\$4,446.30	\$1,653.30	\$6,100.20
15 Liberty AV/HMIC-005				\$138.33		\$13.12	
Cable - 5' XLR Male to Female, Microphone							
Client provided, - PC for Dedicated Audio Recording NOTE: Requires Wireless Keyboard and Mouse	Client	Recording PC	1	\$28.00	\$28.00	\$34.18	\$62.18
1 Sanyo B3-S TEREDMIN/RCA2				\$1.40		\$13.88	
Cable - B3-Series 3.5mm (1/8 in.) Mini Stereo to Dual RCA Male 2 Meter (6.56 ft)							
1 Kerdz PRO-HDMI00				\$18.88		\$1.18	
Cable - 6.5FT PRO Series High Speed HDMI							
VIDEO							
Transmitter - Wall plate 4K DigitalMedia 8G+ transmitter, include PWW-2407VWUL	Crestron	DM-TX-4K-100-C-1G	1	\$627.53	\$627.53	\$57.88	\$685.41
1 Kerdz PRO-HDMI00				\$18.18		\$1.18	
Cable - 16 FT PRO Series High Speed HDMI							
1 Liberty AV/DL-AR				\$18.40		\$1.83	
Accessory - HDMI Adapter Ring With 5 Adapters							
Source - Small/Medium Meeting Room ClickShare Wireless Presentation System with 2 Buttons	Barco	CSE-200	1	\$1,766.17	\$1,766.17	\$114.12	\$1,880.29
1 Kerdz PRO-HDMI00				\$12.83		\$1.18	
Cable - 6 FT PRO Series High Speed HDMI							
1 LAN Patch Cable				\$3.33		\$3.33	
1 LAN Patch Cable							
HD BaseT certified 4K DigitalMedia 8G+ input card with down mixing for DM switcher	Crestron	DMC-4K-C-D8P-HDCP2	1	\$934.17	\$934.17	\$88.21	\$1,022.38
1 Sanyo B3-AUD2				\$3.88		\$13.88	
Cable - B3-Series Analog Audio Cable 2 Meter (6.56 ft)							
Extender - USB over Ethernet Extender with Routing, Host Module	Crestron	USB-EXT-DM-LOCAL	1	\$428.57	\$428.57	\$55.13	\$483.70
16 x 16 DigitalMedia matrix switcher	Crestron	DM-MD 16X16-CPU3	1	\$5,503.35	\$5,503.35	\$168.15	\$5,671.50

* Price Includes Accessories Denotes Optional Product/Labor

Presented By: Valhalla by RSI
 Project Name: Town of Fiske - Council Chambers AV Upgrade
 Project No.: VALHA-0409



8/5/2019
 Page 2 of 6

Confidential - Not to be disclosed without written authorization.

Description	Manufacturer	Model No.	Qty	Unit Price	Ext Price	Ext Labor	Total
1 LAN Patch Cable LAN Patch Cable				\$2.75		\$2.75	
Client provided, - PC for Dedicated Presentation Source NOTE: Requires Wireless Keyboard and Mouse	Client	Presentation PC	1	\$18.60	\$18.60	\$1.10	\$19.70
1 Kozix PRO-HD000 Cable - 6.5FT PRO Series High Speed HDMI				\$16.18		\$1.18	
Extender - USB over Ethernet Extender with Routing, 4-Port Device Module	Creston	USB-EXT-D-M-REMOTE	1	\$428.57	\$428.57	\$55.13	\$483.70
4K HDMI input card for DM switcher	Creston	DMC-4K2-HD	4	\$571.43	\$2,285.72	\$220.52	\$2,506.24
Splitter - 1-to-4 4K HDMI Distribution Amplifier	Creston	HD-D-A0-4K2-E	2	\$1,002.75	\$2,005.50	\$235.32	\$2,240.82
14 Kozix PRO-HD000 Cable - 16.4FT PRO Series High Speed HDMI				\$145.33		\$2.78	
2-Channel high definition baseT certified 4K DigitalMedia 8G+ output card for DM switcher, HDCP 2.2	Creston	DMC-4K2-C-O-HD	5	\$325.00	\$1,625.00	\$275.65	\$1,900.65
DISPLAY							
Receiver - Wall plate 4K DigitalMedia 8G+ receiver and room controller 100 4 Kozix PRO-HD0100 Cable - 4FT PRO Series High Speed HDMI	Creston	DM-RMC-4K-100-C-1G-OC	4	\$516.87	\$2,067.48	\$445.44	\$2,512.92
Large fusion micro-adjustable BR wall mount	Chief	LTM 1U	1	\$225.74	\$225.74	\$110.26	\$336.00
TV - 55", 4K, LED UHD TV	Sony	XBR-55X800G	1	\$899.00	\$899.00	\$165.33	\$1,064.33
Large fusion micro-adjustable BR wall mount	Chief	LTM 1U	1	\$223.50	\$223.50	\$110.26	\$333.76
Medium fusion micro-adjustable BR wall display mount	Chief	MTM 1U	2	\$148.11	\$296.22	\$220.52	\$516.74
TV - 49", 4K, LED UHD TV	Sony	XBR-49X800G	2	\$749.99	\$1,499.98	\$330.78	\$1,830.76
Misc Material Cost - 12" Monitor w. HDMI Input & Stand Belectronics 12HDS	Allowance	Misc Hardware	12	\$350.48	\$4,205.76	\$716.69	\$4,922.45
Receiver - 4K DigitalMedia 8G+ Receiver and Room Controller 4 Kozix PRO-HD0150 Cable - 6FT PRO Series High Speed HDMI	Creston	DM-RMC-4K2-100-C	4	\$653.03	\$2,612.12	\$455.48	\$3,067.60
4 LAN Patch Cable LAN Patch Cable				\$13.48		\$2.78	
TV - 75", 4K, LED UHD TV	Sony	XBR-75X800G	1	\$1,798.07	\$1,798.07	\$165.33	\$1,963.40
CONTROL/MISC							
Programming Allowance for Creston Systems	Allowance	Creston Systems Programming	1	\$5,379.80	\$5,379.80	\$0.00	\$5,379.80
7" Touch Screen 2 Creston TSU-760-TT00X Accessory - Tablet Kit for TSU-760 Touch Screen	Creston	TSU-760-OC	2	\$1,142.86	\$2,285.72	\$441.04	\$2,726.76
Control - 3-Series Control System 1 LAN Patch Cable LAN Patch Cable	Creston	CP3	1	\$1,289.06	\$1,289.06	\$113.02	\$1,402.08
BASEBUILDING							

* Price Includes Accessories Denotes Optional Product/Labor

Prepared By: Valhalla by RSI

Project Name: Town of Frisco - Council Chambers A/V Upgrade

Project No.: VALHA-0409



6/5/2019

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Description	Manufacturer	Model No.	Qty	Unit Price	Ext. Price	Ext. Labor	Total
Connecticut Overfloor Raceway System *Provided for low-voltage cabling from EQ closet to table	6" On Floor Wire Way System		2	\$274.43	\$548.86	\$768.30	\$1,317.16
2 PS RAC-RB-1 Rough In Box				\$18.33		\$18.33	
2 PS RAC-EC-XX On Floor Wire Tray End Component				\$18.33		\$18.33	
2 PS RAC-UT-XX In Carpet On Floor Wire Tray/ Wall Transition Adapter				\$18.33		\$18.33	
2 PS RAC-T2-XX On Floor 72" Wire Tray Section				\$44.48		\$44.48	
2 TrimSnap UP-FLEXNOS E2-UH Clips for Flexible Bulk Wire Pile with Adjustable Silicone Rubber Feet- Through (Double Gang Units)				\$18.33		\$18.33	
Allowance for Wiremold or Similar On-Wall Cable Raceway *Note For Area of Wall/Ceiling from Beam to Accessible Ceiling Space.	Allowance	CABLE RACEWAY	1	\$285.17	\$285.17	\$42.64	\$327.81
Client provided, and configured - APC 8MT-2200C	Client	UPS	1	\$0.00	\$0.00	\$0.00	\$0.00
Power - 6 Outlet Power Strip	SnapAV	WS-10-0-P-6-C	2	\$19.92	\$39.84	\$55.14	\$74.98
Client provided, installed and configured - POE Network switches NOTE: Requires Multiple Full Power POE 802.3 AF Ports To Not Use POE Injectors. *Two Network Switch for EQ Rack 12-14 Ports network plus 15 ports POE only. *One Network Switch Installed Inside DAI8 desk 4-6 Ports.	Client	POE switches	1	\$0.00	\$0.00	\$0.00	\$0.00
44 Space (77") 26" Deep Gangable Rack With Rear Door, Black Finish 1 Middle Atlantic CBS-MRX-26 Cast base for MRX 26" deep. Increases rack overall height by 151/16.	Middle Atlantic	MRK-4426-AV	1	\$1,004.96	\$1,004.96	\$441.04	\$1,446.00
Surge - Rackmount Power, 3 Outlet, 15A, Basic Surge	Middle Atlantic	PD-9 15R-PL	2	\$114.75	\$229.50	\$110.26	\$339.76
Furniture - Fully Configured L5 Lectern Note* See Configuration Drawing For Details	Middle Atlantic	L5-LECTERN	1	\$5,775.00	\$5,775.00	\$220.52	\$6,000.52
Prewire							
DM Video or TV Wall Jack (1) CAT6 Shielded Cable	AVDM - Wire Only - Plenum Rated		16	\$43.33	\$702.88	\$1,429.32	\$2,132.80
Plenum Rated Remote Integrated Microphone Prewire (Connects Microphone Location back to Main EQPM AV Head-End) (1) CAT6 Shielded Cable + (1) 22-2 Shielded Cable	MIC - Plenum Rated		5	\$55.80	\$279.00	\$469.30	\$747.30
Plenum Rated Remote Wall-Mounted Touchpanel or Pad Location (connects back to Main EQPM Head-End) (1) CAT6 Cable + (1) 16-4 Wire	TPW - Plenum Rated		2	\$44.26	\$88.52	\$156.70	\$245.22
Plenum Rated Remote USB Extension Location (Connects USB Jack or Device back to Main EQPM Head-End) (1) CAT6 Cable	USB - Plenum Rated		1	\$30.66	\$30.66	\$120.28	\$150.34

Council Chambers Total: \$64,892.17 \$11,823.43 \$76,333.13

* Price Includes Accessories Denotes Optional Product/Labor

Presented By: Valhalla by RSI

Project Name: Town of Fiske - Council Chambers AV Upgrade

Project No.: VALHA-0409



6/5/2019

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Town Hall Foyer

Description	Manufacturer	Model No.	Qty	Unit Price	Ext Price	Ext Labor	Total
AUDIO							
Speaker - Compact Indoor/Outdoor, 5.25" Two-Way	JBL Pro	CONTROL 25-100C	3	\$156.00	\$468.00	\$330.78	\$798.78
Prewire							
Plenum Rated Speaker Prewire or Jack (2nd Speaker in Stereo Pair, Wired from Associated SPK1 Location) (1) 16-4 Wire Loop/Jumper (35')	SPK2 - Plenum Rated		2	\$11.72	\$23.44	\$112.58	\$136.02
Plenum Rated Speaker Prewire or Jack (1st Speaker in Stereo Pair, or Single Dual Voice Coil Speaker) (1) 16-4 Wire	SPK1 - Plenum Rated		1	\$33.48	\$33.48	\$56.29	\$89.77
Plenum Rated Remote A/V Source Jack Prewire with Pass-through Wall-Plate (Connects a Local A/V Source back to the Main Equipment Head-End) (1) CAT6 Shielded Cable + (2) CAT6 Cables	ICAV - Wire Only - Plenum Rated		1	\$84.06	\$84.06	\$137.90	\$221.96

Town Hall Foyer Total: \$907.89 \$637.56 \$1,246.53

Other Labor and Expenses

Description	Manufacturer	Model No.	Qty	Unit Price	Ext Price	Ext Labor	Total
Other Labor and Expenses							
System Design, Engineering and Documentation	Valhalla	System Design, Engineering and Documentation	1	\$0.00	\$0.00	\$3,733.08	\$3,733.08
Travel Allowance - Frisco, CO thr, 70.7 Miles - One-Way	Valhalla	Travel	1	\$0.00	\$0.00	\$0.00	\$0.00
NOTE: Tax Exempt Client, No Sales Tax Charged	Valhalla	Tax Exempt Client	1	\$0.00	\$0.00	\$0.00	\$0.00
System Training and Documentation	Valhalla	System Training	1	\$0.00	\$0.00	\$2,050.84	\$2,050.84
Allowance - 1 Preventive Maintenance Trip 6 Months In to Warranty *Complementary	Valhalla	6-Month Maintenance	1	\$0.00	\$0.00	\$0.00	\$0.00
Client provided, installed and configured - Enterprise Network * Provided by Others * Audio-Video VLAN is requested * Need approximately 25 static IP addresses within the network * Need WiFi access that can bridge to A/V VLAN * Requires WAN access for updates and conferencing features	Client	Enterprise Network	1	\$0.00	\$0.00	\$0.00	\$0.00
Estimate for Freight, Logistics and Fuel Surcharges - Actual Freight will be billed at Cost.	Freight	Logistics and Fuel Surcharges	1	\$869.37	\$869.37	\$0.00	\$869.37
Work With IT Group to support Connection of TO PMP devices.	Valhalla	IT Configuration	1	\$0.00	\$0.00	\$1,251.39	\$1,251.39
Project Management for on and off site	Valhalla	Project Management	1	\$0.00	\$0.00	\$6,792.89	\$6,792.89
Standard Warranty - No Charge	Valhalla	Standard Warranty	1	\$0.00	\$0.00	\$0.00	\$0.00

Other Labor and Expenses Total: \$869.37 \$13,828.20 \$14,696.17

* Price Includes Accessories Denotes Optional Product/Labor

Presented By: Valhalla by RSI
 Project Name: Town of Frisco - Council Chambers AV Upgrade
 Project No.: VALHA-0409



Totals	
	Equipment Subtotal: \$66,069.13
	Labor Subtotal: \$26,089.78
	Tax:
	Misc. Parts Adjustment \$118.82
	Grand Total: \$92,277.83

^ Price Includes Accessories Denotes Optional Product/Labor

Presented By: Valhalla by RSI

Project Name: Town of Fiskeo - Council Chambers AV Upgrade

Project No.: VALHA-0409



8/5/2019

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MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: NANCY KERRY, TOWN MANAGER
RE: AN ORDINANCE AUTHORIZING A SECOND AMENDMENT TO THE AGREEMENT CONCERNING THE SALE OF CERTAIN REAL PROPERTY OWNED BY THE TOWN AND LEGALLY DESCRIBED AS LOTS 3 AND 4, BLOCK 11, FRISCO TOWNSITE, ALSO KNOWN AS 518 MAIN STREET AND AS THE "STALEY HOUSE" PROPERTY, AMENDING THE AGREEMENT FOR THE PROJECT KNOWN AS THE "FOOTE'S REST PROJECT"
DATE: JUNE 11, 2019

Summary: The item is before the Town Council at the request of Nathaniel Kelly Foote, "Applicant," requesting the Town Council consider a second amendment to the Purchase, Sale and Development Agreement (see Attachment 1). The Applicant requests an amendment for the following:

- 1) A request to relocate the approved employee housing to an off-site location (already identified and owned by Mr. Foote); and
- 2) A request to reconfigure the internal site plan of the hotel resulting in a change from 65 units to 75 units (utilizing the six (6) employee housing units as hotel rooms and reconfiguring the proposed four (4) suites into separate rooms); and
- 3) A request to reduce the minimum number of bowling lanes to six (6) lanes.

Background: The Applicant's project was approved by the Planning Commission on March 14, 2017 (Attachment 3) pending subsequent, and required, approval by the Town Council rezoning to Lots 1-12, Block 11, Frisco Townsite to the Historical Overlay District, which was approved by the Town Council on January 23, 2018 (Attachment 4). The Applicant has provided a project summary and description, which is included (Attachment 5).

Staff Analysis and Recommendation:

If the Council desires to approve the Second Amendment to the Purchase and Sale Agreement, it Council must pass a motion adopting the attached ordinance (Attachment 2).

Financial Impact: Should the project be completed, the Applicant has estimated average daily room rates and occupancy levels, coupled with on-site sales, will generate approximately, \$1M in annual lodging and sales tax revenue for the Town of Frisco; that figure does not account for any transfer of sales from other local businesses due to the generation of estimated increase in daily occupants.

Attachment 1

SECOND AMENDMENT
To Purchase And Sale Agreement

TOWN OF FRISCO

AND

NATHANIEL KELLY FOOTE

SECOND AMENDMENT

TO

PURCHASE, SALE AND DEVELOPMENT AGREEMENT

Dated as of June 25, 2019

THIS SECOND AMENDMENT TO PURCHASE, SALE AND DEVELOPMENT AGREEMENT (this “Second Amendment”), dated as of June 25, 2019, is made by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation (the “Town”), and NATHANIEL KELLY FOOTE, an individual (together with any permitted successors and/or assigns, “Developer”).

Recitals

This Second Amendment is made with respect to the following facts:

A. The Town and the Developer entered into that certain Purchase, Sale and Development Agreement dated as of March 14, 2017 (the “Agreement”); and

B. The Town and the Developer entered into that certain First Amendment to Purchase, Sale and Development Agreement dated as of January 23, 2018 (the “First Amendment”); and

C. Pursuant to the Agreement and First Amendment, the Developer has agreed to design and construct the project on the Redevelopment Property (as defined in the Agreement) in accordance with the Agreement and First Amendment and with all applicable local, state and federal laws; and

D. The Town and the Developer desire to amend the Agreement and First Amendment to make certain adjustments to the requirements of the Agreement and First Amendment related to (i) the location of the employee housing to be provided in connection with the project; (ii) the maximum number of hotel rooms to be constructed as part of the project; and (3) the minimum number of bowling lanes to be constructed for the bowling alley that is to be a 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 parties hereto agree that the Agreement and the First Amendment is hereby amended as follows:

Section 1. Section 2.01 of the Agreement is amended to read as follows:

Section 2.01 Description of the Development. The Project is the redevelopment of the Redevelopment Property in accordance with this Agreement, including the Development Conditions. The exact nature of the Project shall be at the discretion of the Developer, so long as each and every aspect of the Project meets each and every requirement set forth in this Agreement, and has received any and all Town approvals required to construct the Project pursuant to the requirements of the Town Code.

Without limiting the generality of the foregoing, the Project shall include the construction of:

1. a hotel with not more than seventy-five (75) rooms/suites and containing an elevated plaza of not less than one-thousand (1,000) square feet in area, which elevated plaza shall be adjacent to and not more than two (2) floors above the outdoor, at-grade plaza specified below;
2. a restaurant(s) and bar(s);
3. a not less than six (6) lane bowling alley with a restaurant and bar;
4. an outdoor, at-grade plaza that is adjacent to Main Street and is not less than 2,500 square feet in area; and
5. Employee Housing.

The Project shall also include the preservation, on the Redevelopment Property, of the following historic structures that are currently located within the boundaries of the Redevelopment Property:

1. the Staley House
2. the building containing the Foote's Rest private residence and Sweet Shop (but not the associated garage);
3. Cabins 1, 2, and 3; and
4. the Blacksmith Shop.

Collectively, the above-listed structures or parts of structures shall be referred to hereinafter as the "Historic Structures." For purposes of reference only, each such structure is depicted in Exhibit C hereto at its approximate location as of the Effective Date of this Agreement. Exhibit C is incorporated herein by reference. Developer agrees that the building containing the Foote's Rest private residence and Sweet Shop shall be preserved in place at its location as of the Effective Date of this Agreement. Developer agrees that Cabins 1 and 2 shall be preserved at a location that is either adjacent to the western boundary of the Redevelopment Property, or near their respective locations as of the Effective Date of this Agreement. Developer agrees that the Staley House shall be preserved at a location on the Redevelopment Property that is adjacent to Main Street and in such manner and configuration that causes the Staley House's front façade to face Main Street, with at least a five (5) foot setback measured from the back of the sidewalk to serve as a "front yard." Developer further agrees that the remaining Historic Structures shall be located predominantly along the western boundary of the Redevelopment Property.

Developer agrees that, as a part of the consideration to the Town for the sale of the Town Property to the Developer, the Developer shall execute and deliver to the Town, at the time of Closing, an historic preservation covenant over the Redevelopment Property for the purpose of preserving the Historic Structures and their historic appearance, in perpetuity, and for the purpose of limiting the uses to which the Staley House may be put. Said covenant shall run in

favor of the Town, shall bind all future owners of the Redevelopment Property and shall be substantially in the form attached hereto as Exhibit D, which Exhibit is incorporated herein by reference. Any part of the foregoing notwithstanding, the Developer and the Town understand and agree that the Blacksmith Shop, as a result of its degradation, may be difficult and impractical to relocate and/or preserve and, accordingly, agree that the Blacksmith Shop may be replicated rather than preserved in the Developer's reasonable discretion. Any part of the foregoing notwithstanding, the Developer and the Town further understand and agree that Developer shall endeavor but not be obligated to preserve the Tool Shed (which is depicted in Exhibit C) along with the other Historic Structures and that, if so preserved, the Tool Shed shall be added to the list of Historic Structures that will be subject to the historic preservation covenant, the form of which is attached hereto as Exhibit D.

Developer agrees to develop the Redevelopment Property with reasonable care and diligence and to carry out and complete the Project in accordance with this Agreement and the Development Conditions.

Section 2. Section 1.01 of the Agreement, concerning definitions of terms, is hereby amended to remove the definition of the terms "Employee Housing Unit," and to replace that definition of those terms with a definition of the terms "Employee Housing" to read as follows:

"Employee Housing" shall mean that certain real property and improvements located at 221 South 4th Street, Frisco, Colorado, which property: (i) is legally described as Lots 21 through 24, inclusive, Block _____, Frisco Townsite; and (ii) shall be restricted by way of a real covenant, enforceable by the Town and subject to specific performance by the Developer, that allows the use and occupancy of the property only by one or more individuals, and his or her household members, who is employed and works at the Redevelopment Property. For purposes of this definition, the "Redevelopment Property" shall mean and include any part of Lots 1 through 12, inclusive, of Block 11, Frisco Townsite Subdivision. Said covenant shall be in substantially the form attached hereto as "Exhibit E," which exhibit is incorporated herein by this reference.

Section 3. All capitalized terms used in this Second Amendment shall have the same meaning as provided in the Agreement.

Section 4. Except as expressly amended by this Second Amendment, the Agreement and First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Town has caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and Developer has caused these presents to be executed by its duly authorized officer, as of the date first above written.

TOWN OF FRISCO

(SEAL)

Attest:

Deborah Wohlmuth, CMC, Town Clerk

Gary Wilkinson, Mayor

NATHANIEL KELLY FOOTE

STATE OF COLORADO)
) ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me as of the ____ day of _____, 2019, by Gary Wilkinson, as Mayor, and Deborah Wohlmuth, as Town Clerk, of the Town of Frisco, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

STATE OF COLORADO)
) ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me as of the _____ day of _____, 2019, by Nathaniel Kelly Foote

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT E

(to Second Amendment to Purchase, Sale and Development Agreement)

COVENANT FOR EMPLOYEE HOUSING

THIS COVENANT FOR EMPLOYEE HOUSING (this "Covenant") is made and entered into this ___ day of _____, 201_, by Nathaniel Kelly Foote (hereinafter referred to as "Declarant"), and The Town of Frisco, Colorado (the "Town"). This Covenant shall run with the land described herein and be binding upon the successors and assigns of the parties hereto, subject to the terms and conditions set forth herein.

RECITALS

A. Pursuant to that certain Purchase, Sale and Development Agreement between the Declarant and the Town, dated on or about May 14, 2017, that certain First Amendment to Purchase, Sale and Development Agreement between the Declarant and the Town, dated on or about January 23, 2018, and that certain Second Amendment to Purchase, Sale and Development Agreement between the Declarant and the Town, dated on or about June 25, 2019, the Town has sold certain real property to the Declarant in exchange, among other consideration, for the Declarant's execution and delivery to the Town of this Covenant;

B. Declarant owns the real property described in **Exhibit A** appended hereto and incorporated herein by this reference (the "Property"); and

C. Declarant desires to restrict the Property such that it may be used and occupied only by one or more individuals, and his or her household members, who is employed and works at the Redevelopment Property. For purposes of this covenant, the "Redevelopment Property" shall mean and include any part of Lots 1 through 12, inclusive, of Block 11, Frisco Townsite Subdivision.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Declarant, Declarant hereby represents, covenants and agrees as follows:

1. The property and improvements located at 221 South 4th Street, Frisco, Colorado, which property is legally described as Lots 21 through 24, inclusive, Block ____, Frisco Townsite, along with any improvements thereon that are now existing or constructed in the future, shall be used and occupied only by one or more individuals, and his or her household members, who is employed at, and works at some part of the property legally described as Lots 1 through 12, inclusive, of Block 11, Frisco Townsite Subdivision.

2. Enforcement. Declarant understands and agrees that the Town shall be entitled to enforce this Covenant in accordance with its terms, and/or by way of any legal proceeding and remedy available at law or in equity, including but not limited to an order for specific performance of the Declarant's obligations under this Covenant.

3. Inspection and Compliance.

(a) Declarant agrees that the Town shall have the right to enter the Property at reasonable times to inspect the Property to assure compliance with this covenant. Such inspection may occur after the provision of a written notice of inspection to the Declarant, or upon the posting of a written notice of inspection on or about the Property not less than (48) hours prior to the time of inspection. Declarant shall cooperate with the Town and take all actions as may be reasonably requested by the Town in order that the Town may ascertain whether the terms of this Covenant have been and are being complied with. Declarant shall insure that any lease over any part of the Property shall provide for the Town's right of entry and inspection that is set forth herein.

(b) In the event that the Town determines, in its reasonable discretion, that there has been a failure or failures to comply with any requirement of this Covenant, the Town may provide written notice to Declarant that specifies the nature of the failure(s), the corrective action(s) required to remedy the failure(s), and a reasonable period of time within which the failure(s) shall be remedied by and at the expense of the Declarant, which period shall not be less than thirty (30) nor more than forty-five (45) days.

4. Binding on Successors to Declarant; Enforcement; Attorneys' Fees. This Covenant shall be a binding servitude, and shall run with the land and be binding upon Declarant, and its successors, transferees, and assigns in and to the Property, in perpetuity. It is explicitly agreed by the parties hereto that this Covenant shall be enforceable in the courts of the State of Colorado and that in the event an action to enforce this Covenant is brought, the party that substantially prevails in any such enforcement action shall be entitled to recover from the non-prevailing party the full cost of such action, including but not limited to reasonable attorneys' fees and costs.

5. Exercise of Rights and Remedies. Any failure of the Town to exercise or enforce any right or remedy granted under this Covenant shall not have the effect of waiving or limiting the exercise or enforcement by the Town of any other right or remedy, or the exercise or enforcement of such right or remedy at any other time.

6. Notices. Any notice, consent or approval which is required or allowed to be given hereunder shall be given by a party either personally or by mailing the same, by registered mail, properly addressed and with postage prepaid, to the address of the other party, or to any subsequent mailing address of the other party as long as prior written notice of the change of address has been given by the other party to this Covenant. Unless given personally, all such notices, consents or approvals shall be effective seven days following the date the notice was deposited in the U.S. Mail. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant: _____

To Town of Frisco: Town of Frisco
Attn: Town Manager
P.O. Box 4100
Frisco, CO 80443

7. Severability. Each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but, if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provision shall

be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

8. Choice of Law. This Covenant and each and every related document is to be governed and construed in accordance with the laws of the State of Colorado.

9. Recordation and Modifications. This covenant shall be recorded with the Clerk and Recorder of Summit County, Colorado. The parties to this Covenant agree that any modifications of this Covenant shall be effective only when made by a writing signed by both parties and recorded with the Clerk and Recorder of Summit County, Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first above-written.

Declarant: Nathaniel Kelly Foote

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing Covenant for Employee Housing was acknowledged and signed before me this _____ day of _____, 201_ by Nathaniel Kelly Foote.

TOWN OF FRISCO, COLORADO

By:_____

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

STATE OF COLORADO)
) ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me as of the _____ day of _____, 2019, by Gary Wilkinson, as Mayor, and Deborah Wohlmuth, as Town Clerk, of the Town of Frisco, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT A

(to Covenant for Employee Housing)

Lots 21 through 24, inclusive, Block ____, Frisco Townsite Subdivision,

Attachment 2

Ordinance For Consideration of Adoption

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
ORDINANCE 19-08**

AN ORDINANCE AUTHORIZING A SECOND AMENDMENT TO THE AGREEMENT CONCERNING THE SALE OF CERTAIN REAL PROPERTY OWNED BY THE TOWN AND LEGALLY DESCRIBED AS LOTS 3 AND 4, BLOCK 11, FRISCO TOWNSITE, ALSO KNOWN AS 518 MAIN STREET AND AS THE “STALEY HOUSE” PROPERTY.

WHEREAS, the Town Council finds that it has no present governmental use for certain real property owned by the Town and legally described as Lots 3 and 4, Block 11, Frisco Townsite, (the “Property”) and that the Town’s prior use of the Property has been for purposes of lease to one or another non-profit, community-based organization; and

WHEREAS, the Town Council desires that the Property be redeveloped as a means to encourage and facilitate local economic activity and preserve certain historic structures in the vicinity of the Property; and

WHEREAS, Colorado Revised Statutes § 31-15-713(b) authorizes the Town to sell real property, by ordinance, upon such terms and conditions as the Town Council may determine at a regular or special meeting; and

WHEREAS, on or about March 14, 2017, by way of Ordinance No. 17-02, the Town approved the sale of the Property pursuant to that certain Purchase, Sale and Development Agreement (the “Agreement”) between the Town of Frisco and Nathaniel Kelly Foote (the “Developer”), dated as of March 14, 2017; and

WHEREAS, on or about January 23, 2018, by way of Ordinance No. 18-01, the Town approved that certain First Amendment to Purchase, Sale and Development Agreement (the “First Amendment”) to the Agreement; and

WHEREAS, pursuant to the Agreement and the First Amendment, the Developer has agreed to design and construct the project on the Redevelopment Property (as defined in the Agreement) in accordance with the Agreement and First Amendment and with all applicable local, state and federal laws; and

WHEREAS, the Town and the Developer desire to amend the Agreement and the First Amendment to make certain adjustments to the requirements of the Agreement and the First Amendment related to (i) the location of the employee housing to be provided in connection with the project; (ii) the maximum number of hotel rooms to be constructed as part of the project; and (3) the minimum number of bowling lanes to be constructed for the bowling alley that is to be a part of the project.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO:

Section 1. That the Mayor and Town Clerk are hereby authorized to execute the attached Second Amendment to Purchase and Sale Agreement dated as of June 25, 2019, and to execute each and every other document necessary or desirable to effectuate the sale and development of the Property in accordance with the terms and conditions thereof.

Section 2. Severability. If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

Section 3. Effective Date. This ordinance shall take effect pursuant to the Home Rule Charter of the Town of Frisco, Colorado.

INTRODUCED, PASSED ON FIRST READING AND PUBLICATION AND POSTING ORDERED THIS 11TH DAY OF JUNE, 2019.

TOWN OF FRISCO, COLORADO

Gary Wilkinson, Mayor

Attest:

Deborah Wohlmuth, CMC, Town Clerk

Attachment 3

Original Purchase and Sale Agreement
March 14,2017

TOWN OF FRISCO

AND

NATHANIEL KELLY FOOTE

PURCHASE, SALE AND DEVELOPMENT AGREEMENT

Dated as of March 14, 2017

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THIS PURCHASE, SALE AND DEVELOPMENT AGREEMENT, dated as of March 14, 2017, (the “Effective Date”) 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 NATHANIEL KELLY FOOTE, an individual (together with any permitted successors and/or assigns, “Developer”).

Recitals

This Agreement is made with respect to the following facts:

A. The Town is a municipal corporation and political subdivision duly organized and existing under the Constitution and laws of the state of Colorado and its home rule charter;

B. The Town owns certain real property that is commonly known as 518 Main Street, Frisco, Colorado and that is legally described in Exhibit A hereto (the “Town Property”), which Exhibit is incorporated herein by reference;

C. The Developer owns certain real property that is adjacent to the Town Property, that is commonly known as 502, 510 and 512 Main Street, Frisco, Colorado and that is legally described in Exhibit B hereto (the “Developer’s Property”) which Exhibit is incorporated herein by reference;

D. The Developer has a contract to purchase certain other real property that is also adjacent to the Town Property and that is commonly known as 107 South 6th Avenue, Frisco, Colorado and is legally described as Lots 1 and 2, Block 11, Frisco Townsite Subdivision (the “Developer’s Contract Property”);

E. The Town desires to sell the Town Property to be redeveloped in order to bolster local economic activity;

F. The Developer desires to purchase the Town Property to redevelop in conjunction with the redevelopment of the Developer’s Property and the Developer’s Contract Property;

G. There are certain historic structures located on the Developer’s Property and the Town Property that the Town desires be preserved in perpetuity;

H. The Developer desires to purchase the Town Property and to redevelop the Town Property, the Developer’s Property and the Developer’s Contract Property as one project and, in connection therewith, to provide assurance to the Town that: (i) the Town Property, the Developer’s Property and the Developer’s Contract Property will be redeveloped in the near future and will not be held by the Developer for speculative or other purposes, (ii) the redevelopment project will be as described in this Agreement, and (iii) the redevelopment project will preserve the historic structures (as described in Section 2.01) located or to be located on the Developer’s Property and the Town Property by way of an historic preservation covenant to be granted by the Developer to the Town pursuant to this Agreement;

I. Collectively, the Town Property, the Developer's Property and the Developer's Contract Property are referred to hereinafter as the "Redevelopment Property;" and

J. The Developer has agreed to design and construct the project on the Redevelopment Property in accordance with this Agreement and with all applicable local, state and federal laws.

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 parties hereto agree as follows:

SECTION 1 DEFINITIONS.

Section 1.01 Definitions. As used in this Agreement, the following terms will 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.

"Closing" means the events described in Section 3.06.

"Deed" has the meaning set forth in Section 3.06(a).

"Developer" has the meaning set forth in the first paragraph of this Agreement.

"Developer's Contract Property" has the meaning set forth in Recital "D" above.

"Developer's Property" means the real property legally described in Exhibit B.

"Development Conditions" means: (i) such terms of this Agreement as govern the redevelopment of the Redevelopment Property; and (ii) all finally approved plats, plans and other documents that are required or permitted by the Town Code for the development of the Project or any part of the Project.

"Due Diligence Period" has the meaning set forth in Section 3.03.

"Dwelling Unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Employee Housing Unit” means a dwelling unit, of not less than 375 square feet, that is constructed within the boundaries of the Redevelopment Property and that is restricted by way of a real covenant, enforceable by the Town and subject to specific performance by the Developer, that allows use and occupancy of the unit only to an individual, or individual and his or her family members, who is employed and works at the Redevelopment Property.

“Environmental Laws” means all federal, state and local environmental, health and safety statutes, as may from time to time be in effect, including but not limited to federal laws such as the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9602, et seq., the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601(20)(D), the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act Amendments of 1977, 33 U.S.C. §§ 1251, et seq. (“CWA”), the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, et seq., the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., and any and all federal, state and local rules, regulations, authorizations, judgments, decrees, concessions, grants, franchises, agreements and other governmental restrictions and other agreements relating to the environment or to any pollutants, as may from time to time be in effect.

“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 Kuechenmeister & Renaud LLP
710 Kipling Street, Suite 300
Lakewood, CO 80215

Developer: Nathaniel Kelly Foote
P.O. Box 307
Frisco, CO 80443
e-mail: foote@nkfoote.com

With a Copy to: Andrea Mahoney, Esq.
The Law Office of M. Kent Olsen
650 S. Cherry Street, Suite 850
Denver, CO 80246-1841

e-mail: AMahoney@mkolsenlaw.com

“Permitted Exceptions” has the meaning set forth in Section 3.04.

“Planning Department” means the Town of Frisco Planning Department.

“Project” has the meaning set forth in Section 2.01.

“Property Information” has the meaning set forth in Section 3.02.

“Redevelopment Property” has the meaning set forth in Recital “I” above.

“Title Commitment” has the meaning set forth in Section 3.04.

“Title Company” has the meaning set forth in Section 3.04.

“Title Policy” means an ALTA Owner's title insurance policy issued by the Title Company, in the amount of Seven Hundred Thousand Dollars (\$700,000), dated as of Closing and reflecting Developer as fee owner of the Town Property, subject only to the Permitted Exceptions and such other easements, rights-of-way and exceptions as may be agreed upon by the parties.

“Town” has the meaning set forth in the first paragraph of this Agreement.

“Town Property” is that property described in Exhibit A.

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

SECTION 2 DESCRIPTION OF THE DEVELOPMENT.

Section 2.01 Description of the Development. The Project is the redevelopment of the Redevelopment Property in accordance with this Agreement, including the Development Conditions. The exact nature of the Project shall be at the discretion of the Developer, so long as each and every aspect of the Project meets each and every requirement set forth in this Agreement, and has received any and all Town approvals required to construct the Project pursuant to the requirements of the Town Code.

Without limiting the generality of the foregoing, the Project shall include the construction of:

1. a hotel with not more than sixty-five (65) rooms and containing an elevated plaza of not less than one-thousand (1,000) square feet in area, which elevated plaza shall be adjacent to and not more than two (2) floors above the outdoor, at-grade plaza specified below;
2. a restaurant(s) and bar(s);
3. a not less than eight (8) lane bowling alley with a restaurant and bar;

4. an outdoor, at-grade plaza that is adjacent to Main Street and is not less than 2,500 square feet in area; and
5. not less than six (6) Employee Housing Units.

The Project shall also include the preservation, on the Redevelopment Property, of the following historic structures that are currently located within the boundaries of the Redevelopment Property:

1. the Staley House
2. the building containing the Foote's Rest private residence, Sweet Shop and garage;
3. Cabins 1, 2, and 3; and
4. the Blacksmith Shop.

Collectively, the above-listed structures or parts of structures shall be referred to hereinafter as the "Historic Structures." For purposes of reference only, each such structure is depicted in Exhibit C hereto at its approximate location as of the Effective Date of this Agreement. Exhibit C is incorporated herein by reference. Developer agrees that Cabins 1 and 2, and the building containing the Foote's Rest private residence, Sweet Shop and garage shall be preserved in place at their respective locations as of the Effective Date of this Agreement. Developer agrees that the Staley House shall be preserved at a location on the Redevelopment Property that is adjacent to Main Street and in such manner and configuration that causes the Staley House's front façade to face Main Street, with at least a five (5) footback measured from the back of the sidewalk to serve as a "front yard." Developer further agrees that the remaining Historic Structures shall be located predominantly along the western boundary of the Redevelopment Property.

Developer agrees that, as a part of the consideration to the Town for the sale of the Town Property to the Developer, the Developer shall execute and deliver to the Town, at the time of Closing, an historic preservation covenant over the Redevelopment Property for the purpose of preserving the Historic Structures and their historic appearance, in perpetuity, and for the purpose of limiting the uses to which the Staley House may be put. Said covenant shall run in favor of the Town, shall bind all future owners of the Redevelopment Property and shall be substantially in the form attached hereto as Exhibit D, which Exhibit is incorporated herein by reference. Any part of the foregoing notwithstanding, the Developer and the Town understand and agree that the Blacksmith Shop, as a result of its degradation, may be difficult and impractical to relocate and/or preserve and, accordingly, agree that the Blacksmith Shop may be replicated rather than preserved in the Developer's reasonable discretion. Any part of the foregoing notwithstanding, the Developer and the Town further understand and agree that Developer shall endeavor but not be obligated to preserve the Tool Shed (which is depicted in Exhibit C) along with the other Historic Structures and that, if so preserved, the Tool Shed shall be added to the list of Historic Structures that will be subject to the historic preservation covenant, the form of which is attached hereto as Exhibit D.

Developer agrees to develop the Redevelopment Property with reasonable care and diligence and to carry out and complete the Project in accordance with this Agreement and the Development Conditions.

Section 2.02 Permitted and Prohibited Uses of the Staley House.

(a) Developer understands and agrees that the Project shall include a proposed use of the Staley House that will cause the Staley House to be open to the public and appreciated by the public for its historic values. Such uses include but are not limited to a retail sales shop, a coffee shop, a small café or a wine bar. Such uses shall not require alteration of the exterior of the structure nor allow for visual impediments to the exterior of the structure that would detract from the historic integrity or aesthetic of the building. The Developer understands and agrees that the Staley House shall not be used: (1) as a real estate or professional or other office; (2) for the provision of personal or financial services; (3) solely as the entryway or lobby to other uses on the site; (4) for residential purposes; (5) as a repair shop or for any automobile related use; (6) as a drive-through restaurant; or (7) for storage or a sexually oriented business.

SECTION 3 ACQUISITION AND CONVEYANCE OF THE PROPERTY. Developer agrees to buy, and the Town agrees to sell, the Town Property on the terms and conditions set forth in this Agreement.

Section 3.01 Property Inspection and Environmental Assessment.

(a) On and after the Effective Date of this Agreement, the Town shall provide Developer, its employees and agents, with ongoing access to the Town Property to, at Developer's sole cost and expense, inspect it, conduct any due diligence, tests, surveys, or other studies or analysis, or to collect any data, samples, specimens or information as Developer deems necessary, in its sole discretion; provided that, except as set forth below, Developer shall have no right to obtain an environmental assessment of the Property and shall repair any damage resulting from any such activities and shall return the Town Property substantially to its condition prior to such damage. Developer shall not permit claims or liens of any kind against the Town Property for work performed on the Town Property at the Developer's request. Developer agrees to indemnify, protect and hold Town harmless from and against any liability, damage, cost or expense incurred by Town and caused by any such work, claim or lien. This indemnity includes the Town's right to recover all costs and expenses incurred by the Town to defend against any such liability, damage, cost or expense, or to enforce this section, including the Town's reasonable attorney fees, and other legal fees and expenses. The provisions of this paragraph shall survive the termination of this Agreement.

(b) If requested by Developer in writing within ten (10) days after the Effective Date of this Agreement, the Town shall obtain, within seventy (70) days after the Effective Date this Agreement and at Developer's sole expense to be reimbursed to the Town at Closing, a Phase I Environmental Assessment of the Town Property. A Phase II Environmental Assessment of the Town Property shall be obtained by the Town within one-hundred twenty (120) days after the Effective Date of this Agreement, also at Developer's sole expense to be reimbursed to the Town at Closing, if and only if the Phase I Assessment warrants the need, in the reasonable discretion

of the Town, for a Phase II Assessment. Any Environmental Assessment obtained by the Town shall be provided to the Developer; provided, however, that the Developer shall keep said Assessment and its contents strictly confidential, and shall not disclose any of the contents thereof to any of its agents, brokers, consultants, employees, lenders or any other person or entity without the prior written consent of the Town. In the event that any Environmental Assessment reveals information that must be disclosed to a governmental entity, the Town shall be solely responsible for making such disclosures.

Section 3.02 Materials to be Delivered. Within twenty (20) days after the Effective Date of this Agreement, the Town shall deliver to Developer the following materials concerning the Town Property (the "Town Property Information"):

(a) Any, and all, written information in the possession of the Town concerning the Town Property, including but not limited to, public works, planning and building department files;

(b) Any, and all, vendor, contractor, lease or other agreements between the Town and any third party relating to the Town Property; and

(c) The most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by the Town to the Town's actual knowledge, current as of the date of this Agreement.

Section 3.03 Developer's Due Diligence. Developer shall have one hundred thirty (130) days after the Effective Date of this Agreement (the "Due Diligence Period") during which to inspect the Town Property and to review all matters affecting or relating to the Town Property or the Project, including, but not limited to, the location, availability and adequacy of utilities, engineering, soil conditions, tests, surveys, the economic feasibility of the Project, and the financing for acquisition of the Town Property and development of the Project, as well as other studies or analyses (including any environmental assessment(s) provided by the Town), and the Property Information. If, as a result of such inspection and review, Developer finds the Town Property unsatisfactory to it, in its sole and absolute discretion, and delivers written notice to the Town of the exact nature of such unsatisfactory condition(s) within the Due Diligence Period, then, and except as to unsatisfactory condition based upon the Purchase Price, the Town shall make good faith efforts, at no more than four thousand dollars (\$4,000.00) of cost, to cure such unsatisfactory condition(s) within ten (10) days after the receipt of such notice. In the event that the Town is not able to cure such unsatisfactory conditions at such cost within said ten (10) day period, Developer will have the right to terminate this Agreement by notifying the Town in writing of such termination within ten (10) calendar days after such ten (10) day period. In the event of such termination by Developer, the Town and the Developer shall proceed in accordance with the provisions of Section 5 below.

Section 3.04 Survey and Title Evidence.

(a) The Town shall, within twenty (20) days after the Effective Date of this Agreement, deliver to Developer, at the Town's expense, a Title Commitment issued by Land Title Guarantee Company in Frisco, Colorado ("Title Company"), covering the Town Property,

together with legible copies of all exception documents disclosed by such Commitment. Such Title Commitment shall commit to insure Title to the Town Property in Developer in the amount of Seven Hundred Thousand Dollars (\$700,000) and subject only to (i) this Agreement and the Covenant for Preservation of Historic Structures required by this Agreement; (ii) all matters of record disclosed in the Title Commitment; and (iii) any lease agreement over the Town Property (collectively, the "Permitted Exceptions"). On or before the date of the Closing, the Town shall cause such Commitment to be endorsed so as to change the effective date to a date no more than one week prior to the Closing. Town shall pay the title insurance premium at the Closing and the Town shall have the Title Policy delivered to Developer as soon as practicable after the Closing. If required by the Title Company in order to insure the property in the amount set forth in this subsection (a), Developer will obtain and pay for an appraisal of the Property and provide copies of it to the Town and the Title Company. If required by the Title Company to delete the standard preprinted exceptions set for the in the Title Commitment, and if the Developer desires that such preprinted exceptions be deleted, the Developer will obtain and pay for an ALTA survey of the Town Property and provide copies of the same to the Town and the Title Company at such time prior to the Closing as may be required by the Title Company.

(b) Written notice of unmerchantability of title to the Town Property or of any other unsatisfactory title condition shown by the Title Commitment shall be given by or on behalf of Developer on or before the end of the Due Diligence Period. If the Town does not receive Developer's notice on or before the end of the Due Diligence Period, Developer accepts the condition of title as disclosed by the Title Commitment as satisfactory. If the Town timely receives notice of unmerchantability of title or any other unsatisfactory title condition(s), the Town shall use reasonable efforts, at no more than four thousand dollars (\$4,000.00) of cost, to correct such title condition(s). If such condition(s) are not corrected fifteen (15) days after receipt of the Developer's notice, Developer will have the right to terminate this Agreement by notice to the Town given within five (5) business days after such fifteen (15) day period. In the event of such termination by Developer, the Town and the Developer shall proceed in accordance with the provisions of Section 5 below.

Section 3.05 **SPECIAL DISTRICT DISCLOSURE STATEMENT.** **SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE TOWN PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND**

BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

Section 3.06 Closing. Closing of the acquisition by Developer from the Town of the Town Property will take place at the Title Company ten (10) business days after: (i) Developer receives final approval from the Town of the development plan for the Project; and (ii) the Town receives an application for a building permit for the Project that meets the requirements of Section 4.04 below. At Closing, the following will occur, each being a condition precedent to the others and all being considered as occurring simultaneously:

(a) The Town shall execute, have acknowledged and deliver to Developer: (i) a Special Warranty Deed (the "Deed") conveying title to the Property to Developer, free and clear of all taxes and subject only to such liens, encumbrances and other matters as may make up the Permitted Exceptions; (ii) a certification that all representations and warranties made by the Town in this Agreement are true, accurate and complete at the time of the Closing; (iii) an affidavit certifying that the Town is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code of 1986, as amended, and the corresponding income tax regulations; and (iv) such affidavits and agreements to or with Title Company as Title Company shall require to issue to Developer a policy of owner's title insurance.

(b) Developer will deliver to the Town, in funds that comply with all applicable Colorado laws, but including only electronic transfer funds, certified check, savings and loan teller's check or a cashier's check ("Good Funds"), the sum of Seven Hundred Thousand Dollars (\$700,000.00) (the "Purchase Price"), along with a certification that all representations and warranties made by Developer in this Agreement are true, accurate and complete at the time of the Closing.

(c) The Developer shall execute, have acknowledged and deliver to Town a historic preservation covenant in substantially the form attached hereto as Exhibit D.

(c) The Town and the Developer will each pay one-half (50%) of the Title Company's closing costs and will execute settlement sheets, closing instructions, and such other agreements and documents (with customary prorations in accordance with local practice for commercial property transactions) as may be required to implement and to carry out the intent of this Agreement.

(d) The Developer will pay the Town for the costs of any Phase I and Phase II Environmental Assessment of the Town Property that was obtained by the Town pursuant to this Agreement.

(e) The Title Company will issue the Title Policy to Developer, or unconditionally commit to so issue the Title Policy promptly following Closing.

Section 3.07 Risk of Loss. If, prior to the Closing, the Town Property or any part thereof is damaged or destroyed by fire, earthquake, flood or other casualty, to a degree that Developer determines its use is adversely affected, Developer may at its option terminate this Agreement by written notice to the Town prior to the Closing. In the event of such termination by Developer, the Town and the Developer shall proceed in accordance with the provisions of Section 5 below. In the event that the Developer fails to terminate this Agreement as a result of such casualty, the Developer agrees that it is purchasing the Property in its then “as is” condition as a result of such casualty.

Section 3.08 “As Is” Nature of Transaction. The Town has not made, does not make and specifically negates and disclaims any representations, warranties, covenants or guarantees of any kind, whether express or implied: (a) concerning or with respect to the presence of hazardous substances on the Town Property or compliance of the Town Property with any and all applicable Environmental Laws; and (b) the value, nature, quality or condition of the water, soil and geology of the Town Property. The Developer acknowledges and agrees that to the maximum extent permitted by law, the sale of the Town Property, as provided for herein, is made on an “as is,” “where is” and “with all faults” condition and basis with respect to the existence of hazardous substances and the condition of the water, soil and geology of the Town Property. The Developer and anyone claiming by, through or under the Developer hereby fully and irrevocably releases the Town and its successors from any and all claims that it may now have or hereafter acquire against the Town, its officials, officers, employees, representatives and agents for any cost, loss, liability, damage, expense, claim, demand, action or cause of action arising from or related to any such defects and conditions, including, without limitation, compliance with Environmental Laws, affecting the Town Property or any portion thereof.

Section 3.09 Developer’s Feasibility Study. Developer shall have ninety (90) days after the date of the final approval of the Project by the Town within which to study the financial feasibility of the Project, including but not limited to the availability of construction or other financing for the Project. If as a result of such study or studies the Developer shall determine, in its sole and absolute discretion, that the Project is not financially feasible, then the Developer may provide written notice of termination to the Town within said ninety (90) days. In the event of such termination, the Developer and the Town shall proceed in accordance with the provisions of Section 5 below. For purposes of this Section, the date of final approval of the Project shall be the date upon which the Town has given each approval necessary for the Developer to make application to the Town for the issuance of a building permit for all or part of the Project.

SECTION 4 DEVELOPMENT APPROVALS.

Section 4.01 Development Approval. The Town understands and agrees that the Developer may choose to make application to the Town for the rezoning of the Developer’s Property to be within the Town’s Historic Overlay (HO) District. Developer shall make all necessary applications required for the construction associated with the Project through the Town as required by the Town’s ordinances and regulations; including, but not limited to the following:

- (i) Sketch plan procedures found in Chapter 180 of the Town Code; and

- (ii) Development plan procedures found in Chapter 180 of the Town Code;

Section 4.02 Sketch Plan. On or before the 130th day after the Effective Date of this Agreement, the Developer shall have made application to the Town for a sketch plan approval for the Project on the Redevelopment Property. If the Developer fails to make such application within said time period, the Town may terminate this agreement by written notice to the Developer. In the event of such termination by the Town, the Town and the Developer shall proceed in accordance with the provisions of Section 5 below.

Section 4.03 Development Application. On or before the 180th day after the Effective Date of this Agreement, the Developer shall have made application to the Town for development plan approval for the Project on the Redevelopment Property. If the Developer fails to make such application within said time period, the Town may terminate this agreement by written notice to the Developer. In the event of such termination by the Town, the Town and the Developer shall proceed in accordance with the provisions of Section 5 below.

Section 4.04 Building Permit Application. On or before the 360th day after the Effective Date of this Agreement, the Developer shall have made application to the Town, including the payment of building permit fees therefor, for a building permit authorizing the construction of a substantial portion of the improvements to be constructed on the Redevelopment Property pursuant to the approved development plan for the Property. For purposes of this section, a “substantial portion of the improvements” mean improvements of a value that is not less than one-half (50%) of the total value of all improvements that may be constructed on the Property pursuant to the approved development plan, with such values being determined by the Town’s Building Official through the normal and customary valuation methodology generally applied by such official in connection with building permit applications. If the Developer fails to make such application within said time period, the Town may terminate this agreement by written notice to the Developer. In the event of such termination by the Town, the Town and the Developer shall proceed in accordance with the provisions of Section 5 below.

Section 4.05 Development Approvals Generally. The Town agrees reasonably to cooperate with Developer with respect to application(s) for any permits or approvals required or permitted by the laws of the Town, and any permits or approvals required from any other governmental agency, for purposes of developing the Project on the Redevelopment Property; provided, however, that all applications for such permits and approvals are in compliance with this Agreement and applicable ordinances and/or regulations. Nothing contained in this Agreement shall be construed to obligate the Town to issue any permit or approval necessary or desirable in connection with the Project, and the Town may issue any such permit or approval in its sole discretion, with or without conditions, and in accordance with applicable laws of the Town and state. The Developer understands and agrees that the Town’s consideration and decision with respect to any application the Developer may file in order to obtain approval of the Project will be a quasi-judicial decision, which decisions are often to be made only after public hearing. Accordingly, in the event that the Project has not received full development approval consistent with this Agreement as it relates to the development plan (whether due to political

opposition, initiative, referendum, litigation, the Town's lack of support or any other cause) after three (3) good faith efforts to obtain such approval, then the Developer shall have the right to terminate this Agreement by written notice to the Town. In the event of such termination by the Developer, the Town and the Developer shall proceed in accordance with the provisions of Section 5 below.

SECTION 5 CERTAIN TERMINATIONS

This Section 5 shall apply only to those circumstances where a given paragraph of this Agreement provides a right to terminate this Agreement and further provides that, in the event of such termination, "...the Town and the Developer shall proceed in accordance with the provisions of Section 5 below." In such circumstances, this Agreement shall terminate and neither the Town nor the Developer shall have any further obligation to the other party whatsoever, and neither party shall have any claim for damages against the other based upon such termination.

SECTION 6 REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties by Developer Developer represents and warrants that:

(a) He is the sole owner of the fee simple interest in the Developer's Property and has complete and sole authority to execute and deliver this Agreement to the Town or, in the event that this Agreement is properly assigned to a corporate entity, that the entity is duly organized and validly existing under the laws of the State of Colorado, that it is not in violation of any provisions of its governing documents or the laws of the State of Colorado, that it has the power and legal right to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action;

(b) The consummation of the transactions contemplated by this Agreement will not violate any provisions of the governing documents of Developer or constitute a default or result in the breach of any term or provision of any contract or agreement to which Developer is a party or by which it is bound;

(c) Developer will cooperate with the Town with respect to any litigation brought by a third party concerning the Project or this Agreement, except where by the nature of the litigation the Town and Developer are adverse;

(d) There is no litigation, proceeding or investigation contesting the power or authority of the Developer or its officers with respect to the Project or this Agreement, and Developer is unaware of any such litigation, proceeding or investigation that has been threatened; and

(e) Developer, as of the date of this Agreement has funds available which, together with reasonably anticipated financing available to the Developer, should be sufficient and available in an amount not less than the amount stated in Section 3.06(b) above.

Section 6.02 Representations and Warranties by the Town. The Town represents and warrants that:

(a) The Town is a home rule municipal corporation and political subdivision validly existing under the laws of the State of Colorado;

(b) The Town has the power to enter into and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder;

(c) There is no litigation, proceeding or investigation contesting the power or authority of the Town or its officials to enter into or consummate the transactions contemplated by this Agreement, and the Town is unaware of any such litigation, proceeding or investigation that has been threatened;

(d) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the Town or to the Town's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town; and

(e) Town will cooperate with the Developer with respect to any litigation brought by a third party concerning the Project or this Agreement, except where by the nature of the litigation the Town and Developer are adverse.

SECTION 7 RESTRICTIONS ON ASSIGNMENT AND TRANSFER

Section 7.01 Limitation on Assignment. Except for an assignment to an entity that is controlled by Nathaniel Kelly Foote and that owns or has an ownership interest in the Developer's Property, Nathaniel Kelly Foote will not assign his rights or delegate his duties and obligations pursuant to this Agreement without the prior written consent of the Town, which consent may be withheld in the Town's sole and absolute discretion. Any purported assignment without consent of the Town will be null and void. As a condition to granting consent, an assignee will expressly assume in writing the obligations of Developer hereunder and upon any such full assumption of obligations, Nathaniel Kelly Foote shall be released from any and all obligations hereunder only if he no longer has a personal ownership interest in Developer's Property. For purposes of this Section 7.01, and assuming an assignment to an entity that is controlled by Nathaniel Kelly Foote and that owns or has an ownership interest in the Developer's Property, any sale, transfer, assignment, pledge or hypothecation of an interest in that entity that results in a change in control of that entity, or in which that entity retains less than a 51% ownership interest in the Developer's Property, will constitute an assignment of this Agreement.

SECTION 8 MISCELLANEOUS.

Section 8.01 Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when: (i) given by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, 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; and (ii) copied to the e-mail address set forth under the definition of "Notice Address" above, if an e-mail address is so set forth. A notice certificate or other communication given hereunder shall be effective as of the date of delivery if given by hand or overnight delivery, and seven days following the date on which it was deposited in the U.S. Mail if given by certified or registered mail.

Section 8.02 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 8.03 Attorneys' Fees. In any proceeding brought to enforce the provisions of this Agreement, the court shall award the party that substantially prevails on a contested material issue its reasonable attorneys' fees, actual court costs and other expenses incurred in connection with said material issue.

Section 8.04 Conflicts of Interest. The Town will not knowingly allow, and except as disclosed in writing to the Town, Developer will not knowingly permit, any of the following persons to have any interest, direct or indirect, in this Agreement: a member of the governing body of the Town; an employee of the Town who exercises responsibility concerning the Project, or an individual or firm retained by the Town who has performed consulting or other professional services in connection with the Project. The Town will not allow and Developer will not knowingly permit any of the above persons or entities to participate in any decision relating to this Agreement that affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

Section 8.05 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 8.06 Town Not a Partner; Developer Not Town's Agent. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, the Town will not be deemed or constituted a partner of or in a joint venture with Developer, Developer will not be the agent of the Town, and the Town will not be responsible for any debt or liability of Developer.

Section 8.07 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 by Developer set forth in Section 7.01.

Section 8.08 Survival. Except for Section 3, all provisions of this Agreement shall be deemed to be continuing and shall survive the Closing. Unless otherwise expressly set forth in this Agreement, none of the provisions of this Agreement shall survive the termination of this Agreement.

Section 8.09 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 8.10 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 8.11 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 8.12 Non-Liability of Town Officials and Employees. No council member, commissioner, board member, official, employee, agent or consultant of the Town will be personally liable to Developer in the event of breach or Event of Default by the Town or for any amount that may become due to Developer under the terms of this Agreement.

Section 8.13 Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

Section 8.14 Jointly Drafted; Rules of Construction. The parties hereto agree that this Agreement was jointly drafted, and, therefore, 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.

Section 8.15 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 8.16 Default.

(a) In the event of Developer's default, material breach or material misrepresentation of any fact under the terms of this Agreement, the Town, at its option and notwithstanding any other term or provision of this Agreement, may terminate this Agreement by written notice to Developer. In the event of a termination pursuant to this paragraph, the Developer and the Town shall have no further liability or obligation to each other in connection with this

Agreement, except as to such terms and conditions which expressly survive the termination of this Agreement.

(b) In the event of the Town's default, material breach or material misrepresentation of any fact under the terms of this Agreement, the Developer, at its option and notwithstanding any other term or provision of this Agreement, may terminate this Agreement and, thereafter, shall be entitled to pursue its remedies at law or in equity; provided, however, that Developer waives any right to file and maintain an action against the Town for specific performance of this Agreement.

IN WITNESS WHEREOF, the Town has caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and Developer has caused these presents to be executed by its duly authorized officer, as of the date first above written.



(SEAL)


TOWN OF FRISCO

Attest:


Deborah Wohlmut, CMC, Town Clerk


Gary Wilkinson, Mayor

NATHANIEL KELLY FOOTE



STATE OF COLORADO)
) ss
COUNTY OF SUMMIT)

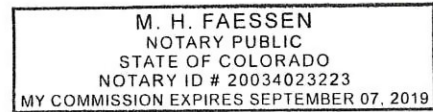
The foregoing instrument was acknowledged before me as of the ____ day of _____, 2017, by Gary Wilkinson, as Mayor, and Deborah Wohlmuth, as Town Clerk, of the Town of Frisco, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.



Notary Public

My Commission Expires: 9-7-2019



STATE OF COLORADO)
) ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me as of the 29 day of MARCH, 2017, by Nathaniel Kelly Foote

WITNESS my hand and official seal.





Notary Public

My Commission Expires: 10/19/19

Exhibit A

LEGAL DESCRIPTION OF TOWN PROPERTY

LOTS 3 AND 4, BLOCK 11, FRISCO TOWNSITE SUBDIVISION, ALSO KNOWN AS 518
MAIN STREET, FRISCO, COLORADO

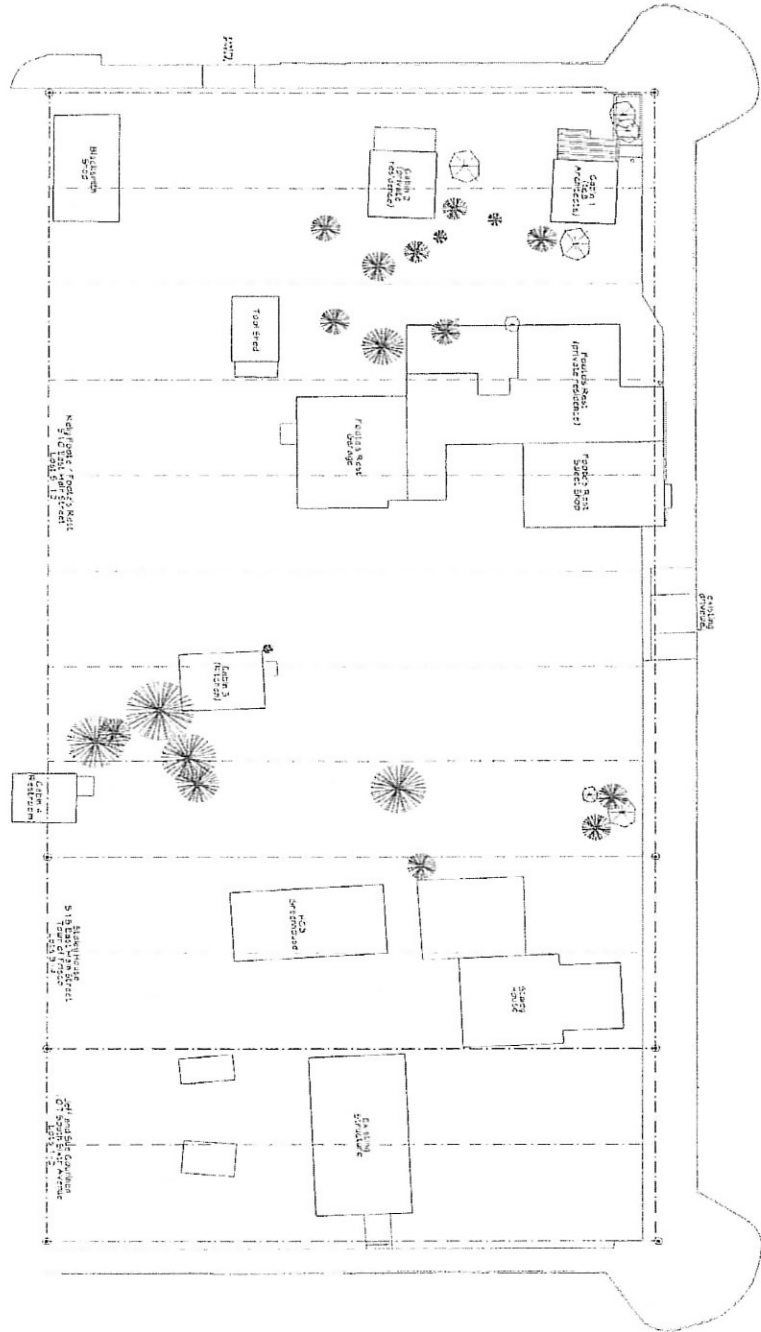
Exhibit B

LEGAL DESCRIPTION OF DEVELOPER'S PROPERTY

LOTS 5 THROUGH 12, INCLUSIVE, BLOCK 11, FRISCO TOWNSITE SUBDIVISION,
ALSO KNOWN AS 502, 510 and 512 MAIN STREET, FRISCO, COLORADO

EXHIBIT C

SITE PLAN OF CURRENT LOCATION OF HISTORIC STRUCTURES



Footie's Rest Existing Conditions

Scale: 1" = 100'

FOOTIE'S REST COMMERCIAL
 502-5 1/8 Main Street
 Kelli Footie
 Post Office Box 501
 Pico Colorado 80443
 303.942.6600

October 25, 2018

EXHIBIT D

COVENANT FOR THE PRESERVATION OF HISTORIC STRUCTURES

THIS COVENANT FOR THE PRESERVATION OF HISTORIC STRUCTURES (the "Covenant") is made and entered into this ___ day of _____, 201_, by _____ (hereinafter referred to as "Declarant"), and The Town of Frisco, Colorado (the "Town"). This Covenant shall run with the land described herein and be binding upon the successors and assigns of the parties hereto, subject to the terms and conditions set forth herein.

RECITALS

A. Pursuant to that certain Purchase, Sale and Development Agreement between the Declarant and the Town, dated on or about _____, 2017, the Town has sold certain real property to the Declarant in exchange, among other consideration, for the Declarant's execution and delivery to the Town of this Covenant;

B. Declarant owns the real property described in **Exhibit A** appended hereto and incorporated herein by this reference (the "Property"); and

C. There are certain historic structures (hereinafter, collectively, the "Historic Structures," and individually, a "Historic Structure") located on the Property, consisting of the Staley House, the building containing the Foote's Rest private residence, Sweet Shop and garage; Cabins 1, 2, and 3; and the Blacksmith Shop; each as sited, depicted and described in the Historic Preservation Site Plan attached hereto as **Exhibit B**.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Declarant, Declarant hereby represents, covenants and agrees as follows:

1. Historic Structure Maintenance Obligation and Staley House Use Limitation. Declarant agrees to maintain, repair, and preserve the Historic Structures located on the Property in a manner that complies with the attached U.S. Secretary of the Interior's Standards for Rehabilitation that are codified at 36 C.F.R. § 68.3(b), and the terms of which are defined at 36 CFR § 68.2 (the "Standards"), so as to preserve the architectural, historical, cultural, and structural integrity of their features, materials, appearance, and workmanship. A copy of the Standards as they exist on the date of recordation of this covenant is attached hereto as **Exhibit C**. Declarant shall maintain, repair and preserve the Historic Structures on the Property at all times and at the locations shown on **Exhibit B**, and shall keep the structures in a state of repair that is at least as good as that which exists as of the date of this Covenant, and shall not allow their appearance to deteriorate in any material way. Without limiting the generality of the foregoing, Declarant agrees that the Staley House shall be maintained, repaired, restored and preserved in a manner that comports with the best practices for historic preservation as they exist and evolve from time to time. Declarant further agrees that the Staley House shall be put to a use or uses that cause it to be open to the public and appreciated by the public for its historic values.

Such uses include but are not limited to a retail sales shop, a coffee shop, a small café or a wine bar. Such uses shall not require alteration of the exterior of the structure nor allow for visual impediments to the exterior of the structure that would detract from the historic integrity or aesthetic of the building. The Declarant agrees that the Staley House shall not be used: (1) as a real estate or professional or other office; (2) for the provision of personal or financial services; (3) solely as the entryway or lobby to other uses on the site; (4) for residential or lodging purposes; (5) as a repair shop or for any automobile related use; (6) as a drive-through restaurant; or (7) for storage or a sexually oriented business.

2. Exclusion and Enforcement. Declarant understands and agrees that the Town has no obligation whatsoever to restore, maintain, repair, or administer the Property or Historic Structures covered by this Covenant. However, the Town shall be entitled to enforce this Covenant in accordance with its terms, and/or by way of any legal proceeding and remedy available at law or in equity, including but not limited to an order for specific performance of the Declarant's obligations under this Covenant.

3. Inspection, Compliance and Town's Self-Help and Lien Rights.

(a) Declarant agrees that the Town shall have the right to enter the Property at reasonable times to inspect the Historic Buildings to assure compliance with this covenant. Such inspection may occur after the provision of a written notice of inspection to the Declarant, or upon the posting of a written notice of inspection on or about the Historic Building(s) to be inspected not less than forty-eight (48) hours prior to the time of inspection. Declarant shall cooperate with the Town and take all actions as may be reasonably requested by the Town in order that the Town may ascertain whether the terms of this Covenant have been and are being complied with. Declarant shall insure that any lease over any part of the Historic Structures shall provide for the Town's right of entry and inspection that is set forth herein.

(b) In the event that the Town determines, in its reasonable discretion, that there has been a failure or failures to comply with any requirement of this Covenant, the Town may provide written notice to Declarant that specifies the nature of the failure(s), the corrective action(s) required to remedy the failure(s), and a reasonable period of time within which the failure(s) shall be remedied by and at the expense of the Declarant, which period shall not be less than thirty (30) days unless the nature of the failure(s) is such that poses an immediate threat to the architectural, historical, or structural integrity of the features, materials, appearance, or workmanship of an Historic Structure.

(c) In the event that the Declarant shall fail to perform or complete the corrective action(s) that are specified in a written notice issued pursuant to subparagraph 3(b) above within the time period specified in the notice, the Town shall have the right to enter the Property and perform such corrective action(s) as were specified in the notice. Any such action(s) by the Town shall be at the Declarant's expense, and the Declarant shall reimburse the Town for such expenses within twenty (20) days after written notice thereof to the Declarant.

(d) In the event that the Declarant shall fail to reimburse the Town within twenty (20) days after written notice issued pursuant to subparagraph 3(c) above, the Town shall have the right to file a lien against the Property to secure payment of the expenses incurred in connection with the corrective action(s), plus interest at the rate of eighteen percent (18%) per annum or such lesser percentage as may be established as the maximum legal interest rate for such purposes, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in the manner for foreclosures of deeds of trust in the State of Colorado, and the Declarant shall be required to pay the costs and expenses of such proceedings, including but not limited to reasonable attorneys' fees.

4. Alterations. Declarant agrees that no alterations shall be made to the exterior of the Historic Buildings unless such alterations comply with the Standards and have been approved by the Town in accordance with applicable law, including but not limited to any applicable law concerning the alteration of structures within the Town's Historic Overlay Zone District.

5. Reserved Rights of Declarant. Declarant shall have all rights to utilize the Historic Structures and the Property not specifically limited or restricted by this Covenant.

6. Binding on Successors to Declarant; Enforcement; Attorneys' Fees. This Covenant shall be a binding servitude, and shall run with the land and be binding upon Declarant, and its successors, transferees, and assigns in and to the Property, in perpetuity. It is explicitly agreed by the parties hereto that this Covenant shall be enforceable in the courts of the State of Colorado and that in the event an action to enforce this Covenant is brought, the party that substantially prevails in any such enforcement action shall be entitled to recover from the non-prevailing party the full cost of such action, including but not limited to reasonable attorneys' fees and costs.

7. Exercise of Rights and Remedies. Any failure of the Town to exercise or enforce any right or remedy granted under this Covenant shall not have the effect of waiving or limiting the exercise or enforcement by the Town of any other right or remedy, or the exercise or enforcement of such right or remedy at any other time.

8. Notices. Any notice, consent or approval which is required or allowed to be given hereunder shall be given by a party either personally or by mailing the same, by registered mail, properly addressed and with postage prepaid, to the address of the other party, or to any subsequent mailing address of the other party as long as prior written notice of the change of address has been given by the other party to this Covenant. Unless given personally, all such notices, consents or approvals shall be effective seven days following the date the notice was deposited in the U.S. Mail. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant: _____

TOWN OF FRISCO, COLORADO

By: _____

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

EXHIBIT A

[Insert here the legal description of all of the real property consisting of the Town Property, the Developer's Property, and the Developer's Contract Property – each as defined in the Purchase, Sale and Development Agreement.]

EXHIBIT B

[Insert Historic Preservation Site Plan showing a plan view and providing a depiction and description of each of the historic buildings.]

EXHIBIT C

U.S. Secretary of the Interior's Standards for Rehabilitation

National Park Service, Interior

§ 68.3

(c) Fees are nonrefundable.
[76 FR 30541, May 26, 2011]

PART 68—THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

Sec.
68.1 Intent.
68.2 Definitions.
68.3 Standards.

AUTHORITY: The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); sec. 2124 of the Tax Reform Act of 1976, 90 Stat. 1918, E.O. 11593, 3 CFR part 75 (1971), sec. 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

SOURCE: 60 FR 35843, July 12, 1995, unless otherwise noted.

§ 68.1 Intent.

The intent of this part is to set forth standards for the treatment of historic properties containing standards for preservation, rehabilitation, restoration and reconstruction. These standards apply to all proposed grant-in-aid development projects assisted through the National Historic Preservation Fund. 36 CFR part 67 focuses on "certified historic structures" as defined by the IRS Code of 1986. Those regulations are used in the Preservation Tax Incentives Program. 36 CFR part 67 should continue to be used when property owners are seeking certification for Federal tax benefits.

§ 68.2 Definitions.

The standards for the treatment of historic properties will be used by the National Park Service and State historic preservation officers and their staff members in planning, undertaking and supervising grant-assisted projects for preservation, rehabilitation, restoration and reconstruction. For the purposes of this part:

(a) *Preservation* means the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property. Work including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than exten-

sive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code required work to make properties functional is appropriate within a preservation project.

(b) *Rehabilitation* means the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.

(c) *Restoration* means the act or process of accurately depicting the form, features and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code required work to make properties functional is appropriate within a restoration project.

(d) *Reconstruction* means the act or process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

§ 68.3 Standards.

One set of standards—preservation, rehabilitation, restoration or reconstruction—will apply to a property undergoing treatment, depending upon the property's significance, existing physical condition, the extent of documentation available and interpretive goals, when applicable. The standards will be applied taking into consideration the economic and technical feasibility of each project.

(a) *Preservation.* (1) A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

(2) The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(b) *Rehabilitation.* (1) A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.

(2) The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(9) New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(10) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) *Restoration.* (1) A property will be used as it was historically or be given a new use that interprets the property and its restoration period.

(2) Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces and spatial relationships that characterize the period will not be undertaken.

(3) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period

will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(4) Materials, features, spaces and finishes that characterize other historical periods will be documented prior to their alteration or removal.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.

(6) Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.

(7) Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

(8) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(9) Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(10) Designs that were never executed historically will not be constructed.

(d) *Reconstruction.* (1) Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture and such reconstruction is essential to the public understanding of the property.

(2) Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.

(3) Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.

(4) Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.

(5) A reconstruction will be clearly identified as a contemporary recreation.

(6) Designs that were never executed historically will not be constructed.

PART 71—RECREATION FEES

Sec	
71.1	Application.
71.2	Types of Federal recreation fees.
71.3	Designation.
71.4	Posting.
71.5	Golden Eagle Passport.
71.6	Golden Age Passport.
71.7	Entrance fees for single-visit permits.
71.8	Validation and display of entrance permits.
71.9	Establishment of recreation use fees.
71.10	Special recreation permits and special recreation permit fees.
71.11	Collection of Federal recreation fees.
71.12	Enforcement.
71.13	Exceptions, exclusions, and exemptions.
71.14	Public notification.
71.15	The Golden Eagle Insignia.

AUTHORITY: Sec. 4, Land and Water Conservation Fund Act of 1965 (16 U.S.C.A. 4601-6a (Supp. 1974)), as amended by Pub. L. 93-303, and sec. 3, Act of July 11, 1972, 86 Stat. 461, sec. 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

SOURCE: 39 FR 33217, Sept. 16, 1974, unless otherwise noted. Redesignated at 44 FR 7143, Feb. 6, 1979, and 46 FR 34329, July 1, 1981, correctly redesignated at 46 FR 43045, Aug. 26, 1981.

§ 71.1 Application.

This part is promulgated pursuant to section 4, Land and Water Conservation Fund Act of 1965, 16 U.S.C.A. 4601-6a (Supp. 1974), and section 3, Act of July 11, 1972, 86 Stat. 461. Any Federal recreation fee charged by any bureau of

Attachment 3

First Amended Purchase, Sale and Development
Agreement
Amendment Approved January 23, 2017

TOWN OF FRISCO

AND

NATHANIEL KELLY FOOTE

FIRST AMENDMENT

TO

PURCHASE, SALE AND DEVELOPMENT AGREEMENT

Dated as of January 23, 2018

THIS FIRST AMENDMENT TO PURCHASE, SALE AND DEVELOPMENT AGREEMENT (this "First Amendment"), dated as of January 23, 2018, is made by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation (the "Town"), and NATHANIEL KELLY FOOTE, an individual (together with any permitted successors and/or assigns, "Developer").

Recitals

This First Amendment is made with respect to the following facts:

A. The Town and the Developer entered into that certain Purchase, Sale and Development Agreement dated as of March 14, 2017 (the "Agreement"); and

B. Pursuant to the Agreement, the Developer has agreed to design and construct the project on the Redevelopment Property (as defined in the Agreement) in accordance with the Agreement and with all applicable local, state and federal laws; and

C. The Town and the Developer desire to amend the Agreement to make certain adjustments to the requirements of the Agreement related to (i) the location of various historic structures to be preserved on the Redevelopment Property, and (ii) the date by which the Developer must submit a building permit application for 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 parties hereto agree that the Agreement is hereby amended as follows:

Section 1. Section 2.01 of the Agreement is amended to read as follows:

Section 2.01 Description of the Development. The Project is the redevelopment of the Redevelopment Property in accordance with this Agreement, including the Development Conditions. The exact nature of the Project shall be at the discretion of the Developer, so long as each and every aspect of the Project meets each and every requirement set forth in this Agreement, and has received any and all Town approvals required to construct the Project pursuant to the requirements of the Town Code.

Without limiting the generality of the foregoing, the Project shall include the construction of:

1. a hotel with not more than sixty-five (65) rooms/suites and containing an elevated plaza of not less than one-thousand (1,000) square feet in

area, which elevated plaza shall be adjacent to and not more than two (2) floors above the outdoor, at-grade plaza specified below;

2. a restaurant(s) and bar(s);
3. a not less than eight (8) lane bowling alley with a restaurant and bar;
4. an outdoor, at-grade plaza that is adjacent to Main Street and is not less than 2,500 square feet in area; and
5. not less than six (6) Employee Housing Units.

The Project shall also include the preservation, on the Redevelopment Property, of the following historic structures that are currently located within the boundaries of the Redevelopment Property:

1. the Staley House
2. the building containing the Foote's Rest private residence and Sweet Shop (but not the associated garage);
3. Cabins 1, 2, and 3; and
4. the Blacksmith Shop.

Collectively, the above-listed structures or parts of structures shall be referred to hereinafter as the "Historic Structures." For purposes of reference only, each such structure is depicted in Exhibit C hereto at its approximate location as of the Effective Date of this Agreement. Exhibit C is incorporated herein by reference. Developer agrees that the building containing the Foote's Rest private residence and Sweet Shop shall be preserved in place at its location as of the Effective Date of this Agreement. Developer agrees that Cabins 1 and 2 shall be preserved at a location that is either adjacent to the western boundary of the Redevelopment Property, or near their respective locations as of the Effective Date of this Agreement. Developer agrees that the Staley House shall be preserved at a location on the Redevelopment Property that is adjacent to Main Street and in such manner and configuration that causes the Staley House's front façade to face Main Street, with at least a five (5) foot setback measured from the back of the sidewalk to serve as a "front yard." Developer further agrees that the remaining Historic Structures shall be located predominantly along the western boundary of the Redevelopment Property.

Developer agrees that, as a part of the consideration to the Town for the sale of the Town Property to the Developer, the Developer shall execute and deliver to the Town, at the time of Closing, an historic preservation covenant over the Redevelopment Property for the purpose of preserving the Historic Structures and their historic appearance, in perpetuity, and for the purpose of limiting the uses to which the Staley House may be put. Said covenant shall run in favor of the Town, shall bind all future owners of the Redevelopment Property and shall be substantially in the form attached hereto as Exhibit D, which Exhibit is incorporated herein by reference. Any part of the foregoing notwithstanding, the Developer and the Town understand and agree that the Blacksmith Shop, as a result of its degradation, may be difficult and impractical to relocate and/or preserve and, accordingly, agree that the Blacksmith Shop may be replicated rather than preserved in the Developer's reasonable discretion. Any part of the foregoing notwithstanding, the Developer and the Town further understand and agree that

Developer shall endeavor but not be obligated to preserve the Tool Shed (which is depicted in Exhibit C) along with the other Historic Structures and that, if so preserved, the Tool Shed shall be added to the list of Historic Structures that will be subject to the historic preservation covenant, the form of which is attached hereto as Exhibit D.

Developer agrees to develop the Redevelopment Property with reasonable care and diligence and to carry out and complete the Project in accordance with this Agreement and the Development Conditions.

Section 2. Section 4.04 of the Agreement is amended to read as follows:

Section 4.04 Building Permit Application. On or before June 15, 2018, the Developer shall have made application to the Town, including the payment of building permit fees therefor, for a building permit authorizing the construction of a substantial portion of the improvements to be constructed on the Redevelopment Property pursuant to the approved development plan for the Property. For purposes of this section, a “substantial portion of the improvements” mean improvements of a value that is not less than one-half (50%) of the total value of all improvements that may be constructed on the Property pursuant to the approved development plan, with such values being determined by the Town’s Building Official through the normal and customary valuation methodology generally applied by such official in connection with building permit applications. If the Developer fails to make such application within said time period, the Town may terminate this agreement by written notice to the Developer. In the event of such termination by the Town, the Town and the Developer shall proceed in accordance with the provisions of Section 5 below.

Section 3. All capitalized terms used in this First Amendment shall have the same meaning as provided in the Agreement.

Section 4. Except as expressly amended by this First Amendment, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Town has caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and Developer has caused these presents to be executed by its duly authorized officer, as of the date first above written.

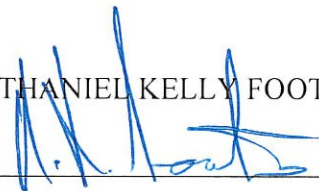
TOWN OF FRISCO

(SEAL)

Attest:


Deborah Wohlmuth, CMC, Town Clerk


Gary Wilkinson, Mayor

NATHANIEL KELLY FOOTE


STATE OF COLORADO)
) ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me as of the 27 day of February, 2018, by Gary Wilkinson, as Mayor, and Deborah Wohlmuth, as Town Clerk, of the Town of Frisco, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.


Notary Public

My Commission Expires: 7/29/18

SUSAN FRANCIS GILMORE
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification #20144029786
My Commission Expires 7/29/2018

STATE OF COLORADO)
) ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me as of the 27 day of February, 2018, by Nathaniel Kelly Foote

WITNESS my hand and official seal.



Notary Public

My Commission Expires: 7/29/18

Attachment 5

Narrative Project Description
as Submitted by Applicant

COUNCIL WORK SESSION NARRATIVE

05.14.2019



INTRODUCTION

Foote's Rest at Block 11 will preserve six historic structures on site, creating a blend of old and new cohesively tied together through a community plaza accessible from both Main Street and 5th Avenue. Through this cornerstone development, Frisco is gaining Main Street vibrancy through a hotel that sets the precedent for mixed-use construction, historical preservation and social responsibility. As part of this social responsibility, the development is committed to providing a minimum of 6 employee housing units.

The owner is proposing a second amendment to the Purchase and Sales Development Agreement with the town, dated January 23, 2018, for the following changes:

- The relocation of employee housing to an off-site facility;
- Clarification on the definition of a suite versus a lock-off room;
- A maximum number of hotel rooms not to exceed 75

All proposed changes will comply with Town Code. The owner is not proposing any changes to historic preservation requirements, architectural design or plaza spaces within the development application.

EMPLOYEE HOUSING

During project development, off-site opportunities for employee housing have become available. This has created the need to request an amendment to the development agreement with the town. We strongly believe that these changes are consistent with the extensive community feedback received during the town review process and will provide an authentic housing option for future residents.

As part of the approval of Foote's Rest, housing for employees of the hotel was identified as a priority. The inclusion of housing with a development project is considered a major community benefit. During the planning process there were concerns about the type of housing, sufficient parking, storage and potential conflicts between employee and guest needs. Through the purchase of the property at 221 South 4th Street; Lots 21-24, these concerns will be addressed and provide a more diverse and desirable living situation for employees (Figure A, B).

THE SITE

Located less than 1,000 feet from the hotel property, the .32 acre site provides over 3,500 total sq. ft. of living space and is within a 5 minute walk of the hotel (Figure A). The site contains 2 residential buildings - a cabin and a primary residence, freestanding garage, and multiple storage sheds. There is extensive outdoor space, and a variety of patios and decks which expand the livable space of the property. Additionally, the property has convenient access to county public transportation, Main Street activities, and local trails.

THE PRIMARY RESIDENCE

The primary house contains 7 bedrooms, a full kitchen, shared living spaces and storage, and four full and 3 half bathrooms. Each bedroom has a private vanity, isolated heating controls, and storage. The living room and kitchen have a wood burning stove and ample room for cooking, dining and lounging. Additionally, the house contains an on-site washer and dryer.

THE CABIN

The cabin is a single family home with its own kitchen, bathroom, washer and dryer and living spaces. The unit would be suitable for couples, small families or as a manager's suite.

PARKING AND STORAGE

The site has ten surface parking spaces and 2 garage spaces. The parking exceeds the Town Code requirement by 7 spaces (5 spaces - 2 for 3 bedrooms +1 for each additional bedroom). The excess parking will allow parking for residents and guests. There are two storage sheds and one garage on site for yard maintenance equipment and resident's belongings.

Figure A: Vicinity Map



Figure B: Proposed Employee Housing; 221 South 4th Street; Lots 21-24



Amenity	Hotel (6) Approved Employee Units	The Primary Residence				The Cabin Single Family Home
		Living Area A	Living Area B	Living Area C	Living Area D	
Bedroom/Room Description	2nd Floor Studio	Ground Floor Master	Garden Level Suite	2nd Floor Master	2nd Floor Bedrooms (4)	1 Bedroom & Loft
Additional Living Spaces	-	Seating Area	Private Living Room	Seating Area with Fireplace	-	Living Room Dining Nook Kitchen
Bathroom	Full Private Bath	Full Private Bath	Full Private Bath	Full Private Bath	Shared Full Bath & (2) Half Baths	Private Bath
Kitchen	-	Shared Full Kitchen				Full Kitchen
Kitchenette/Wet Bar	Yes	Yes	Yes	Yes	-	-
Private Amenities	-	Private Entry Exterior Patio Extensive Storage Seating Area Private Vanity	Private Vanity	Fire Place Built in Storage Private Deck	Built in Storage Private Vanities (in each room)	Separate Building Private Entry Living Room Patio Office Dining Area Extensive Storage Washer/Dryer
Shared Amenities	-	Large Living Room Wood Burning Fire Place Dinning Room Washer/Dryer Half Bathroom		Outdoor yard (.32 Acre Site) Large Outdoor Deck Outdoor Horseshoe Pit Outdoor Fire Pit (2) Storage Sheds Garage Storage		Yard and Storage Sheds Shared with the Primary Residence
Parking Spaces	Valet (1/unit)	8 Spaces Total: 1 Garage Space 7 Surface Spaces				2 Total: 1 Garage 1 Surface
Visitor Parking	-	2 Surface Spaces				-

Figure C: 2nd Floor with Suites

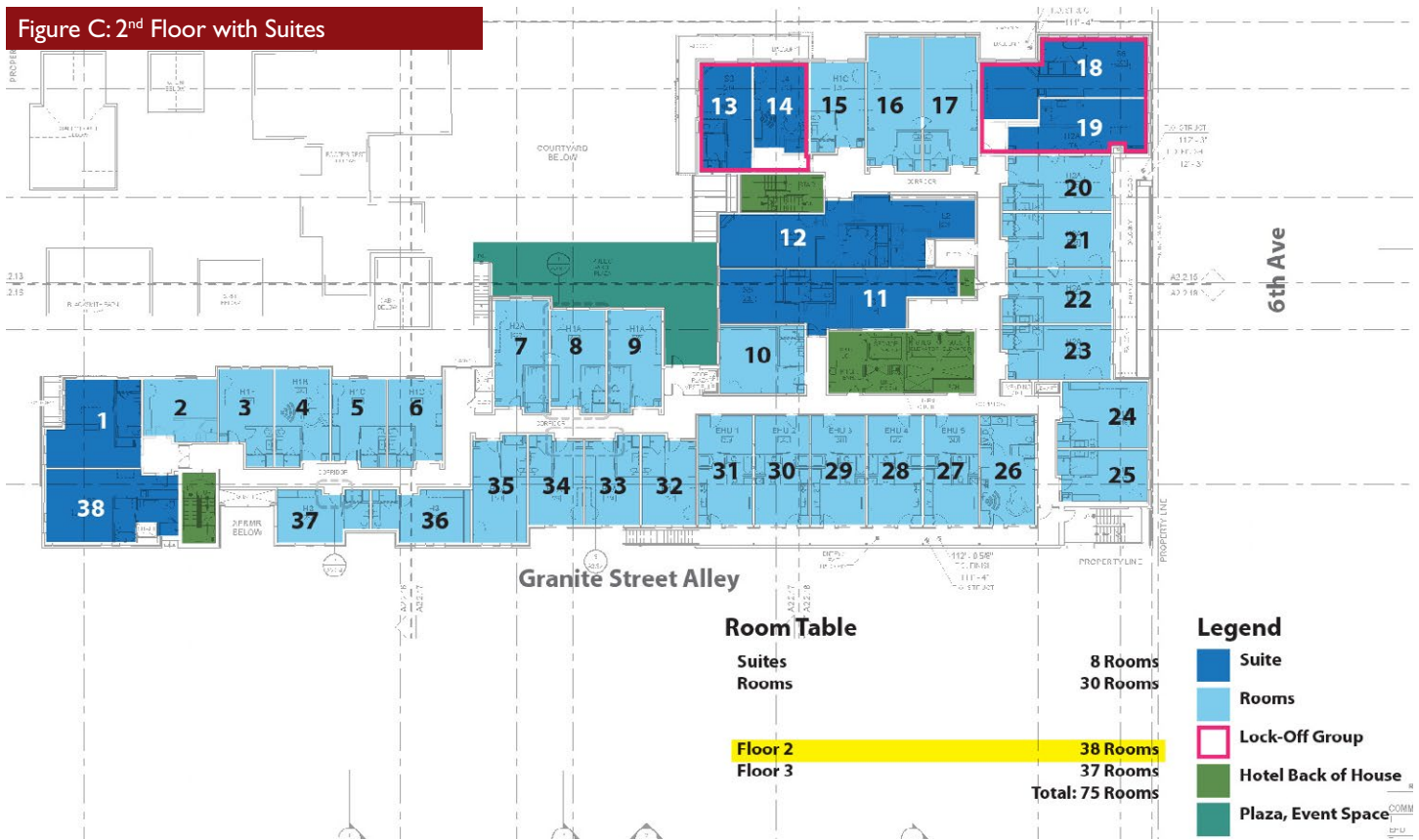
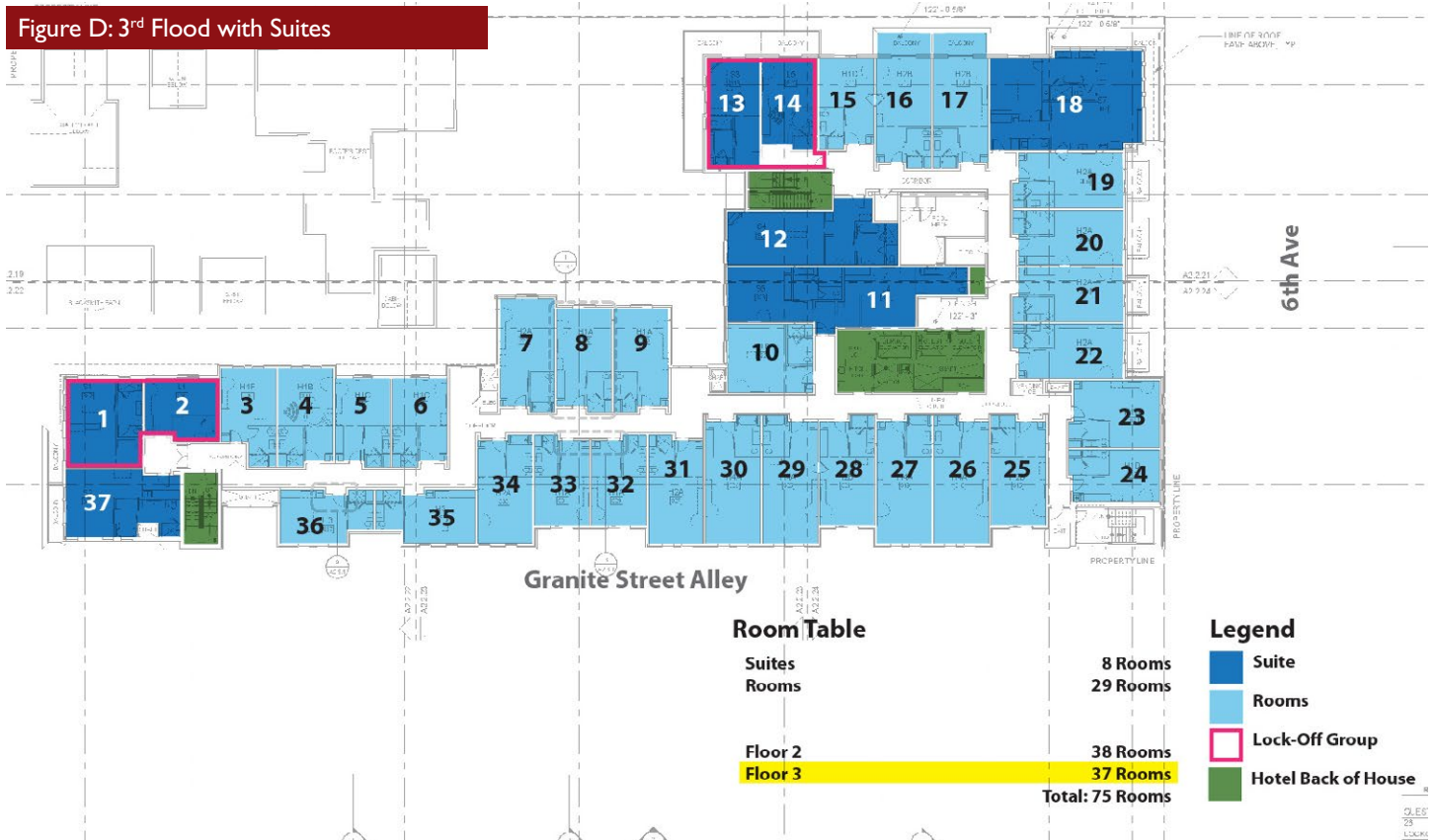


Figure D: 3rd Flood with Suites



HOTEL PARKING AND ROOMS

HOTEL ROOM CLARIFICATION

Currently the development agreement does not differentiate between suites and hotel rooms. Following the initial development review application, the design has evolved to add flexibility to the suites. With the addition of an external door directly to the hall way, the suites are now designed to function as individual lock-off units or suites to meet a variety of needs. This clarification is needed to define a suite or the use of part of the suite as a separate lock-off unit. This definition is being added to finalize the room count for the hotel (Figure C and D).

TABLE 1.1: ROOM BREAKDOWN AS PROPOSED

Breakdown	
Hotel Room	65 Rooms
Employee Units	6 Rooms
Total	71 Rooms

TABLE 1.2: ROOM BREAKDOWN FOR 75 ROOM HOTEL

Breakdown	
Hotel Room	65 Rooms
Lock-Off (Part of Suite)	4 Rooms
Employee Unit Conversion	6 Rooms
Total	75 Rooms

Table 1.1: As proposed the Hotel has 65 rooms and 6 employee units totaling 71 rooms overall.

Table 1.2: The current hotel has 65 rooms. Of these rooms 4 are lock-off units which were previously counted as part of a suite, totaling 69 rooms. The increase in hotel rooms is possible by moving the 6 employee units off-site.



MAXIMUM NUMBER OF HOTEL ROOMS

The current development application defines a maximum number of hotel rooms as 65 rooms. The owner is proposing the number of hotel rooms is extended to 75 rooms. The ten rooms being counted are not additional units, rather they are a result of the conversion of four suites to lock-off units and the reallocation of six employee units no longer needed within the building as that need is proposed to be met off-site. The current town code does not differentiate between a suite and a room, in order to provide flexibility to the suites, doors exiting to internal hallways have been added to the suites. This changes the way a suite is counted under the code and adds an additional four rooms to the hotel count. The additional six rooms comes from converting the employee units on the second floor to guest rooms.

Offering 75 rooms in a boutique hotel on Main Street will meet the demands of the market and provide a product type currently unavailable within the Town of Frisco. The current hotel market in Frisco does not have any mid-sized boutique hotels, but rather offers guests hotel options with approximately less than 50 beds or larger hotels with 120 to 200 beds. A 75 room hotel is an efficient size appropriate for both wedding and business / conference clientele. This development aims to fill a need while attracting visitors to the Town of Frisco.

The proposed increase in hotel rooms complies with the Unified Development Code as the quantity of hotel rooms is not limited by code. The number of hotel rooms is subject only to the ability to provide the required number of parking spaces per Section 180-6.13 Parking and Loading Regulations, Table 6-2. No changes in overall occupancy of the hotel or total number of beds are being proposed.



PARKING

The purchase and sales agreement does not govern parking requirements. The below information is provided as assurance to Town Council that all parking requirements will be met on site. With the employee units moved to the off-site location and the

TABLE 2.1: AS APPROVED	Parking Summary (per staff report)	
	Parking Required: 62 spaces Parking Provided: 67 spaces (63 garage, 4 surface)	
	Breakdown	
	Retail, personal services, restaurants, non-first floor office	0 spaces
	Bowling Alley (2.5/lane - 10 lanes)	25 spaces
	On-street parking credits (non-overnight use only - bowling)	-25 spaces
	Hotel (1/bedroom, 65 rooms)	65 spaces
	Employee Housing Units (1/bedroom, 6 studios)	6 spaces
	Existing Foote's Rest Home (1/bedroom, 4 bedrooms)	4 spaces
	Existing Cabin 2 (1/bedroom, studio)	1 space
	Existing Cabin 3 (1/bedroom, studio)	1 space
	Visitor Parking (1/5 dwelling units, 9 units)	1 space
	<i>Sub-total</i>	<i>78 spaces</i>
	<i>20% reduction for mixed use</i>	<i>-16 spaces</i>
Total Required per code	62 spaces	

Table 2.1: Parking calculations as approved by staff. Table 2.3 shows parking calculations including new vehicular lift systems to maintain a net surplus of spaces.



clarification of room types, additional parking has become available in the garage. To accommodate potential suite conversions, up to 7 vehicle lifts will be added. This will ensure 5 parking spaces in excess of the code is maintained. (Tables 2.1-2.2).

TABLE 2.2: AS 75 ROOM HOTEL PARKING SUMMARY	Parking Summary: 75 Room Hotel	
	Parking Required: 66 spaces Parking Provided: 71 spaces (Total)	
	Breakdown	
	Retail, personal services, restaurants, non-first floor office	0 spaces
	Bowling Alley (2.5/lane - 10 lanes)	25 spaces
	On-street parking credits (non-overnight use only - bowling)	-25 spaces
	Hotel (1/bedroom, 75 rooms)	75 spaces
	Employee Housing Units	N/A
	Existing Foote's Rest Home (1/bedroom, 4 bedrooms)	4 spaces
	Existing Cabin 2 (1/bedroom, studio)	1 space
	Existing Cabin 3 (1/bedroom, studio)	1 space
	Visitor Parking (1/5 dwelling units, 6 units)	1 space
	<i>Sub-total</i>	<i>82 spaces</i>
	<i>20% reduction for mixed use</i>	<i>-16 spaces</i>
Total Required per code	66 spaces	
Total Provided	71 spaces	
Net Parking Above Code	5 spaces	

SUMMARY

In conclusion, the proposed second amendment to the development agreement is requesting the following changes:

- The relocation of employee housing to an off-site facility within a 3 block radius of the hotel
- Clarification on the definition of a suite versus a lock-off room
- A maximum number of hotel rooms not to exceed 75

All changes will comply with Town Code. No changes are proposed to the Historic Preservation sections of the Development Agreement or the community benefit amenities.

Overall, the relocation of employee units and amendments to the hotel room and use definitions will provide employees with larger, more comfortable living arrangements and hotel guests with more flexibility. Employees will benefit from becoming a part of the fabric of Frisco, having more adequate parking, storage and a full kitchen, all within walking distance of the hotel. Future hotel guests will benefit from flexibility in hotel room sizes and types.



MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: NANCY KERRY, TOWN MANAGER
RE: CONSIDERATION OF FINANCIAL CONTRIBUTION TO SUMMIT COUNTY FOR COST OF CLEARING 6-MILES OF THE TEN MILE CANYON RECREATION PATH
DATE: JUNE 11 , 2019

Summary and Background:

Summit County manages and maintains six miles of the recreational pathway in Ten Mile Canyon through a special use permit from the U.S. Forest Service. The Ten Mile Canyon Recpath is an important link between the Vail Pass Ten Mile Canyon National Recreation Trail and the remainder of the Summit County Recpath System. Each year, Summit County strives to clear this stretch of the Ten Mile Canyon Recpath by springtime. However, this year, after an extraordinary winter snowfall and record number of avalanches, the Recpath remains closed at this time.

According to a recent Summit County report, *“The Colorado Avalanche Information Center estimates the March avalanche cycle in Ten Mile Canyon to have been at least a 100-year event. More than 20 avalanches deposited debris onto the Ten Mile Canyon Recpath; the debris piles range from 50 to 500 feet wide, and many are more than 20 feet deep. They consist of mature trees, boulders, ice, snow and soil, compressed into an incredibly dense mass by the force of the avalanches, which charged 3,000 feet down the canyon walls at speeds as high as 80 miles per hour.”*

Analysis:

In order to clear the 6-mile stretch of the Recpath through Ten Mile Canyon, Summit County issued a Request for Proposals. Summit County received a number of bids and after thorough review have selected a contractor at a “not-to-exceed” amount of \$87,500.

As the scope and scale of the debris on the Recpath became known, consideration for financial assistance was discussed between the Town and Summit County Manager in recognition of the Recpath’s importance to the entire community along with the unforeseen costs associated with clearing the path.

Financial Impact:

Summit County staff have completed a Request for Proposals review of submitted bids and selected a contractor to clear the 6-mile stretch of the Ten Mile Canyon Recpath at a “not-to-exceed” amount of \$87,500. Summit County has also reached out to the U.S. Forest Service for financial assistance and indicates a *potential* for some financial assistance.

If the Town Council agrees to contribute to Summit County’s cost of removing the debris from portion, the following options are available:

1. Provide direction to staff of a flat-rate contribution (e.g.: \$25,000)
2. Provide direction to staff of a percentage of Summit County’s net cost (e.g.: 25-50% of Summit County’s net not-to-exceed \$87,500 contract).

The Town as available funds in the following accounts:

- The Town has \$25,000 in available funds budgeted in Lodging Tax for forestry management (account #8000-4592); and
- The Town has \$5,000 in available funds budgeted in Lodging Tax uses- grounds projects (account #8000-4589).

Alignment with Strategic Plan:

Assisting Summit County with the unexpected cost of clearing the Recreation Path in the Ten Mile Canyon area aligns with the Town Council’s 2019-2020 Vibrant Recreation Strategic Priority. In addition, clearing the Recpath aligns with the Town’s goals of supporting a Thriving Economy as the Recpath is highly utilized by locals and visitors.

Staff Recommendation:

Based on the information contained in this report, it is recommended the Town Council pass a motion authorizing the Town Manager to provide either (1) a specific amount of funds or (2) a percentage of the net cost, to Summit County for the cost of clearing the 6-mile stretch of the Recpath through Ten Mile Canyon.

Reviews and Approvals:

This report has been written by Nancy Kerry, Town Manager.

Bonnie Moinet, Finance Director - Approved



MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: PETE SWENSON, NORDIC AND TRAILS MANAGER
RE: RESOLUTION 19-23, FRISCO'S ADOPT-A-RECPATH PROGRAM
DATE: JUNE 11TH, 2019

Summary: The Summit County Open Space and Trails Department manages an Adopt-A-Trail program on Summit County's recpath for individuals, organized groups, organizations, and businesses to improve the county recpath and supplement the level of maintenance on the recpath. All eligible sections of the County recpath are adopted at this time. According to Michael Wurzel, Resource Specialist with Summit County Open Space and Trails, the program has been very successful over the years and it is a great opportunity to ensure the pathways are clean and well maintained.

The Town of Frisco does not currently have an Adopt-a-Trail type program for the 12 miles of recpath that the Town owns or manages. Staff recommends the Town of Frisco adopt such a program and model it off the success of the County's program. Staff's recommendation is to start with five segments of recpath adoption from the Peninsula Recreation Area to the Dillon Dam, for a total of ~4.75 miles. The program would provide volunteer opportunities (picking up trash/sweeping/removing debris) for the betterment of the recpath. The program would be managed by the Town's Nordic and Trails Manager, Pete Swenson, and staff and will run between May and October each year. The program would be available to any individuals, or organized group of individuals, who are capable of performing the minimum requirements of the program including the site visit time commitment of once per month and the general clean up and removal of debris. There is no cost to the individual or organized group of individuals for the program.

Background: This winter, Mr. Swenson was contacted by a Frisco resident wishing to adopt a segment of the recpath passing through the Peninsula Recreation Area (PRA). In response to this request, Mr. Swenson contacted Mr. Wurzel to learn about the County's Adopt-A-Trail program. All eligible sections of the County's recpath are adopted at this time. Staff reviewed the County's program, including the management of the program, the costs, and the benefits to the community. The County's program is very successful and can be used as a template for Frisco. Interested parties are required to complete an agreement and commit to the minimum requirements of the program as listed above.

Staff Analysis: This program will provide volunteers requiring minimal oversight to do needed work picking up trash along the recpath once per month. The recpath would be divided into five segments for adoption. The program will reduce trash and encourage Frisco residents to take

“ownership” of their recpath. Regarding segment adoption, staff recommends preference to be given to applicants with all or some of the following qualifications: Frisco residency, existing group of volunteers, a mission statement or purpose that includes any of the following: education, sustainability, outdoor youth activity or land stewardship.

Recommendation:

On that basis, staff recommends the Town Council make a motion to adopt the attached Resolution, “Resolution 19-23, a Resolution of the Town of Frisco, Colorado, adopting the Adopt-A-RecPath Program.”

Financial Impact: The material cost of implementing the Adopt-a-RecPath program is \$400 for five metal posts and hardware and \$160 for ten 18”x24” blank aluminum signs. Town employees will make the signs and install the posts.

Passage of the recommended motion will have a result in a total cost of \$560 which has been budgeted in the Capital Improvement Fund Trails Construction and Enhancements (20-2000-5066).

Attachments:

Sections 1-5 of potential Adopt-A-Recpath segments

Reviews and Approvals: This report has been reviewed and approved by:

Diane McBride, Assistant Town Manager/Recreation Director
Bonnie Moinet, Finance Director - Approved



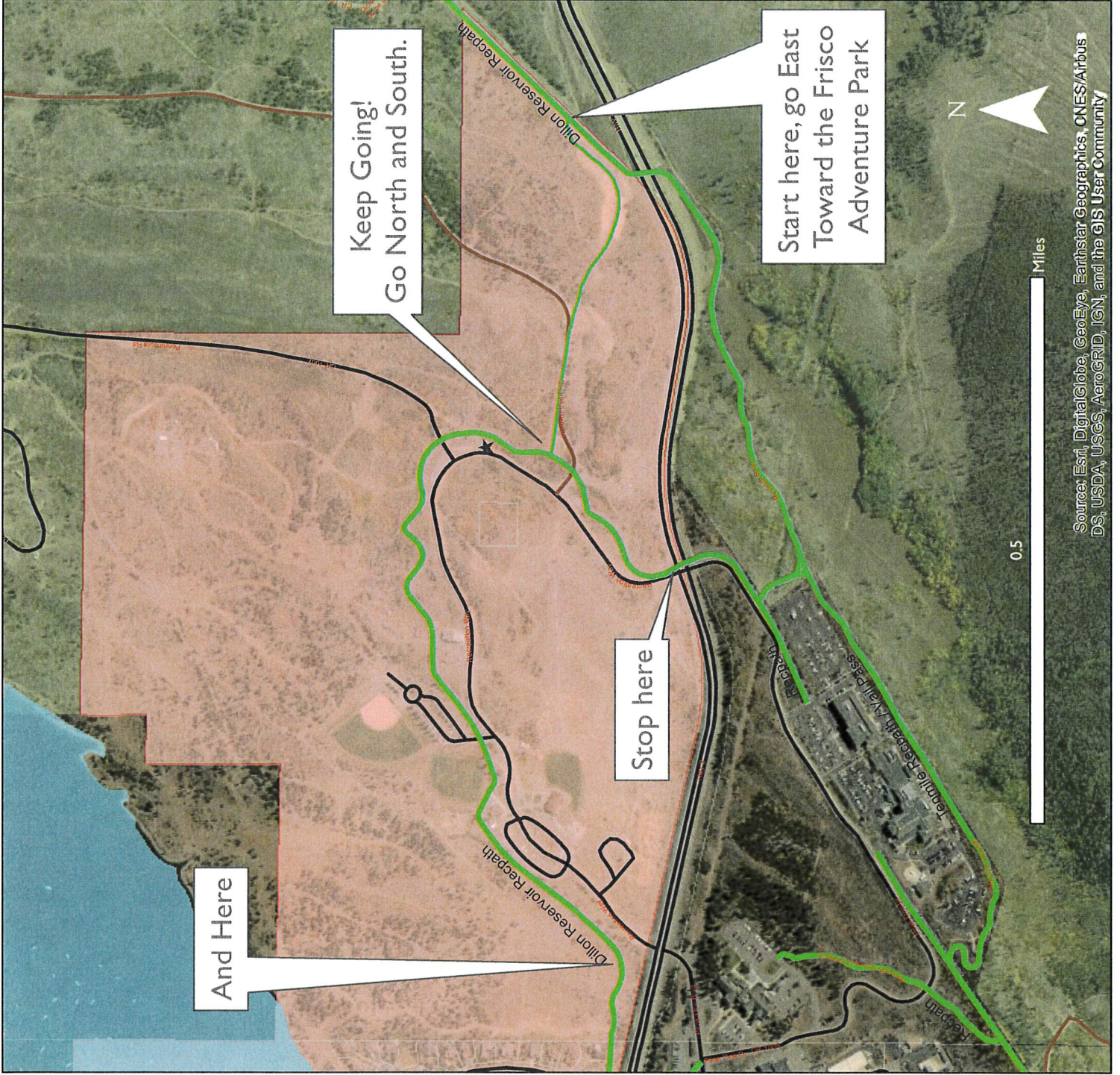
Adopt-a-Recpath Town of Frisco Section I

Description:
Frisco Adventure Park
Recpath

Length:
~ 1.25 miles

★	Trailheads and Portals
	Recpath
	Recpath
	Paved Road
	Unpaved Road
	Trail
	Towns

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Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



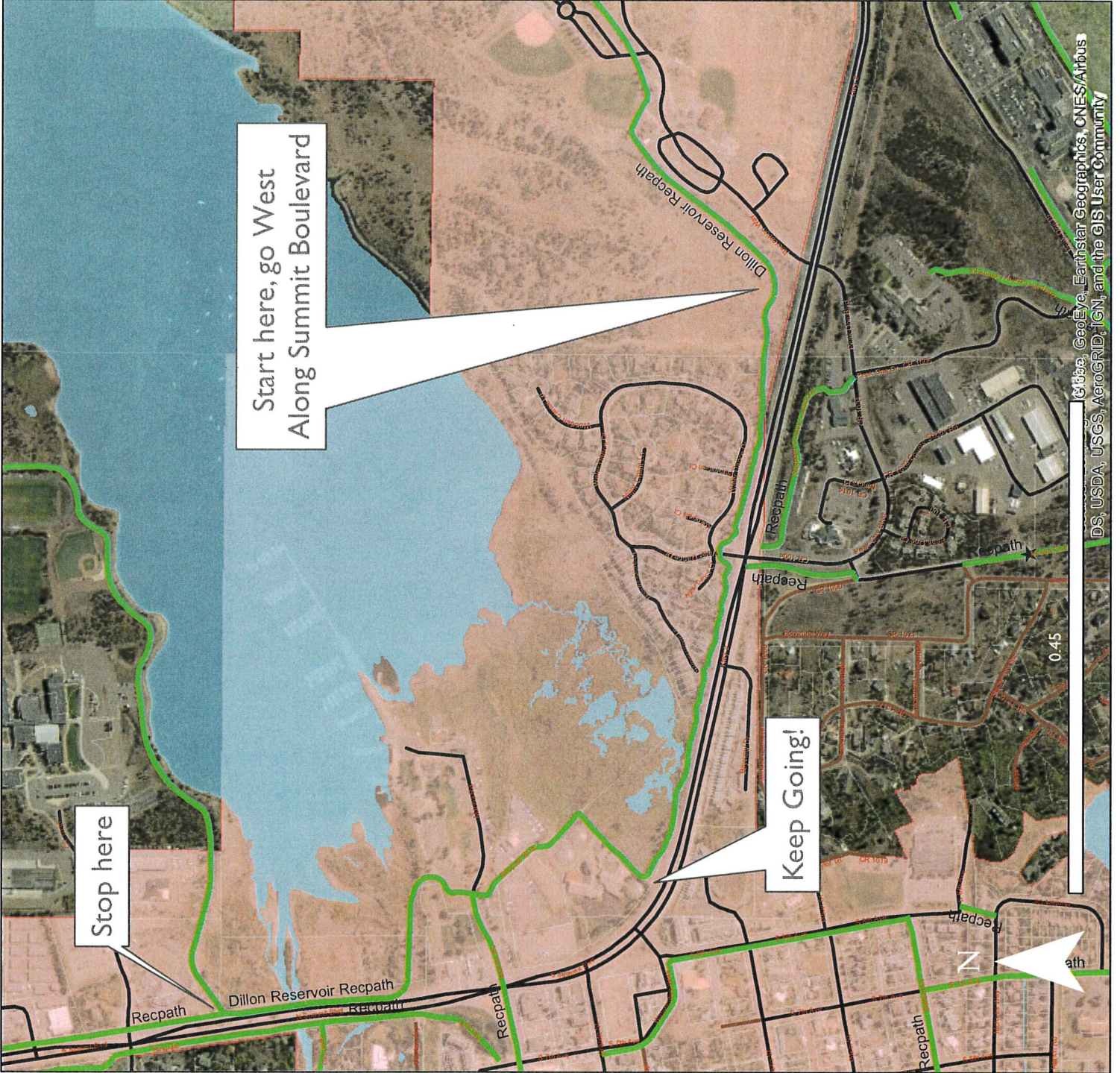
Adopt-a-Recpath Town of Frisco Section 2

Description:
Summit Boulevard
Recpath

Length:
~ 1 mile

★	Trailheads and Portals
	Recpath
	Paved Road
	Unpaved Road
	Trail
	Towns

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Adopt-a-Recpath Town of Frisco Section 3

Description:
Middle School
Recpath

Length:
~ 1 mile

★	Trailheads and Portals
—	Recpath
—	Paved Road
—	Unpaved Road
—	Trail
□	Towns

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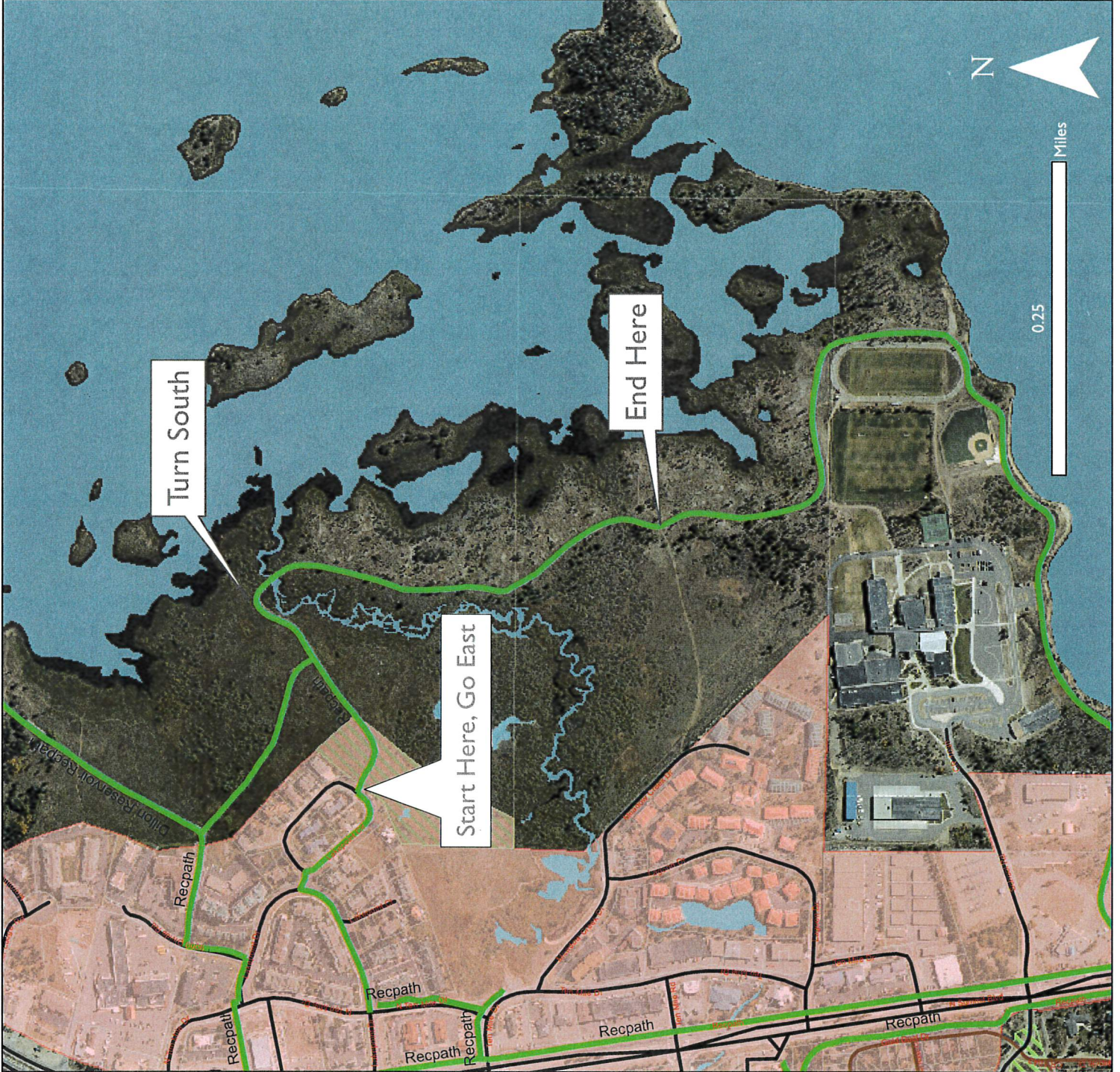
Adopt-a-Recpath Town of Frisco Section 4

Description:
Willow Preserve Section,
from Lakepoint Circle
3/4 of a mile toward
Summit Middle

Length:
~ 3/4 Mile

★	Trailheads and Portals
— (green)	RecPath
— (black)	Paved Road
— (brown)	Unpaved Road
— (dashed pink)	Trail
□ (pink)	Towns

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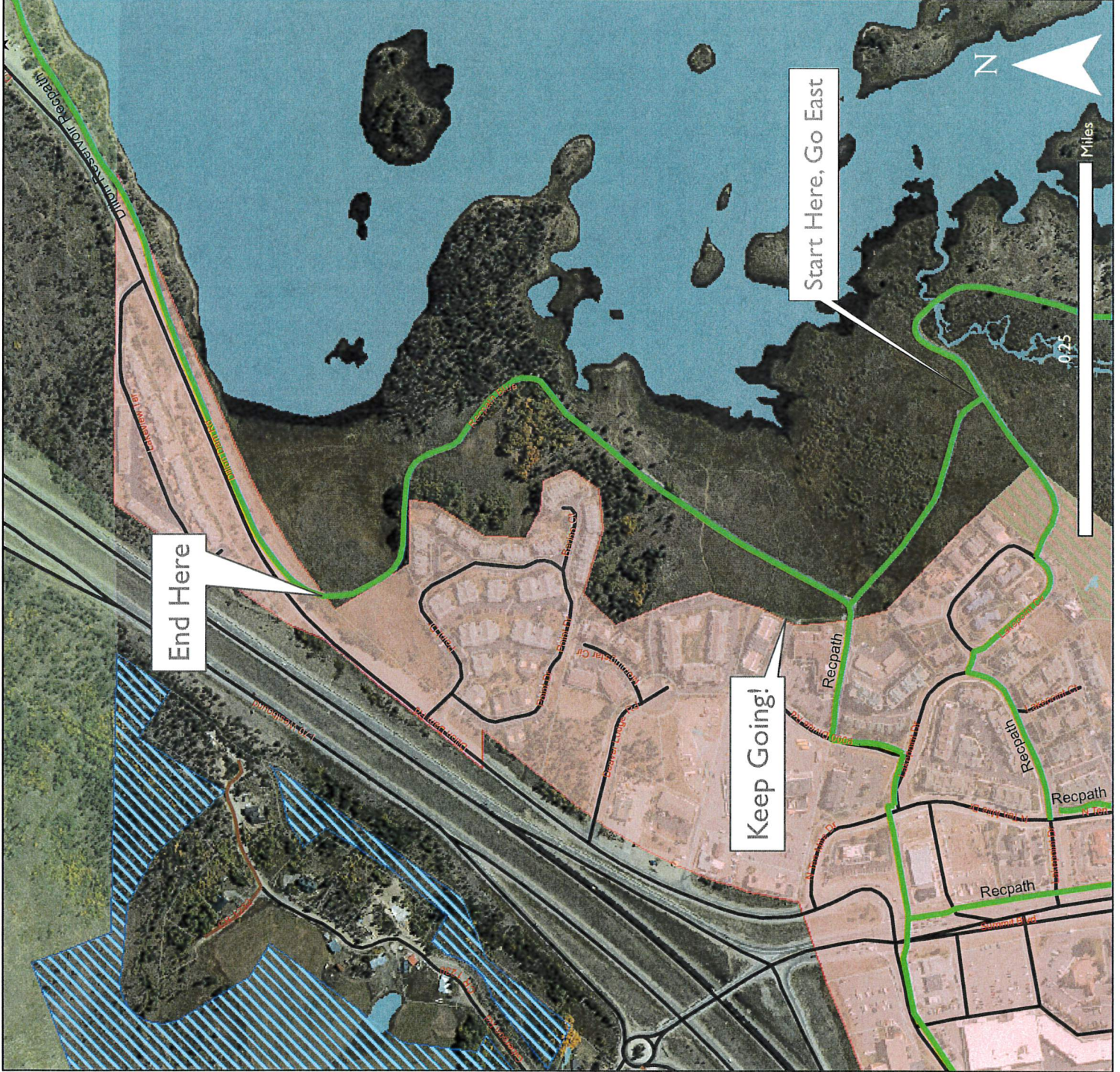
Adopt-a-Recpath Town of Frisco Section 5

Description:
From Lakepoint Circle
Toward Giberson Bay

Length:
~ 3/4 Mile

★	Trailheads and Portals
— (green)	RecPath
— (black)	Paved Road
— (brown)	Unpaved Road
- - - (pink)	Trail
□ (pink)	Towns

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**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
RESOLUTION 19-23**

A RESOLUTION OF THE TOWN OF FRISCO, COLORADO ADOPTING THE ADOPT-A-RECPATH PROGRAM.

WHEREAS, the Frisco Town Council adopted Resolution 17-10 for the Frisco Trails Master Plan to ensure the strategic planning and implementation of trails to achieve the community's vision for trails, community connectivity, and recreation corridors; and

WHEREAS, one of the goals of Frisco's Community Plan is to "maintain the town's paved pathway system, and enhance connections to the community's neighborhoods, parks, commercial areas and to the Summit County Recreation Pathway system"; and

WHEREAS, Summit County's Open Space and Trails Department has a successful Adopt-A-Trail/Open Space Property Program to provide a program of defined opportunities for individuals, organized groups, organizations, and businesses to make specific volunteer contributions in time and/or money for the purpose of improving their county recpaths, trails and open space property.

WHEREAS, the Frisco Adopt-A-RecPath Program would be modeled after Summit County's Adopt-A-Trail/Open Space Property Program to provide volunteer opportunities for the benefit of Frisco's recpath and trails, to encourage and recognize volunteer contributions and efforts, and to supplement the level of maintenance that is necessary for proper maintenance of the Frisco recpath and trail systems; and

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THAT:

The Frisco Town Council hereby adopts the Frisco Adopt-A-RecPath Program.

INTRODUCED, READ AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THIS 11th DAY OF JUNE 2019.

TOWN OF FRISCO, COLORADO:

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: NANCY KERRY, TOWN MANAGER
RE: SOLARIZE SUMMIT
DATE: JUNE 11 , 2019

Summary and Background:

As part of the Climate Action Collaborative, High Country Conservation Center (HC3) has spearheaded an effort aimed at increasing the number of households in the county that have solar panels. The program, known as Solarize Summit, is a community campaign designed to make going solar easy and more affordable for Summit County locals and small businesses.

The program leverages bulk-purchasing power to take advantage of exclusive Solarize Summit program rebates. The more people participating by August 31st, the greater the rebates will be for all participants.

HC3 issued a Request for Proposals and through a competitive process selected an Eagle-based company, Active Energies Solar (AES), to be the installer of the solar equipment. AES has been in business installing solar equipment on both residential and commercial properties for about ten years.

A typical residential rooftop solar array is about 5kW in size and costs about \$17,500 (or \$3.50/watt). AES has committed to lower installation rates (starting at \$3.25/watt or \$16,250 for 5kW) and decreasing in price based on the size of system. Additionally, there are federal tax credits participants may receive through the federal government up to \$6,000 per system. AES has committed to providing an additional after-installation rebate that increases based on total number of participants. The rebates begin at \$200 per participant and could reach a maximum rebate of up to \$500/system if approximately 30 residential customers participate.

The Town of Breckenridge and Summit County have committed to offering their community members additional rebates for participation to help reach Climate Action Plan goals. The Town of Frisco has been asked to consider offering similar rebates for its community members.

On Wednesday, May 29th, HC3 held a community meeting to describe the program and encourage enrollments. A copy of the presentation is attached to this report. As a result of the meeting, four (4) residents of Frisco enrolled to participate of the 14 total enrolled (4 Breckenridge, 3 Dillon and 3 Silverthorne). The 14 enrolled means the program is nearly half-way to its goal of enrolling 30 residents. Since that meeting, an additional four (4) Frisco residents have enrolled.

Analysis:

This discussion is before the Town Council to consider offering rebates to residential property owners in the Town of Frisco who participate in the Solarize Summit program. The Town of Breckenridge is offering the first 25 residential participants a \$1,500 rebate to participate in the program. If the Town Council provides direction to staff, the Town of Frisco could also offer a similar rebate of \$1,500 per residential participant, up to the first 25 residential participants.

Proposed Program Guidelines

Staff recommends the following guidelines in offering the \$1,500 rebate:

1. Rebate would be provided after January 1, 2020 to provide time for the \$37,500 cost to be include in next year's fiscal budget.
2. Rebate would be provided **after** installation of system and following an inspection by Town of Frisco Building Inspector.
3. The first 25 participants must sign a contract by August 31, 2019 to participant in the program **and** in the Town of Frisco's rebate offer.

Program Benefits

Reduction in energy usage is a primary goal of the Town Council's 2019-2020 Strategic Plan. Reduction in energy usage benefits the individual user (reduced energy costs span a period of at least 25 years when solar panels replace a local utility as the energy source). If residents participated in the program, the residents would realize a significant and measurable reduction in their energy usage (amount varies by system). If 25 residents participate, it would help the Town of Frisco reach its 100% renewable goals as well as implementation goals in the Climate Action Plan.

The Town Council may also wish to consider installing solar panels on Town Hall or other Town-owned properties to help reach the Town Council's 100% renewable energy goal and to set the example of implementing the Town's Climate Action Plan.

Offering the rebate would encourage more residents to participate. If the Town Council approves the rebate program, the average cost of a household solar array could drop from \$17,500 to approximately \$9,500. (\$17,500 - \$6,000 federal tax credit - \$1,500 TOF rebate - \$500 rebate from AES if 30 participants county-wide install solar under this program).

Financial Impact:

The cost of offering \$1,500 rebate to a maximum of 25 residential participants is \$37,500. Those costs are not currently budgeted. The Town Council could give direction to staff to:

- (1) Evaluate the current budget to identify where \$37,500 may be available for the program;
- (2) Amend the current budget to include \$37,500 from available fund balance; or
- (3) As recommended by staff, launch the rebate program now to provide the opportunity to participants with rebate payment in January 2020; staff would then include in the necessary funds in TOF's 2020 budget relative to the number of participants who signed up (not to exceed 25 participants); or
- (4) Not offer the rebate.

Strategic Plan Alignment:

The Solarize Summit program directly aligns with Council's 100% renewable energy reduction goal and implementation of the Climate Action Plan, both of which are identified in the 2019-2020 Strategic Plan. The Solarize Summit program provides a great opportunity for the Town to encourage rooftop solar installation.

Staff Recommendation:

It is the recommendation of the Town Manager to offer the rebate program and provide direction to include the necessary funds in TOF's 2020 Budget relevant to the number of residential homeowners who sign contracts by August 31, 2019, not to exceed 25 participants for a total cost not to exceed \$37,500.

Attachments:

Presentation from Solarize Summit Community Meeting.

Reviews and Approvals:

This report has been written by Nancy Kerry, Town Manager.
Reviewed by Bonnie Moniet, Finance Director -- Approved

Attachment 1

Solarize Summit
Community Presentation

Solarize Summit Kick-Off



Who is HC3?

- Community recycling + composting
- Climate action leadership + engagement
- Residential energy efficiency
- Sustainable business consulting
- Water conservation
- Community gardens and farm-share program
- Youth K-12 education
- Zero Waste for large events



Why a Climate Action Plan?

- Colorado is one of the fastest-warming states in the country
- If we do nothing...
 - Frisco will be the new Eagle
 - Only 43% of wintertime precipitation will fall as snow in the Upper Colorado watershed



Climate Action Goals

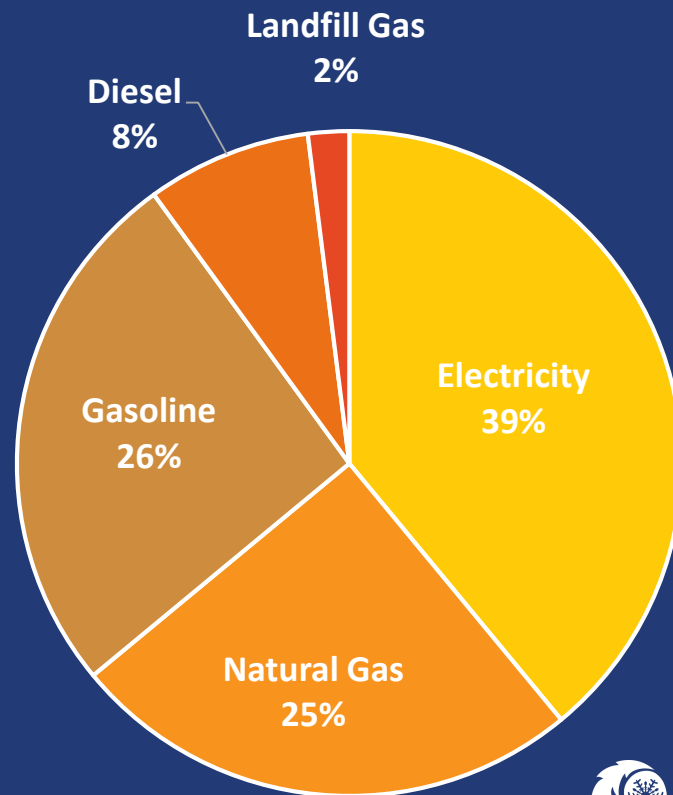
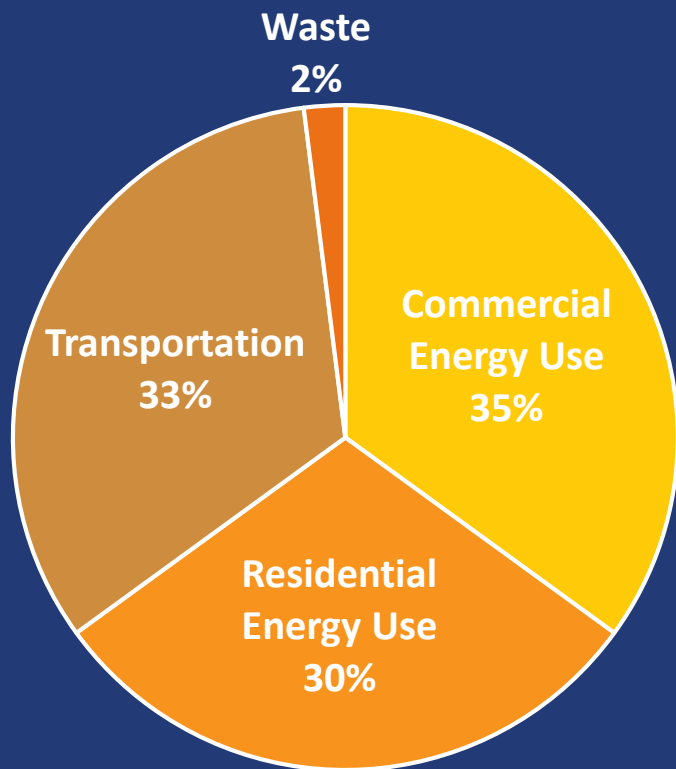
Reduce
countywide
emissions...

50% by 2030
80% by 2050



Summit County GHG Emissions

GHG Emissions by Source





SUMMIT COUNTY
COMMUNITY CLIMATE ACTION PLAN:
STRATEGIES FOR A SUSTAINABLE FUTURE

Climate Action Plan

- Renewable energy
- Building energy
- Transportation
- Waste
- Forests
- Community Engagement



Solarize Summit

What we did...

- Interviewed solar installers
- Prioritized competitive pricing and great customer service
- Hired *Active Energies Solar*
- Negotiated a program discount...and bonus rebates in some towns!

What you can do...

- Decide you want to learn more
- Sign up for a free phone consultation with *Active Energies Solar*
- Say “**YES!**” or “**No, thanks**” to moving forward



SOLAR POP QUIZ!

Navigate to [Kahoot.It](https://kahoot.it) and enter the game code on the screen



SOLARIZE SUMMIT

Community Partners:



Installation Partner:

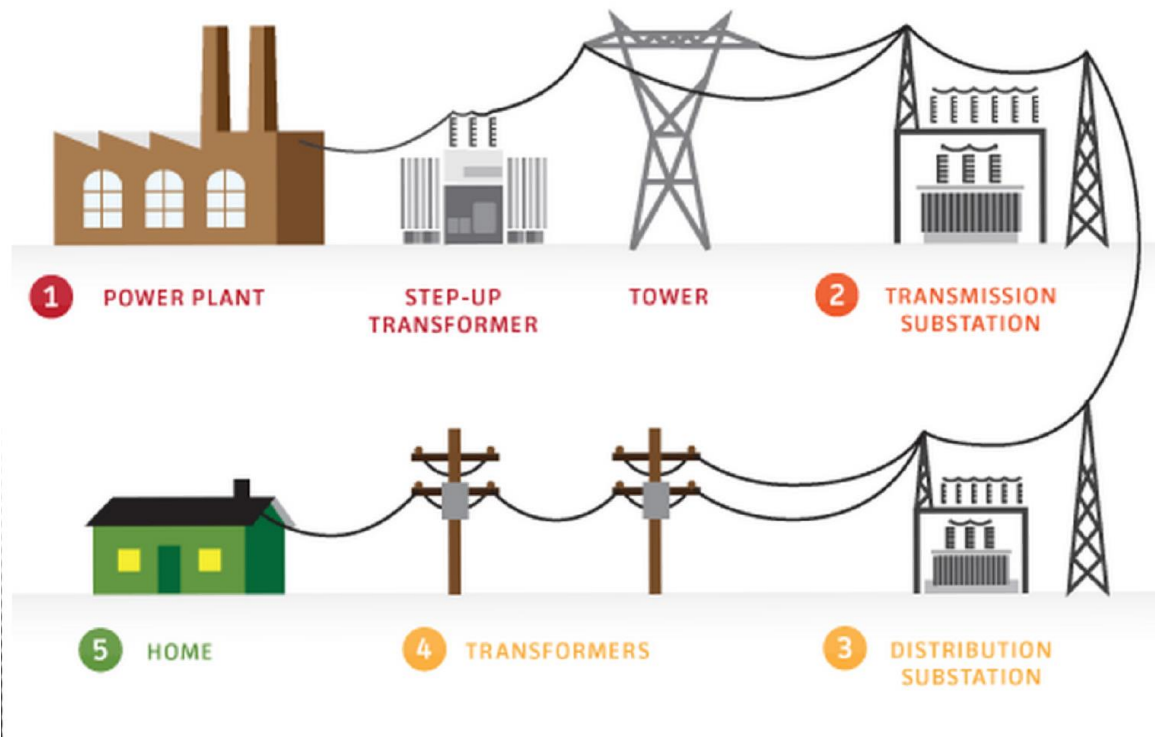


ELECTRIC POWER GRID

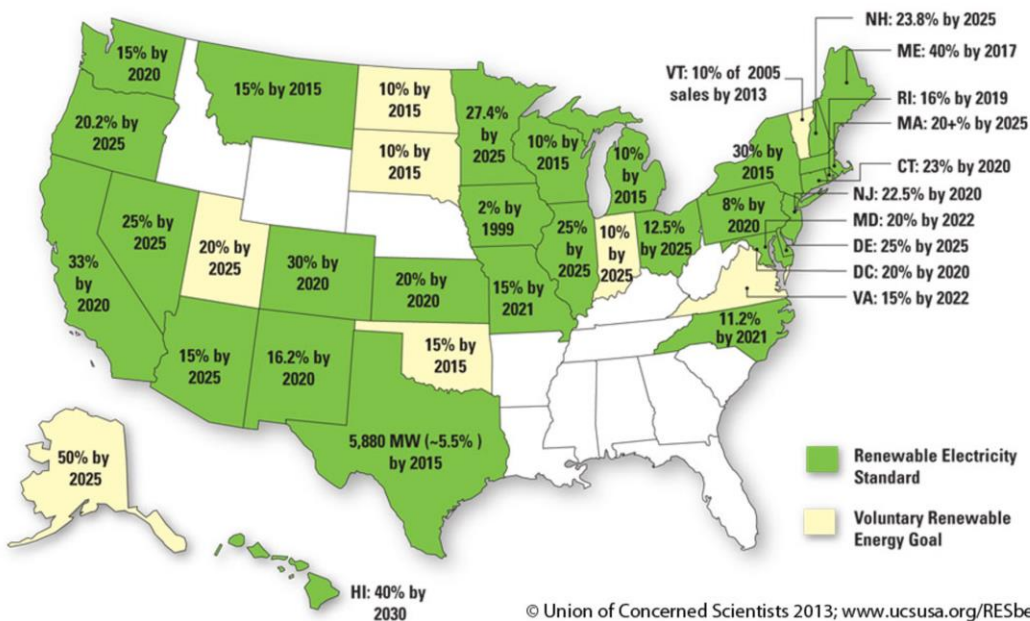
TODAY'S ELECTRIC POWER GRID
SEE HOW THE GRID IS EVOLVING



THE GRID



State Renewable Electricity Standards



© Union of Concerned Scientists 2013; www.ucsusa.org/RESbenefits

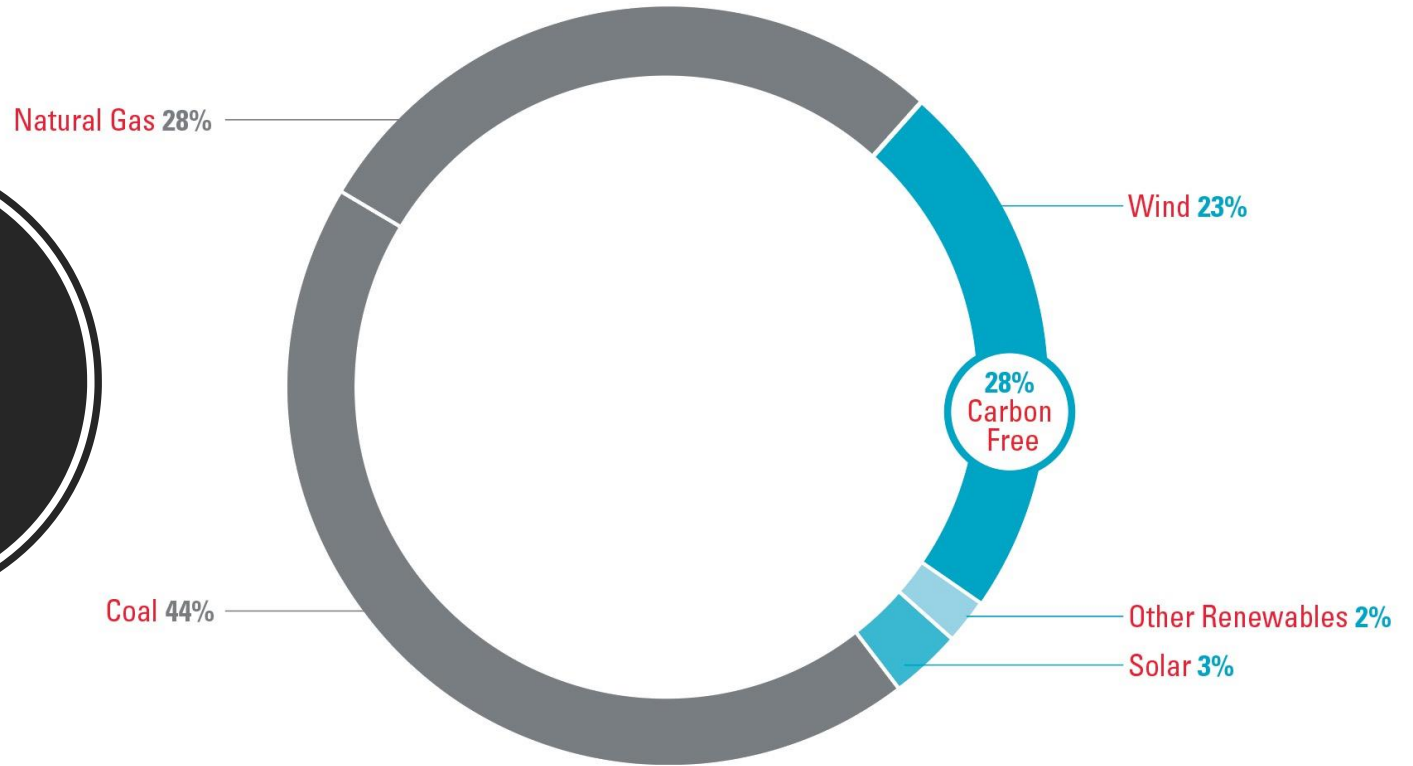
State-level renewable electricity standards are a leading driver of wind, solar, and other renewable development in the United States. Twenty-nine states and the District of Columbia have renewable electricity standards in place, 17 of which have set targets at 20 percent or greater. Another eight states have voluntary targets for renewable electricity.

State abbreviation	State coal generation percent (resource mix)	State oil generation percent (resource mix)	State gas generation percent (resource mix)	State nuclear generation percent (resource mix)	State hydro generation percent (resource mix)	State biomass generation percent (resource mix)	State wind generation percent (resource mix)	State solar generation percent (resource mix)	State geothermal generation percent (resource mix)	State other fossil generation percent (resource mix)	State other unknown/purchased fuel generation percent (resource mix)	State total nonrenewables generation percent (resource mix)	State total renewables generation percent (resource mix)	State total nonhydro renewables generation percent (resource mix)
STCLPR	STOLPR	STGSPR	STNCPR	STHYPR	STBMPR	STWIPR	STSOPR	STGTPR	STOFPR	STOPPR	STTNPR	STTRPR	STTHPR	
AL	24.0	0.0	40.5	27.9	5.2	2.3	0.0	0.0	0.0	0.0	0.0	92.4	7.6	2.4
AR	39.4	0.1	30.1	22.2	6.0	2.3	0.0	0.0	0.0	0.0	0.0	91.7	8.3	2.3
AZ	28.0	0.0	31.4	29.8	6.6	0.2	0.5	3.4	0.0	0.0	0.0	89.2	10.8	4.1
CA	0.2	0.1	49.2	9.6	14.5	3.1	6.8	9.8	5.8	0.7	0.0	60.0	40.0	25.5
CO	55.0	0.0	23.3	0.0	3.0	0.3	17.3	1.0	0.0	0.0	0.1	78.4	21.6	18.6
CT	0.6	0.3	46.3	16.4	0.6	3.6	0.0	0.1	0.0	0.0	0.0	66.3	33.7	4.0
CO	55.0	0.0	23.3	0.0	3.0	0.3	17.3	1.0	0.0	0.0	0.1	78.4	21.6	18.6
FL	16.6	1.2	66.5	12.3	0.1	2.6	0.0	0.1	0.0	0.7	0.0	97.3	2.7	2.7
GA	28.5	0.0	39.8	1.4	3.4	0.1	3.4	0.7	0.0	0.1	0.0	94.5	5.5	4.1
HI	15.1	66.7	0.0	0.0	0.9	6.4	0.9	2.6	0.6	1.1	0.0	83.6	16.4	15.5
IA	46.3	0.5	5.4	8.6	1.7	0.5	36.9	0.0	0.0	0.0	0.0	60.9	39.1	37.4
ID	0.2	0.0	21.2	0.0	57.7	3.4	16.5	0.2	0.5	0.0	0.4	21.8	78.2	20.5
IL	31.7	0.0	9.3	52.6	0.1	0.2	5.7	0.0	0.0	0.1	0.2	94.0	6.0	6.0
IN	71.3	0.6	19.7	0.0	0.4	0.4	4.8	0.2	0.0	2.2	0.3	94.1	5.9	5.5
KS	48.5	0.1	4.3	17.3	0.1	0.1	29.6	0.0	0.0	0.0	0.0	70.2	29.8	29.8
KY	83.2	1.5	10.3	0.0	4.3	0.6	0.0	0.0	0.0	0.1	0.0	95.1	4.9	0.6
LA	11.2	4.5	61.8	16.1	1.0	2.7	0.0	0.0	2.0	0.6	0.0	96.3	3.7	2.7
MA	5.9	1.3	66.2	16.9	0.7	6.5	0.7	1.9	0.0	0.0	0.0	90.3	9.7	9.0
MD	37.2	0.4	14.6	39.7	3.7	2.3	1.4	0.6	0.0	0.0	0.0	91.9	8.1	4.3
ME	0.6	1.0	30.4	0.0	26.1	25.3	14.5	0.0	0.0	1.3	0.9	34.1	65.9	39.8
MI	36.1	0.7	26.1	28.1	0.7	2.4	4.2	0.0	0.0	1.6	0.0	92.7	7.3	6.5
MN	38.7	0.1	14.9	23.1	2.0	3.6	17.5	0.0	0.0	0.0	0.2	76.9	23.1	21.1
MO	76.7	0.1	7.7	12.0	1.8	0.2	1.4	0.0	0.0	0.0	0.0	96.5	3.5	1.6
MS	8.5	0.0	79.7	9.4	0.0	2.4	0.0	0.0	0.0	0.0	0.0	97.6	2.4	2.4
MT	51.4	1.7	1.7	0.0	36.3	0.1	7.7	0.0	0.0	1.2	0.0	55.9	44.1	7.8
NC	26.6	0.2	30.0	32.7	3.4	2.0	0.0	2.6	0.0	0.2	0.2	92.1	7.9	4.6
ND	70.2	0.1	2.8	0.0	5.1	0.0	21.6	0.0	0.0	0.1	0.1	73.3	26.7	21.6
NE	58.8	0.0	1.4	25.1	4.1	0.3	10.2	0.0	0.0	0.0	0.0	85.4	14.6	10.5
NH	2.2	0.2	24.6	55.8	5.9	9.0	2.2	0.0	0.0	0.0	0.0	82.8	17.2	11.3
NJ	1.7	0.2	56.3	38.4	0.0	2.0	0.0	1.1	0.0	0.3	0.1	97.0	2.8	3.0
NM	55.8	0.2	30.2	0.0	0.4	0.1	11.0	2.3	0.0	0.0	0.0	86.2	13.8	13.4
NV	5.5	0.0	73.7	0.0	4.6	0.1	0.9	6.5	8.5	0.0	0.1	79.3	20.7	16.1
NY	1.3	0.5	42.1	31.0	19.7	2.3	2.9	0.1	0.0	0.0	0.0	74.9	25.1	5.4
OH	57.8	1.0	24.3	14.1	0.4	0.6	1.0	0.1	0.0	0.6	0.0	97.8	2.1	1.7
OK	24.4	0.0	46.4	0.0	3.2	0.5	25.5	0.0	0.0	0.0	0.0	70.8	29.2	26.0
OR	3.2	0.0	25.4	0.0	57.4	1.7	11.9	0.1	0.3	0.0	0.0	28.6	71.4	14.0
PA	25.4	0.2	31.6	38.6	0.8	1.5	1.6	0.0	0.2	0.0	0.0	96.0	4.0	3.1
RI	0.0	0.4	95.8	0.0	0.0	3.1	0.4	0.2	0.0	0.0	0.0	96.2	3.8	3.7
SC	21.7	0.1	16.9	57.6	1.3	2.5	0.0	0.0	0.0	0.0	0.0	96.3	3.7	2.5
SD	20.2	0.0	8.9	0.0	40.2	0.0	30.6	0.0	0.0	0.0	0.0	29.2	70.8	30.6
TN	39.3	0.2	14.3	37.3	7.7	1.2	0.0	0.1	0.0	0.0	0.0	91.0	9.0	1.3
TX	26.7	0.0	49.8	9.3	0.3	0.4	12.7	0.2	0.0	0.6	0.1	86.5	13.5	13.2
UT	68.0	0.1	22.8	0.0	2.0	0.2	2.8	0.1	1.3	0.1	0.5	91.6	8.4	6.4
VA	17.8	0.6	44.2	32.1	0.3	4.9	0.0	0.0	0.0	0.0	0.0	94.7	5.3	4.9
VT	0.0	0.2	0.1	0.0	56.4	25.0	15.2	3.1	0.0	0.0	0.0	0.3	99.7	43.3
WA	4.0	0.0	9.6	8.4	68.7	1.8	7.0	0.0	0.0	0.4	0.0	22.5	77.5	8.9
WI	51.4	0.2	23.8	15.6	4.3	2.3	2.3	0.0	0.0	0.0	0.0	91.1	8.9	4.6
WV	94.2	0.2	1.6	0.0	2.2	0.0	1.9	0.0	0.0	0.0	0.0	95.9	4.0	1.9
WY	85.8	0.1	1.7	0.0	2.1	0.0	9.4	0.0	0.0	0.8	0.1	88.5	11.5	9.4
US	30.1	2.0	30.4	15.6	9.6	4.0	6.8	0.8	0.4	0.3	0.1	78.4	21.6	12.0

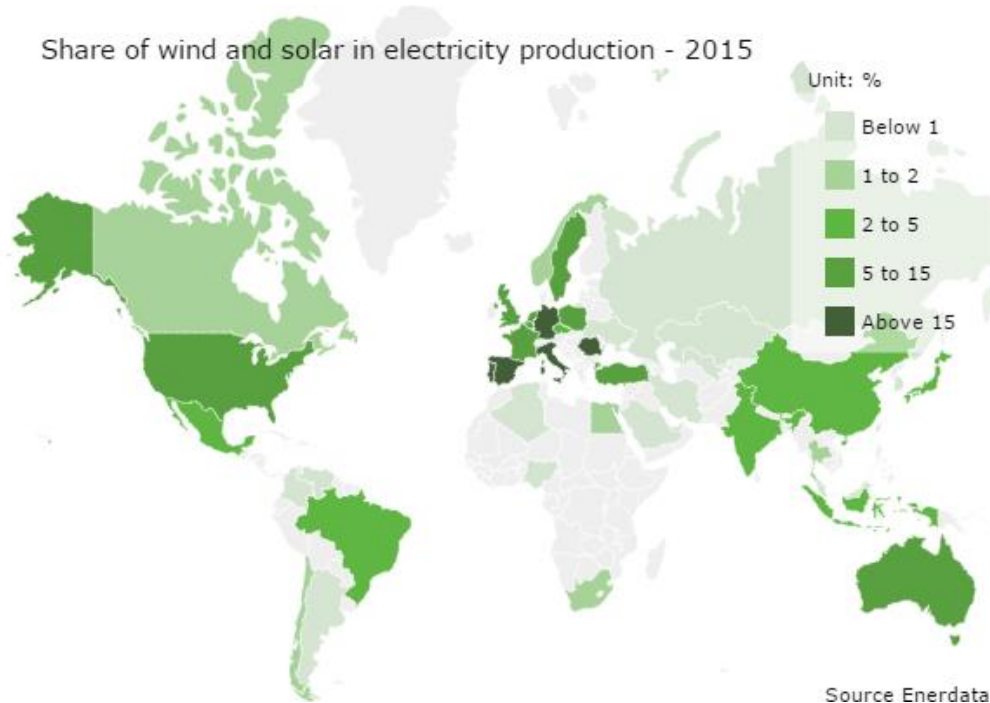


Source : eGRID2016 Data File (XLSX)

Xcel Energy Grid Mix in Colorado



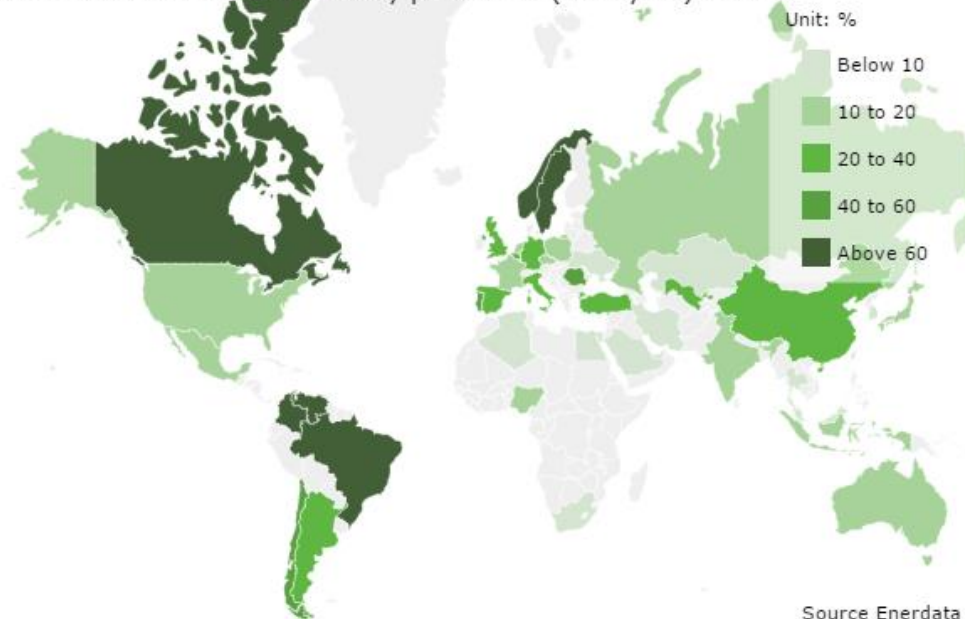
Share of wind and solar in electricity production



Portugal	24.2
New Zealand	23.2
Spain	22.3
Germany	19.6
Romania	17.2
Italy	16.3
United Kingdom	14.0
Belgium	14.0
Sweden	10.4
Netherlands	8.0
Australia	6.8
Poland	6.6

Share of renewables in electricity production (incl hydro)

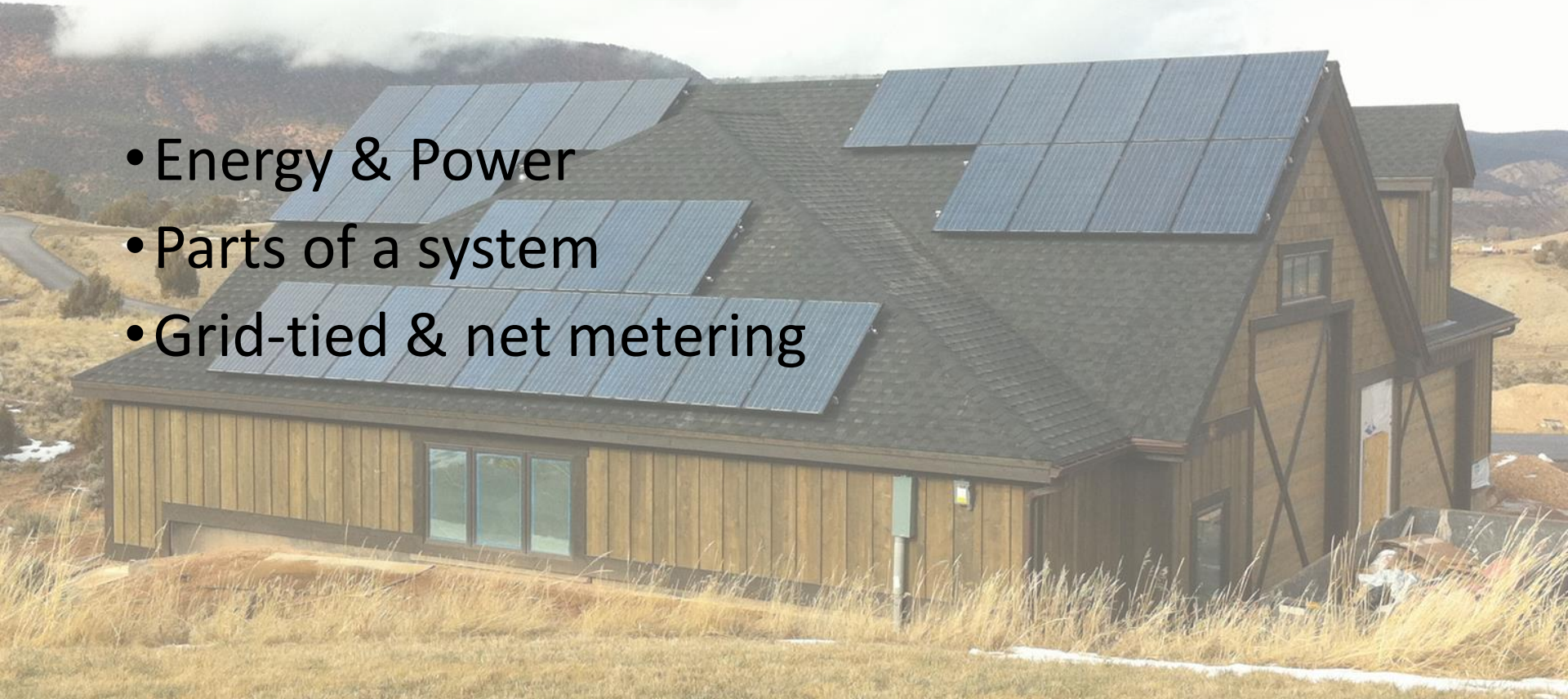
Share of renewables in electricity production (incl hydro) - 2015



Norway	97.9
New Zealand	80.0
Brazil	73.5
Venezuela	68.9
Colombia	67.9
Sweden	64.3
Canada	62.7
Portugal	49.3
Romania	42.6
Chile	41.6
Italy	38.4
Spain	35.5

Solar Basics

- Energy & Power
- Parts of a system
- Grid-tied & net metering



Power \neq Energy

- **Power** is the time rate at which work is done or energy is transformed
- **Energy** is the ability to do work
- How much total *energy* can the system store? (watt-hours)
- How much *power* can it deliver at any moment? (watts)



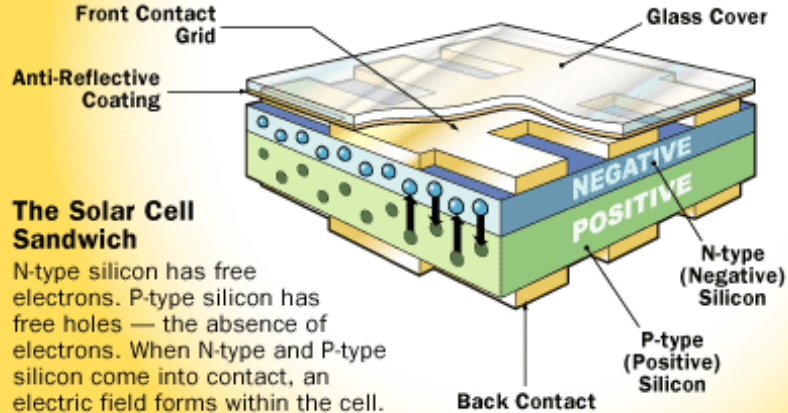
**The average desktop computer is 200watts





How Solar Cells Work

©2006 HowStuffWorks



The Solar Cell Sandwich

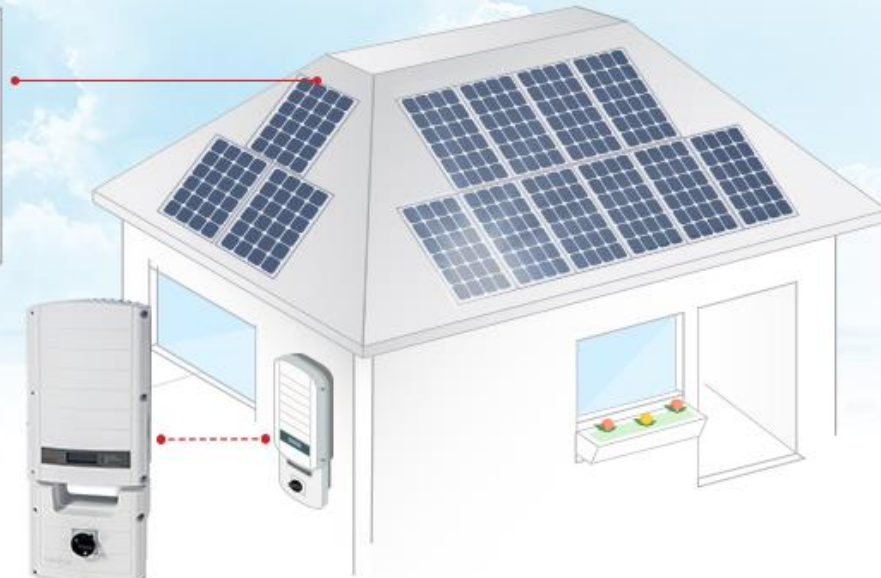
N-type silicon has free electrons. P-type silicon has free holes — the absence of electrons. When N-type and P-type silicon come into contact, an electric field forms within the cell.



What's in a Solar Panel?



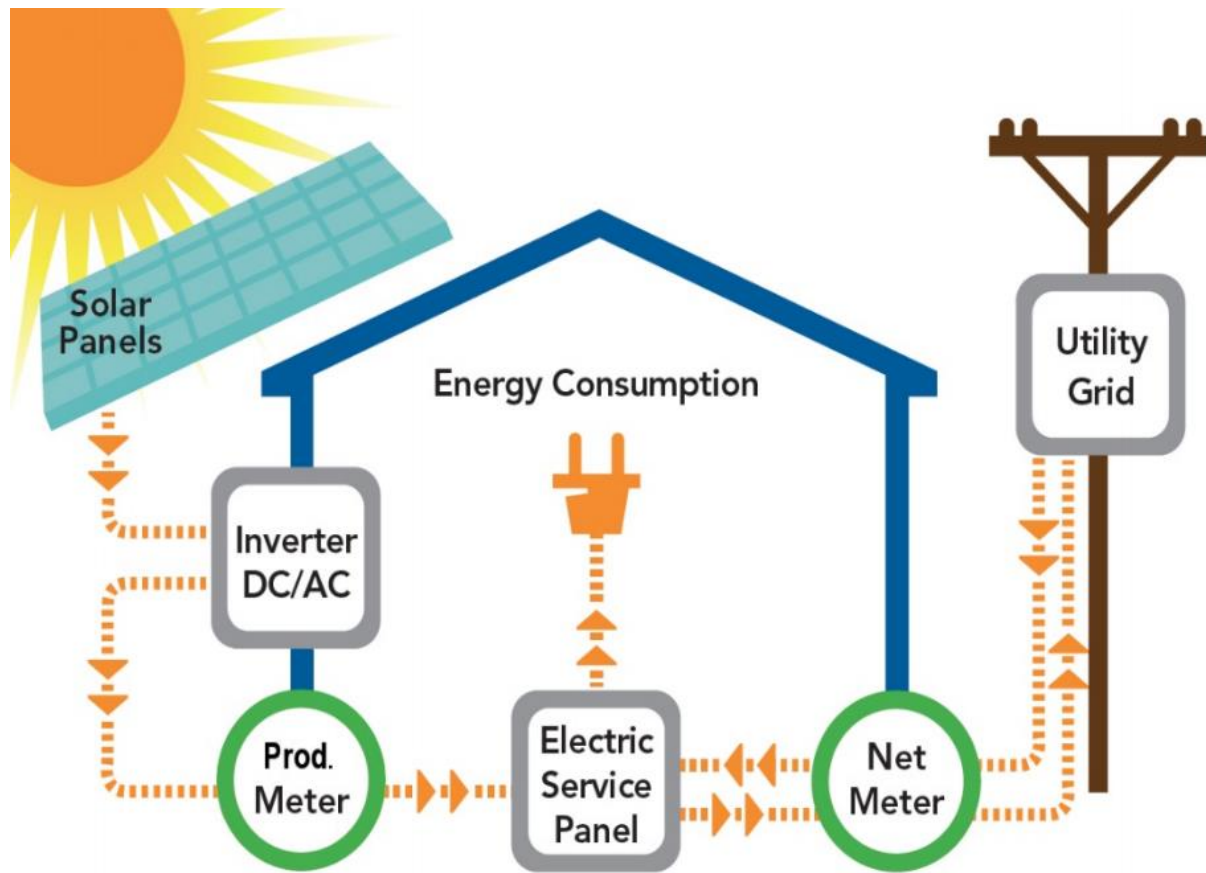
Power Optimizer



Inverter



Monitoring Platform





How much
do we pay for
electricity?

Computer:

.2 kWh x 18 hours a day x 360 days
a year x \$0.10/kWh = \$162.56

Average household usage:

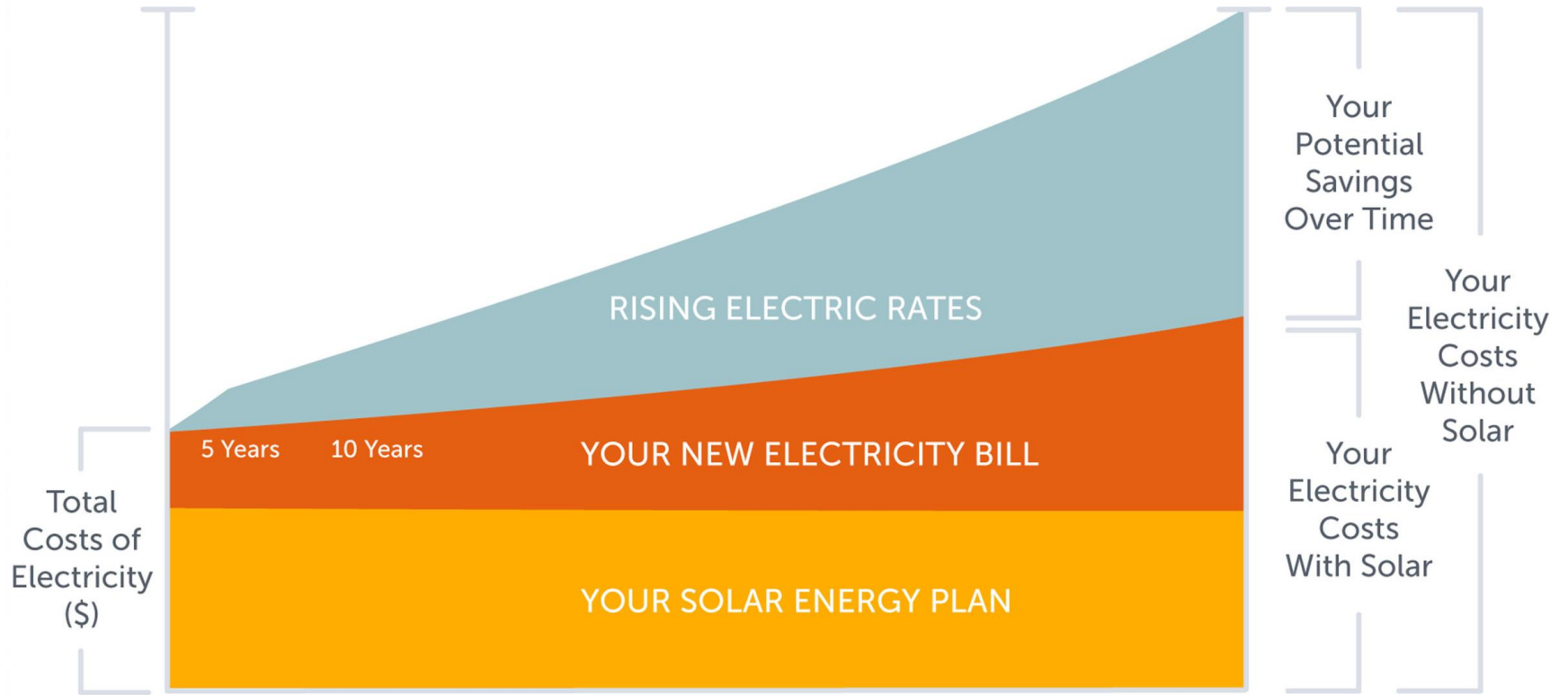
11,000 kWh x \$0.10 = \$1,100/year

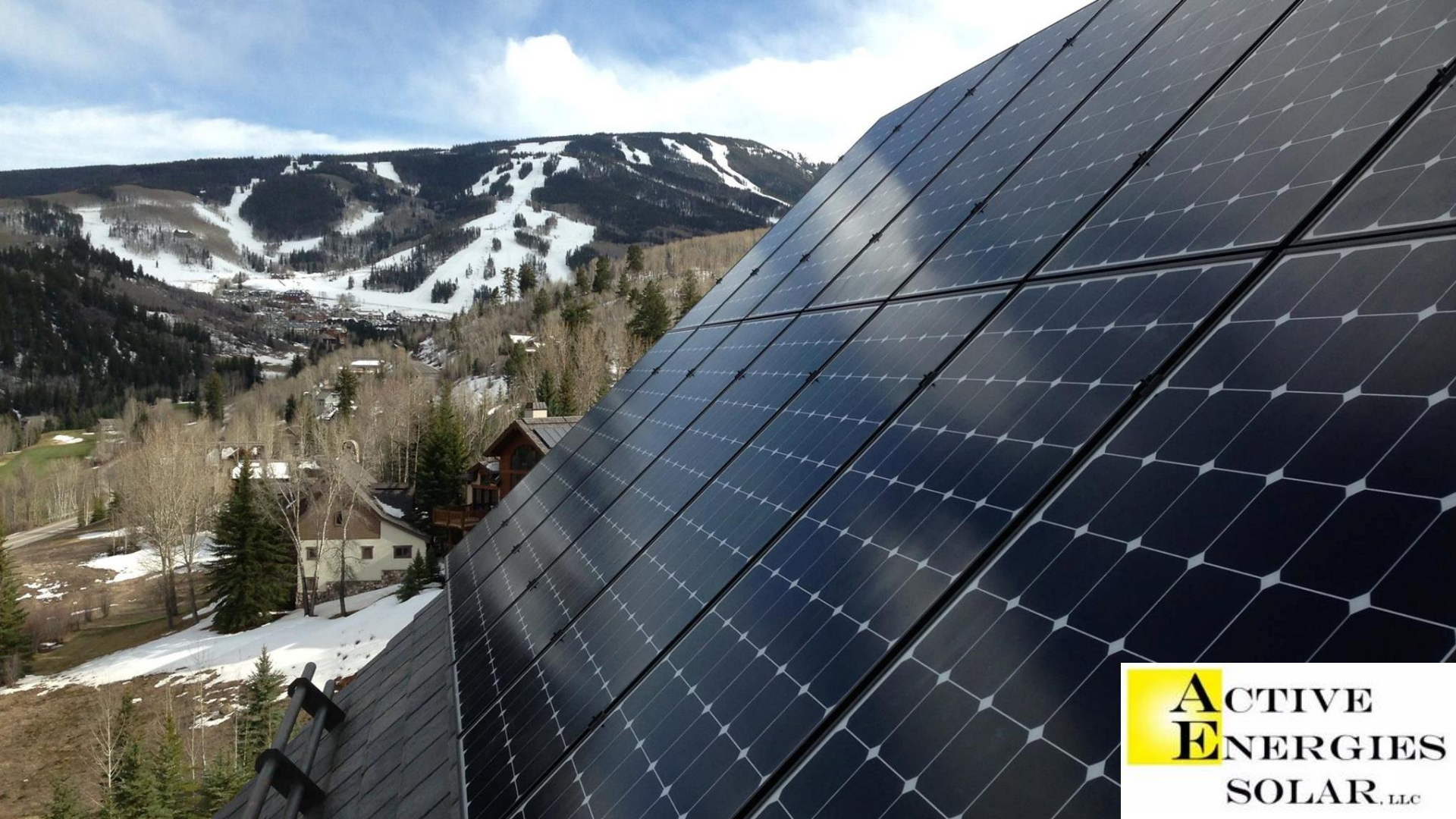


ELECTRICITY CHARGES

RATE: R Residential General

DESCRIPTION	USAGE UNITS	RATE	CHARGE
Service & Facility			\$5.39
Non-Summer	647 kWh	\$0.054610	\$35.34
Trans Cost Adj	647 kWh	\$0.001090	\$0.71
Elec Commodity Adj	647 kWh	\$0.030780	\$19.91
Demand Side Mgmt Cost	647 kWh	\$0.001320	\$0.85
Purch Cap Cost Adj	647 kWh	\$0.004650	\$3.01
CACJA	647 kWh	\$0.005030	\$3.25
Renew. Energy Std Adj			\$1.37
GRSA			-\$0.38 CR
Subtotal			\$69.45
Franchise Fee		3.00%	\$2.08
Sales Tax			\$2.15
Total			\$73.68





ACTIVE
ENERGIES
SOLAR, LLC

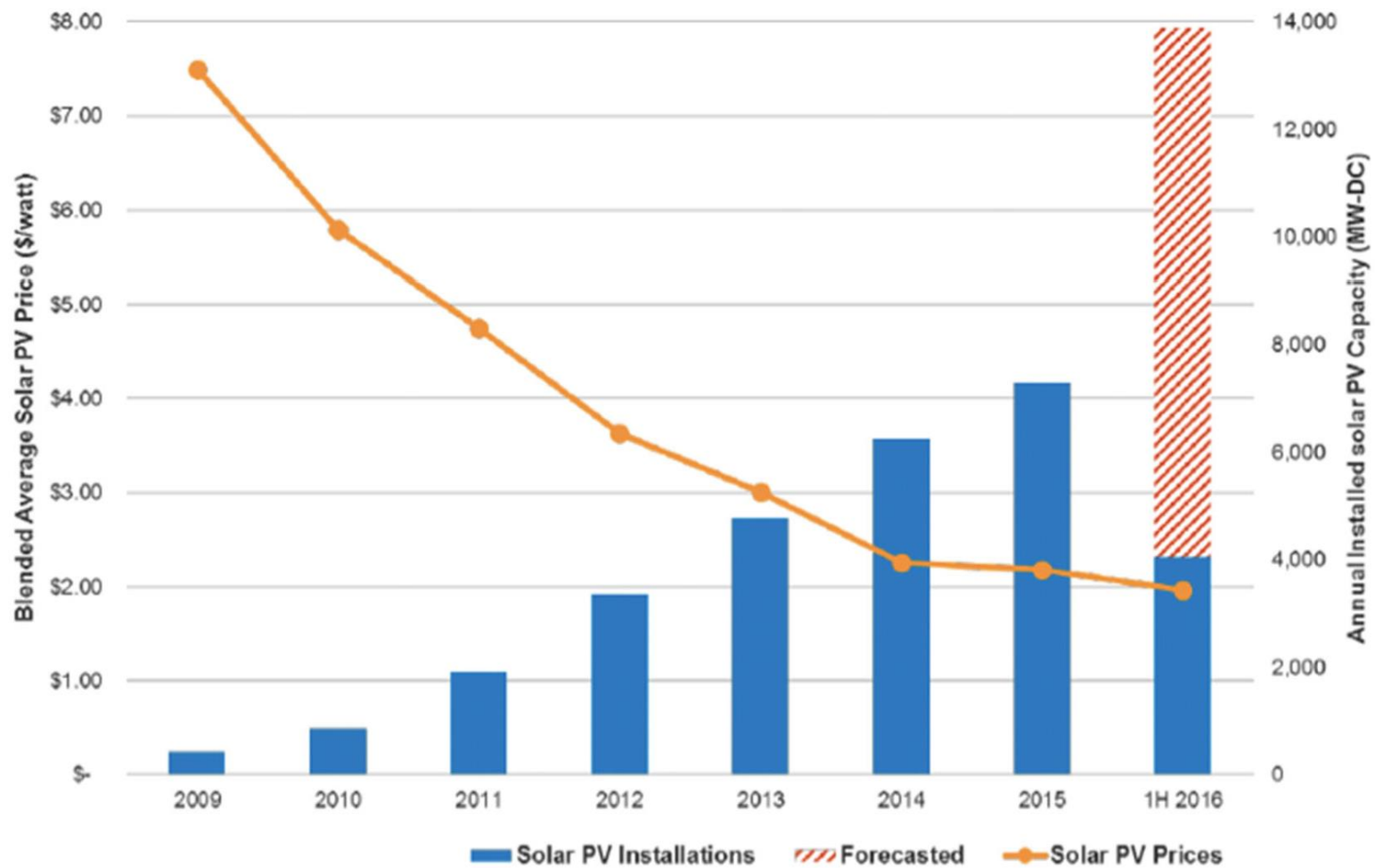
Solar Process



- Initial customer contact to Solarize Summit (H3C) or Active Energies Solar
 - Site visit
- Customized proposal delivered
 - Contract
- Design plans
 - Building/Electrical permits
 - Xcel interconnection request
 - Xcel approval typically takes 5-6 weeks
- Installation scheduled for 6-7 weeks from Utility submission (date subject to Permit/Utility approval)
- Typical installation takes 1-2 days
- Inspections performed by AHJ (and fire department, if required)

- Utility testing dependent on Xcel energy.
 - Xcel can take 2-4 weeks for final energizing of the system

Once the system is energized, our team will perform a final walk-thru with the customer to provide training on the system and go thru final paperwork, including warranty information.





RESIDENTIAL SOLAR PRICING

Through the Solarize Summit Program

Partners:



Installation Partner:



SOLARIZE SUMMIT RESIDENTIAL PRICING				
Cost/Watt	System Size (kW)	Install Cost	Federal Tax Credit	Net Cost**
\$3.25	2.48	\$8,060	\$2,418	\$5,642
	3	\$9,750	\$2,925	\$6,825
	4	\$13,000	\$3,900	\$9,100
	5	\$16,250	\$4,875	\$11,375
	6	\$19,500	\$5,850	\$13,650
\$3.19	7	\$22,330	\$6,699	\$15,631
	8	\$25,520	\$7,656	\$17,864
	9	\$28,710	\$8,613	\$20,097
	10	\$31,900	\$9,570	\$22,330
	11	\$35,090	\$10,527	\$24,563
\$3.12	12	\$37,440.00	\$11,232	\$26,208
	13	\$40,560.00	\$12,168	\$28,392
	14	\$43,680.00	\$13,104	\$30,576
	15	\$46,800.00	\$14,040	\$32,760
	16	\$49,920.00	\$14,976	\$34,944
	17	\$53,040.00	\$15,912	\$37,128
	18	\$56,160.00	\$16,848	\$39,312
	19	\$59,280.00	\$17,784	\$41,496
	20	\$62,400.00	\$18,720	\$43,680
	21	\$65,520.00	\$19,656	\$45,864
	22	\$68,640.00	\$20,592	\$48,048
	23	\$71,760.00	\$21,528	\$50,232
	24	\$74,880.00	\$22,464	\$52,416
	\$3.04	25	\$76,000.00	\$22,800

SOLARIZE SUMMIT REBATES:

Active Energies Solar will give each participant a rebate based on the total kilowatts installed across the county:

- 0 - 50 kW = \$200
- 50 - 100 kW = \$300
- 100 - 150 kW = \$400
- 150+ = \$500

***Net cost does not include AES rebate*

**Additional Local Rebates May Be Available, Depends On Location Of Installed System



Form **5695**

Department of the Treasury
Internal Revenue Service

Residential Energy Credits

► Information about Form 5695 and its separate instructions is at www.irs.gov/form5695.
► Attach to Form 1040 or Form 1040NR.

OMB No. 1545-0074

2016
Attachment
Sequence No. **158**

Name(s) shown on return

Your social security number

Part I Residential Energy Efficient Property Credit (See instructions before completing this part.)

Note. Skip lines 1 through 11 if you only have a **credit carryforward from 2015**.

1	Qualified solar electric property costs	1		
---	---	---	--	--

RESIDENTIAL NUMBER CRUNCH

- 22 x 310w panels = 6.82kW
- Annual energy produced = 10,413kWh (110% offset)
- Cost of system = \$22,165 (@ \$3.25/Watt)

Tax Credit \$ 6,650

Total \$15,515



**SOLARIZE
SUMMIT**

Solar Homes Have **MORE** VALUE

PV Systems add an extra \$3.00 per watt to the value of the sale of the house



Solar Homes **SELL** FASTER

HOME SIZE

SYSTEM SIZE

ADDED SALE PREMIUM



small house



5 kw system



\$15,000



medium house



7 kw system



\$21,000



large house
large house



10 kw system
10 kw system





\$30,000


6,82kW Solar Array

Coal tons	6.1
CO2 tons	12.3
Water Gallons	8593
Driven Miles	18903
Trees Planted	41







Environmental Benefits

 CO2 Emission Saved
12,169.81 lb

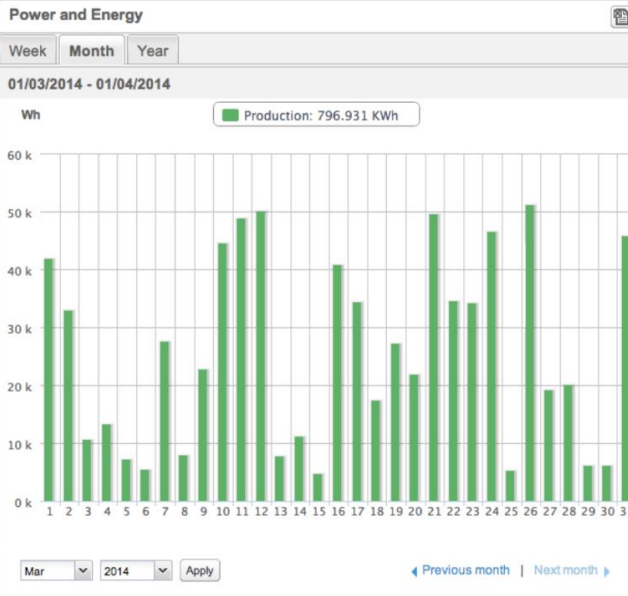
 Equivalent Trees Planted
306.51

 Light Bulbs Powered
23,816.09 For a day

Overview			
Current Power	Energy today	Energy this month	Lifetime energy
425 W	328.08 Wh	17.99 kWh	7.86 MWh

- 
Dashboard
- 
Layout
- 
Chart
- 
Reports
- 
Alerts
- 
Admin

Overview				
Current Power	Energy today	Energy this month	Lifetime energy	Lifetime revenue
3.53 kW	45.83 kWh	796.93 kWh	1.02 MWh	£137.16



Choose a site (insert at least 3 letters to search):



Site summary

Site status: ✓

Name:	Dalwhinnie
Country:	United Kingdom
Installed:	07/02/2014
Last updated:	31/03/2014 16:29
Peak power:	9.16 kWp
Address:	Dalwhinnie

Weather

Temperature 9.0 °C
 Mostly Cloudy
 Feels like 7.0 °C
 Wind ESE, 14.0 Km/h
 Humidity 76.0 %
 Sunrise at 06:41
 Sunset at 19:46

 Monday 8-7 °C Mostly Cloudy	 Tuesday 7-6 °C Rain	 Wednesday 8-7 °C Mostly Cloudy
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Silfab
SOLAR

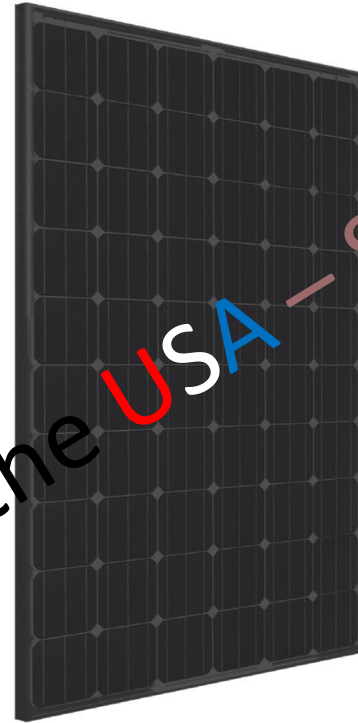
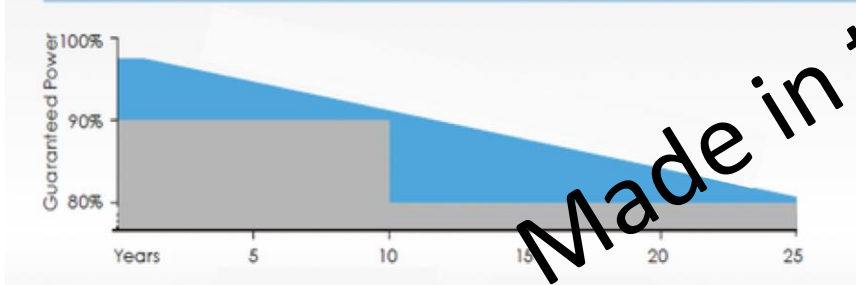
Los Angeles • Toronto • Minneapolis

SLA-M
Monocrystalline

310 Wp
60 Cell

LINEAR PERFORMANCE WARRANTY

12 Year Product Warranty • 25 Year Linear Power Warranty



Made in the **USA** — Seattle, WA



Save
Money
SAVE ENERGY

LEDs
USE
UP TO **86%** LESS ENERGY
than incandescent bulbs

LEDs
GENERATE **98%** LESS HEAT
than incandescent bulbs

LEDs
LAST AT
LEAST **25X** LONGER
than incandescent bulbs

LED
EMISSIONS
HAVE **88%** LESS CO²
than incandescent bulbs



ACTIVE
ENERGIES
SOLAR, LLC



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: NANCY KERRY, TOWN MANAGER AND
THAD RENAUD, TOWN ATTORNEY
RE: AN ORDINANCE AMENDING CHAPTER 110 OF THE CODE OF ORDINANCES OF THE TOWN
OF FRISCO, CONCERNING THE LICENSING AND REGULATION OF BUSINESSES THAT
PROVIDE DOCKLESS SHARED MOBILITY DEVICES
DATE: JUNE 11 , 2019

Summary and Background:

During the Town Council's April 23, 2019 work session, the Council discussed electric and pedal assist bicycles for use on the Recreation Path and the regulation of businesses that provide dockless shared mobility devices.

At that work session, the Town Council gave direction to the Town Attorney to bring back an ordinance concerning the regulation of dockless shared mobility devices with the following goals in mind:

- The prohibition of dockless mobility devices commonly referred to as "scooters", "stand-up skateboards", and other similar electric devices;
- The consideration to allow one or more business licenses to operate a dockless electric bicycle business in the Town of Frisco, not to exceed approximately 50 devices (total among all businesses) within the Town;
- Regulations for business licensing, business obligations, and bicycle use as allowed by law, for the operation of dockless bicycles within the Town limits.

Analysis and Ordinance:

The Town Attorney has prepared an Ordinance (Attachment 1) that, if adopted, would enact regulations for the licensing and regulation of businesses seeking to provide dockless bicycles within the Town of Frisco.

For a complete understanding of the proposed regulations, a thorough review of the attached Ordinance is recommended. The following *summary* of key points in the ordinance are provided as such and not intended to replace a thorough review of the ordinance.

Summary of Key Regulations

<u>Regulation</u>	<u>Section in Ord</u>
1. A business license will only be considered for the operation of dockless bicycles, <i>all other shared mobility devices are prohibited</i>	§ 110-47
2. <u>Limitations</u> : The licenses issued under this Article shall not authorize, cumulatively, more than fifty-one (51) dockless shared bicycles to be offered within the Town at any one time, nor more than seventeen (17) dockless shared bicycles to be offered by any single licensee. Licenses shall issue under this Article on a first come, first served basis, based upon the date and time of submission of a complete application.	
3. <u>Application</u> required to include: \$80 per bicycle financial guarantee to cover the cost of damage to public property, cost of removing and/or storing dockless bicycles, any cost for the termination of license.	§110-48
4. <u>Management Plan</u> required; plan must address (a) equitable distribution of shared bicycles and electric assisted bicycles, including deployment of dockless shared bicycles at transit facilities, high demand areas of the Town, and areas of the Town that are not currently served by shared bicycle stations (b) A description of how the applicant will respond to complaints of improperly parked or abandoned shared bicycles; (c) description of how the applicant will respond when notified of safety or operational concerns of a shared bicycle in the system; (d) maintenance plan for shared bicycles; and (e) user education and outreach plan for proper bicycle parking and riding.	§110-48 (C)
5. <u>Application Fee</u> : \$500	§110-49
6. <u>Application Review</u> : conducted by Chief of Police, Town Manager, Public Works Director, Community Development Director and any additional review as determined by the Town Manager.	§110-50
7. <u>Decision Making Process</u> : Town Manager approval, denial, and process described in section 110-51.	§110-51
8. <u>Licensing Term, Expiration, Renewal</u> : Term is one –year from date of issuance, licensing expiration and renewal explained in ordinance	§110-52-55
9. <u>Insurance Required</u> : \$2M comprehensive commercial general liability insurance with limits of liability not less than two million dollars (\$2,000,000.00) per claim, two million dollars (\$2,000,000.00) aggregate, and fifty thousand dollars (\$50,000.00) for property damage. The Town shall be named as an additional insured under such insurance policy. Town Attorney to review and approve insurance.	§110-56
10. <u>Operator’s Duties, Obligations, and Standards</u> : A complete list of all of the operator and user’s duties, use, obligations, standards, requirements are explained in the ordinance Sections 110-57 & 110-58.	§110-57& 58
11. <u>Parking of Dockless Bicycles</u> : Police Chief is authorized to impound bicycles left in a location not authorized for parking of shared bicycles; parking of bicycles must follow applicable laws or Town Manager rules.	§110-61

Financial Impact:

The proposed ordinance is new to the Town and therefore, the actual cost of authorizing dockless bicycles within the Town is not yet known in terms of impacts to the Town and staff time. The application fee of \$500 is expected to cover the cost of processing the application. The \$80 per-bicycle financial guarantee is projected to cover the cost of Police Department staff time to investigate improper use, abandonment of bicycles, impounding and storing of bicycles.

If the Town Council elects to adopt the ordinance allowing dockless shared bicycles, the actual costs will be evaluated over the first year and reported back to Council for consideration of amending the fees.

Strategic Plan Alignment:

Authorizing dockless shared bicycles within the Town of Frisco aligns with the Council's Strategic Priorities of Vibrant Recreation and Sustainable Environment providing multi-modal opportunities for locals and visitors within the Town.

Staff Recommendation:

Based on the Town Council's direction to address dockless shared bicycles, staff recommends the Council adopt the attached ordinance concerning the licensing and regulation of businesses that provide dockless shared mobility devices.

Attachments:

Ordinance

Reviews and Approvals:

This report has been written by Nancy Kerry, Town Manager.

Attachment 1

Ordinance for Adoption

ORDINANCE AMENDING CHAPTER 110 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING THE LICENSING AND REGULATION OF BUSINESSES THAT PROVIDE DOCKLESS SHARED MOBILITY DEVICES

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
ORDINANCE 19-09**

AN ORDINANCE AMENDING CHAPTER 110 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING THE LICENSING OF BUSINESSES, TO ADOPT A NEW ARTICLE IV CONCERNING THE LICENSING AND REGULATION OF BUSINESSES THAT PROVIDE DOCKLESS SHARED MOBILITY DEVICES.

WHEREAS, the Town of Frisco, Colorado (“Town”) is a home rule municipality, duly organized and existing under Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority, its police power, C.R.S. § 31-15-702 (concerning municipal regulation of streets and alleys), and the Charter for the Town of Frisco, the Town possesses the authority to regulate the time, place, manner, and licensing requirements for the operation of businesses that provide dockless shared mobility devices to the public for use on public rights-of-way; and

WHEREAS, by limiting such businesses to certain types, and by requiring that they be operated only in certain manners and locations, and subject to certain licensure requirements, the Town Council intends to mitigate the potential negative impacts that dockless shared mobility devices may have on the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT:

~~Section 1.~~ Chapter 110 of the Frisco Town Code, concerning the licensing of businesses, is hereby amended by the addition of a new Article IV thereof, to read in its entirety as follows:

ARTICLE IV

Licensing of Businesses Providing Dockless Shared Mobility Devices

§ 110-45. Legislative Intent.

The intent and purpose of this Article is to protect the public health, safety, and welfare by preventing or mitigating against any adverse impact that dockless shared mobility devices may have to people or to public or private property and by licensing all persons who make available dockless shared bicycles in the Town.

/////

§ 110-46. Definitions.

As used in this Article the following words have the following meanings:

APPLICANT: means a person who has submitted an application for license pursuant to this Article.

APPLICATION: means an application for license submitted pursuant to this Article.

DAY: means a calendar day, unless otherwise indicated.

DOCKLESS: means not having a docking station in a fixed location from which users must lock and unlock their rented shared mobility device..

DOCKLESS SHARE: means a transportation system providing users the ability to access bicycles or other mobility devices via mobile technology and that does not need to be attended by the licensee, allowing the user to pick up a mobility device from one location and leave it at another within a system's service area.

DOCKLESS SHARED BICYCLE (OR SHARED BICYCLE): means a bicycle or electrical assisted bicycle offered or operating in a system through which members of the public are offered for consideration the use of bicycles or electrical assisted bicycles without the use of fixed docking facilities.

ELECTRICAL ASSISTED BICYCLE: shall mean and be limited to a “Class 1” electrical assisted bicycle which shall mean and be limited to a bicycle with an electric motor that provided propulsion only as an assistance to pedaling, and that has a governor that prevents propulsion from being provided at speeds greater than twenty (20) miles per hour.

GOOD CAUSE means:

- A. The licensee has violated, does not meet, or has failed to comply with: 1) any of the terms, conditions, or provisions of this Article; or 2) any rule and regulation promulgated by the Town Manager pursuant to this Article; or
- B. The licensee has failed to comply with: 1) any of the terms and conditions of its license including, but not limited to, any special terms or conditions that were placed on its license at the time the license was issued, or 2) any special conditions that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings.

LICENSEE: means the person to whom a license has been issued pursuant to this Article.

MOBILE APPLICATION: means the software installed on a user's mobile device that allows the user to access a dockless shared mobility device.

MOBILITY DEVICE: means every and any device, whether or not motorized and other than a motor vehicle as defined in the Model Traffic Code adopted in Chapter ___ of this Code, that is designed or intended for the transportation of a person or persons from one location to another. Such devices include, but are not limited to bicycles, electrical assisted bicycles, stand-up scooters, skateboards, Segways, and similar devices.

PERSON: means an individual or any legal entity of any kind, corporate or otherwise.

POLICE CHIEF: means the Police Chief of the Town of Frisco, or the Police Chief's designee.

REBALANCING: means redistributing dockless shared mobility devices throughout the Town to ensure all areas are served by dockless share.

TOWN MANAGER: means the Town Manager of the Town of Frisco, or the Town Manager's designee.

USER: means the operator of a shared bicycle rented from a licensee.

§ 110-47. License Required; Limitations on Type and Number of Licenses.

A. No person shall conduct or carry on the business of offering or allowing the operation of dockless shared mobility devices within the Town without first obtaining a license from the Town Manager under this Article.

B. No license shall be issued under this Article to permit the conduct or carrying on of a business offering or allowing the operation of dockless shared mobility devices within the Town unless the license is limited to allowing only the operation of dockless shared bicycles.

C. The licenses issued under this Article shall not authorize, cumulatively, more than fifty-one (51) dockless shared bicycles to be offered within the Town at any one time, nor more than seventeen (17) dockless shared bicycles to be offered by any single licensee. Licenses shall issue under this Article on a first come, first served basis, based upon the date and time of submission of a complete application.

§ 110-48. Application for License.

A. A person seeking to obtain a license pursuant to this Article shall file an application with the Town Manager. The form of the application shall be provided by the Town Manager.

B. The applicant shall provide, with its license application, a financial guaranty upon which the Town may draw, in the amount of eighty dollars (\$80.00) per bicycle, to secure performance of the terms of the applicant's license following issuance. The financial guaranty shall be cash, a letter of credit from a surety or financial institution

located in the State of Colorado and in a form acceptable to the Town Manager, payable to the Town as beneficiary. The financial guaranty will be used to pay Town expenses related to the enforcement of this chapter including, without limitation, the following:

1. Public property repair and maintenance costs caused by the licensee's equipment;
2. Any cost for removing or storing a licensee's bicycles that are improperly parked; and
3. Any cost to the Town to remove a licensee's bicycles if its license expires or is otherwise terminated.

If the financial guaranty or any part thereof is used by the Town prior to the term of the license, the licensee shall, upon written notice from the Town, restore the financial guaranty to its original amount. A licensee's failure to restore the financial guarantee shall be a violation of the terms and conditions of the license. If an applicant's license is not granted, the financial guaranty shall be returned to the applicant without interest. Upon the expiration or termination of a license the remaining balance of the financial guarantee shall be refunded to the licensee without interest.

C. An applicant for a license shall submit, along with the application, a management plan that addresses accessibility of the applicant's proposed dockless bicycle share system, and how the applicant will prevent or mitigate adverse impacts that its dockless shared bicycles may have to public or private property. The Town Manager shall not approve a management plan unless it adequately addresses such impacts. The management plan shall include the following components:

1. A proposed service plan to achieve equitable distribution of shared bicycles and electric assisted bicycles, including deployment of dockless shared bicycles at transit facilities, high demand areas of the Town, and areas of the Town that are not currently served by shared bicycle stations;
2. A description of how the applicant will respond to complaints of improperly parked or abandoned shared bicycles;
3. A description of how the applicant will respond when notified of safety or operational concerns of a shared bicycle in the system;
4. A maintenance plan for shared bicycles; and
5. A proposed user education and outreach plan for proper bicycle parking and riding.

D. A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required Town licenses related to the operation of the licensee's business, including, without limitation:

1. A Town sales tax license; and
2. A Town business license.

§ 110-49. Application Fee:

An applicant shall pay to the Town a non-refundable application fee in the amount of five hundred dollars (\$500.00) at the time the application is filed. The purpose of the fee is to cover the Town's administrative costs of processing the application, and the Town's costs of monitoring and enforcing licenses issued pursuant to this Article.

§ 110-50. Review of Application.

A. Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application fee and provision of the financial guaranty as required by this Article, the Town Manager shall transmit copies of the application to:

1. The Police Department;
2. The Community Development Department;
3. The Public Works Department; and
4. Any other person or agency that the Town Manager determines should properly investigate and comment upon the application.

B. Within twenty (20) days of receipt of a completed application those Town departments and other referral agencies described in subsection A of this section shall provide the Town Manager with comments concerning the application.

C. If the Town Manager requests the applicant to provide additional information that the Town Manager reasonably determines to be necessary in connection with the investigation and review of the application, the applicant shall provide such information within five (5) days of the Town Manager's request, unless the Town Manager agrees in writing to a longer time period.

§ 110-51. Decision by Town Manager.

A. The Town Manager shall approve, conditionally approve or deny an application within forty (40) days of the receipt of a completed application unless, by written notice to the applicant, the decision period is extended for an additional ten (10) days if necessary for the Town Manager to complete the Town Manager's review of the application. The Town Manager shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this chapter and applicable law.

B. The Town Manager shall issue a license under this chapter when, from a consideration of the application, and such other information as may otherwise be obtained, the Town Manager determines that:

1. The application (including any required attachments and submissions) is complete and signed by the applicant, and the applicant has provided any additional information concerning the application requested by the Town Manager pursuant to subsection 110-50.C of this Article;

2. The applicant has paid the application fee and made the deposit of the financial guaranty required by this Article;
 3. The application does not contain a material falsehood or misrepresentation; and
 4. The granting of the application will not endanger public health or safety.
- C. The Town Manager shall deny an application for a license under this Article if the Town Manager determines that:
1. Information contained in the application, or supplemental information requested from the applicant, is found to be false in any material respect;
 2. The applicant has had a license issued under this Article revoked within the two (2) years immediately preceding the filing of the application, or the applicant owned a fifty percent (50%) or greater interest in any business entity that has had a license issued under this Article revoked within the two (2) years immediately preceding the filing of the application;
 3. The applicant is currently indebted to the Town for any lawfully assessed tax or fee; or
 4. The granting of the application will endanger public health or safety.
- D. If the application is denied, the Town Manager shall clearly set forth in writing the grounds for denial.
- E. If the application is conditionally approved, the Town Manager shall clearly set forth in writing the conditions of approval.
- F. If an application is denied the application fee shall not be refunded.

§ 110-52. Contents of License.

A license issued pursuant to this Article shall contain the following information:

- A. The name of the licensee;
- B. The date of the issuance of the license;
- C. The address and telephone number at which the licensee may be contacted;
- D. The date of the expiration of the license; and
- E. Notice that the shared bicycles authorized by the license may only be deployed by the licensee between April 15th and October 31st of a calendar year.

A license must be signed by both the licensee and the Town Manager to be valid.

///

§ 110-53. License Not Transferrable.

A license issued pursuant to this Article is non-transferable and non-assignable. Any attempt to transfer or assign a license shall void the license.

§ 110-54. Duration of License.

Each license issued pursuant to this chapter shall be valid for one year from the date of issuance.

§ 110-55. Renewal of License.

- A. A licensee does not have a vested right or a property right in the renewal of a license issued pursuant to this Article.
- B. Each license issued pursuant to this Article may be renewed as provided in this section.
- C. An application for the renewal of an existing license shall be made to the Town Manager, on forms provided by the Town Manager, not less than forty five (45) days prior to the date of expiration of the license. No application for renewal shall be accepted by the Town Manager after the date of expiration. The Town Manager may waive the forty five (45) days' time requirement set forth in this subsection if the applicant demonstrates an adequate reason.
- D. At the time of the filing of an application for the renewal of an existing license, the applicant shall pay a renewal fee in the amount of three hundred dollars (\$300.00).
- E. The timely filing of a renewal application shall extend the current license until a final decision is made on the renewal application by the Town Manager.
- F. A license renewal application may be approved, conditionally approved, or denied by the Town Manager pursuant to the criteria set forth in section 110-51 of this Article.

§ 110-56. Insurance and Indemnification.

Each license issued under this chapter shall contain the following requirements:

- A. The licensee shall procure and continuously maintain throughout the term of the license a policy of comprehensive commercial general liability insurance with limits of liability not less than two million dollars (\$2,000,000.00) per claim, two million dollars (\$2,000,000.00) aggregate, and fifty thousand dollars (\$50,000.00) for property damage. The Town shall be named as an additional insured under such insurance policy. An ACORD Form 27, or other certificate of insurance acceptable to the Town Attorney, shall be completed by the licensee's insurance agent and provided to the Town Manager as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be reviewed and approved by Town prior to

commencement of the operations of the business pursuant to the license, and on each renewal or replacement of the policy during the term of the license.

B. The licensee shall indemnify and defend the Town, its officers, employees, insurers, and self-insurance pool (with counsel acceptable to the Town in its reasonable discretion), from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of in any manner connected with the operation of the business for which the license was issued. The licensee shall investigate, handle, respond to, and provide defense for and defend against, any such liability, claims, or demands at the sole expense of the licensee, and bear all other costs and expenses related thereto, including court costs and attorney fees. The indemnity obligation of this subsection shall survive the expiration or revocation of the license.

§ 110-57. Licensee's Specific Duties and Obligations.

In addition to the other requirements of this Article, it is the duty and obligation of each licensee to:

- A. Comply with the following:
 - 1. all of the terms and conditions of the license, including, without limitation, any special condition imposed by the Town Manager;
 - 2. the licensee's approved management plan;
 - 3. all of the requirements of this chapter; and
 - 4. all other Town ordinances that are applicable to the licensee's business.

- B. Provide, on its mobile application, a link for customers to notify the licensee if there is a safety or maintenance issue with the bicycle.

- C. Include, in its mobile application, prominently displayed notification to users that:
 - 1. Helmet use is encouraged while riding a bicycle;
 - 2. Bicyclists are required to yield to pedestrians on sidewalks;
 - 3. When riding on-street, users must comply with all traffic regulations, as drivers would in a motor vehicle; and
 - 4. Shared bicycles may only be parked in bicycle racks, designated bicycle parking areas or on private property with the consent of the property owner, or in designated areas on Town property that have been approved by the Town.

- D. Provide users with a 24-hour customer service telephone number to report safety concerns, complaints, or ask questions.

E. Understand and educate users regarding the laws applicable to riding and operating a bicycle or electric assisted bicycle in the Town, and within Summit County.

F. Provide the Town Manager with current contact information for the licensee or the licensee's staff who are capable of rebalancing shared bicycles or picking up abandoned or damaged shared bicycles as required by subsection H of this section.

G. Relocate or rebalance shared bicycles within two (2) hours of receiving a request from the Town.

H. Remove or maintain or repair any inoperable shared bicycle or shared bicycle that is not safe to operate, within twenty four (24) hours of notice by any means to the licensee by any individual or entity.

§ 110-58. Dockless Shared Bicycle Standards.

A. No person shall offer a dockless shared bicycle for use that does not meet each of the standards set forth in this section.

B. The shared bicycle shall meet the standards outlined in the Code of Federal Regulations (CFR) under title 16, chapter II, subchapter C, part 1512 - Requirements for Bicycles. Additionally, the shared bicycle shall meet the safety standards outlined in International Organization for Standardization (ISO) 43.150 - Cycles, subsection 4210.

C. Each electric assisted shared bicycle shall meet the definition of a Class 1 electric assisted bicycle in that it shall provide propulsion only as an assistance to pedaling and shall have a governor that prevents propulsion at speeds greater than twenty (20) mile per hour.

D. The shared bicycle shall be equipped with a locking mechanism that enables the bicycle to be locked to a fixed structure.

E. The shared bicycle shall have affixed, in a prominent location, identifying information that includes:

1. The name, address, electronic mail address, and 24-hour customer service telephone number of the licensee; and
2. A unique identifier number or series of numbers for each shared bicycle.

G. No sign or other form of advertising shall be placed on the shared bicycle; provided, however, the licensee's name, contact information, and other technical information concerning the shared bicycle itself may be placed on the bicycle or on a placard not larger than four inches by six inches (4" x 6").

§ 110-59. Suspension or Revocation.

A. A license issued pursuant to this chapter may be suspended or revoked by the Town Manager after a hearing for any of the following reasons:

1. Fraud, misrepresentation, or a false statement of material fact contained in the license application.
2. A violation of any Town or State law or regulation pertaining to the operation of the business for which the license was issued.
3. A violation of this Article.
4. A violation of any of the terms and conditions of the license, including, without limitation, any special condition imposed upon the license by the Town Manager pursuant to this Article.
5. Licensees' operations have ceased for more than six (6) months for any reason.
6. Ownership of the licensee business has been transferred without the new owner obtaining a license pursuant to this Article.

B. In connection with the suspension of a license, the Town Manager may impose reasonable conditions.

C. For the purpose of disciplinary action imposed pursuant to this Article, a licensee is responsible and accountable for the conduct of the licensee's employees, agents, and contractors occurring in connection with the operation of the business for which the license has been issued.

D. In deciding whether a license should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the Town Manager shall consider all of the following:

1. The nature and seriousness of the violation.
2. Corrective action, if any, taken by the licensee.
3. Prior violation(s), if any, by the licensee.
4. The likelihood of recurrence.
5. All circumstances surrounding the violation.
6. Whether the violation was willful.
7. The number of previous violations by the licensee.
8. Previous sanctions, if any, imposed against the licensee.

E. No fee previously paid by a licensee in connection with the application shall be refunded if such license is suspended or revoked.

§ 110-60. Town Manager's Decision is Final.

Any decision made by the Town Manager pursuant to this Article shall be a final decision of the Town and may be appealed to a court in accordance with applicable law. The applicant's or licensee's (as applicable) failure to timely appeal the decision is a waiver of the applicant's or licensee's right to contest the denial or conditional approval of the application.

§ 110-61. Parking Dockless Shared Bicycles:

A. No user of a dockless shared bicycle shall park a shared bicycle in any location except where authorized by this Article, applicable law, or pursuant to rules issued by the Town Manager under this Article. Both the licensee and user are jointly and severally liable for any parking in violation of this Article, applicable law or the Town Manager rules issued under this Article.

B. The Police Chief is authorized to impound any shared bicycle left in a location that is not authorized for the parking of a shared bicycle under this Article or pursuant to rules issued by the Town Manager, to dispose of any abandoned or improperly parked shared bicycle, and to collect the cost of such impoundment or disposal from the licensee either through the financial guaranty required by this Article or directly from the licensee if the financial guaranty is insufficient to cover the cost.

§ 110-62. Penalties: Injunctive Relief.

A. It is unlawful for any person to violate any provision of this chapter. Any person convicted of having violated any provision of this chapter shall be punished as set forth in Chapter 1, Section 1-14 of this Code.

B. If a person is required to have a license issued pursuant to this Article, the operation of such person's business without a valid license issued pursuant to this Article may be enjoined by the Town in an action brought in the Municipal Court, In any case in which the Town prevails in a civil action initiated pursuant to this section, the Town may recover its reasonable attorney fees plus costs of the proceeding.

C. The remedies provided in this section are in addition to any other remedy provided by applicable law.

§ 110-63. No Town Liability.

The adoption of this Article and the issuance of licenses pursuant to this Article shall not create any duty to any person. No person shall have any civil liability remedy against the Town, or its officers, employees or agents, for any damage or loss of any kind arising out of or in any way connected with the issuance of any license pursuant to this Article. Nothing in this chapter shall be construed to create any liability or to waive any of the immunities, limitations on liability, or other provisions of the Colorado Governmental Immunity Act, section 24-10-101, et seq., Colorado Revised Statutes, or to waive any immunities or limitations on liability otherwise available to the Town, or its officers, employees or agents.

§ 110-64. Rules and Regulations.

The Town Manager shall have the authority from time to time to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this Article or to regulate the parking of dockless shared bicycles. A violation of any such parking regulations may be enforced in the Town's Municipal Court if those regulations are approved by an Ordinance adopted by the Town Council.

Section 2. Effective Date. This ordinance shall become effective in accordance with the home-rule Charter of the Town of Frisco, Colorado.

INTRODUCED, PASSED ON FIRST READING AND PUBLICATION AND POSTING ORDERED THIS 11TH DAY OF JUNE, 2019.

TOWN OF FRISCO, COLORADO:

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC,
Town Clerk



MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: DIANE MCBRIDE, ASSISTANT TOWN MANAGER/RECREATION & CULTURE DIRECTOR
RE: FIELDHOUSE FEASIBILITY STUDY UPDATE & RESULTS
DATE: JUNE 11, 2019

Summary: Results from the Summit County Fieldhouse Feasibility Study were presented to the Mayors/Managers/Commissioners at their meeting on May 2, 2019. The results of the study will be presented to Town Council during the regular meeting.

The towns of Frisco, Breckenridge, Silverthorne and Summit County partnered on a fieldhouse feasibility study to gauge the willingness of the community to fund an indoor sports complex, also known as a fieldhouse, and to identify priority amenities that could be included in such a facility. The study included a needs assessment, preliminary design, cost estimates, funding options, location review and operational considerations.

The results of the study provided evidence that the capital and operational costs of even the most limited fieldhouse concept far outpaced the community's willingness to fund it. After investigating revenue projections from possible rentals, programming revenue, and/or private sponsorships, no feasible financial path to building a community fieldhouse was identified. At this time and based on the study findings, the fieldhouse study partners have decided to no longer pursue construction of a fieldhouse in Summit County.

No specific action is being asked of the Town Council at this time.

Background: During the Town Council retreat in May 2017, Town Council directed staff to look at the feasibility of building a fieldhouse at the Peninsula Recreation Area. Staff researched the project and brought forth a budget request for the 2018 budget for \$90,000 to complete a comprehensive site study and analysis for a fieldhouse. This request for \$90,000 came from comparable analyses done in and around the Denver area for such fieldhouses. Town Council supported this request as a placeholder, contingent upon participation of and funding from other local entities.

In early 2018, staff met with the Mayors and Managers from the other local entities to gauge their interest and support for a County-wide fieldhouse feasibility study. The towns of Breckenridge and Silverthorne and Summit County committed their financial and staff resource support for a comprehensive, County-wide study. As a result, a request for proposals was issued on March 2, 2018, and a contract was signed with Ohlson Lavoie Collaborative (OLC), teamed with Ballard*King & Associates and Norris Design, on May 22, 2018, for the project.

The study was broken down into three (3) phases:

- Phase 1: Needs Assessment
- Phase 2: Design, Cost Estimates, and Funding Options
- Phase 3: Location and Operation

Phases 2 and 3 were contingent upon the results from Phase 1.

Phase 1: Phase 1 of the study consisted of a statistically valid mail-in survey, an online opt-in survey, stakeholder interviews, and a market assessment. Results were as follows:

- 2,100 unique household addresses in Summit County were randomly selected to receive the mail survey; 463 responded; 48% indicated they would support the development of a new indoor sports complex if it included the amenities that were most important to them. The most desired amenities were an indoor walking track and artificial turf field. Residents would prefer to pay for the construction and operation of a new facility through a lodging tax, with strong opposition towards increasing property taxes.
 - Of the 463 responses, 54 responses were from Frisco. Frisco-specific details are listed below:
 - The current indoor recreation facilities in Summit County meet Frisco's indoor recreation/athletic needs – 20% answered “all the time”, 43% answered “most of the time”
 - For those who did not answer “all the time”, the question was asked “why not?” and 56% indicated that the location was not convenient.
 - 60% of Frisco respondents indicated they would support the development of a new indoor sports complex if it included the amenities that were most important to them
 - 56% of Frisco respondents indicated they would “strongly support” a lodging tax as a way to fund a new facility.
- 1,976 interested County residents responded to the online opt-in survey. 71% indicated they would support the development of a new indoor sports complex if it included the amenities that were most important to them. Respondents preferred to pay for the new facility through a lodging tax (about two-thirds strongly or somewhat supported this option), with strong opposition to increasing property taxes.
 - Of the 1,976 responses, 296 responses were from Frisco. Frisco-specific details are listed below:
 - The current indoor recreation facilities in Summit County meet Frisco's indoor recreation/athletic needs – 22% answered “all the time”, 31% answered “most of the time”, 36% answered “sometimes”
 - For those who did not answer “all the time”, the question was asked “why not?” and 50% indicated that the location was not convenient.
 - 67% of Frisco respondents indicated they would support the development of a new indoor sports complex if it included the amenities that were most important to them
 - 44% of Frisco respondents indicated they would “strongly support” a lodging tax as a way to fund a new facility.

Results from the stakeholder interviews and market assessment revealed the following:

- There is a great “want” amongst youth sports organizations and adult sport participants for an indoor fieldhouse in Summit County that can address the needs of turf and court space.
- Summit County has a reasonable population base to support parks and recreation amenities. While the cost of living is high, so is the spending on recreational equipment and activities.
- The weather in Summit County means that a realistic operating season for a fieldhouse would be from August 1-June 1.
- There are only 3 pieces of indoor turf in Summit County – Breckenridge Recreation Center, Summit High School, Stephen C. West Ice Area (limited availability).
- There are multiple organizations; private schools, medical providers, etc. that have expressed an interest in being associated with a facility like this. Such partners could also be a significant revenue stream.
- Depending on the number of turf surfaces and/or number of courts included in a facility, it is possible to assume that the facility could have a positive economic impact to the community.
- With the rise in popularity with the sport of pickleball and the opportunity to include an indoor walking track, it would be possible to attract a larger segment of the population, in comparison to only focusing on youth sports.
- While there is an identifiable need for indoor space, there are still significant questions regarding the ability to fund the facility and the ability to operate the facility at a break-even standpoint.

Results from Phase 1 were presented to the Mayors/Managers/Commissioners at their meeting on December 6, 2018. Although the survey results indicate that the community did not support paying for a fieldhouse through property taxes, the local entities were still interested in pursuing phases 2 and 3 of the study to estimate construction costs, analyze operational details, review funding options and identify suitable locations for such a facility.

Phases 2 and 3: Results from phases 2 and 3 of the study were presented to the Mayors/Managers/Commissioners at their meeting on May 2, 2019, and included the following:

- A minimum of five (5) acres was identified as the space needed for such a facility, including parking and future expansions. Three (3) potential sites were identified using a site matrix and included the land adjacent to the high school (owned by the Summit County School District), the McCain property (owned by the Town of Breckenridge), and the Peninsula Recreation Area (owned by the Town of Frisco).
- Facility concept plans included the most desired, basic amenities of an indoor walking track, artificial turf field, and locker rooms with the ability to phase or add on additional amenities as needed. These additional amenities included a hard court, future turf, expanded turf, fitness space, and multi-purpose rooms.
- According to the statistically valid survey, the most favorable method to fund a capital fieldhouse project and ongoing operations would be a lodging tax. Frisco’s lodging tax fund was established in 2004 to account for a new, voter-approved 2.35% tax imposed upon lodging establishments. Expenditures are restricted to economic development, special events, advertising and marketing, recreation amenities, multi-purpose facilities,

and open space and similar uses. The proportion of revenues to be allocated to any of these uses is determined by Council. The 2019 budgeted lodging tax revenue is \$525,000.

- Probable construction costs for a fieldhouse, not including financing costs, were estimated at \$15-35M, depending on the scope of the project.
- Annual operational expenses for the basic fieldhouse concept of an NHL-sized turf field, an indoor walking track, locker rooms, gymnasium, multi-purpose room, and a fitness studio translated into ~\$1,721,340. Annual revenues from rentals, admissions, memberships, and programs translated into ~\$1,109,929. This operational model includes a fitness option because it is a primary driver of membership, which is a significant revenue source. Cost recovery per this model starts at 64.5% in year one and reaches 73.7% by year 5, as revenues are projected to increase more than expenses over this 5 year period.
- Some potential partners emerged during the course of the study as likely renters of field time within the facility. By securing a day time primary renter, the cost recovery percentages increase to nearly 80%.

The results of these outreach efforts provided evidence that the capital and operational costs of even a scaled-back fieldhouse concept far outpaced the community's willingness to fund it. After investigating revenue projections from possible rentals, programming revenue, and/or private sponsorships, no feasible financial path to building a community fieldhouse was identified through this study.

Recommendation: At this time and based on the study findings, the fieldhouse study partners of Frisco, Breckenridge, Silverthorne and the County have decided to no longer pursue construction of a fieldhouse in Summit County. Should the Frisco Town Council express interest in pursuing a future fieldhouse, recreation center, training facility or other community amenity at the Peninsula Recreation Area, staff will include this analysis in the future interdisciplinary, holistic review of the entire PRA.

Financial Impact: The fieldhouse feasibility study is concluded at this time. Total cost of the study was ~\$61,000. This cost was split equally between the towns of Frisco, Breckenridge, Silverthorne and Summit County, thereby resulting in a total cost to the Town of Frisco of ~\$15,250. No further expenses associated with this study are anticipated at this time.

Reviews and Approvals: This report has been reviewed by:

Nancy Kerry, Town Manager – approved
Bonnie Moinet, Finance Director - approved

Fieldhouse Feasibility Study

Update June 11, 2019



A Fieldhouse in Summit County?

- What Is It?
- Why In Summit County?
- The Study:
 1. Needs Assessment
 2. Design, Cost Estimates, and Funding Options
 3. Location and Operation



Phase 1

- Needs Assessment
 - Statistically Valid Survey
 - On – Line Survey
 - Stakeholder Input
 - Market Assessment
- Results

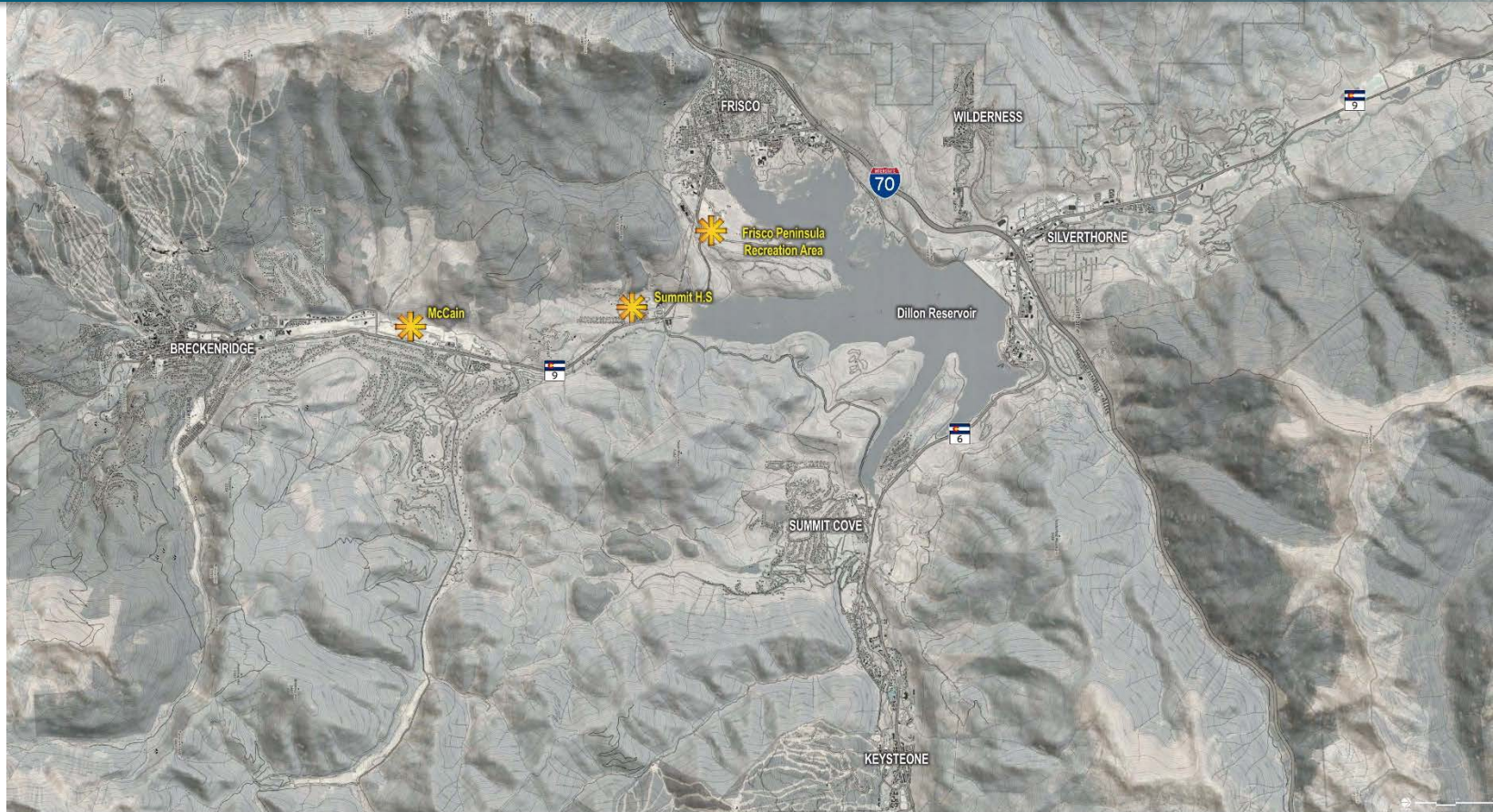


Phases 2 and 3

- Analysis of Potential Sites
- Site Concepts
- Facility Concept Plans
- Images
- Opinion of Probable Costs
- Operations Analysis



Potential Site Locations



Site Matrix

Analysis of Potential Sites

3 Sites analyzed

Two Part Matrix

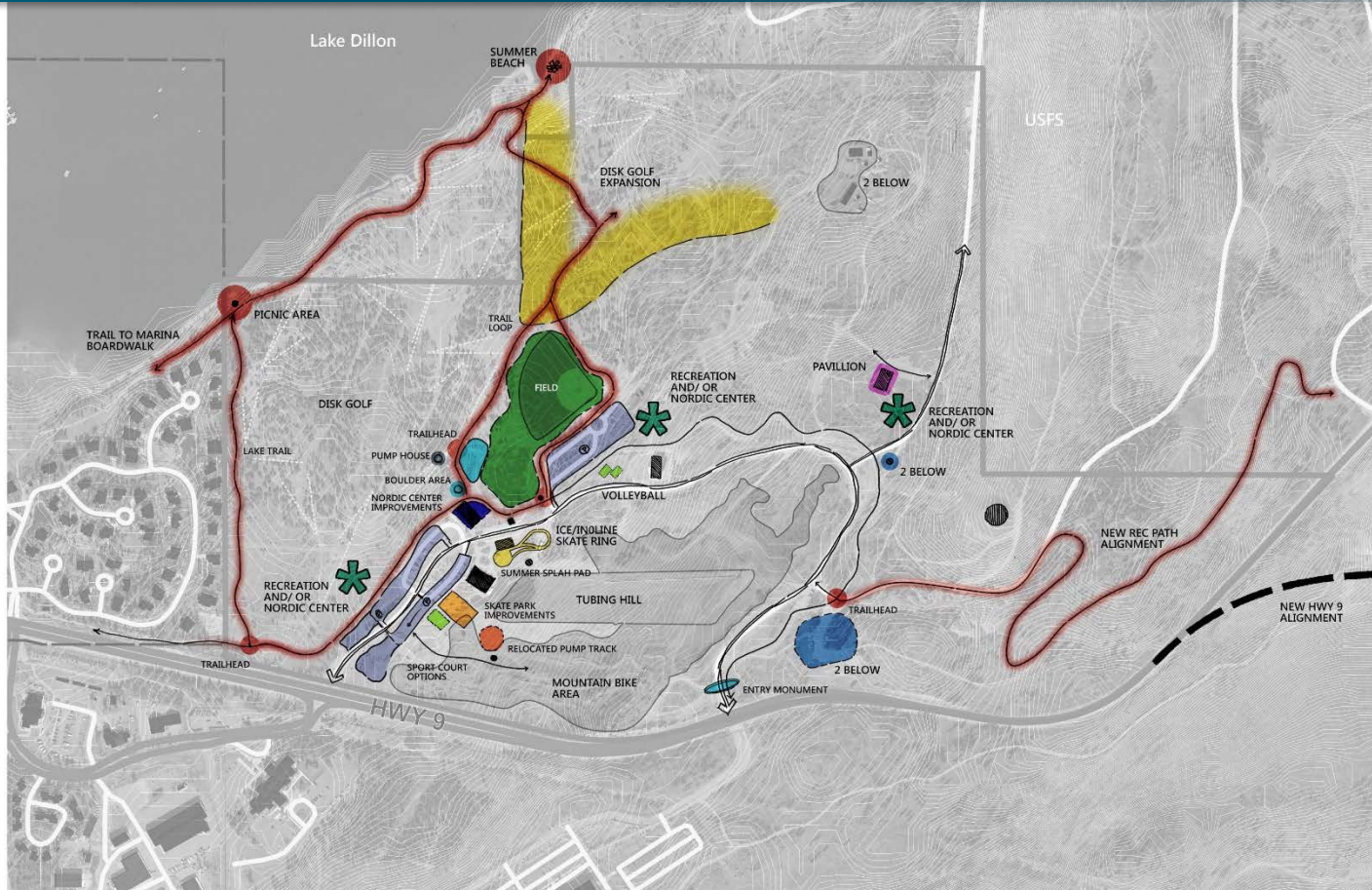
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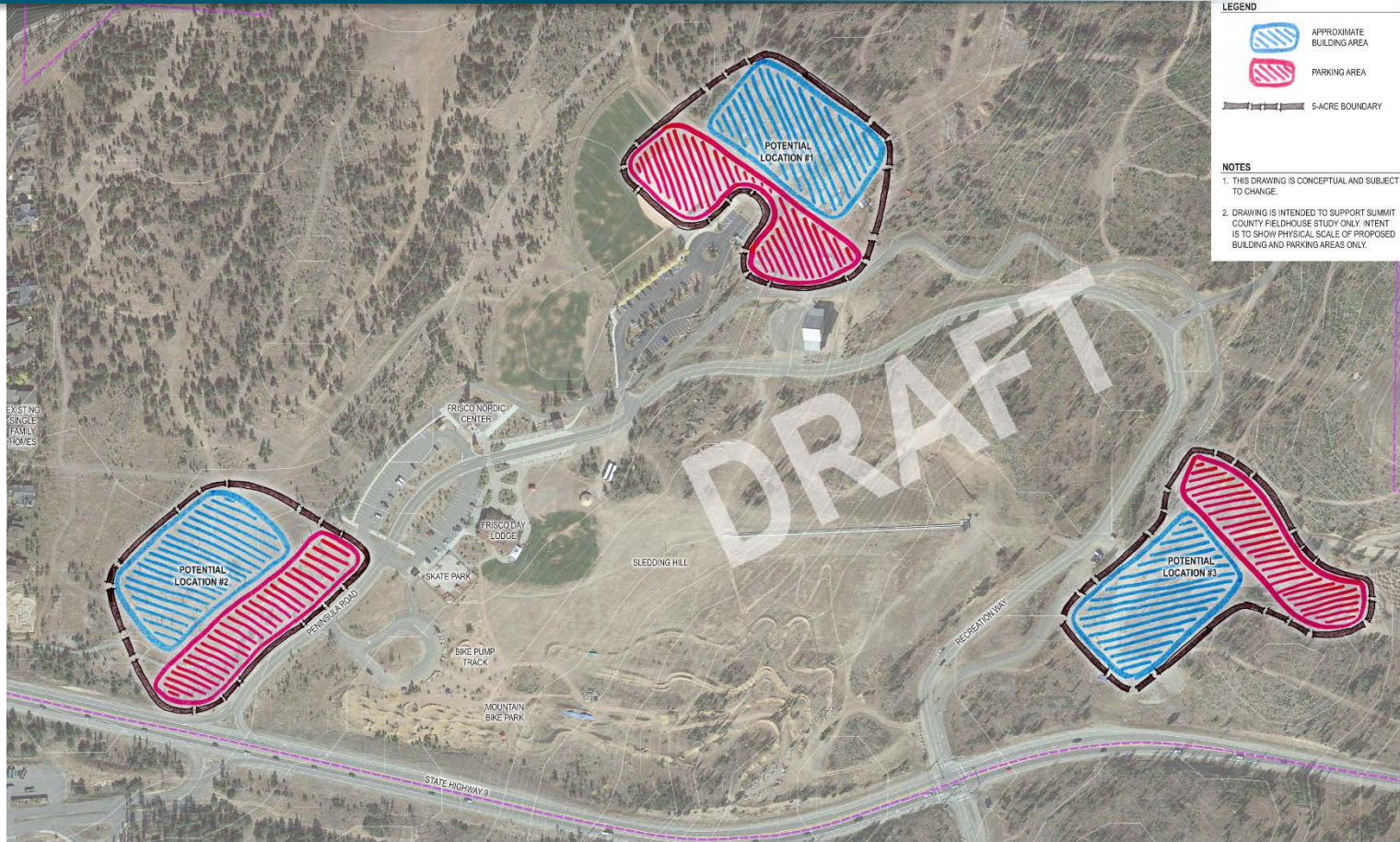
Potential Development Costs

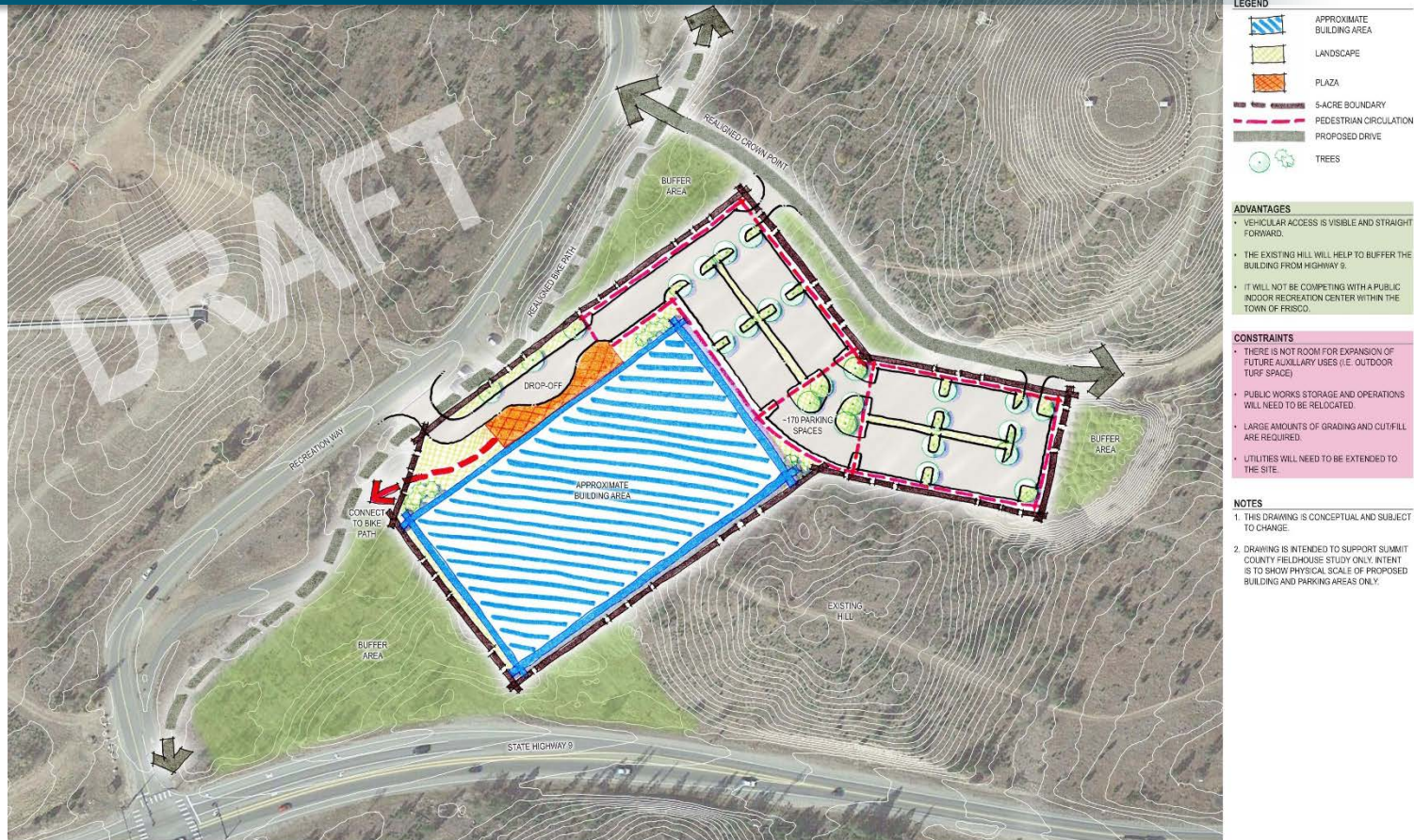
High School: 155 Points/ \$3.13 Relative Cost

McCain: 166 Points/ \$3.48 Relative Cost

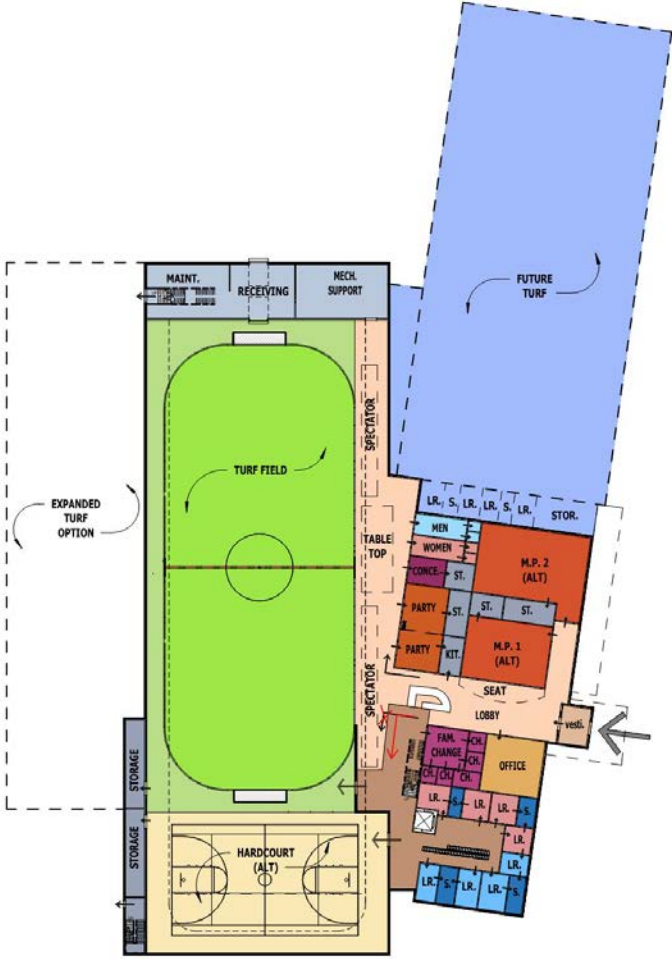
Peninsula: 191 Points/ \$3.06 Relative Cost





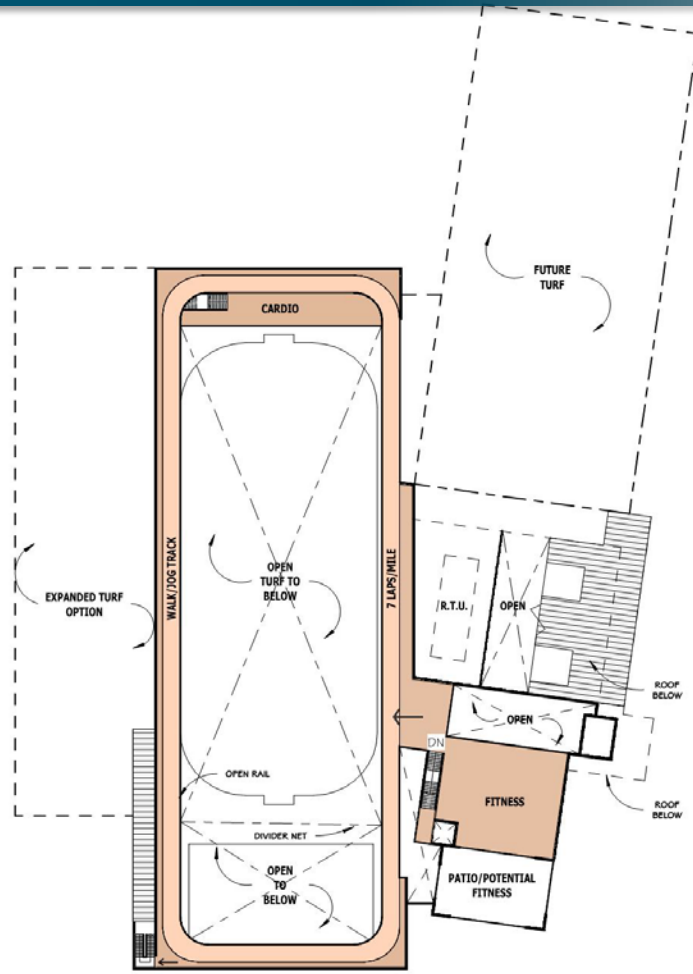


Facility Concept Plans

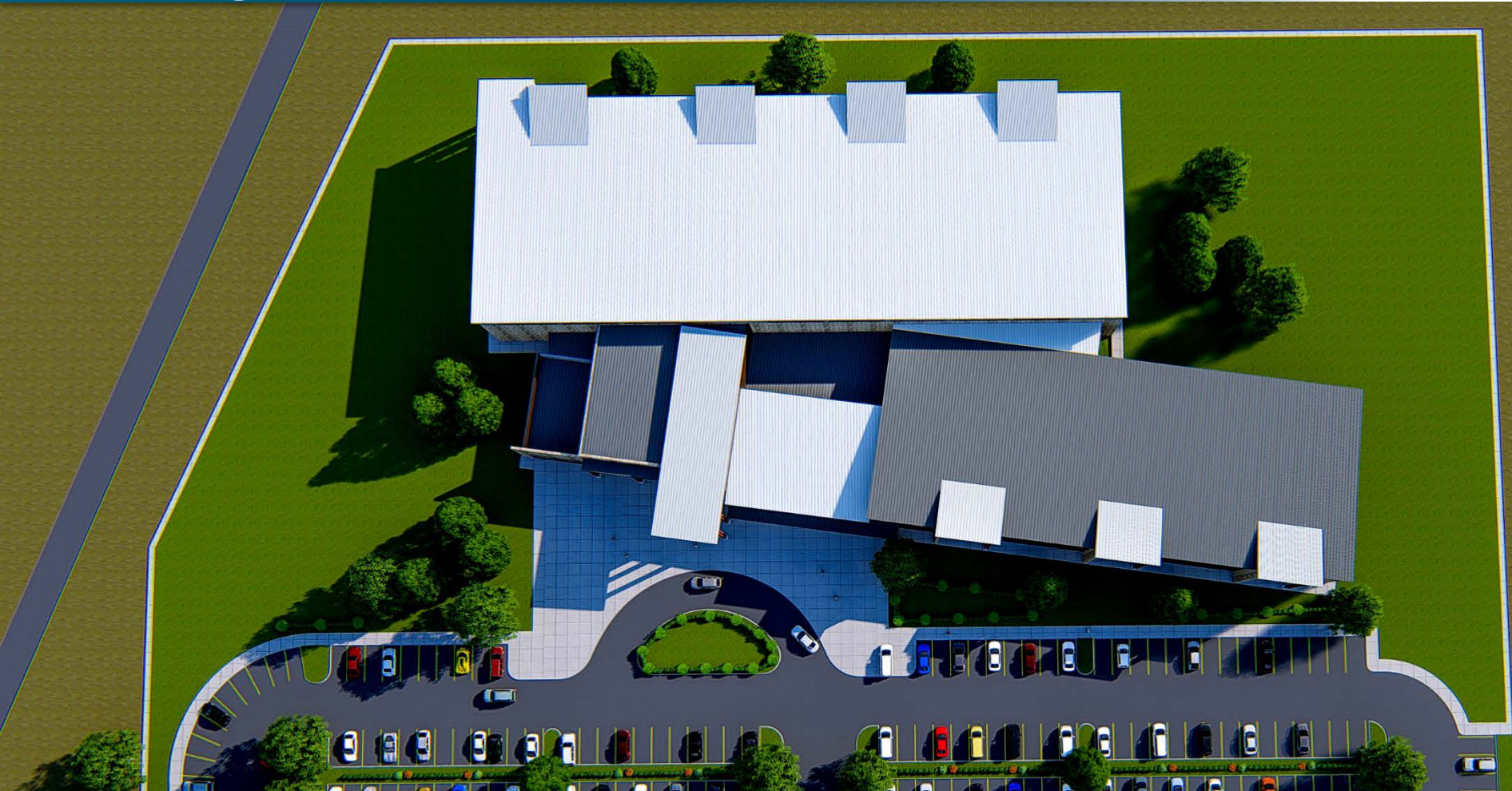


First Level

Facility Concept Plans



Second Level







3D Images

Front Elevation Night



Total Project Cost

- NHL Turf Option: \$15.72 million (\$290/SF)
- Single Court Gym: + \$2.15 million
- Fitness & Multi-Purpose Rooms: + \$2.31 million
- Total, NHL Turf + Alternates: \$20.18 million

Probable Cost – Full-Sized Turf

Total Project Cost:

- Full-Sized Turf Option: \$29.82 million (\$287/SF)
- Single Court Gym: + \$2.15 million
- Fitness & Multi-Purpose Rooms: + \$2.31 million
- Total, Full-Sized Turf + Alternates: \$34.28 million

- No drastic market changes 3 – 5 Years
- Reflective of an independent operator
 - Could adjust hours of operation
 - Could adjust staffing levels
- Membership Rates based on Breckenridge and Silverthorne
 - Less than their price point – lack of aquatics
- Both models assume inclusion of fitness
 - No fitness changes the operational model dramatically
- 50 Week Operation
- 2 Scenarios; With and Without Private Partner participation
- Vending included, self operated. No concessions
- Reflects minimal tournament revenue, and no economic impact

Expenses and Revenues

	NHL-Sized	Full-Sized
Expenses	\$1,721,340	\$2,010,893
Revenue	\$1,109,929	\$1,609,304
Cost Recovery	64.5%	80%

Questions?

Thank you





MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: BONNIE MOINET, FINANCE DIRECTOR
RE: WATER RATE ORDINANCE 19-07
DATE: JUNE 11, 2019

Background: The Town last completed a water rate study in May of 2006, effective in January 2007. This study covered a ten year period beginning in 2007 and remained in effect through 2016. Rates have remained unchanged for over two years.

In 2018, Council directed staff to conduct a new five-year study and present various rate alternatives to Council. The Council has held three worksessions on this subject matter. One on November 27, 2018, at which time the Council asked staff to return with more in-depth analysis and recommendations, which was provided during the February 12, 2019 work session. Due to the complexity of the analysis, and the various options to consider, Council requested additional information, which was provided during the April 23, 2019 work session. During the April worksession, Council provided direction to implement “Alternative 3”, which was identified as the option to meet the goals of the Water Efficiency Plan, encourage conservation, sustain the infrastructure of the water system, and provide a sustainable revenue for the water system based on number of EQRs. The details of this alternative are as follows:

Base and Tiers	Usage / gallons	Fees and Rates
Base Rate	none	\$45/ quarter
Tier 1:	0,001 to 8,000	\$1.12/1,000 gallons
Tier 2:	8,001 to 16,000	\$2.24/1,000 gallons
Tier 3:	16,001 to 50,000	\$4.00/1,000 gallons
Tier 4:	50,001 or more	\$5.00/1,000 gallons

The five-year plan for this alternative reflected a 5% annual increase in all of the above fees and rates and a 10% annual increase in tap fees. The proposed rate changes are planned for implementation in the 4th quarter of 2019.

Analysis: During the April 23, 2019 work session, Council requested staff place the water rates discussion on regular agenda with options to implement between a three percent (3%) and five percent (5%) annual increases. Staff has prepared estimates (see attachments) illustrating revenues generated by annual increases of 3%, 4% and 5% and a graduated annual increase of 3% for the second year of implementation, 4% for the third year and 5% in subsequent years. The differences between the annual rate increases does not significantly affect the Water Fund fund balance nor the individual users.

At the May 28 first reading of Ordinance 19-07, Council approved the following changes to the current water rate structure:

1. The rate structure identified as Alternative 3 and shown above in the background section of this memo to become effective October 1, 2019.
2. 5% annual increase in service fees and usage rates each year on October 1 through 2024.
3. 10% annual increase in the Town's tap fees to become effective January 1, 2020 and a 10% annual increase each year on October 1, 2020 and every October 1 through 2024.

The Town Attorney has prepared the appropriate ordinance (attached) to reflect these changes.

Financial Impact: Staff has attached several worksheets for your review, demonstrating financial impacts of the proposed optional rate structures. All of the options maintain the Water Fund balance at approximately \$2,000,000 year-over-year. The adoption of the Water Efficiency Plan and the addition of conservation programs have led to increases in capital project needs and ongoing revenue. These projects and programs were not known at the time of 2019 budget preparation but are reflected in the projections.

Reviews and Approvals: This report has been reviewed and approved by:

Bonnie Moinet, Finance Director - Approved
Nancy Kerry, Town Manager - Approved