

**THE JANUARY 28, 2020 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  
JANUARY 28, 2020  
4:00PM**

Agenda Item #1: Dig-Once Policy Discussion

Agenda Item #2: Excelsior House Discussion

Agenda Item #3: Summit Stage Discussion

Agenda Item #4: Community Solar Proposal

**RECORD OF PROCEEDINGS  
REGULAR MEETING AGENDA OF THE  
TOWN COUNCIL OF THE TOWN OF FRISCO  
JANUARY 28, 2020  
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:**

**Presentation:**

2020 Non-Profit Grant Presentation

**Consent Agenda:**

- Minutes January 14, 2020 Meeting
- Frisco Legal Services Agreement - Murray Dahl Beery & Renaud LLP
- Frisco IT Services Agreement – HBL Consulting

**New Business:**

Agenda Item #1: New Brewpub Liquor License – Outer Range Inc. dba Outer Range Brewing Co. 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

**Old Business:**

Agenda Item #2: Second Reading Ordinance 20-01, an Ordinance Amending Chapter 180 of the Code of Ordinances of the Town of Frisco, Concerning Zoning, by Amending Section 5.2.11 thereof, Concerning Telecommunications Facilities, to Revise Regulations Concerning Small Cell Wireless Facilities to Conform to Federal Communications Requirements and Limitations 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

**Executive Session:**

Agenda Item #3: Executive Session Pursuant to C.R.S. 24-6-402(4) (f), Personnel Matters - Town Manager Performance Review / Contract Discussion

**Adjourn:**



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: JEFF GOBLE, PUBLIC WORKS DIRECTOR**  
**RE: DIG ONCE ORDINANCE – WORK SESSION DISCUSSION**  
**DATE: JANUARY 28, 2020**

**Summary and Background:** This subject was first brought up a couple of years ago during the Project THOR discussions. Since then Breckenridge, Silverthorne, Dillon and Summit County have adopted similar ordinances to provide for the efficient and cost effective installation of high speed broadband communications facilities while limiting the disruption to the public that utility installations can create. The goal of this ordinance is to limit utility disturbance in the Town's Rights of Way for underground utility work.

**Analysis:** This ordinance as currently drafted will ensure the following:

1. Broadband conduit will be installed during all Town projects if deemed beneficial by the Town Manager.
2. Broadband conduit will be installed when utility companies are performing work in the Right of Way. The Town would pay the cost to co-locate Broadband conduit in this case, if determined to be beneficial by the Town Manager.
3. Broadband conduit will be installed during new development or new street projects. The total cost of the installation would be paid by the developer and dedicated to the Town.

**Financial Impact:** Adoption of the proposed ordinance will have no known immediate impact on the 2020 budget. There may be future costs associated with this ordinance when and if projects come forward that would be effected by this ordinance. If that's the case these costs would be accounted for in the project budget.

**Alignment with Strategic Plan:** Adoption of this ordinance aligns with the Quality Core Services, Thriving Economy and Inclusive Community sections of the Councils 2019-2020 Strategic Plan by ensuring high speed broadband communications system can be installed in the Town over time.

**Environmental Sustainability:** Adoption of this ordinance will result in less negative impacts on the environment by reducing the amount of excavating and not duplicating work already done. Digging once is far less impactful than digging two or more times.

**Staff Recommendation:** After discussion and input from the Council, staff recommends that the Council direct staff to place this ordinance on the soonest possible Council agenda for first reading.

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

Thad Renaud, Town Attorney  
Bonnie Moinet, Finance Director-Approved  
Nancy Kerry, Town Manager

**Attachments:**

Attachment 1: Draft Ordinance



**TOWN OF FRISCO  
COUNTY OF SUMMIT  
STATE OF COLORADO  
ORDINANCE 20 - \_\_**

AN ORDINANCE AMENDING CHAPTER 155 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING STREETS AND PUBLIC WAYS, BY AMENDING ARTICLE II THEREOF, CONCERNING UTILITY INSTALLATIONS, TO GIVE THE TOWN THE ABILITY TO PROVIDE FOR THE CONSTRUCTION OF COMMUNICATIONS CONDUITS IN CONNECTION WITH THE EXCAVATION OF PUBLIC WAYS FOR UTILITY PURPOSES, OR THE CONSTRUCTION OF NEW STREETS.

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, the purpose of Article II of Chapter 155 of the Code of Ordinances of the Town of Frisco is to provide principles and procedures for the permitting and coordination of construction excavation within public ways within the Town, and to protect the integrity of the Town’s public ways and street system, while accommodating the need for public utilities and other similar uses of public ways; and

WHEREAS, the Town Council desires to promote cooperation among the Town and applicants to the Town for the excavation and occupation of the public ways, and work therein, in order to: (i) eliminate duplication that is wasteful, unnecessary or unsightly; (ii) lower the Town’s costs of providing services to the public, and (iii) minimize the number of excavations that occur in the Town’s public ways.

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

Section 1. Article II of Chapter 155 of the Frisco Town Code, concerning utility installations, is hereby amended to read as follows:

**ARTICLE II  
UTILITY INSTALLATIONS**

**§155-11. Purpose.**

The purpose of this article is to provide a means for the Town to grant consent to the use of its public ways for the installation of utilities and other improvements along, through, in, upon, under or over the public ways within the incorporated limits of the Town, and to allow the Town to provide for communications conduits in connection with the installation and maintenance of utilities in public ways by third parties, and to require the installation of communications conduits in connection with the paving of new or existing public ways.

**§ 155-12. Exemption.**

Except as otherwise expressly set forth in this article. Utility installations by the Town of Frisco and the Frisco Sanitation District shall be exempt from the provisions of this article.

**§ 155-13. Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

CONDUIT means a single enclosed raceway, pipe or canal for cables, fiber optics or other wires.

COUNCIL or TOWN COUNCIL means the Town Council of the Town of Frisco, Colorado.

DIRECT COST means all necessary and usual costs associated with the placement of conduits as determined and approved by the Town Manager.

PERSON means any individual, firm, company, corporation, district, private or governmental entity of any kind, whether or not a public utility.

PUBLIC WAY means any street, roadway, way, place, alley, sidewalk, pathway, bridge, viaduct, easement, park, square, plaza, and any Town owned right-of-way or other public property owned or controlled by the Town and dedicated to public use or reserved for future use by the public, within the Town of Frisco, in which utility installations may be made, or that may be paved for vehicular travel.

TOWN MANAGER means the Town Manager of the Town of Frisco, or his or her authorized representative.

UTILITY INSTALLATION or UTILITY means any and all facilities, including without limitation, plants, works, systems, lines, equipment, pipes, wires, antennas, satellite or other dishes, transmitters or receptors, mains, and meters, belonging to any person, other than the Town of Frisco, which are used or designed to provide telephone, telegraph, telecommunications, electric, gas, cable television, water, sewer, or any other similar service to any person, whether or not considered a "public utility" as that term may be defined by Colorado statute, and which are located or proposed to be located in any public way within the Town of Frisco. Notwithstanding the foregoing, "utility installation" or "utility" shall not include any utility service line connected to a transmitter or main, and designed to serve an individual structure.

**§ 155-14. Review and Approval of Design and Construction Required; Requirements Related to Conduits.**

A. Unless otherwise provided by franchise agreement or contract with the Town, no person shall locate, relocate or replace any utility installation in any public way, until three (3) copies of the plans and specifications for such installations have been submitted to and approved by the Town. Such plans and specifications, prepared and signed by an engineer registered in the State of Colorado, shall disclose the nature, extent, location, depth or height, and materials to be used for the proposed utility installation within the public way, shall indicate the timing and duration of the planned construction activity, and shall contain such additional information as the Town Manager may reasonably require. The Town Manager may, in the exercise of his discretion, waive the requirement that the plans be signed by a registered engineer, where the proposed utility installation is simple in nature and does not require engineering design.

B. All utility installations in public ways shall be designed so as not to interfere with the Town's water mains, street or path improvements and paving, drainage structures, or other municipal or utility uses within the public way, or to the extent such interference is unavoidable, the plans and specifications submitted shall include provisions for minimizing such interference and for restoring any disturbance to public or private property caused by the installation, at the expense of the person proposing the installation. ~~The Town Manager may require that proposed utility installations be coordinated with Town street improvement programs or other public improvements or utility installations planned by the Town or other persons providing utility service within the Town.~~

C. The Town Manager may require that proposed utility installations be coordinated with Town street improvement programs or other public improvements or utility installations planned by the Town or other persons providing utility service within the Town. The Town Manager may require that conduit be installed in the same or an adjacent location that the permittee proposes for excavation and, if so required, the permittee shall coordinate with the Town and facilitate the installation of the Town's conduit. The direct cost of installing the Town's conduit will be paid by the Town. No permittee shall be required to serve as a financial pass-through from the Town to a contractor installing the Town's conduit.

D. The intent of this subsection is to provide for the construction of infrastructure sufficient to allow broadband communications entities desiring to deploy facilities in the future to do so by pulling the same through the conduit and appurtenances installed pursuant to this subsection and without excavating within the public ways. This subsection is not intended to require owners of broadband facilities or other conduit to install additional ducts or conduit in existing public ways; rather, it is intended to require those constructing public streets, including the Town and developers, to provide and install such conduit and appurtenances as may be necessary to accommodate future broadband needs within the public ways without further excavation.

1. Whenever any new public street is constructed, whether by the Town as a public works project or by a developer or other private party in conjunction with development, the following shall be required:
  - i. For all new collector streets or major arterial streets, as defined in the Town's Minimum Street Design and Access Criteria, as amended, a minimum of two 4" conduits shall be installed by and at the sole cost of the party constructing the street; provided however that at the discretion of the Town Manager, the number and size of the conduit and spacing of pull boxes may be modified to address the reasonably known plans and/or demand for broadband capacity in these locations. If determined that additional conduits are required, the Town shall determine and pay the direct costs resulting from such additional conduits.
  - ii. For all other new streets, a minimum of two 2" conduits shall be installed by and at the sole cost of the party constructing the street; provided however that at the discretion of the Town Manager, the number and size of the conduit and spacing of pull boxes may be modified to address the reasonably known plans and/or demand for broadband capacity in these locations. If determined that additional conduits are required, the Town shall determine and pay the direct costs resulting from such additional conduits.
  - iii. In addition to installing conduit, the party constructing the street will be required to install such vaults and other appurtenances as may be necessary to accommodate installation and connection of broadband facilities within the conduit.
  - iv. All construction and installation shall be accomplished according to construction standards adopted by the Town. The construction standards shall be adopted with due consideration given to existing and anticipated technologies and consistent with industry standards.

- v. All facilities installed by developers or other private parties pursuant to this section shall be conveyed and dedicated to the Town with the dedication and conveyance of the public street and/or way.

The Town reserves the right to charge reasonable fees for the use of conduit installed pursuant to this subsection, to the extent consistent with and as limited by federal and state laws.

GE. The Town Manager shall review said plans and specifications for compliance with the requirements of this article and any other applicable regulations or requirements of the Town. The Town Manager may approve the plans as submitted, approve the plans with modifications, or deny the plans for any utility installation if such installation does not comply with such requirements or where necessary to protect the public health, safety or welfare of the citizens of the Town. In approving any plans for a utility installation, the Town Manager may impose any reasonable conditions to ensure that the utility installation complies with the applicable requirements of the Town or where necessary to protect the public health, safety or welfare of the citizens of the Town. The Town Manager shall provide written notice of the approval, conditional approval or denial of any proposed utility installation, to the person seeking such approval.

DE. Any person aggrieved by the decision of an authorized representative of the Town Manager may appeal the same to the Town Manager, by filing such an appeal, in writing, with the Town Manager or such authorized representative not later than ten (10) calendar days from the date of the decision. The Town Manager may reverse or affirm, wholly or partly, or may modify or condition the authorized representative's decision, after consideration of the requirements of this article and all other applicable regulations and requirements of the Town.

EG. All utility installations shall be underground, unless specifically exempted by the Town Council, which shall grant such exemption only in cases of extraordinary or exceptional physical conditions making the placement of such utility installations underground economically infeasible.

FH. All utility installations in public ways shall conform to the approved plans and specifications therefor and any conditions imposed by the Town. Upon completion of construction, the person installing such utility shall provide to the Town three (3) copies of as built plans, showing final location and construction details. Any material changes to the approved plans and specifications, as determined by the Town Manager, may be made only after obtaining the Town's approval in the manner provided in this article.

#### **§ 155-15. Fees.**

A. Application fees. All applications for review of proposed utility installations pursuant to this article shall be accompanied by payment of an application fee payable to the Town, which fee is intended to help defray the expense of the Town in administering the provisions of this article. The Town Manager shall from time to time determine the cost of performing the administrative services required by this article and, on the basis of such historic costs and estimations, shall promulgate a schedule of fees for the performance of administrative services. Any schedule of fees promulgated by the Town Manager shall be effective immediately upon filing with the Town Clerk and shall be available for public inspection in the office of the Town Clerk and the office of the Town Manager.

B. Other fees. Any person seeking to place a utility installation in a public way shall be required to pay to the Town certain Town costs associated with said utility installation, including without limitation, legal and engineering fees for review and consultation incurred by the Town. The

procedure for payment of such fees shall be the same as that provided in § 180-31, subparagraph D4, of the Code.

C. Occupation fees. Unless otherwise preempted by state or federal law, the Town Council is hereby authorized to provide, by resolution, for the levy of a fee for the occupation by utility installations of the public ways, provided that any such occupation fee be uniformly applied to all utility installations occupying the public ways, and provided that said occupation fee be reasonably related either to the cost to the Town of such occupation, or to the value of such occupation.

**§ 155-16. Relocation of Facilities.**

A. When required by the Town Manager due to the construction, installation, relocation, repair or improvement of streets, pedestrian or bicycle paths or ways, street lighting, drainage structures, water mains, or other utilities or public improvements, or for other reasons of public health, safety or welfare, the owner of a utility installation in any public way shall, at such owner's expense, protect, support, temporarily disconnect, or relocate within or outside such public way the said owner's utility installation or portions thereof as directed by the Town. Such required action shall be taken promptly upon notification from the Town Manager and shall be completed within a reasonable time, as determined by the Town Manager.

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 \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

ADOPTED ON SECOND AND FINAL READING AND PUBLICATION BY TITLE  
ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020

TOWN OF FRISCO, COLORADO:

\_\_\_\_\_  
Gary Wilkinson, Mayor

ATTEST:

\_\_\_\_\_  
Deborah Wohlmut, CMC,  
Town Clerk



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: SUSAN LEE, COMMUNITY PLANNER**  
**RE: EXCELSIOR BUILDING RELOCATION**  
**DATE: JANUARY 28, 2020**

**Summary and Background:** The purpose of this work session is to provide additional detail on two potential sites for the relocation of the Excelsior Building: Triangle Park and Town Hall. In order to facilitate the discussion and assist Council with final site selection, staff has prepared site plans, perspective renderings, and a zoning analysis.

A comprehensive list of potential sites was presented to Council at the September 10, 2019 work session. From the work session discussion, a list of priority goals was developed along with a short list of properties worthy of further investigation. Staff has been conducting site analyses and community outreach on possible locations in relation to the priority goals:

- Authentic physical context
- Contribute to the overall story of Frisco
- Have a relevant future use
- High visibility
- Open and accessible to the public
- Act as a gateway element for visitors

**Discussion:** One of the main benefits of locating the Excelsior building in a prominent, highly visible location is the ability to build character and add historical value to Frisco's Central Core. Both the Town Hall site and Triangle Park are highly visible sites located on Frisco's historic Main Street. Based on direction from Council at the December 10, 2019 work session, staff has revisited the site plans for both of these sites with a special focus on maximizing the impact of the building and benefits to the site. Existing zoning information was analyzed in order to look at future potential uses for each of these sites.

**Triangle Park (Option 1)** – This park is approximately one acre in size and currently serves as Frisco's eastern gateway to Main Street. Reasons for locating the Excelsior Building at this park include its identity as a gateway, high visibility, ease of public access from existing infrastructure, and the ability to increase the historical character of this area.

Various locations within the site were explored, including the frontage along Summit Boulevard and locations along the recreation path in the center of the park. The corner of 7<sup>th</sup> Avenue and Main Street was identified as the top choice because of the potential for locating the building as

close to the historic street grid as possible. Locating the building along Summit Boulevard would create visual interest but would lack accessibility and the ability to locate the building adjacent to the street. One drawback for the 7<sup>th</sup> Avenue and Main Street location is that it is close to a busy intersection with high traffic volumes. Safe access for pedestrians is a major concern. The addition of the Excelsior Building at this corner may help lower traffic speed by visually narrowing the street and providing driver cues that they are entering a lower volume, multi-modal, commercial area.

Triangle Park is currently zoned Parks and Recreation (PR). Allowed uses include community and cultural facilities, activities geared towards conservation and the environment, active recreation, community garden, and recreation facility. Conditional uses include restaurant, bar, or tavern, and light retail, among others.

***Town Hall (Option 2A and 2B)*** – This parcel is approximately one acre in size with the Town Hall facility located in the north eastern portion of the property. Benefits of locating the Excelsior building at the Town Hall site include high visibility, and proximity to other public buildings. At the December 10, 2019, Town Council directed staff to investigate the removal of the clock tower. Based on this direction staff took a fresh look at potential locations within the site.

***Corner of Madison Avenue and Main Street (Option 2A)*** – This location has potential for acting as an entry feature to East Main, signaling the beginning of the more pedestrian-oriented, commercial core area of Main Street. This location has average visibility for traffic coming from the west and visibility from the east is limited due to the road curvature. Pedestrian traffic to the Madison-Main Street corner is lower than sites further to the east. Due to the grade changes in this area ramps and retaining walls will be necessary to create a flat building site and ADA access.

***Corner of 1<sup>st</sup> Avenue and Main Street (Option 2B)*** - This location has good visibility from both east and west due to the curvature of the road. This location is in direct line of sight to both the 1<sup>st</sup> and Main Building and the Historic Park. Proximity to these Town facilities enhances opportunities for civic uses including support for the historic park, community rental facilities, or special events. Higher visibility from the east may attract more pedestrian traffic, increasing the potential for private sector retail lease opportunities. This location also leaves the western portion of the Town Hall lot unencumbered should some type of redevelopment be proposed in this area.

The Town Hall Site is zoned Public Facilities (PF). Applicable allowed uses for this zone district include a community center, and institutional uses. Farmers markets, educational facilities, and places of worship are all allowed as conditional uses in the PF District.

**Financial Impact:** The 2019 capital improvement fund (20-2000-5089) contains a placeholder of \$100,000 for relocation costs. In order to maintain realistic expectations for the costs associated with the relocation and rehabilitation of the Excelsior Building, Jeff Goble, Public Works Director, has prepared the following estimates for each of the locations:

**Triangle Park:**

- Transport and setting costs - \$50K to \$60K
- Site Work (grading, foundation, utilities, etc.) - \$125K to \$150K (some savings may be realized if PW performs some of the work)
- Basic Building Rehab - \$25K to \$50K (substantial cost savings could be realized if PW does this work)
- Total \$200K to \$260K

**Town Hall:**

- Transport and Setting Costs - \$50K to \$70K
- Site Work (grading, foundation, utilities, etc.) \$140K to \$170K (some cost savings may be realized if PW performs some of the work)
- Basic Building Rehab - \$25K to \$50K (substantial cost savings could be realized if PW does this work)
- Total \$215K to \$290K

It is important to note that these are rough estimates that can change over time. Costs can also vary depending on what ultimate use would be desired once the building is in place. Staff is seeking direction from Council on implementation priorities and will prepare the associated budgetary estimates for Council's review and approval.

**Alignment with Strategic Plan:** One of the goals of the Town Council's 2019-2020 Strategic Plan is to establish a plan for the Excelsior House. The goal includes identifying options for relocation of the house to a useful permanent location. This goal is within the Strategic Priority of "Creating a Sustainable Environment", whereby the "Town of Frisco will take action to collaboratively protect and sustain our treasured environment."

**Recommendation:** Staff recommends Council use this work session to explore the options presented and have a discussion regarding the potential for relocation of the Excelsior Building to the locations presented. Should Council select a preferred location, the staff can provide more detailed site planning options, use options, and costs as needed.

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

Diane McBride, Assistant Town Manager/Recreation Director  
Bonnie Moinet, Finance Director – Approved contingent upon appropriation of additional funding in addition to \$100,000 budgeted  
Nancy Kerry, Town Manager

**Attachments:**

Exhibit A: Site Plans and Renderings of Excelsior Building at Triangle Park and Town Hall

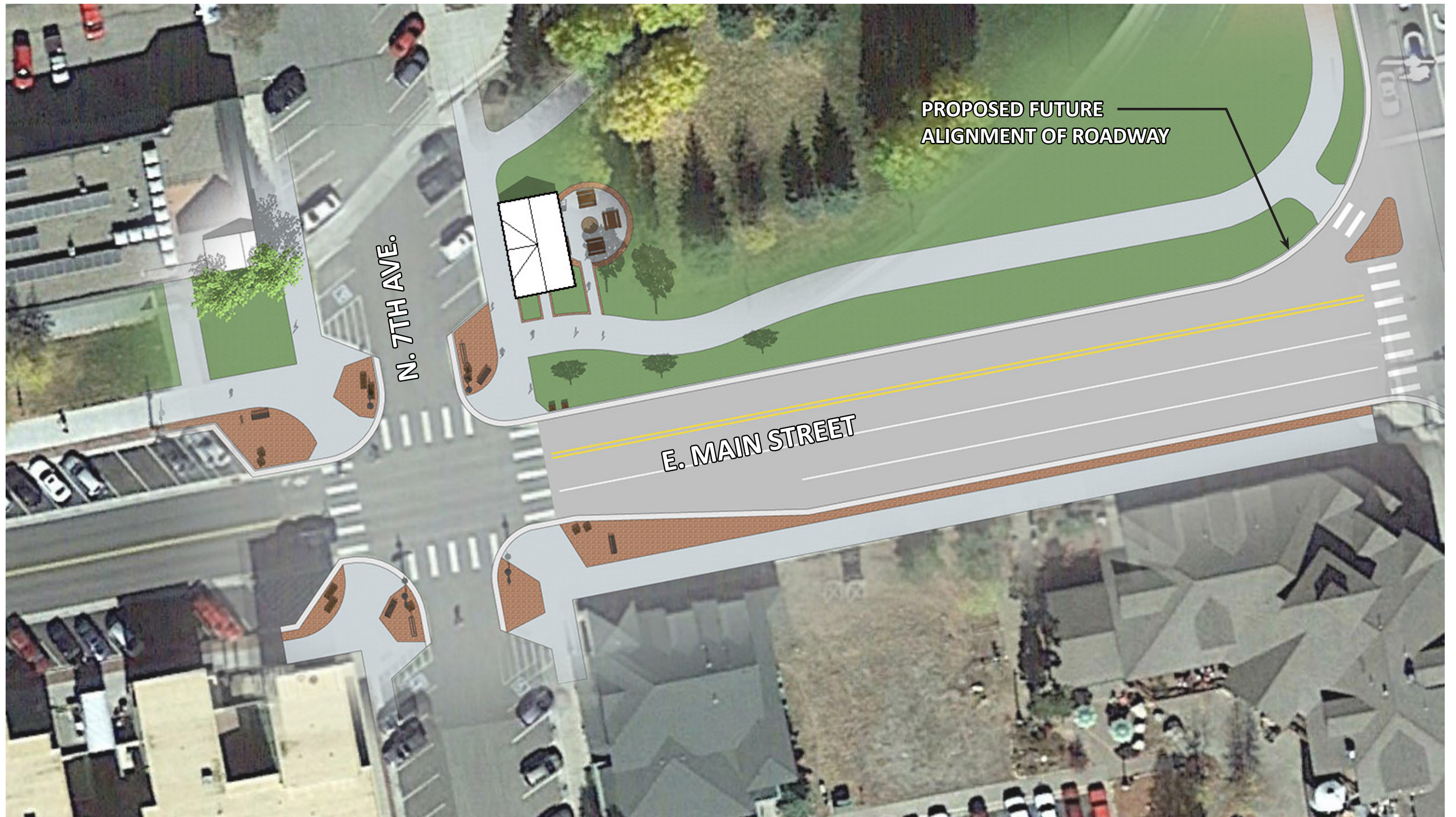




# EXCELSIOR BUILDING PLACEMENT

## OPTION 1: TRIANGLE PARK





Site Plan (not to scale)

# OPTION 1: TRIANGLE PARK

01.13.20





**View from corner of E. Main and 7th Ave.**



**View walking along north side of E. Main sidewalk**



**View from southeast corner of Main and 7th**



**Aerial view from southwest corner**

# **OPTION 1: TRIANGLE PARK**

01.13.20





# EXCELSIOR BUILDING PLACEMENT

## OPTION 2A: TOWN HALL MADISON AND MAIN STREET





Site Plan (not to scale)

## OPTION 2A: TOWN HALL MADISON AND MAIN STREET

01.13.20





View from parking lot



View from plaza



View from intersection of Main and Madison



Aerial view

# OPTION 2A: TOWN HALL MADISON AND MAIN STREET

01.13.20





# EXCELSIOR BUILDING PLACEMENT

## OPTION 2B: TOWN HALL 1ST AND MAIN





Site Plan (not to scale)

# OPTION 2B: TOWN HALL 1ST AND MAIN

01.13.20





View looking West



View from 1st Avenue Street Parking



View from Southeast corner of 1st and Main



Aerial view

# OPTION 2B: TOWN HALL 1ST AND MAIN

01.13.20



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MEMORANDUM

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P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: NANCY KERRY, TOWN MANAGER**  
**RE: SUMMIT STAGE ROUTE UPDATE**  
**DATE: JANUARY 28, 2020**

**Summary and Background:** This is before Council upon their request to get an update from on route changes of the Summit Stage from the director.

**Reviews and Approvals:**

Nancy Kerry, Town Manager



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: JEFF GOBLE, PUBLIC WORKS DIRECTOR**  
**RE: CLEAN ENERGY COLLECTIVE, COMMUNITY SOLAR PROPOSAL**  
**DATE: JANUARY 28, 2020**

**Summary and Background:** As part of the Council's Strategic Plan to reach Net Zero emissions and desire to utilize renewable energy whenever possible, staff was instructed to investigate and find efficient and cost effective methods to help achieve this goal. Staff has determined that one method is participation in a Community Solar Garden program such as the one being presented here.

**Analysis:** Working with Clean Energy Collective (CEC), staff has determined that participating in their proposed solar array project that will be coming on-line in early summer of 2020 will be a beneficial first step in achieving the Net Zero goal. The CEC program requires no down payment or up-front costs and the Town will realize savings on our Xcel Energy bills from the first month after the array is connected to Xcel's grid.

Along with the savings the Town will realize, there is the added benefit of not having to alter existing structures or having the ongoing costs of maintenance and repair or replacement of panels.

We looked at two options for this program and they are briefly described below:

Option 1 – PPA style contract – This option allows for fluctuation in savings the Town would realize based on Xcel's rates each year. This option could provide higher potential savings if over the 20 year period Xcel's rates increase. However, if rates dip, which they have a couple times over the last 5 years, the Town could end up paying more for the credits than we would have for the electricity.

Option 2 – Fixed 5% Credit – This option fixes the credits at 5% over the entire 20 year period regardless of fluctuations in Xcel's rates. While this option can be less lucrative than option 1, there is no downside risk as we are guaranteed to receive 5% credit over the life of the contract.

**Financial Impact:** There is no up-front or ongoing maintenance costs associated with this and if Council selects option 2 the Town will realize guaranteed savings on its SG class electric bills. Should Council select option 1, there will still be no up-front or maintenance costs but depending on Xcel rate fluctuations it is possible the Town could pay more for the credits than the electricity.



**Alignment with Strategic Plan:** This Community Solar Proposal aligns with the Council's top priority of achieving net zero emissions and dedication to renewable energy sources as outlined in the Sustainable Environment section of the Strategic Plan.

**Staff Recommendation:** Staff is seeking Council direction on entering into a contract with Clean Energy Collective to participate in the Community Solar program. Should Council decide to enter into this agreement, staff recommends choosing option 2 at the fixed return rate of 5%.

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

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

January 13, 2020

Clean Energy Collective is pleased to present the Town of Frisco the opportunity to participate in the savings produced by solar panels in Clean Energy Collective's (CEC) Community Solar Arrays for Xcel Energy customers. This opportunity is through the Colorado Community Solar Gardens Act, House Bill 10-1342 and the Xcel Energy Community Solar Rewards program. The CEC/Xcel Energy Solar Rewards Program is designed to reduce monthly electricity bills, protect against rising energy costs and to provide positive financial payback, all with no changes to your facilities. CEC develops remote off-site solar arrays, not on your roof or land that encourage multiple customers to enjoy the savings. With no effect to your location the maintenance is all taken care of by CEC not your facilities staff.

The proposed renewable energy system requires no down payment and can generate financial savings from the first month of service. This proposal is based upon all SG class accounts, we will finalize account selection prior to project interconnection.

## Clean Energy Collective

CEC is the nation's leading developer of community solar solutions. CEC pioneered the model of delivering clean power-generation through large-scale facilities that are collectively serving participating utility customers. Since establishing the first community-owned solar array in the country in 2010, CEC has more than 100 community solar arrays online or under development with over 27 utility partners across 12 states, these developments represent over 177 MW of community solar capacity. CEC has been nationally recognized for pioneering the community solar project as the primary vehicle to bring solar power to all rate-payers, especially those where on site solar is not an option.



U.S. DEPARTMENT OF  
**ENERGY**

**National Innovative Green  
Power Program of the Year**

CEC has more than 100 community solar arrays online or under development with over 27 utility partners across 12 states, these developments

In addition to winning distinction as the National Innovative Green Power Program of the Year, Clean Energy Collective, was named to the 2014 Inc. 500 list, an exclusive ranking of the nation's fastest-growing private companies. Ranked number 194 overall, and 11th within the Energy segment, CEC was recognized for its innovative community-owned solar solution being adopted by utilities and communities across the country. Between 2010 and 2013 CEC's revenue grew 2,217 percent. These awards signify a track record of success and are important strengths to note in your selection of CEC as your partner for reduced energy costs in your strategy to support renewable energy sources.



The following proposal was developed to address your specific energy use patterns, reduction of expense, environmental and societal benefits based on your particular usage. We stand ready to answer questions you may have and look forward to be a part of your energy cost savings and sustainable energy strategies.

Regards,



Mike Malone  
Sr. Vice President of Sales  
Clean Energy Collective

**Community Solar Proposal**

[cleanenergyco.com](http://cleanenergyco.com) // phone **800.646.0323** // fax **970.692.2592**

## Clean Energy Collective in Colorado

CEC is developing large scale community solar facilities in Colorado, with multiple projects serving Xcel Energy customers throughout the Xcel Energy territory. These projects are utility scale, incorporating the most advanced solar panels, inverters, automated maintenance and single axis tracking. These methods help to ensure the highest on-bill credit rates for our solar projects. Customers of Xcel Energy can now receive reduced energy costs from local renewable energy simply by participating in one or more of the CEC community-owned solar arrays.

### How Clean Energy Collective's Community Solar Works

Commercial, Government and Non-Profit Xcel Energy utility customers can participate in CEC's Community Solar Program without making an upfront payment. CEC customers are assigned a number of panels in a community solar facility based on their meters and in turn receive Solar Rewards Credits from Xcel Energy for the power produced; directly on their monthly electric bills. The following month customers will make a monthly payment to CEC for a portion (95%) of the credits they received. Customers generate these automatic clean energy savings in one easy step, without change to their property.

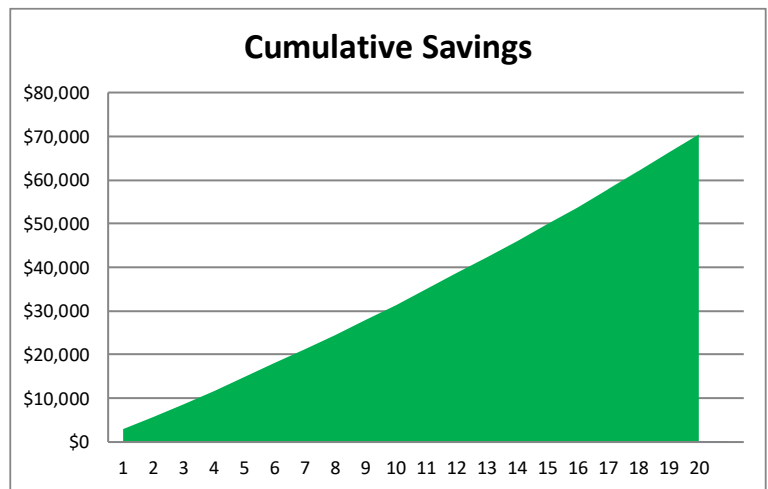
System Size		
Panel Size (watts)	Panels	kW
113	3,556	400
Year 1		
SRC Credits		\$56,486
CEC Payments		(\$53,662)
Year One Savings	5.0%	\$2,824
20 Years		
SRC Credits		\$1,411,728
CEC Payments		(\$1,341,142)
Total Savings	5.0%	\$70,586
20 Year Environmental Benefits		
CO2 Avoided (lbs)		29,005,638
Car Travel Avoided (miles)		32,889,443
Trees Planted		44,738

### Monthly Credit

Each month, your utility will calculate the amount of kilowatt hours (kWh) attributable to each customer in the community solar array. Once the kWhs attributable to each customer are determined, the utility will apply a credit to your electric bill that is the product of the kWh produced and the Solar Rewards Credit Rate for your account. Credits are applied to your Xcel Energy electric bills one month in arrears and directly offset the monthly electricity charges on your bill.

As your utility's rates change over time, the Solar Rewards Credit Rate changes keeping pace with the established tariff. As rates changes, your credit rate will move in unison. When rates increase or decrease your savings can increase or decrease.

Xcel Energy will continue to bill customers for all of the electricity consumed under prevailing tariff rates. They will then apply the Solar Rewards Credit against the total charges on your electric bill. The Solar Rewards Credits will reduce the whole dollar cost of the bill, with any excess credits rolled over and applied to future months' billings. This program attacks the entire utility bill expense, not just your kWh usage charges.



### Customer Participation Rules

To participate in the CEC/Xcel Energy Solar Rewards program you must have an active account with Xcel Energy and maintain that account throughout the life of the agreement. Any location, meter or account will need to be determined

eligible by Xcel Energy. You may participate in more than one project, making it possible to maximize your savings from renewable energy or to supply savings to multiple locations in different areas. You can change the utility account up to 2 times per year where credits are posted as your energy requirements change. In order to participate, you will be required to sign a 20-year contract.



Xcel Energy requires that each community solar array have no more than 40% dedicated to any one customer. Fortunately, with the large number of sites awarded to CEC, you may combine capacity in a variety of projects to meet your objectives, while remaining in compliance with these restrictions. With your historical annual electricity consumption and expense information, CEC can provide a system that generates a solar offset of up to 120% of your annual electricity usage.

## Customer Payment

There is no down payment to participate in the CEC/Xcel Energy Community Solar Rewards program. From the very first month after the solar array is connected to Xcel Energy's grid you can generate Solar Rewards Credits that reduce your utility costs. The month after receiving your on-bill credit for the power produced you will pay CEC 95% of the credits you receive and retain all the credit above that as savings every month. You pay for the credits as they are received on your utility bill and can benefit from saving the first month from the on-bill credits. You will receive year after year savings under the program based on our estimates.

## Transfer

Customers may assign the credits received to any meter on their account. This allows you the opportunity to potentially move future credits from one location or account to others as your organization's needs change. Any credits already earned to an account will stay on the designated meter until they are used. To comply with the utility's regulations, CEC provides two opportunities each year for customers to make panel reassignment changes.



## Operations & Maintenance Program

CEC is responsible for the ongoing operations and maintenance of all Community Solar Arrays. Ongoing operations and maintenance includes active daily monitoring of production and weather information, with real-time visibility into actual production. Any unexpected degradation in production is flagged and investigated by CEC and our maintenance contractors. The manufacturer's 25-year panel warranty covers expected annual production assuming a degradation rate after year 1 of 0.67% per year for the next 24 years. The charts provided to you in the following pages factor this rate into the numbers.

### The CEC O&M Program provides:

- Real time monitoring of the array's production.
- Real time monitoring of the weather and irradiation at the array.
- Baseline production monitoring against the expected production per year, not just the manufacturers' warranties. If production falls by more than 2%, the array is inspected and faulty components are replaced or repaired as required.

- Annual inspections of the array by certified technicians.
- 25-year panel warranties from the manufacturer.
- Two 10-year successive inverter warranties from the manufacturer.
- 10-year installation warranty from the installation contractor.
- Immediate repair or replacement of faulty or defective parts.
- Insurance against all damages at full replacement value.

## **Summary:**

The CEC community solar program offers customers the unparalleled opportunity to:

- Achieve immediate savings on your utility costs, from the first month, with no payback period
- Reduce or hedge your long-term energy costs with a 20-year agreement that rises and falls with utility costs
- Lock in long term savings for 20-years
- Support renewable energy sources and be seen as an environmental leader in the community

The CEC community solar program comes without the restrictions of having to:

- Secure long-term financing or commit a large down payment
- Alter your property or facility to accommodate solar panels
- Budget or assign resources to the maintenance of an on-site solar power installation

The CEC community solar program is a fast and easy way to implement a renewable energy savings program for your organization within the state of Colorado.

A specific estimation of Production, Credits, Payments and Savings follows.



The CEC Program provides the following production, savings and cost estimates:

ESTIMATED POWER PRODUCTION AND SAVINGS							
Utility Rate Inflation		3.00%		Panels		3,556	
Year 1 Solar Rewards Credit Rate		\$0.06457		KW		400	
				20 Year Savings \$		\$70,586	
				20 Year Savings %		5%	
Year	Annual kWh	Solar Rewards Credit Rate Average (\$/kWh)	Total Solar Rewards Payment	Annual PPA Payments	Total Savings Generated	Cumulative Savings	Effective Discount Rate
1	874,800	\$0.0646	\$56,486	(\$53,662)	\$2,824	\$2,824	5%
2	868,965	\$0.0665	\$57,792	(\$54,903)	\$2,890	\$5,714	5%
3	863,130	\$0.0685	\$59,126	(\$56,170)	\$2,956	\$8,670	5%
4	857,295	\$0.0706	\$60,489	(\$57,464)	\$3,024	\$11,695	5%
5	851,460	\$0.0727	\$61,879	(\$58,785)	\$3,094	\$14,789	5%
6	845,625	\$0.0749	\$63,299	(\$60,134)	\$3,165	\$17,954	5%
7	839,791	\$0.0771	\$64,748	(\$61,510)	\$3,237	\$21,191	5%
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9	828,121	\$0.0818	\$67,736	(\$64,350)	\$3,387	\$27,889	5%
10	822,286	\$0.0842	\$69,277	(\$65,813)	\$3,464	\$31,353	5%
11	816,451	\$0.0868	\$70,849	(\$67,306)	\$3,542	\$34,895	5%
12	810,616	\$0.0894	\$72,453	(\$68,830)	\$3,623	\$38,518	5%
13	804,781	\$0.0921	\$74,089	(\$70,385)	\$3,704	\$42,222	5%
14	798,946	\$0.0948	\$75,759	(\$71,971)	\$3,788	\$46,010	5%
15	793,111	\$0.0977	\$77,462	(\$73,588)	\$3,873	\$49,884	5%
16	787,276	\$0.1006	\$79,198	(\$75,238)	\$3,960	\$53,843	5%
17	781,441	\$0.1036	\$80,970	(\$76,921)	\$4,048	\$57,892	5%
18	775,606	\$0.1067	\$82,776	(\$78,637)	\$4,139	\$62,031	5%
19	769,772	\$0.1099	\$84,618	(\$80,387)	\$4,231	\$66,262	5%
20	763,937	\$0.1132	\$86,496	(\$82,171)	\$4,325	\$70,586	5%
<b>Total</b>	<b>16,387,366</b>		<b>\$1,411,728</b>	<b>(\$1,341,142)</b>	<b>\$70,586</b>		<b>5%</b>
<i>Annual kWh is the estimated production from your portion of the solar facility.</i>							



Clean Energy  
COLLECTIVE®

*member owned. nature operated.*

# Overview of Xcel Energy Community Solar Garden Program



U.S. DEPARTMENT OF  
**ENERGY**

National Innovative Green  
Power Program of the Year



2012 National Photovoltaic  
Project of Distinction Award



# Agenda

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- Current Energy Challenges
- Advantages of Community Solar
- How It Works
- Who is Clean Energy Collective (CEC)?
- Town of Frisco Proposal for Capacity
- Summary

# Current Energy Challenges



- Rising energy prices
  - Energy is typically 2<sup>nd</sup> or 3<sup>rd</sup> highest cost for businesses
- Race to claim “green” identity
  - Citizens demanding green in their buying decisions
- Many obstacles to going solar may exist
  - Aesthetics
  - Roof design and orientation
  - Maintenance
  - Price
  - Building lessee



# The Solution - Community Solar with the CEC



**SOLAR POWER  
Reinvented**



# Advantages of Community Solar



- Clean, Renewable Energy
  - Purchase power at a discounted price below market average to hedge against rising energy prices
  - Significant Savings for 20 years (5%)
  - Higher on bill credit than any other solar project type in Colorado
  - An example to the community - Improve image and environmental position with constituents

# BHE Community Solar helps you:



- Save Money on your Electrical bills
- Lock in your solar savings to rise and fall with Xcel Energy tariff rates
- Control your electrical expense and use renewables all for no capital expense, save green!

# Advantages of Community Solar



- Offsite Solar Benefits
- Anyone can participate, regardless of roof design, direction, shading, etc.
- Allows lessees and lessors to participate – anyone who pays a utility bill.
- No aesthetic or structural integrity issues
- Comprehensive operations and maintenance program
- Higher efficiency from economies of scale



# Advantages of Community Solar



- **Flexibility**
  - Xcel Energy bill credit can be transferred to any meter in the utility and applicable geographic zone.
  - Transferrable to another owner if property is sold, or has a reduced energy need.
- **Saves on ENTIRE Electrical Costs**
  - Only solution to reduce Generation, Demand & Distribution Costs
  - Can off-set up to 120% of annual usage

# Community Solar



- Panels are part of a large ground array.
- Panels are not on your Facilities or Grounds
- No Maintenance or Liability
- Positioned for optimum Production

# How Does it Work?



- **CEC Community Arrays** – >25 MW clean power capacity in Xcel Energy Service Area.
- Clean Solar Power is sold to Xcel Energy **under 20 year agreements**
- **Any government or commercial customer** can participate in the CEC community solar power plant with **No Money Down**
- Customers receive **monthly electric bill credits** on their utility bill for 20 years tied to increases in utility rates
- Customers pay monthly and **save on their energy cost for 20 years**
- **CEC maintains the solar array power plant** for optimal performance and savings



# Solar Rewards Credit Flow



- CEC's Solar Array Generates Power to Utility Grid
- Xcel Energy buys the power at a defined Tariff Rate
- Xcel Energy pays for the Power with a Solar Credit on Participating Customer's Monthly Utility Bill
- CEC Invoices Customer for Solar Credits they received minus 5%
- The payment for those credits is due 30 days after receipt
- Effectively saving Customer 5% over the life of the agreement

# About CEC



- **Clean Energy Collective (CEC)** was founded in 2009
- CEC provides **easy access** to locally produced solar energy
- We **pioneered** country's first "community-owned solar arrays"
- **93** producing solar power systems online or under development, >160 MW of power – **More than any developer**
- Currently serving customers of **25 utilities in 12 states**
- Recognized as 194<sup>th</sup> **fastest growing private company** on INC. 500



# CEC Details for Town of Frisco



# CEC By the Numbers - Colorado



- Xcel Energy - Online
  - Arapahoe County 1 & 2 = 1 MW
  - Boulder County 1 & 2 = 1 MW
  - Denver County 1, 2 & 3 = 1.4 MW
  - Summit County 1 & 2 = 1 MW
  - Jefferson County 1 & 2 = 775 kW
  - Lake County 1 = 500 kW
  - Adams County 1 & 2 = 4 MW
  - Arapahoe County 3 = 2 MW
  - Conejos County 1 = 2 MW
  - Logan County 1 = 2 MW
  - Weld County 1 = 2 MW
- Poudre Valley Electric – Online
  - PVREA 1 & 2 = 1 MW
- Colorado Springs Utilities – Online
  - CSU 1 = 500 kW
- Holy Cross Electric – Online
  - HCE 1, 2, 3 & 4 = 3.5 MW
- Yampa Valley Electric – Online
  - YVEA 1 = 500 kW
- San Miguel Power Authority – Online
  - SMPA 1 = 1.2 MW
- Black Hills Electric - Online
  - BHE 1 = 500 kW
- Black Hills Electric - Awarded
  - BHE 2 & 3 = 2.5 MW
- Fort Collins Electric – Online
  - FCE 1 = 500 kW



# CEC By the Numbers – Non-Colorado



- Online

- Vermont Electric Coop (VT) – 75 kW
- Green Mountain Power (VT) – 75 kW
- Kit Carson Electric (NM) – 100 kW
- Wright-Hennepin Electric (MN) – 150 kW
- Midwest Energy (KS) -
- Vernon Electric (WI) -
- Western Mass Electric (MA) –
- National Grid (MA) –
- EverSource (MA) –
- Avista Electric (WA) – 423 kW
- CPS Energy (TX) - 1,2 MW
- Nueces Electric (TX) 1.0 MW

- Development

- National Grid (MA) – 14 MW
- EverSource (MA) – 33 MW
- SCE&G (SC) – 21 MW
- Halfmoon (NY) – 581 kW
- Westchester (NY) – 2 MW





# Who are some of our Muni Customers?



- **Town of Breckenridge** – 1.2 MW system



- **City of Wheatridge** – 1.5 MW system



- **Town of Telluride** – 105 kW system



- **City of Louisville** – 1.4 MW system



- **City of Lakewood** – 275 kW system

# Who are some of our Muni Customers?



- **Carbondale** – 469 kW system



- **Silverthorn** – 200 kW system



- **Englewood** – 125 kW system



- **Pueblo** – 2.6 MW system

- **Leadville** – 198 kW system

# Who are some of our County Customers?



- **Pitkin County** – 119 kW system



- **Eagle County** – 1.5MW system



- **Arapahoe County** – 7 Mw system

ARAPAHOE COUNTY  
COLORADO'S FIRST



- **Summit County** - 100 kW system



- **Lake County** – 200 kW system



- **Logan County** – 1.4 MW System

# Who are some of our Customers?



- **Posada** – 60 kW system



- **City of Pueblo** – 2.6 MW system



- **Pueblo County School District 70** – 1.117 MW system



- **Pueblo Urban Renewal Authority** – 450 kW

# Who are some of our out of Massachusetts Customers?



- **UMASS Amherst** – 920 kW system

- **Cummings Properties** – 5 MW system



- **Attleboro Public Schools** – 3.5 MW system

- **Somerset Public Schools** – 1.3 MW system



- **Iron Mountain** – 1.4 MW system

# Year 1 and Year 20 Benefits - Total



System Size		
Panel Size (watts)	Panels	kW
113	3,556	400
Year 1		
SRC Credits		\$56,486
CEC Payments		(\$53,662)
Year One Savings	5.0%	\$2,824
20 Years		
SRC Credits		\$1,411,728
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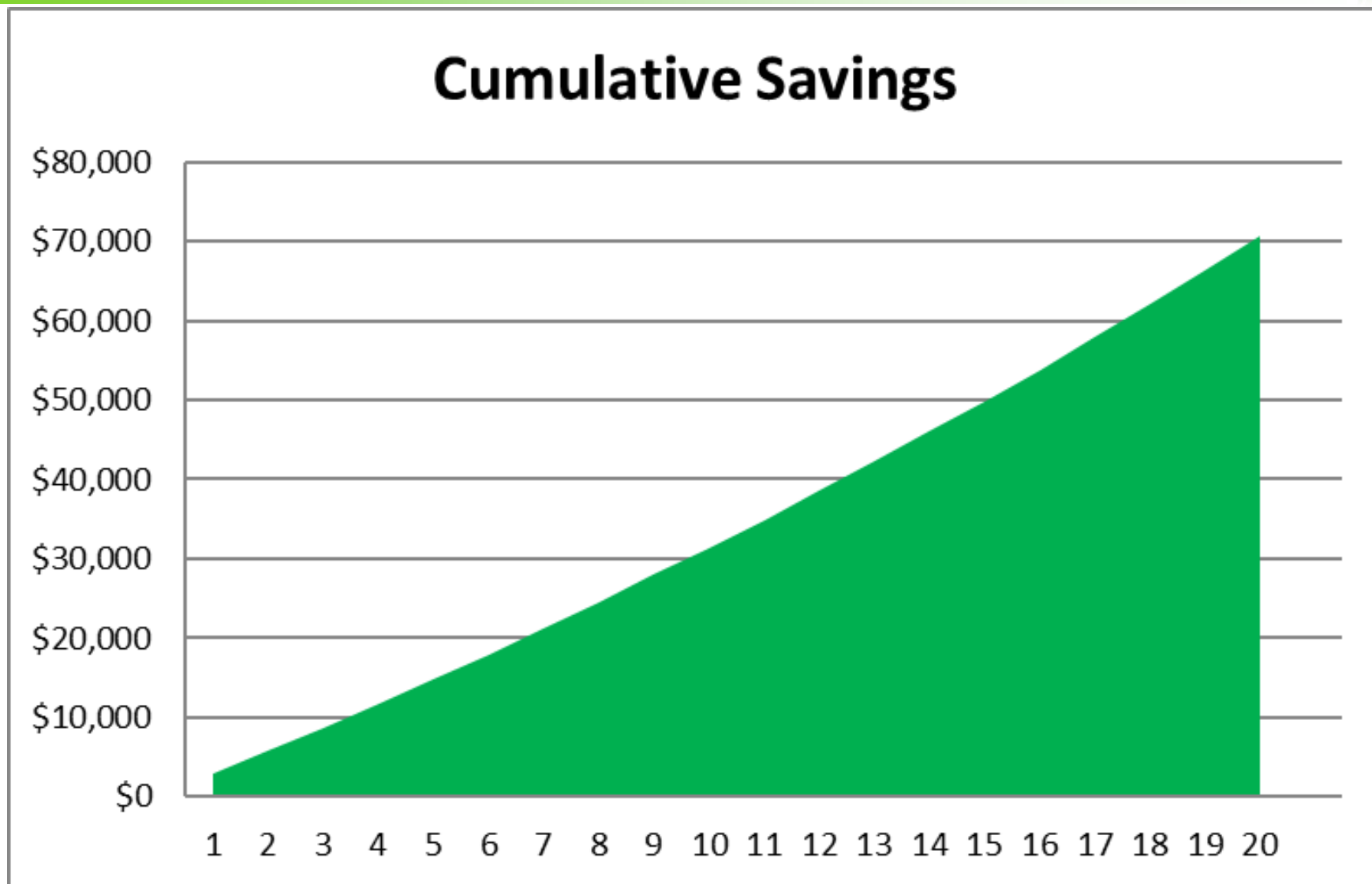
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# 20 Year Savings



# Advantages of Community Solar



- **Lock in low energy costs for a long time (20 years) – Hedge against inflation**
- **Community Solar Generates Higher Bill Credits than other Projects**
- **No need to install anything on customer premise**
- **Professionally Maintained**
- **Zero Money Down**
- **Optimal Production & Longer Life**
- **Transferable to utility meters the customer owns**
- **Everyone can OWN clean energy and save money!**



# Contact Information



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Fax: 970-692-2592

[www.cleanenergyco.com](http://www.cleanenergyco.com)

**Mike Malone**

Sr. Vice President of Sales

303-717-5830

[Mike.malone@cleanenergyco.com](mailto:Mike.malone@cleanenergyco.com)

## COMMUNITY SOLAR SUBSCRIPTION AGREEMENT

This Community Solar Subscription Agreement (the “*Agreement*”) is entered into as of \_\_\_\_\_, 20\_\_ (the “*Effective Date*”) and is by and between \_\_\_\_\_, LLC, a Colorado limited liability company (“*Company*”), and \_\_\_\_\_, a \_\_\_\_\_ (“*Customer*”). In this Agreement, Company and Customer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

### RECITALS

**WHEREAS**, Company is in the business of financing, developing, owning, operating and maintaining solar electric generation facilities.

**WHEREAS**, Customer is a Colorado municipality, county, school district, special district or other political subdivision.

**WHEREAS**, Company has offered to provide to Customer under this Agreement a means of procuring low-cost electrical energy as utility cost-savings measures under C.R.S. 29-12.5-101 et seq.

**WHEREAS**, the Board (as defined below) has received the analysis and recommendations concerning such utility cost-savings measure from a person experienced in the design and implementation of utility cost-savings measure.

**WHEREAS**, Customer is an active electric account holder with the utility listed on Appendix A (the “*Utility*”) serving the Utility Service Location (as defined below), and Customer desires to participate in the Solar Rewards Community Service Program (the “*Program*”), as further defined in Section 1 below.

**WHEREAS**, Company has constructed or intends to construct a Community Solar Garden (as defined in the Community Solar Garden Regulations (as defined below)) at the facility location set forth in Appendix A (the “*Facility*”). Company will interconnect the Facility with the Utility pursuant to the terms of the Tariff (as defined below), generator interconnection agreement, any other applicable tariff, or other agreements required to be executed with the Utility (collectively, the “*ICA*”) pursuant to which Company or its Affiliate will deliver power generated at the Facility to the Utility. The Utility will provide Bill Credits (as defined below) to Customer as set forth in the Program and as directed by Company or its Affiliate.

**WHEREAS**, Customer wishes to subscribe to a portion of the electric generating capacity of the Facility (such portion, the “*Solar Interest*”) during the Term (as defined below) in order to receive Bill Credits from the Utility, subject to the terms and conditions, and at the prices, set forth in this Agreement.

**WHEREAS**, the Board has found pursuant to C.R.S. 29-12.5-103 that the amount of money the Customer would spend on such utility cost-savings measure is not likely to exceed the amount of money the Customer would save in energy costs over the term of this Agreement.

**WHEREAS**, the Board has found that the obligations entered into by the Customer under this Agreement shall not cause the total outstanding indebtedness incurred by the Customer under C.R.S. 29-12.5-103 to exceed the applicable limit set forth in C.R.S. 29-12.5-103(2)(b).

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual promises, representations, warranties, covenants, conditions herein contained, and the appendices attached hereto, Company and Customer agree as follows:

## **1 DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined in this Article 1 or elsewhere in this Agreement shall be given their common and ordinary meanings.

**“Affiliate”** means any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or partnered with, or is under common control with the person or entity specified.

**“Applicable Legal Requirements”** means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the construction, operation, and ownership of the Facility, as well as the Bill Credits distributed pursuant to the Program.

**“Bill Credits”** means the Solar Rewards Community Service Credit (as defined under the Community Solar Garden Regulations) that is the monthly amount paid by the Utility to the Customer as a credit on the Customer’s retail electric service bill to compensate the Customer for its beneficial share of photovoltaic energy produced by the Facility and delivered to the Utility as calculated pursuant to Section 3.3 which are based upon the Customer’s Solar Output pursuant to the terms of this Agreement. The value of the Bill Credit will appear as a line-item credit, and offset charges, on Customer’s Utility bill.

**“Bill Credit Payment”** means the monthly amount due from Customer to Company under this Agreement as calculated pursuant to Section 5.1.

**“Bill Credit Rate”** means the applicable rate for the Customer’s class and subclass as determined under the rate schedule in the Tariff in effect at the time of energy generation (in \$/kWh) as may be periodically revised by the Utility based upon variations in the Utility’s retail rate from time to time.

**“Board”** means the governing body of the above referenced Customer.

**“Commercial Operations Date”** means the date on which the Facility (i) generates electric energy on a commercial basis, and (ii) is interconnected to the local electrical distribution system

and has been authorized by the Utility. Such date shall be specified by Company either in Appendix A, or by a separate notice provided to Customer pursuant to Section 2.2.

**“Commission”** means the Colorado Public Utilities Commission.

**“Community Solar Garden Regulations”** means the Colorado statute C.R.S § 40-2-127; Commission rules governing Community Solar Gardens (Commission Rule 3650-3668); Utility rules and regulations on file with the Commission, as each may be amended from time to time.

**“Customer’s Capacity”** means the amount of capacity Customer has subscribed to under this Agreement expressed in terms of kW as set forth in Appendix A and shall be updated after the Commercial Operations Date. Customer’s Capacity shall include the Initial Capacity plus any increases or decreases made by Company (Current Capacity), if any, pursuant to Section 3.1.

**“Customer’s Solar Output”** means the portion of the Facility’s production allocable to Customer as determined in accordance with Section 3.2.

**“Customer’s Portion”** means the Customer’s Capacity expressed as a percentage of the total nameplate capacity of the Facility. The Customer’s Portion in this Agreement is set forth in Section 3.1.

**“Eligibility Period”** means the period commencing on the Eligibility Date (as defined below) through the termination of this Agreement.

**“Environmental Attributes”** means any credit, benefit, reduction, offset, financial incentive, and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Facility, its production capacity and/or electricity generation, (ii) government financial incentives, (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iv) renewable energy credits, renewable generation attributes, or renewable energy certificates (each referred to as “RECs”) or any similar certificates or credits under the laws of any jurisdiction, including, without limitation, solar RECs, and (v) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the Facility, its production capacity and/or electricity generation. For the avoidance of doubt, the term Environmental Attributes does not include Bill Credits as defined pursuant to this Agreement.

**“Estimated Initial Annual Customer’s Solar Output”** means the Customer’s Solar Output estimated to occur during the twelve (12) month period following the Commercial Operations Date.

**“Facility Meter”** means Company’s electric meter located at the Facility and used to measure the solar electricity generated at the Facility for purposes of determining the Bill Credit Payment, if the Utility Meter is unavailable.

“**Facility Solar Output**” means the amount of solar electricity generated during the Production Month at the Facility and delivered to the Utility Meter.

“**Fixed Bill Credit Rate**” means the applicable retail rate for the Customer’s class and subclass as determined under the rate schedule in the Tariff in effect at the time of energy generation (in \$/kWh) as may be periodically revised by the Utility based upon variations in the Utility’s retail rate from time to time.

“**Force Majeure Event**” means any event or circumstance not within the reasonable control of Company which precludes Company from carrying out, in whole or in part, its obligations under this Agreement, including, without limitation, Acts of God, hurricanes or tornados, fires, epidemics, landslides, earthquakes, floods, other natural catastrophes, strikes, lock outs or other industrial disturbances. Notwithstanding the contrary, economic hardship or unavailability of funds shall not constitute a Force Majeure Event.

“**Governmental Authority**” means (i) any federal, state or local government, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, (ii) any independent system operator or regional transmission owner or operator, and (iii) any transmission or distribution entity providing net metering, distribution or transmission services to the Facility, including the Utility.

“**kW**” means kilowatt DC.

“**kWh**” means kilowatt hour AC.

“**Lender**” means the entity or person(s) directly or indirectly providing financing to Company in connection with the Facility.

“**Membership Information List**” means the form Company files with the Utility to inform the Utility of what percentage of the Facility Solar Output each customer is entitled to in the form of Bill Credits. Company shall update the Membership Information List from time to time as allowed under the Community Solar Garden Regulations and Tariff.

“**Production Month**” means a monthly period during which solar electricity is generated at the Facility and delivered to the Utility Meter.

“**Program**” means the Solar Rewards Community Service Program offered by the Utility pursuant to the Tariff, the Community Solar Garden Regulations, and requirements of the ICA which may at any time be applicable to a Party’s rights and obligations hereunder, each as may be amended from time to time.

“**Replacement Customer**” means a customer of the Utility that is eligible to participate in the Program and is acceptable to Company in Company’s sole discretion that takes over Customer’s Capacity

“**Tariff**” means the Utility’s Colorado PUC No. 8 Tariff, Schedule of Solar Rewards Community Service that is approved by the Commission and any other appropriate jurisdictional regulatory bodies, as may be amended from time to time.



“**Tax Incentives**” means any tax credits, incentives or depreciation allowances established under any federal or state law, including, without limitation, investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated, bonus or other depreciation).

“**Utility Meter**” means the Utility account meter located at the Facility and used by the Utility to measure the energy delivered by the Facility to the Utility.

“**Utility Service Location**” means the location at which Customer receives electrical service from the Utility. The Utility Service Location is specified in Appendix A hereto, and is subject to change in accordance with the terms and conditions of Section 7.

## 2 TERM

- 2.1 Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and terminate twenty (20) years from the Facility’s Commercial Operations Date unless earlier terminated in accordance with this Agreement, in which case the Term shall expire on the effective date of such termination.
- 2.2 Initial Accrual of Bill Credits. Customer shall begin to accrue Bill Credits in accordance with the terms of this Agreement on the date by which all of the following shall have occurred (the “**Eligibility Date**”): (i) the Commercial Operations Date, (ii) the Facility has qualified as a Community Solar Garden, (iii) Customer has been added to the Membership Information List, and (iii) the Utility has accepted the Membership Information List with such Customer information included. If the Commercial Operations Date is not known by the Effective Date, Company will provide Customer with notice of the Commercial Operations Date once known. Appendix A will be updated after the Commercial Operations Date with the Commercial Operations Date, the Facility location, the Facility’s total nameplate capacity, the Customer’s Capacity, the Customer’s Portion, and the Estimated Initial Annual Customer’s Solar Output. Such updated Appendix A shall be added to this Agreement without the need for additional consent or signature of the Parties.

## 3 CUSTOMER’S SUBSCRIPTION

- 3.1 Capacity. Commencing on the Eligibility Date and continuing throughout the Eligibility Period, Customer shall subscribe to \_\_\_\_\_ % of the nameplate capacity of the Facility (the “**Customer’s Portion**”). The initial Customer’s Portion expressed in terms of kW capacity is referred to as the “**Initial Capacity**.” The Company shall update Appendix A with the exact Initial Capacity in kW within thirty (30) days of the Commercial Operations Date of the Facility. Company may increase or decrease the Customer’s Capacity at any time by providing written notice and an updated Appendix A to Customer, if such increase does not violate the Program Limitation in Section 4.1 (the “**Current Capacity**”). Company may not decrease Customer’s Capacity below the Initial Capacity unless otherwise pursuant the terms to this Agreement.

- 3.2 Determination of Solar Output. Customer acknowledges the measurement of Facility Solar Output shall be based upon readings at the Utility Meter. If readings from the Utility Meter are unavailable, the Company shall base the measurement of the Facility Solar Output from the Facility Meter. Each month during the Eligibility Period of this Agreement, for as long as the Customer is in compliance with the requirements of this Agreement, the Program and the Utility, the Utility will record the amount of solar electricity generated that month at the Facility and delivered to the Utility Meter (the "**Facility Solar Output**"). The Utility will then multiply the Facility Solar Output by Customer's Portion to arrive at the "Customer Solar Output" for that month in kWhs. The amount of solar electricity generated is measured in kilowatt hours AC or "kWh", and the month over which such solar electricity is measured is referred to herein as the "**Production Month.**"
- 3.3 Calculation of Bill Credits. Bill Credits are calculated pursuant to the Program by the Utility and are based upon readings at the Utility Meter. Bill Credits are applied solely by the Utility based upon the terms and conditions of the Program. Company will provide the Utility with Customer's information so that the Utility can post the appropriate allocation of Bill Credits to Customer's Utility bill, pursuant to the allocations shown in the Membership Information List. Bill Credits to be applied on the Customer's Utility account are calculated as the Bill Credit Rate multiplied by the Customer's Solar Output based upon readings at the Utility Meter for the Production Month. Customer acknowledges and agrees that Company's sole obligation regarding payment of Bill Credits to Customer is to request and use commercially reasonable efforts to require Utility to deliver Bill Credits. The duration, terms and conditions of the Program, including the Bill Credit Rate used to determine Bill Credits, are subject to the sole and exclusive control of the Utility, and Company has not made any representations or warranties with respect to the expected duration of the Program or the amounts to be provided by the Utility as Bill Credits. Customer understands that (i) the Bill Credits received by Customer for a particular Production Month will be reflected on Customer's statement from the Utility as a monetary credit amount and not as an electricity quantity; and (ii) such Bill Credits will be reflected on Customer's monthly invoice according to the Utility's billing cycle, which may be approximately two (2) months after the Production Month in which the Bill Credits are generated by the Facility.
- 3.4 Title; Environmental Attributes and Tax Incentives Excluded. Customer shall not be entitled to any ownership interest in, and as between Customer and Company, Company shall have title to, the Facility and all solar panels. Customer acknowledges and agrees that Customer's Solar Interest does not include any Environmental Attributes or Tax Incentives associated with the Facility, and Customer shall not claim the Environmental Attributes or Tax Incentives associated with the Facility.
- 3.5 Taxes. Customer shall be responsible for any applicable sales, use, import, excise, value added, or other taxes or levies (other than Company's income taxes) associated with this Agreement.

#### 4 ACKNOWLEDGMENTS REGARDING THE PROGRAM

- 4.1 Program Limitation. The Program imposes certain requirements on participation in the Program, which include the following: (i) Customer's Solar Output measured over twelve (12) months shall not exceed one-hundred twenty percent (120%) of Customer's electric energy consumption during the most recent twelve (12) month billing period, and (ii) Customer's Utility Service Location must be within the same service territory as the Utility (collectively, the "***Program Limitation***"). The Estimated Initial Annual Solar Output from the Customer's Capacity as set forth in Appendix A shall not exceed the Program Limitation. Customer's participation (or the participation of others at the same Utility Service Location) in other Utility programs relating to renewable energy payments, credits or rebates may further limit the Bill Credits or capacity which Customer can receive or which may be attributed to Customer in connection with this Agreement and the Program. The Utility is not obligated to provide Bill Credits to the extent Customer's Solar Output exceeds the Program Limitation. Company reserves the right to decrease the Customer's Capacity in order to maintain Customer's compliance with the Program Limitation. The Program Limitation set forth in this Section 4.1 is derived from the Program, and this Agreement will be deemed automatically amended to incorporate any changes to corresponding provisions in the Program.
- 4.2 Program Requirements. To participate in the Program, Customer must, in addition to other applicable requirements, (i) be and remain a current customer of record of the Utility for electric service throughout the Term, and (ii) be and remain in compliance with all requirements of this Agreement, the Program and the Utility throughout the Term.
- 4.3 Customer's Subscription Contingent on Allocation of Bill Credits by the Utility. Customer's subscription is contingent upon and subject to the Utility's acceptance and allocation of Bill Credits to Customer's Utility account. During the Term, (i) if for any reason the Utility refuses to allocate a portion or all of the Bill Credits to Customer's Utility account on a temporary basis, this Agreement shall remain in full force and effect, but Company shall promptly refund to Customer any amount paid to Company by Customer for such Bill Credits which the Utility refused to credit to Customer's Utility account, and (ii) if for any reason the Utility refuses to allocate the Bill Credits to Customer's Utility account on a permanent basis, either Party may terminate this Agreement by written notice to the other Party. Notwithstanding anything to the contrary, this Section 4.3 does not apply to the extent that the reason that the Utility refuses to allocate Bill Credits to Customer is a result of Customer failing to pay Customer's Utility bill.
- 4.4 Additional Requirements. From time to time during the Term, Company may request and Customer shall within ten (10) days of such request provide financial information reasonably requested by Company and/or its Lender in order to perform a financial analysis of Customer. If such information is not provided within such time, or if Company determines in Company's sole discretion that such information is

unsatisfactory, Company may terminate this Agreement upon written notice to Customer.

## 5 PAYMENT

- 5.1 Bill Credit Payment. The Bill Credit Payment for each month shall equal ninety-five percent (95%) of the Bill Credits attributable to Customer's Solar Output for the prior Production Month.
- 5.2 Invoice for Bill Credit Payment. After the Eligibility Date, Company will provide Customer with electronic notice of the Bill Credit Payment due from Customer on or about the 60th day after the end of the Production Month upon which such Bill Credit Payment is based (the "***Invoice***"). The Invoice shall be based on readings at the Utility Meter if available. In the event the Utility does not provide Utility Meter readings at all or on a timely basis, the Invoice shall be based on readings at the Facility Meter. Customer shall pay all invoiced amounts owed to Company by automatic electronic funds transfer via the Automated Clearing House ("***ACH***") wire transfer, from the Designated Payment Account (as defined in Appendix B) identified by Customer in Appendix B, or by any other approved electronic payment method. Customer shall execute the "Payment Authorization Form" attached as Appendix B and incorporated herein.
- 5.3 Records and Audits. Each Party shall keep, for a period of not less than three (3) years after the date of each Invoice, records sufficient to permit verification of the accuracy of billing statements, charges, computations and payments reflected on such Invoice. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to such Invoice during the other Party's normal business hours. Company shall, at Customer's request (such request to not occur more than once annually), provide documentation of the amount of electricity generated by the Facility during the Production Months covered by Customer's request and/or the calculation of the applicable Bill Credit Payment; provided that in connection with any such request Customer shall provide Company with Customer's Utility bills for the Production Months covered by Customer's request.
- 5.4 Dispute. Customer shall only be entitled to dispute an amount owed or paid by Customer within twelve (12) calendar months from the date of issuance of such Invoice. Upon resolution of the dispute, any required payment shall be made within seven (7) business days of such resolution. Any overpayments shall be returned by Company upon request or deducted from subsequent payments. If the Parties are unable to resolve a payment dispute under this Section 5.4, the Parties shall follow the procedure set forth in Section 14.6.

## 6 INTERACTION WITH THE UTILITY

- 6.1 Appointment of Company as Customer's Agent. Customer information includes, without limitation, Customer's name, address, Customer's Utility Service Location, the Utility account numbers and meter numbers associated with the Utility Service Location, the Customer's Solar Output, and other Customer information listed on Appendix A (collectively, the "***Customer Information***"). Company agrees to be, and Customer hereby appoints Company, as Customer's representative for submitting Customer Information to the Utility, with full power and authority to supply to the Utility such information as may be required by the Utility under the Program. In addition, Customer hereby authorizes the Utility to release to Company the consumption and other account information of Customer listed in Appendix A to help Company to carry out the terms of this Agreement and the Program, and shall execute any documents that either Company or the Utility may request to permit the release of such information.
- 6.2 Provision of Information to Utility and Disclosure Forms. Within ten (10) days of any request made from time to time, Customer shall provide to Company and/or the Utility all applications, documentation, and information required by Company or the Utility, as applicable, and otherwise to qualify Customer to participate in the Program. Customer shall sign any disclosure form provided by Company within ten (10) days. Company may terminate this Agreement if Customer fails to provide such signed disclosure form back to Company within such ten (10) days.

## **7 CHANGE OF CUSTOMER LOCATION; CAPACITY CHANGES**

### **7.1 Change in Location.**

- 7.1.1 Advance Notice. Customer shall provide Company with six (6) months advance notice of any change which may cause Customer to not be the Utility's customer at the Utility Service Location for any of the accounts listed on Appendix A.
- 7.1.2 New Eligible Location Within Utility Service Territory. If Customer shall cease to be Utility's customer at the Utility Service Location and within thirty (30) days thereof moves to a new location within the service territory of the Utility, Customer shall take all steps and provide all information required by the Utility under the Program to substitute Customer's new service location as the Utility Service Location under this Agreement, and this Agreement shall continue in effect. If such requirements are not met within such time or if the Utility Service Location or any new service location exceeds the Program Limitation or otherwise does not comply with the Utility's requirements, Customer's ability to participate in the Program may cease or be limited in accordance with Program requirements. Company may update Customer's Utility Service Location in Appendix A with the new address without the need for additional consent or signature of the Parties.
- 7.1.3 Other Termination of Utility Service. If Customer ceases to be a Utility customer for electric service at the Utility Service Location and Customer's new location is not eligible under the Program or capacity cannot be allocated

to another account if applicable, Company may terminate this Agreement in accordance with Section 10.3.

- 7.2 Decrease in Capacity. At any time during the Term, Company may decrease Customer's Capacity to keep Customer in compliance with the Program Limitation. Customer will be charged a downsize fee in the amount of \$50.00 per kW of decrease in Customer's Capacity (the "**Downsize Fee**") to be paid to Company within thirty (30) days after Company's determination that Customer's Capacity must be decreased to keep Customer in compliance with the Program Limitation; provided that no Downsize Fee shall be assessed at the time of decreasing Customer's Capacity under any of the following circumstances: (a) downsizing of Customer's Capacity is based on inaccurate estimates for a new customer without historical usage, within the first six (6) months of the Term, (b), or (c) Customer has found a Replacement Customer for the decreased capacity. Within thirty (30) days of Company's determination that Customer's Capacity must be decreased to keep Customer in compliance with the Program Limitation, and (y) Company's receipt of payment of the Downsize Fee, if applicable, Company will take the necessary steps to reduce Customer's Capacity and provide Customer with electronic notice of the new Customer's Capacity and projected date for its commencement, which will take effect at the beginning of Customer's next billing period following Company's notice to Customer of the new Customer's Capacity and projected date for its commencement. The Parties agree and acknowledge that Company will have suffered damages on account of the decreasing capacity and that, in view of the difficulty in ascertaining the amount of such damages, the Downsize Fee constitutes reasonable compensation and liquidated damages to compensate Company on account thereof.
- 7.3 Transfer to a Replacement Customer. Customer may be permitted to transfer all or some of Customer's Capacity to a Replacement Customer as long as (i) such transfer is made in compliance with all terms and conditions of this Agreement and the Program; and (ii) Customer obtains Company's prior written consent, which consent may be withheld in Company's sole discretion. Without limiting the generality of the foregoing, Customer must have no outstanding obligations in connection with Customer's Utility account or payments dues under this Agreement, and the transferee of the Capacity must qualify for participation in the Program and comply with the Utility's requirements (including but not limited to the Program Limitation). As a condition of any such transfer, Customer and the proposed transferee shall provide the Company with all requested documentation and information related to the transfer, and confirmation of qualification by the Utility to participate in the Program. Upon receipt of such documents and information, the Company will prepare an agreement similar to this Agreement for execution by the Replacement Customer, except that the Term shall be only the remaining Term under this Agreement. Such transfer to an approved Replacement Customer may be subject to a reasonable fee. Upon execution of such new agreement, this Agreement will terminate if all Capacity is transferred. Customer acknowledges and agree that the Company has no obligation to assist Customer in

identifying or qualifying any potential Replacement Customer to whom Customer may transfer Customer's Capacity.

## **8 REPRESENTATIONS AND WARRANTIES; ACKNOWLEDGEMENTS; COVENANTS**

8.1 Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Party as follows:

8.1.1 The Party is duly organized, validly existing, and in good standing under the laws of the state of its formation.

8.1.2 The Party has full legal capacity to enter into and perform this Agreement and that the information provided is true to the best of its knowledge and belief.

8.1.3 The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of the Party has full authority to do so and to fully bind the Party.

8.1.4 The execution and delivery of this Agreement and the performance of the obligations hereunder will not violate any Applicable Legal Requirement, any order of any court or other agency of government, or any provision of any agreement or other instrument to which the Party is bound.

8.1.5 There is no litigation, arbitration, administrative proceeding, or bankruptcy proceeding pending or being contemplated by the Party, or to the Party's knowledge, threatened against the Party, that would materially and adversely affect the validity or enforceability of this Agreement or the Party's ability to carry out the Party's obligations hereunder.

## **9 OPERATIONS AND MAINTENANCE**

9.1 Operations and Maintenance Services. Beginning on the Commercial Operations Date through the end of the Term, Company will operate the Facility, and provide customary maintenance services designed to keep the Facility in good working condition. Company will use qualified personnel to perform such services in accordance with industry standards and will pay such personnel reasonable compensation for performing such services.

## **10 TERMINATION**

10.1 Termination of Program. In the event the Utility ceases to offer the Program or a comparable substitute, or in the event that there is a change in the Program such that Customer is no longer eligible to participate in the Program, then either Party may terminate this Agreement after the Utility ceases to provide Customer the Bill Credits.



10.2 Termination Based on Lease. If the lease where the Facility is located is terminated for any reason and not subsequently reinstated, this Agreement will terminate at such time without liability to either Party.

10.3 Event of Default; Termination for Default.

10.3.1 Customer Default. Each of the following events will constitute a default on the part of Customer (a “**Customer Default**”):

- a) Customer fails to make any payment to Company when due pursuant to the terms of this Agreement and such failure continues for a period of ten (10) days after receipt of written notice thereof from Company.
- b) Customer breaches any warranty or representation of Customer set forth in this Agreement or fails to perform any material obligation or covenant of this Agreement, and such breach or failure is not cured by Customer within thirty (30) days after Customer receives written notice of such breach or failure from Company.
- c) Customer no longer has any accounts with the Utility within an eligible service territory.
- d) Customer institutes or consents to any proceeding in bankruptcy pertaining to Customer or its property, or Customer fails to obtain the dismissal of any such proceeding within thirty days of filing; a receiver, trustee or similar official is appointed for Customer or substantially all of Customer’s property or assets, or such property or assets become subject to attachment, execution or other judicial seizure; or Customer is adjudicated to be insolvent.
- e) Customer attempts to claim any Environmental Attributes (including any RECs) or Tax Incentives in connection with the Facility or Customer’s Solar Interest.

10.3.2 Company Default. Each of the following events will constitute a default on the part of Company (a “**Company Default**”) provided there is no concurrent Customer Default:

- a) Company breaches any warranty or representation of Company to Customer set forth in this Agreement, or fails to perform any material obligation of this Agreement, and such breach or failure is not cured by Company within thirty (30) days after Company receives written notice of such breach or failure from Customer, or, if such breach or failure is not capable of cure within such thirty (30) day period, then Company (i) fails to begin such cure within ten (10) days of such written notice or (ii) fails to complete the cure of such breach or failure with sixty (60) days of such written notice using diligent efforts.

- 10.3.3 Remedies. If a Customer Default occurs and is continuing after the expiration of the cure period applicable thereto, Company may terminate this Agreement for breach by written notice to Customer, and Customer shall be responsible for paying for all Bill Credits that the Utility continues to allocate to Customer until Company can find a replacement customer, in Company's sole discretion. If a Company Default occurs and is continuing after the expiration of the cure period applicable thereto, Customer may terminate this Agreement by written notice to Company. Subject to the limitations set forth in this Agreement, each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party has a duty to mitigate damages that it may incur as a result of a Party's non-performance under this Agreement.
- 10.4 Force Majeure. If a Force Majeure event occurs, Company shall not be deemed to be in default during the Force Majeure event, provided that: (i) Company gives the Customer written notice within two (2) weeks describing the occurrence and the anticipated period of delay; (ii) no obligations of Company which were to be performed prior to the Force Majeure Event shall be excused; and (iii) Company shall use commercially reasonable efforts to remedy the Force Majeure Event. If any Force Majeure Event lasts longer than ninety (90) days, and Company determines in good faith that such Force Majeure Event substantially prevents, hinders or delays Company's performance of any of its obligations, then either Party may upon written notice terminate the Agreement without further liability, except that neither Party shall be relieved from any payment obligations arising under this Agreement prior to the Force Majeure Event.
- 10.5 Early Termination. Prior to the Commercial Operations Date, either Party may terminate this Agreement without penalty or any liability if Company has not achieved the Commercial Operations Date within eighteen (18) months after the Effective Date or the Facility fails to qualify as a Community Solar Garden in accordance with the Program and Customer has not been transferred to a different Facility in accordance with Section 12.2, provided that such eighteen-month period shall be extended on a day-for-day basis for any delay in achieving the Commercial Operations Date due to a Force Majeure Event or action or inaction on the part of Customer.
- 10.6 Effect of Termination. Upon termination of this Agreement for any reason, (i) Company shall remove Customer from the Membership Information List upon the next update to the Utility, and (ii) Company shall have no further obligation to request Utility to deliver and Customer shall have no further obligation to subscribe to any Bill Credits from the Utility; provided, however, that Customer shall pay Company for any Bill Credit Payments with respect to any Bill Credits that have or may continue to be allocated to Customer by the Utility until the Membership List can be changed with a replacement customer. In connection with the foregoing sentence, Customer and Company agree to execute any documents as may be reasonably required by the Utility.

## **11 LIMITATIONS OF LIABILITY**

- 11.1 Limitation of Liability. LIABILITY OF EACH PARTY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, IN CONNECTION WITH THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.
- 11.2 COMPANY DOES NOT REPRESENT OR WARRANT ANY MINIMUM PRODUCTION, SOLAR OUTPUT, OR BILL CREDIT AMOUNT. COMPANY DOES NOT SELL, TRANSMIT OR DISTRIBUTE SOLAR ELECTRICITY TO CUSTOMER UNDER THIS AGREEMENT. COMPANY DOES NOT PROVIDE CUSTOMER WITH OWNERSHIP OF, OR ANY INTEREST IN, ANY UTILITY INCENTIVES, TAX INCENTIVES, TAX ATTRIBUTES, ENVIRONMENTAL ATTRIBUTES, ENVIRONMENTAL INCENTIVES, OR RECS UNDER THIS AGREEMENT, ALL OF WHICH WILL BE OWNED BY COMPANY OR THE UTILITY AND USED BY COMPANY AS COMPANY MAY DETERMINE FROM TIME TO TIME. CUSTOMER UNDERSTANDS THAT COMPANY HAS NOT GUARANTEED OR MADE ANY REPRESENTATIONS OR WARRANTIES THAT THE OPERATION OF THE FACILITY WILL BE UNINTERRUPTED OR ERROR FREE. COMPANY DOES NOT REPRESENT OR WARRANT THAT ANY CHANGE TO STATE OR FEDERAL LAW OR CHANGES TO THE TARIFF OR THE PROGRAM WILL NOT ADVERSELY AFFECT CUSTOMER OR WILL NOT CAUSE CUSTOMER TO BE INELIGIBLE FOR THE PROGRAM.

## 12 ASSIGNMENT

- 12.1 Prior Written Consent. Customer may not assign this Agreement nor assign or transfer the Bill Credits without the prior written consent of Company, which consent may not be unreasonably conditioned, withheld or delayed. Company may assign this Agreement, or any of Company's rights, duties, or obligations under this Agreement, to another entity or individual, including any affiliate, whether by contract, change of control, operation of law, collateral assignment or otherwise, without Customer's prior written consent.
- 12.2 Transfer to an Affiliate Facility. Company, in Company's sole discretion, may from time to time transfer Customer to another Facility owned or managed by Company or its Affiliates, provided that Customer receives similar rights and benefits as hereunder. Company shall provide Customer with written notice of such transfer and shall provide an updated Appendix A with the new Facility information. Such updated Appendix A shall be deemed to be added to this Agreement and such transfer may be made without the need for additional consent or signature of the Parties.

### 13 AMENDMENT FOR FINANCING

13.1 Obligation to Modify this Agreement for Financing. If a Lender requires this Agreement to be modified, or if Company determines that this Agreement needs to be modified in order to finance, develop or operate the Facility, the Parties shall enter into negotiations to amend this Agreement to materially conform to such requirements and to the original intent of this Agreement in a timely manner. If the Parties, negotiating in good faith, cannot agree on such amendments within thirty (30) days of notice of the required Lender modifications, or if Company determines in good faith that this Agreement cannot be amended to allow the Facility to be financed, developed or operated in a commercially reasonable manner, then Company shall have the option, but not the obligation, to terminate this Agreement upon thirty (30) days prior written notice to Customer without further liability on the part of either Party, provided that Customer and Company shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

### 14 MISCELLANEOUS

14.1 Notices. All notices and other formal communications which a Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon receipt, and shall be sent by any of the following methods: electronic notification; hand delivery; reputable overnight courier; or certified mail, return receipt requested, and shall be sent to the following addresses:

If to Company: \_\_\_\_\_, LLC  
c/o Clean Energy Collective, LLC  
363 Centennial Parkway, Suite 300  
Louisville, CO 80027  
Attn: Tom Sweeney

with a copy by email to [Tom.Sweeney@easycleanenergy.com](mailto:Tom.Sweeney@easycleanenergy.com)

If to Customer: [Name]  
[Address]  
[Contact]  
[Email]

Either Party may change its address and contact person for the purposes of this Section 14.1 by giving notice thereof in the manner required herein.

14.2 Applicability of Open Records Act. The Parties acknowledge and agree (a) that Customer is required to comply with the Colorado Open Records Act, and (b) that the terms of this Agreement contain and constitute confidential and privileged market information and

trade secrets of Company, which if disclosed to Company's competitors could harm the Company. The Customer agrees to not disclose the terms hereof to any other entity or person, except as may be required under the Open Records Act or other requirements of law. Customer will advise Company of any request for the foregoing information under the Open Records Act.

- 14.3 Governmental Immunity. Customer and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to Customer and its officers, attorneys or employees, as applicable hereto.
- 14.4 Severability. Should any terms of this Agreement be declared void or unenforceable by a court of competent jurisdiction, such terms will be amended to achieve as nearly as possible the same economic effect for the parties as the original terms and the remainder of this Agreement will remain in full force and effect.
- 14.5 Service Contract. This Agreement is a service contract under Internal Revenue Code Section 7701(e), and its various subparts.
- 14.6 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Colorado without regard to principles of conflicts of law.
- 14.7 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 14.6 shall be the exclusive mechanism to resolve disputes arising under this Agreement.
- 14.7.1 Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of formal negotiations between respective executive officers of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for formal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.
- 14.7.2 In the event that the Parties cannot timely resolve a dispute by negotiation, the sole venue for judicial enforcement shall be the district Courts of Colorado. Each Party hereby consents to the jurisdiction of such courts, and to service of process in the State of Colorado in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.
- 14.7.3 Notwithstanding the foregoing, injunctive relief from any court may be sought without resorting to negotiation to prevent irreparable harm that would be caused by a breach of this Agreement.

- 14.7.4 EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).
- 14.8 Entire Agreement. This Agreement, together with its appendices, exhibits contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 14.9 Press Releases. Customer authorizes Company and Company's Affiliates to use Customer's name and the nameplate capacity allocated to Customer hereunder for reporting purposes, such as official reporting to Governmental Authorities, the Utility, public utility commissions and similar organizations, and in marketing materials that Company or Company's Affiliates generate or distribute. Following written notice from Customer to opt out of Company's marketing program, Company shall no longer identify Customer by name in Company's marketing materials.
- 14.10 Compliance with Laws. Each Party shall comply with all Applicable Legal Requirements pertaining to it.
- 14.11 Customer Covenants.
- 14.11.1 Customer Information. The information set forth in Appendix A hereto is accurate, and Customer is a current customer of the Utility named in Appendix A at the Utility Service Location specified therein.
- 14.11.2 No Other Assignment or Authorization. Customer has not transferred, assigned or sold Customer's Capacity, Solar Interest, or Customer's Solar Output to any other person or entity, and will not do so during the Term, except as permitted under this Agreement. Customer has not provided any other person or entity any of the authority granted to Company under this Agreement and will not do so during the Term.
- 14.11.3 No Liens or Encumbrances. Customer has not granted or placed or allowed others to place any liens, security interests, or other encumbrances on the Customer's Capacity, Solar Interest, or Customer's Solar Output and will not do so during the Term.
- 14.11.4 Utility Bill. Customer shall promptly pay Customer's Utility bills by the date due thereof, and Customer understands that any failure to pay Customer's Utility bill on time may cause Customer to no longer be eligible to receive Bill Credits under this Agreement.

- 14.12 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of each Party hereunder are individual and neither collective nor joint in nature.
- 14.13 Amendments; Binding Effect; Waiver. Except as otherwise permitted in this Agreement, this Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by each of the Parties to this Agreement or its respective successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and each of their respective successors and permitted assigns. No waiver of any provision of this Agreement will be binding unless executed in writing by the Party making the waiver. Neither receipt nor acceptance by a Party of any payment due herein, nor payment of same by a Party, shall be deemed to be a waiver of any default under this Agreement, or of any right or defense that a Party may be entitled to exercise hereunder.
- 14.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart.
- 14.15 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 14.14.
- 14.16 Estoppel. Customer agrees, at any time within ten (10) days of Company's written request, to execute, acknowledge and deliver to Company a written statement in form and content acceptable to Company stating whether the Agreement has been modified and is in full force and effect, whether Company is in default of said terms, and whether there exist any charges or set-offs against Company, and setting forth such other matters as Company or any Lender or potential lender may reasonably request.
- 14.17 Survival. The provisions of Sections 3.4, 3.5, 5.4, 5.5, 10, 11, 12, and 14 shall survive the expiration or earlier termination of this Agreement.
- 14.18 Third-Party Beneficiaries. A Lender is a third-party beneficiary to this Agreement and is entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party hereto.

*[Signature page to follow.]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**CUSTOMER**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMPANY**

\_\_\_\_\_, LLC

By: Clean Energy Collective, LLC

Its Manager

By: \_\_\_\_\_

Tom Sweeney, President of Renewable Assets

List of Appendices to Agreement

Appendix A: Customer and Facility Information

Appendix B: Payment Method Authorization

Appendix C: Payment Rate List



## Appendix A

### Customer and Facility Information

(This Appendix will be completed and an updated copy of this Appendix will be provided after the Commercial Operations Date of the Facility.)

**Customer Name(s):** [CUSTOMER]  
**Customer Billing Address:** [CUSTOMER BILLING ADDRESS]  
**Email:** [CUSTOMER EMAIL]  
**Telephone:** [CUSTOMER PHONE]  
**Name of Utility:** [UTILITY]  
**Facility Name:** [FACILITY NAME]  
**Facility Company Name:** [FACILITY SPV NAME]  
**Facility Location:** [FACILITY ADDRESS]  
**Facility Nameplate Capacity (kW):** [TOTAL KW OF FACILITY]  
**Commercial Operations Date:** [FACILITY INTERCONNECTION DATE]

<b>Customer Utility Service Location</b>	<b>Account Number</b>	<b>Meter Number</b>	<b>Initial Capacity (kW)</b>	<b>Current Capacity (kW)</b>	<b>Customer's Portion (%)</b>	<b>Estimated Initial Annual Customer's Solar Output (kWh)</b>

## Appendix B

### PAYMENT METHOD AUTHORIZATION

Customer shall provide Company with information regarding a checking or savings account which Customer has with a bank or other financial institution, which information shall include the bank's or financial institution's name, the legal name of the account holder, the account number, and the routing number (collectively, the "**Designated Account Information**"), via Company's online customer portal (the "**Account Portal**"), within ten (10) days after Customer's receipt of the Account Portal link and password. The account for which the Designated Account Information is provided, and all successor accounts for which Customer provides Company with Designated Account Information, is referred to in this Agreement as the "**Designated Payment Account.**" Customer shall also provide via the Account Portal the information for a valid credit card, to be used only in the event the Designated Payment Account fails or is unable to be used for payment. At all times during the Term, Customer will maintain a Designated Payment Account in good standing with the bank or other financial institution holding such account so as to provide Company with timely and full payment by ACH withdrawal from the Designated Payment Account of each monthly Invoice as such monthly Invoice shall become due. Should a Designated Payment Account be closed or otherwise become unavailable for payment of the monthly Invoice on a timely basis, Customer will provide Company with a replacement Designated Payment Account information within five (5) business days via the Account Portal and provide Company with full payment of any amounts which are then due from Customer to Company. Notwithstanding any other provision of this Agreement, Company shall not, and shall not be obligated to, seek to have the Utility allocate Bill Credits to Customer until Customer has executed the Payment Method Authorization and provided the Designated Account Information.

The Designated Payment Account information to be provided via the Account Portal will be used for the automatic deduction of Customer's payments pursuant to this Agreement from the Designated Payment Account. Customer hereby authorizes Company, or Company's service provider, to debit the Designated Payment Account on behalf of Customer by ACH wire transfer, on a monthly basis, not sooner than thirty (30) days after Customer's receipt of the Invoice (the "**Payment Date**") for payment of regular Invoices issued by Company, and other amounts due, pursuant to the terms of this Agreement (collectively, the "**Payment**"). Customer further authorizes and consents to the use of electronic documents and authorizations in connection with ACH transactions pursuant to this Agreement.

Customer understands and agrees that if sufficient funds are not available from the Designated Payment Account or the Payment fails for any reason on the Payment Date, Company will charge Customer's credit card on file. Customer shall (i) reimburse Company for all penalties and fees incurred as a result of Customer's bank rejecting an ACH withdrawal as a result of unavailable funds or the Designated Payment Account not being properly configured for ACH transactions, (ii) pay an additional ten dollars (\$10.00) as a late fee for each failed ACH transaction due to insufficient funds, and (iii) pay an alternate payment method fee of ten dollar (\$10.00) for use of any payment method other than the Designated Payment Account (collectively, "**NSF Charges**"). Payment for NSF Charges will be initiated as a separate transaction from the Payment. Customer understands and agrees that no Payment will be considered "paid" until Company receives the funds in full, and that Company shall incur no liability as a result of withdrawal being dishonored.

by the account holder's bank, or for any charges made to Customer by Customer's bank in connection with any ACH transaction.

Recurring Bill Credit Payments shall be drafted monthly, and Company shall provide Customer with notice of the Invoice ten (10) days prior to the Payment Date. Depending upon the timing of Payments made by Customer, Company may need to draft more than one month's Bill Credit Payment (including past due amounts) in order to bring the Payments due to a current status.

Customer understands and agrees that the authorizations provided hereby will remain in effect until Company receives a notification of termination in writing from Customer. Customer shall notify Company in writing of any changes in Customer's Designated Payment Account information or of termination of the authorizations at least fifteen (15) days prior to the beginning of the next month. Notice to Company hereunder shall be delivered to the following address:

Clean Energy Collective, LLC  
363 Centennial Pkwy. Ste. 300  
Louisville, CO 80027  
Attn: Accounting

If the above noted Payment Dates fall on a weekend or holiday, Customer understands that the Payments may be executed on the next business day. For ACH debits of Customer's Designated Payment Account, Customer understands that because these are electronic transactions, these funds may be withdrawn from the account as soon as the above noted Payment Dates.

Customer acknowledges that the origination of ACH transactions to the Designated Payment Account must comply with provisions of U.S. law, and that Customer will not dispute these scheduled transactions with Customer's bank, so long as the transactions correspond to the terms indicated in this Appendix B.

Customer certifies that the Designated Payment Account is enabled for ACH transactions. Customer certifies that the Designated Payment Account may be charged or drawn by Customer or in the legal business name of Customer. Customer certifies that the individual designated below has been authorized by Customer to provide the Customer's Designated Account Information electronically via the Account Portal, and to enter into and authorize ACH transactions for and on behalf of Customer:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Company will provide Customer with a link and password to the Account Portal within ten (10) days after the Effective Date hereof by delivery of the link to the email address listed above.

The individual completing this Payment Method Authorization certifies the information contained herein is complete, true and correct, to the best of his or her knowledge, and that he or she has the authority to bind Customer and is authorized by Customer to enter into the terms and conditions set forth in this Payment Method Authorization for, and on behalf of, Customer.

**CUSTOMER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: BILL GIBSON, ASSISTANT DIRECTOR**  
**RE: COMMUNITY DEVELOPMENT DEPARTMENT REPORT**  
**DATE: JANUARY 28, 2020**

**Department Updates:** We are pleased to announce that Don Reimer has joined the Community Development Department team as the new Director. Don brings many years of planning and engineering experience to this position, most recently as the Summit County Planning Director. He will begin his new role with the Town of Frisco on January 27. Please welcome him the next time you are at Town Hall.

**Planning Commission Activities:** Planning Commission meeting on December 5, 2019:

1. Planning File No. 104-19-OR: A code text amendment to Chapter 180 of the Code of Ordinances of the Town of Frisco, concerning zoning, by amending Section 5.2.11 thereof, concerning telecommunications facilities, to revise regulations concerning small cell wireless facilities to conform to Federal Communications Commission requirements and limitations.

*The Planning Commission forwarded a recommendation of approval to the Town Council for the proposed code amendments by a vote of 5-0.*

The Planning Commission did not hold meetings on December 19, 2019; January 2, 2020; or January 16, 2020.

**Planning Division Activities:** Administrative review applications approved in November: 14

Application Type	Applicant	Address
Sign Permit	Ten Mile Music Hall	710 East Main Street
Administrative Site Plan (Solar)	Sandbox Solar LLC	103 Mountain Poppy Way
Sign Permit	Howard Head Sports Medicine	226 Lusher Court, Unit 105
Administrative Site Plan (Solar )	Active Energies	418 South 5th Avenue
Sign Permit	Sherwin Williams	699 Ten Mile Drive, Unit 1
Sign Permit	Kitchenscapes	323 West Main Street, Unit 102
Administrative Site Plan	Kim Howland	35 Hawn Drive
Master Sign Plan	Peak One Industrial Plaza	699 Ten Mile Drive
Administrative Site Plan	McDonald Construction	540B Gold Dust Drive

Administrative Site Plan	Hess Custom Homes	321 North 6th Avenue
Administrative Site Plan	Karowski Roofing	170 Wichita Avenue, 1 Alpine Drive
Administrative Site Plan	Chris Steuri	215D South 5th Avenue
Administrative Site Plan	Egress Inc.	714 Meadow Drive
Administrative Site Plan (Solar )	Active Energies	271 North 6th Avenue

Administrative review applications approved in December: 6

<b>Application Type</b>	<b>Applicant</b>	<b>Address</b>
Sign Permit	Steadman Clinic	226 Lusher Court, Suite 103
Administrative Site Plan	Kimberly Howland	35 Hawn Drive
Administrative Site Plan	Kaupas Water	714 Meadow Drive
Administrative Site Plan	Modesto Ramos	740 North Summit Boulevard
Administrative Site Plan	Andrew Hill	106B Alpine Drive
Administrative Site Plan	Carrie Kim	302 Emily Lane

**Building Division Activities:**

- Permits issued in November included the following:
  - Building Permits: 16
  - Plumbing & Mechanical Permits: 8
  - Electrical Permits (issued by Summit County): 14
  - Solar Permits: 7
  
- Permits issued in December included the following:
  - Building Permits: 6
  - Plumbing & Mechanical Permits: 16
  - Electrical Permits (issued by Summit County): 6
  - Solar Permits: 0
  
- Valuation of permits issued in November: \$551,570  
 Valuation of permits issued in December: \$2,109,982
  
- Inspections performed in November: 171  
 Inspections performed in December: 197
  
- Rapid Review Wednesday customers assisted in November: 29  
 Rapid Review Wednesday customers assisted in December: 23
  
- Certificates of Completion / Certificates of Occupancy issued in November: 1  
 Certificates of Completion / Certificates of Occupancy issued in December: 13  
 Including Estates on Galena Units 1, 2, 3, and 7; Rebel Sports tenant finish; and Next Page Books & Nosh expansion

**Front Desk Activities:**

Phone calls and walk-in customers served in November: 542  
 Phone calls and walk-in customers served in December: 555



MEMORANDUM

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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:** JANUARY 28, 2020

**Destination PR/Media Coverage Highlights:**

- Rolling Stone Magazine included Frisco's Snoe Down music festival in March in their article "[The 10 Best Colorado Mountain Town Music Festivals of 2020](#)". The festival is taking place at 10 Mile Music Hall and Copper Mountain. Rolling Stone has 19,284,278 monthly visitors to their website.
- The New York Times included Frisco in [an article about how multi-mountain passes are changing the ski vacation](#). It's a good read, and reinforces our messaging as Frisco as the ideal "home base" for skiers staying overnight and visiting multiple mountains. The NYT online receives 29.98 million unique monthly visitors, and this ran in print as well with a distribution over 1 million.
- Frisco was included in an article from Mind Body Green titled "[Top Reasons to Skip the Beach and Embrace the Mountain Wellness Retreat this Winter](#)." Mindbodygreen.com covers personal health and wellness and sees 8,798,741 unique monthly visitors.
- The Frisco Adventure Park was featured in a [report about holiday visitors](#) on Channel 4.
- The Frisco Adventure Park was included in Mile High Mamas December giveaway "[Ultimate Denver Holiday Giveaway: \\$1,500+ in hotel stays and adventures!](#)" Mile High Mamas has a reach of 45,000 unique monthly visitors.
- Wassail Days was included in Colorado Parent's [calendar for the December issue](#). Colorado Parent has a circulation of 45,821 readers.
- Frisco was included in PlanetWare's "[16 Best Christmas Towns in Colorado](#)". PlanetWare is an online outlet that helps travelers search for travel gems related to their interests, provides visit decision details, and helps in making judgments about the merits of tourist attractions and has a reach of more than 765,000 unique monthly visitors.

- Frisco and Wassail Days were featured in the December issue of Food Network Magazine, in their “[Christmas in Denver](#)” story. Food Network Magazine is published monthly and targets food lovers and Food Network fans of all ages and culinary abilities. It has a circulation of 1.78 million.
- Tubing at the Adventure Park was included in Curbed’s article: “[15 ways to enjoy Colorado ski towns without actually skiing](#)”. Curbed covers national real estate, architecture, interior design, home technology, renovations and all things home. It has a reach of more than 3.1 million unique monthly visitors.
- Sleigh rides in Frisco are included in The Know’s article: “[10 things that are guaranteed to get you into the holiday spirit in Colorado](#)”. The Know is The Denver Post’s lifestyle website, and it receives 550,000 unique monthly visitors.
- 5280 included Wassail Days in their article “[35 Fantastic Foodie Events Coming to Colorado in December](#)”. 5280 receives 139,000 unique monthly visitors.
- In Good Taste Denver also covered Wassail Days in their [holiday roundup](#). In Good Taste Denver sees 10,225 unique monthly visitors.
- Wassail Days was included on 9News.com in “[The best Colorado mountain town holiday festivals in 2019](#)”, and they did a report on the [Adventure Park opening](#). 9News.com sees 3,157,184 unique monthly visitors.
- Mountain Meetings included Frisco as a [mountain town with a standout Main Street](#). Their website sees about 9,100 unique monthly visitors.

**Governmental Communications Highlights:** Bag fee- Frisco businesses/retailers were visited at least one time (many received two visits) personally in the lead up to the bag fee launch and were provided with Town of Frisco signage for point of sale and entrances. Retailers also received more information via mail and email. There were also multiple social media posts on Facebook and NextDoor. Three town staff handed out over 300 free bags at Summit Boulevard businesses on January 1 in order to spread the word about the bag fee.

**Special Events:**

Wassail Days by the Numbers

- **12 Sips of Wassail cards:** 1,786 redeemed total, down 79 from last year; likely the result of one less event day. This means there were over 21,400 visits to businesses, which were inspired by Wassail Days.
- **63 businesses** participated in Wassail Days 2019, which is comparable to past years.
- **2019 Wassail Winners:**  
 1st place: The Frisco Lodge  
 2nd place: Rivers  
 3rd place: Colisco



- Merchants have determined that **2020 Wassail dates** will be by November 28-December 6 to once again take advantage of “small business Saturday” and a Saturday lighting, which does not compete with other events in Summit County.
- **Tree lighting and fireworks** saw over 300 attendees and one Santa on a blustery and snowy night.
- **Free Tubing:** The tubing hill saw 153 people at Adventure Park experiencing free tubing.
- **Free Nordic Skiing:** 109 free tickets were given out for free skiing at the Nordic Center. One pair of skiers even came in after skiing and said “you got us!” and purchased two season passes.
- **Santa’s Calling:** With a lot of help from Summit Fire & EMS staff, Santa was able to call 64 children to chat about wish lists, reindeer, and anything else the kids could come up with. Our team reformatted and branded the signup sheets this year, as well as continuing online signup for the second year.
- **Wassail Night at the Museum** was attended by 175+ people.
- **Breakfast with Santa:** Benefitting Summit County Preschool, this event drew 170 attendees to the Summit Senior Center and raised \$5,300.00 for the school; almost \$1,000 more than last year.
- **Santa visits** at the Frisco Historic Park saw almost 500 children.
- **Soup Cup Classic:** 205 attendees enjoyed samples of the 21 different soups, brownies, and unlimited tubing.

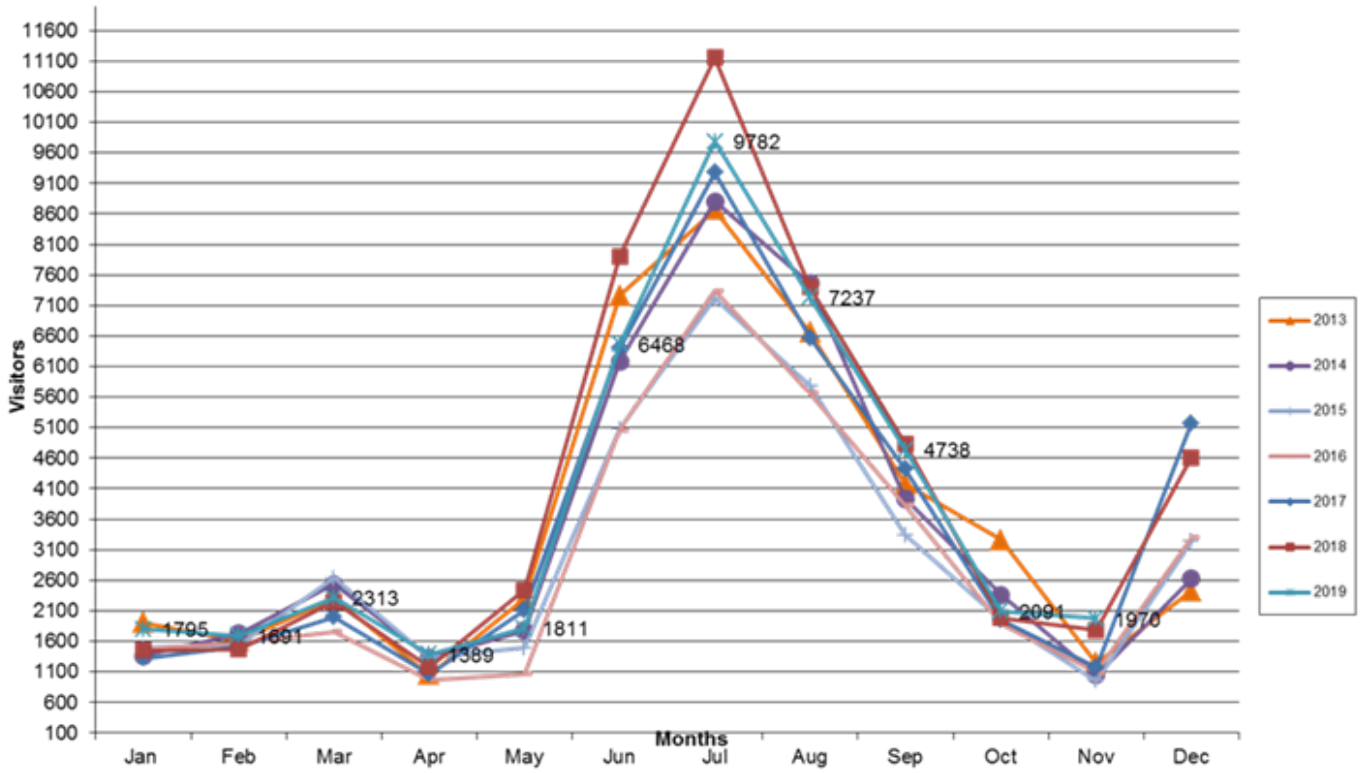


Photo Credits: Todd Powell

### **Frisco/Copper Visitor Information Center:**

- The Information Center saw 1,970 visitors in November 2019 (1,778 in November 2018).  
The Information Center saw 4,230 visitors in December 2019 (4,612 in December 2018).
  
- The Information Center answered 192 phone calls in November 2019 (203 in November 2018).  
The Information Center answered 304 phone calls in December 2019 (249 in December 2018).
  
- Public computer use- 15 in November 2019 (24 in November 2018)  
- 12 in December 2019 (31 in December 2018)
  
- Restroom usage
  - Men's restroom usage  
November 1-30, 2019: 1,691  
December 1-31, 2019: 2,176
  - Women's restroom usage  
November 1-30, 2019: 1,159 – missing 11 days of data  
December 1-31, 2019: 2,190
  
- Water bottle pledge and giveaway - November- 22  
- December- 88
  
- Guest comment highlights: “Thanks for the highway information” “Thanks for the hospitality” “Great info.” “Thanks for a fun Wassail Night” “Nice job on the Wassail Mug” “Came from Maryland for Wassail Days” “Excellent people, restaurants, atmosphere and Christmas spirit” “Beautiful town” “Very helpful”
  
- The Visitor Center had a booth at the Girls on the Run event. The booth had a spin wheel game for prizes and also provided Town info.
  
- The Visitor Information Center served as Wassail Days “headquarters” and distributed Wassail Days mugs in exchange for completed 12 Sips of Wassail cards, as well as serving Wassail, providing Wassail info and restocking businesses with Wassail supplies.
  
- 2019 Overall
  - 2019 walk-in visitor numbers were down a total of 2,927 (45,515 total in 2019) visitors which equals approximately a 6% decrease in comparison with 2018, which was a record year. This decrease was seen in the months of May, June, July, August, September and December.
  - Both telephone calls and public computer usage also decreased in 2019. Public computer usage decreased by approximately 45% and telephone calls decreased by approximately 5.5%.

### Walk in Visitors 2013-2019





## MEMORANDUM

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P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO:** TOWN COUNCIL  
**FROM:** DIANE MCBRIDE, ASSISTANT TOWN MANAGER / RECREATION & CULTURE DIRECTOR  
**CC:** KATIE BARTON, GENERAL MANAGER – ADVENTURE PARK  
ROSE GORRELL MUSEUM MANAGER  
TOM HOGEMAN, GENERAL MANAGER - MARINA  
LINSEY JOYCE, PROGRAMS MANAGER  
**RE:** **RECREATION & CULTURE DEPARTMENT REPORT – DECEMBER 2019**  
**DATE:** JANUARY 28, 2020

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### Overview

This Department report highlights operations, programs and events for the month of December.

- The tubing hill, ski & ride hill, and the Nordic Center performed very well during the month of December. Total tubing hill participation in December totaled 15,904 people, with over 50% of the guests tubing from December 19-31. The largest volume day was on Friday, December 27<sup>th</sup>, with 1,059 tubing hill participants on the hill.
- The beginner ski and ride hill opened early on 12/19 for a total of 239 participants between December 19-31. The hill typically opens in early January but staff worked hard to open the hill early to accommodate the holiday guests.
- All Nordic trails were open by December 21<sup>st</sup> and participation numbers were strong with daily pass sales and lessons.
- Each division of the Recreation and Culture Department hit targeted 2019 budget revenues for the year, and managed expenses exceptionally well:
  - Adventure Park: Year-end revenues exceeded budgeted revenues by over \$100,000, finishing the year at 105.7% of budget
  - Nordic Center: Year-end revenues were nearly \$130,000 ahead of budget or 137% of budget.
  - Marina: Revenues finished nearly \$350,000 ahead of budget or 112% of budget.
  - FHPM: Exceeded budgeted revenue figures by nearly \$4,000, or 123% of budget.
  - Recreation Programs & Events: Revenues finished at 117% of budget, which is nearly \$50,000 ahead of budgeted figures
- Planning efforts continued for:
  - Implementation of Phase 2 of the Marina Master Plan
  - The Peninsula Recreation Area Visioning and Implementation Plan

- The Historic Park and Museum site plan
- The Excelsior House relocation plan

Each of these updates and reports will be before Council in early 2020.

- The Museum closed out 2019 with 33,990 visitors to the Schoolhouse Museum, 490 school-age field trips, and 4,451 participants in community programming for a total of approximately 38,391 visitors to the Frisco Historic Park & Museum.
- Linsey Joyce, Programs Manager, submitted and successfully received a \$90,000 grant for playground equipment for Walter Byron Park through GameTime.

The report below details each of the different divisions (Adventure Park, Marina, Historic Park and Museum, Recreation Programs and Events) within the Department. Attendance numbers (as appropriate) and financials are all presented for December.

### **Adventure Park**

For the purpose of this report, the Adventure Park consists of all aspects of the Peninsula Recreation Area (PRA) including the tubing hill, ski and ride hill, field and facility reservations, concessionaire operations, the bike park, the skatepark, disc golf, trails and the Nordic Center. Finances are broken down into 1160 accounts (tubing hill, ski and ride hill, Day Lodge) and 1170 accounts (Nordic and Trails).

December highlights for the **Adventure Park (1160)** included the following:

- The tubing hill was busy throughout the month of December. The operation went from three to six lanes on 12/21. Total tubing hill participation in December totaled 15,904 people. Participation was down ~3% compared to 2018, which was a direct result of not being fully open for 4 days over the holiday period. The operation opened from 10a-2p on 12/24, 12/25, 12/31, and 1/1, with half capacity due to staffing shortages. These four days fall on Tuesdays and Wednesdays, which is typically when the tubing hill is closed. Over the holiday stretch, the operations typically extend to a 7d/wk operation, 9a-6p. However, staffing was limited and as a result, these four additional days had reduced hours of operation and reduced capacity.

Holiday rates were in effect from December 19-January 5 with a 1-hour price of \$32 (\$27 for Summit County residents; \$25 for Frisco residents). This is an increase of \$4/hour over the regular tubing rates.

- Staff helped with Wassail Days with free tubing on 12/2 and the Soup Cup Classic on 12/8.
- Opened the beginner ski and ride hill early on 12/19 and sold tickets for a price of \$40/day through the holidays. Saw a total of 239 participants on the ski and ride hill from 12/19-12/31.
- Total water usage numbers for the season finished at 6,223,000 gallons, which translates into 19.10 acre feet. Snowmaking operations ended for the season in December due to significant damage to the pipes. Repair work will continue in 2020.

- The Adventure Park performed exceptionally well in 2019. Year-end revenues exceeded budgeted revenues by over \$100,000, finishing the year at 105.7% of budget. Of the total Adventure Park budget, tubing hill revenue accounts for nearly 90% of the total budget. Total tubing hill revenue for 2019 hit \$1,810,616, and total Adventure Park revenues (1160) hit \$2,060,329. The ski and ride hill also performed exceptionally well in 2019, bringing in \$55,568 in total revenue and far exceeding budget projections. Staff concentrated on opening the ski and ride hill in December this year to capture the beginner skier and riders – a decision that paid off.

Expenses also tracked very well in 2019, finishing the year at 83% of the budgeted amount. This number will increase as additional 2019 expenses are still being accounted for at this time. Staffing accounts for the largest expense to operate the Adventure Park at nearly 65% of total expenses. Staff will continue to diligently monitor expenses in 2020 while also assessing business opportunities to increase prices, product offerings, and new revenue streams.

**Table 1: Frisco Adventure Park Figures (1160)**

	December 2019	December 2018	December 2017
Tubing Hill Participation	15,904	16,465	19,115

	December 2019	December 2018	December 2017
Revenue – 1160	\$542,625	\$552,823	\$583,422
Expenses – 1160	\$142,017	\$138,899	\$137,009

	YTD Actual 2019	Budget 2019	YTD Actual 2018	YTD Actual 2017
Revenue – 1160	\$2,060,329	\$1,948,500	\$2,107,698	\$2,021,356
Expenses – 1160	\$1,087,991	\$1,307,679	\$1,085,087	\$1,151,579

December highlights for **Nordic and trails (1170)** included the following:

- Race #1 of the Frisco Nordic Up & At 'Em Ski Series took place on a frigid December 18<sup>th</sup> morning; a total of 17 burly racers started at 7am with a crisp temperature of 3°!
- Day pass visits were strong in December, especially over the holiday period. Numbers were ~14% less compared to December 2018 figures yet still strong.

Season pass visits are estimated as not all visits are captured with sign-ins. Visits were still strong in December and feedback from the season pass holders has been very positive this season.

- All trails were open by December 21<sup>st</sup>. Staff groomed and tracked all trails each day, and built snow fence as time allowed. The snow fencing has proven to be very beneficial this year.
- There is new retail inventory this year in the Nordic Center – come check it out!

- The Nordic Center performed exceptionally well in 2019. Revenues for December were comparable to 2018 figures; year-end revenues were nearly \$130,000 ahead of budget or 137% of budget. Daily pass sales, punch pass sales and equipment rentals accounted for a significant portion of this increase in revenue for the year.

Expenses were also managed well, finishing the year at 64% of budget or nearly \$180,000 under budget. Expenses are still rolling in at this time and this number is expected to change through the early part of January. A significant savings is in the labor budget as the two, 10-month trail/Nordic employees were not hired until May 2019, thereby resulting in a labor savings of nearly five months. All positions are fully hired at this time. The two, 10-month trail/Nordic employees are responsible for the daily grooming of the Nordic trails and the summer and winter maintenance of the trail system. The feedback this season on the Nordic grooming has been exceptional.

**Table 2: Frisco Nordic Center and Trails Figures (1170)**

	December 2019	December 2018
Day Pass Visits	1,744	2,024
Season Pass Holder Visits	~600	~700

	December 2019	December 2018	December 2017
Revenue – 1170	\$140,862	\$149,530	\$48,516
Expenses – 1170	\$27,599	\$38,128	\$29,153

	YTD Actual 2019	Budget 2019	YTD Actual 2018	YTD Actual 2017
Revenue – 1170	\$474,799	\$345,600	\$397,750	\$264,830
Expenses – 1170	\$322,007	\$500,899	\$232,063	\$200,487

### **Marina**

December highlights for the Marina included the following:

- Staff continued to work with Stais Architecture & Interiors on Phase 2 of the Marina Master Plan implementation. This presentation will be before Council on January 14<sup>th</sup>. Work also continues with the engineers at this time on the lift station design and fuel system design.
- Staff continued invoicing for fall work orders, and collecting outstanding balances from customers.
- The standpipe walk around took place on December 9<sup>th</sup>. All questions have been answered and the project is moving forward.



- In January, 2019, the Town issued marina enterprise revenue bonds to complete the first two phases of the Marina Park Master Plan. Per the issuance of the bonds and good business practice, revenues are expected to hit targeted budgets annually. The cost of services is reviewed annually to ensure these budgets are met. For 2020, the following rates are increasing:
  - Slip and mooring rates are increase 10%
  - Dry, winter and trailer storage rates are increasing 25%
  - Racks are increasing 4.25%
  - Power sport rentals are increasing 4-7%
- Despite a slow start to the summer season (weather/construction), the Marina fared exceptionally well in 2019. Revenues finished nearly \$350,000 ahead of budget and approximately \$85,000 ahead of 2018 figures. Rentals (power/paddle) account for nearly 50% of the total Marina revenue budget and are a very labor intensive operation. This summer, the rental revenue exceeded budgeted amounts by nearly \$160,000, which is a credit to the staff and all the hard work they put in to turn over the rental fleet as fast and as efficiently as possible.

Expenses also tracked very well in 2019, finishing the year at 95% of budget. The capital project expense line item for 2019 was budgeted at nearly \$4M. Through December, this line item is sitting at \$3,900,287. Staff did a very good job managing the budgets and projects for all the phase 1 and big dig marina work in 2019. Expenses are higher in December 2019 compared to other years due to \$136,250 in debt service hitting the budget this year.

**Table 3: Frisco Marina Figures (9000)**

	December 2019	December 2018	December 2017
Revenue – 9000	\$86,657	\$18,714	\$3,199
Expenses – 9000	\$232,439	\$44,252	-\$80,616+

+ Negative value due to \$107,682 being refunded to the Debt Services – Principal line item – 90-9000-4334

	YTD Actual 2019	Budget 2019	YTD Actual 2018	YTD Actual 2017
Revenue – 9000	\$1,714,631*	\$1,370,000**	\$2,094,921~	\$1,634,656
Expenses – 9000	\$5,070,678^	\$5,438,064	\$1,394,725	\$972,575

\* YTD Actual 2019 is \$7,120,787, which includes the marina bond proceeds of \$5,406,156. The marina bond proceeds value is removed from this table for year-to-date and year-over-year comparisons.

\*\* Actual 2019 budget is \$6,370,000, which accounts for the \$5M loan proceeds. The \$5M loan proceeds are extracted from this table for year-to-date and year-over-year comparisons.

^ Expenses are higher in 2019 due to the capital improvement projects. 2019 budget for capital improvement projects is \$3,996,700.

~ \$466,057 of this amount in 2018 is from the water agreement settlement



## **Historic Park and Museum**

December highlights for the Historic Park and Museum included the following:

- Visitor attendance totaled 2,704 people (compared to 2,950 in 2018). *Please note that these attendance numbers are based on a click system and therefore do not always accurately reflect all visitors to the museum and park.*
- Museum programs included the following:
  - 12/01 & 12/07- Santa Visits were on par from last year with 490 total visitors.
  - 12/06- Wassail Night at the Museum had 175 people in attendance with cookies from Butterhorn Bakery and holiday songs sung by Nina Waters. The highlight of the night was a reading of the Night before Christmas and a rousing rendition of the 12 Days of Christmas led by Frisco’s own Bill Thomas played by Ben Little. Todd Powell was on hand to document the occasion.
  - Upcoming: 01/06- Staff will begin a full inventory of the Museum collections. Per the Collection Management Policy, full inventories of all object locations are to be conducted every two years. The last documented inventory was in 2015.
- The Museum closed out 2019 with 33,990 visitors to the Schoolhouse Museum, 490 school-age field trips, and 4,451 participants in community programming for a total of approximately 38,391 visitors to the Frisco Historic Park & Museum.
- The Winter Lecture Series will begin in February 2020 and run through the end of March. Speakers will present on a variety of topics including avalanche mitigation, the history of Irish mining in the area, and the 10<sup>th</sup> Mountain Division. The lectures will be held in the Log Chapel at 3pm starting February 5<sup>th</sup>.
- The FHPM is a subsidized operation whereby the cost to operate the facility far outweighs any direct revenue collected through the sale of goods, donations, and rentals. Staff strives every year to hit budgeted revenue targets while managing expenses. In 2019, the FHPM exceeded budgeted revenue figures by nearly \$4,000, and managed expenses well by coming in nearly \$68,000 under budget, or at 78.8% of the budget. Staff will continue to manage expenses and look for opportunities in 2020 to increase revenues including charging for special tours.

**Table 4: Frisco Historic Park and Museum Figures (1125)**

	<b>December 2019</b>	December 2018	December 2017
Attendance	<b>2,704</b>	2,950	2,875

	<b>December 2019</b>	December 2018	December 2017
Revenue – 1125	<b>\$1,236</b>	\$1,453	\$1,668
Expenses – 1125	<b>\$15,011</b>	\$26,231	\$16,997

	<b>YTD Actual 2019</b>	<b>Budget 2019</b>	YTD Actual 2018	YTD Actual 2017
Revenue – 1125	<b>\$21,486</b>	<b>\$17,500</b>	\$21,310	\$19,541
Expenses – 1125	<b>\$254,934</b>	<b>\$323,539</b>	\$252,940	\$253,862

## **Recreation Programs and Special Events**

December highlights for Recreation Programs and Special Events included the following:

- Winter Fun Club ran for six days in December when the Summit School District was out for the holiday break. Participant numbers remained steady with the 2018 numbers.

Grant McKay, the Recreation Programs Lead, spent a good portion of the month planning the Winter Fun Club schedule for the December/January school break; activities included swimming, art with Frosted Flamingo, ice skating, tubing, a scavenger hunt and more!

- Linsey Joyce submitted and successfully received a \$90,000 grant for playground equipment for Walter Byron Park through GameTime.
- The Programs and Events Division performed exceptionally well in 2019. Revenues finished at 117% of budget, which is nearly \$50,000 ahead of budgeted figures. Expenses were also managed exceptionally well, finishing the year at 88% of budget or nearly \$50,000 less than budgeted amounts. This expense number will increase slightly as additional year end expenses continue to roll in at the beginning of 2020. Staff will continue to evaluate the fees charged for programs and special events and will make adjustments as appropriate to continue to help cover costs and maximize revenues.

**Table 5: Programs and Events Figures (1150)**

	<b>December 2019</b>	December 2018	December 2017
Winter Fun Club	<b>120</b>	95	80
Kids Night Out	<b>n/a</b>	n/a	20
Art of Giving After School Art Program	<b>26</b>	n/a	n/a
BOKS	<b>n/a</b>	42	72

*\* Note, in 2017 and 2018, TOF ran the before school BOKS (Build Our Kids' Success) program at Frisco Elementary.*

	<b>December 2019</b>	December 2018	December 2017
Revenue – 1150	<b>\$5,911</b>	\$1,480	\$2,418
Expenses – 1150	<b>\$19,012</b>	\$13,107	\$10,176

	<b>YTD Actual 2019</b>	<b>Budget 2019</b>	YTD Actual 2018	YTD Actual 2017
Revenue – 1150	<b>\$335,824</b>	<b>\$286,500</b>	\$291,712	\$304,918
Expenses – 1150	<b>\$374,838</b>	<b>\$426,578</b>	\$361,290	\$361,111

## **Upcoming Programs, Events and Specials:**

Upcoming programs, events and specials within the Frisco Recreation and Culture Department include the following:

### **Series**

- Up and At 'Em Nordic Race Series - January 8, 22, February 5, 19 – 7am, Frisco Nordic Center
- Winter Lecture Series – February 5-March 25, 3pm – Frisco Historic Park

- Bubble Gum Races – February 17-March 23 – 5pm – Frisco Day Lodge

### **January**

- 1/2, 1/3, 1/6: Winter Fun Club

### **February**

- February 1: Eat, Ski and Be Merry (SNSC)
- February 8: 50<sup>th</sup> Anniversary of the Frisco Gold Rush + Spontaneous Combustion Community Bonfire
- February 22: Frisco Freeze Fat Bike Race
- February 24-28: Winter Fun Club – no school days – Summit School District winter break

### **March**

- March 7: Snowshoe for the Cure – Frisco Nordic Center
- March 14: Brewski
- March 21: Women of Bill's Ranch Tour
- March 22: Historic Town Tour

**RECORD OF PROCEEDINGS  
MINUTES OF THE REGULAR MEETING  
OF THE TOWN COUNCIL OF THE TOWN OF FRISCO  
JANUARY 14, 2020**

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

**Present:** Dan Fallon  
Rick Ihnken  
Hunter Mortensen  
Melissa Sherburne  
Gary Wilkinson

**Absent:** Jessica Burley  
Deborah Shaner

**Public Comment:**

There was no public comment.

**Council Comment:**

There was no Council comment.

**Consent Agenda:**

- Warrant List
- Purchasing Cards
- Home Rule Charter Review: Chapter 1 - General Provisions
- Resolution 20-01, Public Place for Posting Notices
- Resolution 20-02, Designation of Official Publications
- Resolution 20-03, No Pet Events
- Resolution 20-04, Street Closures
- Resolution 20-05, Setting April 7, 2020 Regular Election
- Resolution 20-06, Annual Summer Boat Purchases
- Resolution 20-07, Contract with Squire Patton and Boggs for State Advocacy Services

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

<b>BURLEY</b>	<b>ABSENT</b>	<b>SHANER</b>	<b>ABSENT</b>
<b>FALLON</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>WILKINSON</b>	<b>YEA</b>
<b>MORTENSEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

**New Business:**

Agenda Item #1: First Reading Ordinance 20-01, an Ordinance Amending Chapter 180 of the Code of Ordinances of the Town of Frisco, Concerning Zoning, by Amending Section 5.2.11

thereof, Concerning Telecommunications Facilities, to Revise Regulations Concerning Small Cell Wireless Facilities to Conform to Federal Communications Requirements and Limitations  
STAFF: BILL GIBSON 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

Interim Community Development Director Bill Gibson stated that the purpose of this ordinance is to revise the Frisco Unified Development Code (UDC) to conform to Federal Communications Commission (FCC) requirements and limitations related to small cell wireless facilities. Mr. Gibson indicated that public comment from Verizon has been distributed to Council. Mayor Wilkinson opened the public hearing at 7:25 p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 7:26 p.m.

**MOTION: COUNCIL MEMBER MORTENSEN MOVED TO APPROVE ON FIRST READING ORDINANCE 20-01, AN ORDINANCE AMENDING CHAPTER 180 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING ZONING, BY AMENDING SECTION 5.2.11 THEREOF, CONCERNING TELECOMMUNICATIONS FACILITIES, TO REVISE REGULATIONS CONCERNING SMALL CELL WIRELESS FACILITIES TO CONFORM TO FEDERAL COMMUNICATIONS REQUIREMENTS AND LIMITATIONS WITH THE AMENDED HEIGHT TO TEN FEET. SECOND, COUNCIL MEMBER FALLON. VOTE:**

<b>BURLEY</b>	<b>ABSENT</b>	<b>SHANER</b>	<b>ABSENT</b>
<b>FALLON</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>WILKINSON</b>	<b>YEA</b>
<b>MORTENSEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

**Old Business:**

Agenda Item #2: Second Reading Ordinance 19-24, an Ordinance Granting a Deed of Conservation Easement to Colorado Open Lands, a Colorado Non-Profit Corporation, for the Purpose of the Conservation of an Area Known as the Meadow Creek Wetlands, and Legally Described as Lot 2B, a Resubdivision of Lot 2, Summit Stage Transfer Center 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

Assistant Town Manager Diane McBride stated that this ordinance authorizes a Deed of Conservation Easement Meadow Creek Wetlands, 2019. Ms. McBride stated that the Frisco Community Plan includes the goal of protecting the quality and health of the natural environment in Frisco and the surrounding area. The area of wetlands that is known as the "Meadow Creek Wetlands" has important conservation attributes, including relatively natural wetlands and riparian areas, open space and scenic character, and recreation and educational values. The Town has proposed, and the Army Corps of Engineers has permitted pursuant to Wetlands Permit #SPK-2010-00673, the perpetual conservation of the property as a means of mitigating the disturbance of certain other wetlands in connection with the Town's Frisco Marina Improvement Project, with the ratio of conserved area to disturbed area being approximately twelve (12) to one (1). Mayor Wilkinson opened the public hearing at 7:36 p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 7:37 p.m.

**MOTION: COUNCIL MEMBER FALLON MOVED TO APPROVE ON SECOND READING, ORDINANCE 19-24, AN ORDINANCE GRANTING A DEED OF CONSERVATION EASEMENT TO COLORADO OPEN LANDS, A COLORADO NON-PROFIT CORPORATION, FOR THE PURPOSE OF THE CONSERVATION OF AN AREA KNOWN AS THE MEADOW CREEK WETLANDS, AND LEGALLY DESCRIBED AS LOT 2B, A RESUBDIVISION OF LOT 2, SUMMIT STAGE TRANSFER CENTER. SECOND, COUNCIL MEMBER SHERBURNE. VOTE:**

<b>BURLEY</b>	<b>ABSENT</b>	<b>SHANER</b>	<b>ABSENT</b>
<b>FALLON</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>WILKINSON</b>	<b>YEA</b>
<b>MORTENSEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

**Executive Session:**

Agenda Item #5: Executive Session Pursuant to C.R.S. 24-6-402(4) (f), Personnel Matters - Town Manager, Town Attorney Performance Review

**MOTION: COUNCIL MEMBER MORTENSEN MOVED TO ENTER INTO AN EXECUTIVE SESSION PURSUANT TO C.R.S. 24-6-402(4) (F), PERSONNEL MATTERS - TOWN MANAGER, TOWN ATTORNEY PERFORMANCE REVIEW. SECOND, COUNCIL MEMBER SHERBURNE. VOTE:**

<b>BURLEY</b>	<b>ABSENT</b>	<b>SHANER</b>	<b>ABSENT</b>
<b>FALLON</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>WILKINSON</b>	<b>YEA</b>
<b>MORTENSEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

**MOTION: COUNCIL MEMBER MORTENSEN MOVED TO EXIT AN EXECUTIVE SESSION PURSUANT TO C.R.S. 24-6-402(4) (F), PERSONNEL MATTERS - TOWN MANAGER, TOWN ATTORNEY PERFORMANCE REVIEW. SECOND, COUNCIL MEMBER SHERBURNE. VOTE:**

<b>BURLEY</b>	<b>ABSENT</b>	<b>SHANER</b>	<b>ABSENT</b>
<b>FALLON</b>	<b>YEA</b>	<b>SHERBURNE</b>	<b>YEA</b>
<b>IHNKEN</b>	<b>YEA</b>	<b>WILKINSON</b>	<b>YEA</b>
<b>MORTENSEN</b>	<b>YEA</b>	<b>MOTION CARRIED.</b>	

**Adjourn:**

There being no further business, the meeting adjourned at 8:30 p.m.

Respectfully Submitted,

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Deborah Wohlmut, CMC  
Town Clerk

## LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT, (this "Agreement") is made to be effective as of January 1, 2020, and is between the Town of Frisco, a Colorado home rule town ("Town"), and Murray Dahl Beery & Renaud LLP ("Law Firm") under which the Law Firm shall perform legal services for the Town.

WHEREAS, pursuant to Section 6-1 of the Town Charter, the Town Council of the Town of Frisco has appointed Thad W. Renaud of the Law Firm as its Town Attorney; and

WHEREAS, on or about January 1, 2015, the Town and the Law Firm entered into a Legal Services Agreement (the "Prior Legal Services Agreement"); and

WHEREAS, the Town and the Law Firm desire to terminate the Prior Legal Services Agreement and to substitute this Agreement in its place

NOW THEREFORE, the Town and the Law Firm agree that the Prior Legal Services Agreement is hereby terminated, and further agree as follows:

1. Scope of Legal Services. The Law Firm will provide any and all legal services requested of it by the Mayor, the Town Council, the Town Manager, and any boards or employees of the Town authorized by the Mayor, Town Council or Town Manager to request legal services of the Law Firm. Such services shall include, but are not limited to the following:

a. Attend regular and special meetings of the Town Council; attend work session meetings of the Town Council as requested.

b. Attend meetings and conferences with Town Council, Town boards and commissions, Town staff and officers as directed by the Mayor, Town Council or the Town Manager.

c. Prepare and/or review ordinances, resolutions and Town Charter amendments.

d. Prepare and/or review contracts for services, materials and real estate involving the Town.

e. Respond to all inquiries and communications of a general legal nature from the Mayor, members of the Town Council, the Town Manager, and the Town staff.

f. Represent the Town in its dealings and negotiations with federal, state and local governmental entities and agencies, special improvement districts and utilities, affecting the Town.

g. Represent the Town in litigation matters involving the Town.

h. Enter an appearance in and/or monitor litigation matters that are being actively handled by outside counsel.

i. Represent the people of the Town of Frisco in the prosecution of Code violations in the Frisco Municipal Court.

j. Perform such other duties as may be prescribed by the Frisco Charter, the Town Council, or the Town Manager.

The Law Firm agrees to exert its best efforts on behalf of the Town and to handle the matters for which representation has been requested of it faithfully and with due diligence. The Law Firm cannot and does not guarantee or agree that a result favorable to or satisfactory to the Town will be achieved. No settlement or compromise will be made without the Town's consent.

2. Identification of Client. It is understood that the Law Firm's client for purposes of its representation is the Town of Frisco, and not any of its individual members or constituents, or any other entities whose interests are being represented by those individuals.

3. Term. It is understood that the Town Attorney serves at the pleasure of the Frisco Town Council, and this Agreement shall therefore be for an indefinite term.

4. Performance Review. The parties agree that the performance of the Town Attorney shall be reviewed by the Town Council and Town Manager annually.

5. Designated Town Attorney. The name of the Town Attorney within the Law Firm who will be primarily responsible for all legal services to be rendered to the Town is Thad W. Renaud. The Town Attorney may delegate certain research or drafting projects or other matters to other attorneys in the Law Firm who have expertise in the area of the legal services requested; however, any such delegated work will be performed directly under his supervision and responsibility.

6. Management. At least quarterly, the Town Attorney will confer with the Town Manager to identify legal service priorities, and to plan for the management of the legal services budget.

7. Compensation and Expenses. The Law Firm will charge the Town for its services according to the following provisions:

a. Retainer. The Town agrees to pay the Law Firm a monthly retainer in the amount of \$1240.00. The retainer will cover all services associated with attendance at two regular Town Council meetings per month. In lieu of attendance at Town Council meetings, the Town Manager and Town Attorney may agree to apply the retainer to office hours or other board meetings on a case by case basis.



b. *Fee For Services of Thad W. Renaud.* The hourly fee for all legal services provided by Thad W. Renaud shall be \$225.00.

c. *Fee for Associates of the Law Firm.* The hourly fee for all legal services provided by any Associate attorney of the Law Firm shall be \$170.00.

d. *Fee for Partners and Special Counsel of the Law Firm.* The hourly fee for all legal services provided by any Partner or Special Counsel attorney of the Law Firm shall be that amount that is eighty percent (80%) of the attorney's standard hourly rate from time to time, provided, however, that in no event shall the hourly fee of any such attorney exceed \$220.00.

e. *Development-Related Legal Services.* Notwithstanding the foregoing, the hourly fee for development-related legal services performed by Thad W. Renaud that are actually billed to and paid for by any applicant seeking a land use or development related approval shall be \$250.00.

f. *Fee for Paralegals of the Law Firm.* The hourly fee for all services provided by any Paralegal of the Law Firm shall be \$95.00.

g. *Fee for Municipal Court Prosecution Services.* Notwithstanding the foregoing, the hourly fee for any Associate attorney of the Law Firm providing municipal court prosecution services shall be \$140.00.

h. *Flat Fee for Certain Services.* The Town Manager and Town Attorney may, when they deem it in the best interests of the Town, agree on a flat fee for any discrete legal services project.

i. *Travel Expenses.* The Law Firm will not bill the Town for travel time between Denver and Frisco Town Hall, unless the Town Attorney and/or other Law Firm attorneys are required to travel to Frisco more than twice in one month; in such event, travel time associated with any such additional trips shall be included within the fee of the attorney required to travel.

j. *Other Expenses.* In addition to the foregoing hourly rates for legal services fee, The Law Firm shall charge and the Town shall pay all costs incurred by the Law Firm in providing legal services to the Client. Examples of such costs include charges for filing fees, depositions, expert witnesses, consultants, travel, long distance telephone, computer research, photocopies, scanning, color printer, messenger service, etc. The Client shall, upon request of the Law Firm, advance to the Law Firm the payment of any single item of cost that exceeds Five Hundred Dollars (\$500.00). A copy of the Schedule of Costs is attached hereto as Exhibit A.

k. *Monthly Billings.* The Law Firm will bill the Town on a regular basis, normally each month, for both fees and disbursements. All bills will reflect services already performed and disbursements already made and are due upon receipt. Any amounts not paid

within 60 days of the date of the bill shall be subject to a late payment charge of 1-1/2% per month (18% per year). If the Town fails to pay any charges within 90 days of the date of the bill the Law Firm may elect to stop all work for the Town. The Town's obligation to make prompt payment of all charges does not depend upon achievement of any specific result. Payments will be applied first to the oldest amounts outstanding.

1. *Rates generally.* Except for the fees that are (80%) of a Partner or Special Counsel attorney's standard hourly rate from time to time under subsection "d" above, the Law Firm agrees that it shall not raise nor seek to raise the hourly rates for legal services provided under this agreement for a period of three (3) years from the effective date of this agreement.

8. Billing Statement. The Law Firm will provide a computer generated billing statement each month setting forth the following information in a readable, detailed format:

- a. The date services are provided.
- b. The description of those services.
- c. The legal professional performing those services.
- d. The applicable hourly rate.
- e. The amount of time expended.
- f. A total of the cost of those services.
- g. With respect to disbursements and other expenses, the billing statement will indicate the date, the item of expense and the cost of that expense in a cumulative total of all expenses that month.

9. Miscellaneous. The Town may terminate this Agreement at any time. If the Town discharges the Law Firm, the Town shall pay all fees and costs incurred to the date of termination. Subject to the Colorado Rules of Professional Conduct and any applicable court rules, the Law Firm may, after reasonable advance written notice to the Town, terminate this Agreement. If the Law Firm terminates this Agreement, the Town shall pay all fees and costs incurred to the date of termination.

10. Arbitration. Although we do not expect that any dispute between us will arise, in the unlikely event of any dispute under this Agreement, including a dispute regarding the amount of legal fees or costs owed to the Law Firm or the quality of the Law Firm's services, including any claim of malpractice, such dispute shall be subject to binding arbitration. The Town and Law Firm acknowledge that they are waiving their right to seek remedies in court, including the right to a jury trial. (This clause does not prevent the Town and the Law Firm from trying to resolve any dispute through voluntary mediation, but there is no requirement to do so.)

Any dispute concerning fees or costs shall be submitted to the Legal Fee Arbitration Committee of the Denver Bar Association and the decision of the Committee shall be final and binding on both parties. Any dispute concerning the quality of the Law Firm's services, including malpractice claims, shall be submitted to a single arbitrator and the decision of the arbitrator shall be final and binding on both parties. A final judgment can be entered on the arbitration award by a court of competent jurisdiction. The arbitrator shall be selected from the Judicial Arbitrator Group, Denver, Colorado unless the parties agree otherwise. If the parties do not agree on the selection of a single arbitrator within ten days after a demand for arbitration is made, then the arbitrator shall be selected by the Judicial Arbitrator Group from among its available professionals.

All arbitrations shall be held in Denver, Colorado unless the parties mutually agree on some other location. All arbitrations shall proceed under the Commercial Arbitration Rules of the American Arbitration Association, except as modified in this Agreement, unless otherwise agreed by the parties. The arbitrator shall have the discretion to order that the costs of arbitration, fees (including expert witness and reasonable attorney fees), and other costs shall be borne by the losing party. Any filing fees or other administrative costs of arbitration shall be divided equally between the Town and the Law Firm. Arbitration of all disputes, and the outcome of the arbitration, shall remain confidential between the parties.

11. Document Retention. The Town acknowledges that the files the Law Firm creates and compiles for work on the Town's matters, including notes, correspondence, pleadings, research, and documents which we prepare, will not be kept indefinitely. It is the Law Firm's policy to destroy all files (including all documents and materials therein), seven (7) years after we send such files to remote storage upon completion of each matter. However, if some legal restriction on destruction is imposed or some new development occurs, the retention period may be modified. This file destruction process is automatic and the Town will not receive further notice prior to the destruction of these files. Accordingly, if the Town wishes to maintain a record of any matter beyond our retention period, the Town should consider maintaining its own files relating to the matters that we are handling.

12. Governing Law. This Agreement shall be construed in accordance with, and governed by the laws of the State of Colorado.

13. Amendment. This Agreement may be amended only by a written instrument signed by both of the parties hereto.

14. Prior Agreements. This Agreement shall supercede all prior agreements between the parties concerning the provision of legal services.

15. Signature. THE LAW FIRM AND THE TOWN HAVE READ THIS DOCUMENT, UNDERSTAND IT, AND AGREE TO IT.

EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, 2020, to be effective as of January 1, 2015.

TOWN OF FRISCO

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Gary Wilkinson, Mayor

ATTEST:

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Deborah Wohlmuth, Town Clerk

MURRAY DAHL BEERY & RENAUD, LLP

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Thad W. Renaud  
Partner

# **Murray Dahl Kuechenmeister & Renaud LLP**

## **PRIVACY POLICY NOTICE**

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Attorneys, like other professionals, who advise on certain personal matters, are now required by a new federal law to inform their clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this new law. Therefore, please understand that your privacy is important to us and we have always protected your right to privacy. Maintaining your trust and confidence is a high priority to this law firm. The purpose of this notice is to comply with the new law by explaining our longstanding privacy policy with respect to your personal information.

### **NONPUBLIC PERSONAL INFORMATION WE COLLECT:**

In the course of providing our clients with financial advisory activities, including estate planning, tax planning and tax preparation services (including income tax, estate tax, and gift tax advice), collecting overdue accounts receivable, and providing real estate settlement services, we collect personal and financial information about our clients that is not available to the public and which is provided to us by our clients or obtained by us with their authorization or consent.

### **PRIVACY POLICY:**

As a current or former client of Murray Dahl Kuechenmeister & Renaud LLP, rest assured that all nonpublic personal information that we receive from you is held in confidence, and is not released to people outside the firm, except as agreed to by you, or as is permitted or required by law and applicable ethics rules.

### **CONFIDENTIALITY AND SECURITY:**

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. We restrict access to nonpublic, personal information about you to those people in the firm who need to know that information to provide services to you (and their support personnel). In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards as well as federal regulations.

Please call the attorney you work with if you have any questions. Your privacy, our professional ethics, and the ability to provide you with quality service are very important to us.

## **EXHIBIT A**

### **Schedule of Costs**

1. **Faxes:** There is no charge for faxes received or for faxes sent within the local calling area. For faxes sent outside of the local calling area, the client is charged for the long distance telephone connection.
2. **Copying and Scanning:** Document scanning and copying charges are \$.10 per page for services performed within the Firm. Copying, collating, binding, and scanning performed outside the Firm shall be charged at actual cost. The decision to use outside scanning, copying, collating and binding services shall be made on a case-by-case basis as the circumstances require.
3. **Deliveries:** Items delivered by commercial messenger service are billed at the actual rate charged by the service.
4. **Computer Research:** The charge to the client includes the usage amount billed to the Firm for on-line computer services plus an additional amount to cover equipment, telephone, basic subscription costs, taxes, and other overhead costs.
5. **Mileage:** Mileage is charged at a rate consistent with the guidelines published by the IRS.
6. **Other Costs:** Other third party costs, such as conference calls, will be billed to clients at the same rate the Firm is billed for the third party services.

## **CONTRACT FOR GOODS AND/OR SERVICES**

THIS AGREEMENT ("Agreement"), made to be effective as of the 1<sup>st</sup> day of January, 2020, between the Town of Frisco, a Colorado home rule municipal corporation, hereinafter referred to as "FRISCO" and HBL Consulting, Inc., a Colorado Corporation, as an independent contractor, hereinafter referred to as "CONSULTANT," provides as follows:

### **ARTICLE I SCOPE OF SERVICES**

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

Section 1.2 Scope of Services: FRISCO agrees to retain CONSULTANT to complete the Project. CONSULTANT shall commence work upon direction to proceed and complete the Project on or before December 31, 2020, at which time this Agreement shall terminate. Additional services beyond those listed in Exhibit A, if requested, shall be provided only when authorized in writing by FRISCO.

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

Section 1.4 Warranty of CONSULTANT: CONSULTANT 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 CONSULTANT, 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 CONSULTANT, 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 CONSULTANT 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, CONSULTANT 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 CONSULTANT, 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 consultant or sub-consultant 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 CONSULTANT appropriate to and for use in the execution of their work under this Agreement. All documents prepared by CONSULTANT in its performance of this Agreement shall be considered works for hire and any copyright associated with such documents shall be held by FRISCO. All copies made under this authorization shall bear the statutory copyright notice, as shall all documents prepared by CONSULTANT pursuant to this Agreement.

(b) CONSULTANT, 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 CONSULTANT for other projects, provided that CONSULTANT is not held liable for future project applications other than the Project described pursuant to this Agreement.

Section 2.4 Insurance:

(a) CONSULTANT 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 CONSULTANT 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 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, and products. 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 CONSULTANT'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 CONSULTANT has no owned automobiles, the requirements of this Section 2.4 (d) shall be met by each employee of CONSULTANT providing services to FRISCO under this Agreement.

(e) The insurance policies required by Sections 2.4(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) Professional Liability Insurance in the minimum amount of ONE MILLION DOLLARS (\$1,000,000).

(g) 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 CONSULTANT. CONSULTANT shall be solely responsible for any deductible losses under any policy required above. Any insurance policy required under this Agreement shall be written by a responsible company.

(h) Prior to commencement of this Agreement, CONSULTANT shall provide FRISCO with a certificate of insurance completed by CONSULTANT'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: Finance Director

(i) CONSULTANT shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section 2.4 by reason of CONSULTANT'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 CONSULTANT 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 CONSULTANT to FRISCO upon demand, or FRISCO may withhold the cost of the premiums from any monies due to CONSULTANT from FRISCO.

(j) 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 \$150,000 per person and \$600,000 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) CONSULTANT 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 reasonable attorneys' fees, arising out of or resulting from this Agreement, provided that any such claim, damage, loss or expense (1) is attributable to 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 CONSULTANT, any subcontractor of CONSULTANT, anyone 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 CONSULTANT, any subcontractor of CONSULTANT, anyone 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 CONSULTANT or any subcontractor under worker's or workman's compensation actions, disability benefit acts or other employee benefit acts; provided, however, that if FRISCO is found to be wholly or partially responsible for any such claims, the indemnification obligation of CONSULTANT under this Section 2.5 shall be limited in proportion to the relative degrees of fault of FRISCO and CONSULTANT with respect to such claims..

(c) In the event it becomes necessary for any party to this Agreement to bring any action to enforce any provision of this Agreement or to recover any damages the other may incur as a result of the breach of this Agreement, including, but not limited to, defective work, the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees as determined by the court.

Section 2.6 Subcontractor: CONSULTANT 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 for any reason upon thirty (30) days' written notice. In the event of termination, FRISCO will pay CONSULTANT for all services performed to date of termination. If payment is otherwise due upon completion, FRISCO will pay CONSULTANT 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 CONSULTANT of any failure to appropriate such adequate monies.

Section 2.8 Binding Effect: FRISCO and CONSULTANT 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 CONSULTANT shall assign or transfer its interest in this Agreement without the written consent of the other, which consent may be withheld in the other party's sole and absolute discretion.

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, CO 80443  
Attn: Finance Director  
FAX: (970) 668-0677

CONSULTANT:

HBL Consulting, Inc.  
PO Box 506  
Frisco, CO 80443  
Attn: Joe Gajewski  
TEL: (970) 401-0678

**ARTICLE III**  
**COMPENSATION FOR SERVICES**

Section 3.1 Compensation: CONSULTANT shall be compensated for services as described in Exhibit B.

Section 3.2 Payment: FRISCO shall pay CONSULTANT monies due under this Agreement within thirty (30) days after invoice date, provided such amounts are not in dispute or the subject of setoff.

Section 3.3 Expenses: FRISCO shall not reimburse CONSULTANT for the cost of any expenses associated with this Agreement.

Section 3.4 FRISCO's Right to Withhold: Notwithstanding any other provision of this Agreement and without prejudice to any of FRISCO's rights or remedies, FRISCO shall have the right at any time or times, whether before or after approval of any pay request, to deduct and withhold from any payment that may be due under this Agreement such amount as may reasonably appear necessary to compensate FRISCO for any actual or prospective loss due to:

- (a) work that is defective, damaged, flawed, unsuitable, nonconforming or incomplete;
- (b) damage for which CONSULTANT is liable under this Agreement;
- (c) valid liens or claims of liens;
- (d) valid claims of subcontractors, suppliers or other person;
- (e) delay in the progress or completion of the Project;
- (f) inability of CONSULTANT to complete the Project;
- (g) reasonable doubt that the unpaid balance available under the Agreement is adequate to cover actual or liquidated damages, if any;
- (h) failure of CONSULTANT properly to complete or document any pay request;
- (i) any material and/or substantial failure of CONSULTANT to perform any of its obligations under this Agreement; or
- (j) the cost to FRISCO, including reasonable attorneys' fees and reasonable administrative expenses, for correcting any of the aforesaid matters or exercising any one or more of FRISCO's remedies.

**ARTICLE IV**  
**MISCELLANEOUS**

Section 4.1 Colorado Law: This Agreement is to be governed by the laws of the State of Colorado.

Section 4.2 Amendments: This Agreement may only be amended, supplemented or modified in a written document signed by both parties.

Section 4.3 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 4.4 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.

**ARTICLE V**  
**PROHIBITION ON EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN**

Section 5.1 The CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT obtains actual knowledge that a subcontractor performing the work under this Agreement knowingly employs or contracts with an illegal alien, the CONSULTANT shall: (a) notify the subcontractor and the FRISCO within three (3) days that the CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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.

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

FRISCO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Deborah Wohlmuth, Town Clerk

CONSULTANT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

## **Exhibit A – Description and Scope of Services**

### **Scope of Contract for Services**

#### **1 - PC Support**

##### **\$40 Monthly per Computer**

- On-site support
- Setup and installation
- License management
- Telephone support
- Microsoft application support
- Inventory and asset management
- Microsoft security patch management
- Installation of hardware and software upgrades
- Routine desktop optimization and management
- Anti-virus monitoring, management, and updates
- Anti-Spyware monitoring, management, and updates

#### **2 - Server Support**

##### **\$120 Monthly per Server**

- On-site support
- License management
- Setup and installation
- Event log monitoring
- Data backup and monitoring
- User account administration
- Telephone support
- Microsoft application support
- Performance monitoring and tuning
- Microsoft security patch management
- Inventory and asset management
- File sharing permission administration
- Backup monitoring and administration
- Planning and design of server architecture
- Setup and configuration of server hardware
- Installation and configuration of server software
- Routine maintenance and patch management
- Anti-virus monitoring, management, and updates
- Installation of hardware and software upgrades
- Microsoft Exchange maintenance and administration
- Anti-Spyware monitoring, management, and updates
- VMWare Esxi 6.5 and VCenter management and support

#### **3 - Network Management and Support per Location**

##### **\$200 Monthly**

- ISP liaison
- Purchasing
- VPN management
- Switch configuration
- Network documentation
- Anti-spam management
- Setup and installation of hardware
- Router configuration and monitoring
- Firewall configuration and monitoring
- Assistance with Business Continuity Planning
- Assistance with technology project research and proposals
- Assistance with creation of technology related policies and procedures

**Exclusions from flat rate services:**

- Electrical work
- Training is excluded from this agreement
- HBL Consulting, Inc. will charge the cost of any parts, hardware, or software required
- New installation of premise wiring, relocation of premise wiring, or removal of premise wiring
- Installation of shelving and racks for equipment
- Repairs and maintenance of equipment resulting from the actions of third party vendors not associated with HBL Consulting, Inc.
- Installations – new technology/rollout packages. Unless previously agreed upon, 5 or more units of hardware or software are considered installations/rollouts. (Examples: system wide installations of new printers, deployment of accounting software across more than 10 desktops, or networking a building or office.)
- After hours and emergency support. After-hours are defined as anytime after normal business hours and are charged at a premium rate to the Client.
- Projects not planned and approved by council or budgeted for the previous year will be deemed special projects and all work will be time and materials based as described in Exhibit B.
- Disaster recovery other than minor file restoration from system backups
- Server hardware, software, and phones associated with Cisco telephony. Basic support for these systems will be provided based on HBL Consulting, Inc. technician's discretion and knowledge level of the products.
- Extensive troubleshooting (anything more than several minutes) of printers and peripherals is not covered by our managed support agreement.
- Printers which require services other than basic troubleshooting must be serviced by authorized repair centers. HBL Consulting, Inc. will forward printers to authorized repair centers upon request. Any cost associated to these repairs will be charged to the printer owner. Normal HBL Consulting, Inc. charges may apply to the diagnosis and transport of printer.

**Computer, Server and Network component setup**

## HBL Responsibilities:

- Unpack and connect computer components
- Configure operating systems for network connectivity
- Installation of operating system patches and updates
- Installation of approved applications
- Setup on-site and install printer drivers
- Install or configure routers, switches, or hubs

## Town Responsibilities:

- Consultation with HBL should be made before any hardware purchases
- As much advance notice as possible should be made with HBL to schedule setup and installation
- The computer user may need to be present at certain points during the installation process
- Licenses and media for applications must be provided and readily available
- Town should provide storage space for new or old hardware and clear off space to make room necessary for installations

**Maintenance of Supported Hardware**

## HBL Responsibilities:

- Monitor vendor and web resources for necessary patches
- Install necessary patches
- Update standard supported applications
- Monitor server and network equipment event logs and resources

## Town Responsibilities:

- Employees should notify HBL of any problems they experience
- Purchase licenses for software

**Application Support**

## HBL Responsibilities:

- Help with basic usage
- Install and update software
- Troubleshoot common problems
- Provide assistance with applications on a best-effort basis
- Support for advanced features and complex configurations if possible
- HBL will not perform job functions of the employees

## Town Responsibilities:

- Manuals, online help systems and other training resources shall be utilized for the applications used frequently
- Licenses and media should be provided when required

**Network Support**

## HBL Responsibilities:

- Assist with network planning and ordering
- Install and configure routers and switches
- Troubleshoot network connectivity problems
- Act as liaison with vendors, when appropriate, for problem resolution and recommendations of a technical nature

## Town Responsibilities:

- Notify HBL regarding problems
- Contact HBL prior to installing networking equipment
- Notify HBL if another vendor installs or makes changes to equipment

## Exhibit B – Compensation Schedule

**Discounted Rate Structure for time and material based services:**

Standard Rate:	\$100 per/hr. 8:01 a.m. to 6:00 p.m.
Overtime Rate:	\$120.00 per/hr. 6:01 a.m. to 8:00 a.m. and 6:01 p.m. to 12:00a.m.
Overtime Rate:	\$150.00 per/hr. 12:01 a.m. to 6:00 a.m.
Weekend Rate:	\$150.00 per/hr. Saturday and Sunday

**Flat-rate Services Rate Schedule:**

\$40	Monthly per PC	x 125 PCs	= \$5000.00
\$120	Monthly per Server and virtual VMWare Environment	X 17 Servers	= \$2040.00
\$200	Monthly Network Management per Office	x 8 Offices	<u>= \$1600.00</u>
Monthly Total =			<b>\$ 8640.00</b>

**\*Restrictions:**

- Any items not specifically included in flat- rate services (Exhibit A, Items 1, 2 and 3) will be billed on a time and materials basis.
- Flat-rate services (Exhibit A, Items 1, 2 and 3) are to be performed between the hours of 8:01 am and 6:00 pm.
- If work is requested on flat-rate services (Exhibit A, Items 1, 2 and 3) outside of the standard rate hours an additional surcharge at the discounted hourly rate will be assessed between the hours of 6:01pm to 8:00 am.
- Contract for services does not include the cost of materials, equipment, and hardware.
- Contract for services does not include support for equipment located off of Town of Frisco property or personal hardware and software.
- Please see the scope and description of services in Exhibit A for additional details





MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO:** MAYOR AND TOWN COUNCIL  
**FROM:** DEBORAH WOHLMUTH, TOWN CLERK  
**RE:** NEW BREW PUB LIQUOR LICENSE – OUTER RANGE INC DBA OUTER RANGE BREWING Co.  
**DATE:** JANUARY 28, 2020

**Background:** As prescribed in State Statute, all new liquor license applications must be first submitted to the local licensing authority for approval. Supporting documentation as outlined on State form DR 8404 must accompany the application to begin the hearing process requirements. The preliminary findings have been included in this report to support proof of a completed application.

**Analysis:** This application is for a new Brew Pub liquor license for Outer Range Inc. dba Outer Range Brewing Co. located at 182 Lusher Court Unit #2. Applicants Steven Cleghorn, Emily Cleghorn, and Ryan Chang have filed the necessary paperwork and posted the premise in accordance with the Colorado Liquor Code. Further, notice of this application was published in a newspaper of general circulation on January 17, 2020 pursuant to statutory requirements. Identogo and the Frisco Police Department have performed the necessary fingerprinting and background checks for the applicants and have found them to be satisfactory.

**Staff Recommendation:** On that basis, it is recommended the Council make a motion approving the issuance of a Brew Pub liquor license for Outer Range Inc. dba Outer Range Brewing Co. located at 182 Lusher Court Unit #2, on the basis of the following findings: that the Authority (1) has reviewed the neighborhood under consideration and finds it to be the Town of Frisco as a whole; (2) has considered the desires of the inhabitants of the neighborhood and finds that the inhabitants desire an additional establishment that serves liquor; (3) has reviewed the needs of the neighborhood for the outlet and finds that the needs of the neighborhood are not met by the existing outlets; (4) has reviewed the location of the proposed establishment and finds that it is not located within 250 feet of any school or college campus; (5) has reviewed the qualifications of the applicant and, pursuant to the requirements of the Frisco Code and Colorado Statutes, find the applicant to be qualified to obtain a Brew Pub liquor license for Outer Range Inc. dba Outer Range Brewing Co.

**Financial Impact:** There is no financial impact.

**Reviews and Approvals:** This report has been reviewed and approved by:  
Nancy Kerry, Town Manager - Approved  
Bonnie Moinet, Finance Director-Approved



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO: MAYOR AND TOWN COUNCIL**  
**FROM: BILL GIBSON, ASSISTANT COMMUNITY DEVELOPMENT DIRECTOR**  
**RE: ORDINANCE 20-01, AN ORDINANCE AMENDING CHAPTER 180 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING ZONING, BY AMENDING SECTION 5.2.11 THEREOF, CONCERNING TELECOMMUNICATIONS FACILITIES, TO REVISE REGULATIONS CONCERNING SMALL CELL WIRELESS FACILITIES TO CONFORM TO FEDERAL COMMUNICATIONS COMMISSION REQUIREMENTS AND LIMITATIONS.**  
**DATE: JANUARY 28, 2020**

**Summary and Background:** This is the second reading of Ordinance 20-01. The purpose of this ordinance is to revise the Frisco Unified Development Code (UDC) to conform to Federal Communications Commission (FCC) requirements and limitations related to small cell wireless facilities.

**Analysis:** On September 26, 2018, the FCC adopted Declaratory Ruling and Third Report and Order (FCC 18-133) regarding small cell telecommunications and the acceleration of wireless infrastructure necessary for 5G and other advanced wireless services through the relaxation of regulatory barriers affecting local permit processes. The existing provisions of §180-5.2.11 of the Frisco UDC do not fully comply with the requirements and limitations of this FCC ruling. Therefore, Town Staff is proposing code text amendments, as drafted by the Town Attorney, to bring the UDC into conformance with FCC 18-133.

On December 5, 2019, the Planning Commission forwarded a recommendation of approval to the Town Council for the proposed code amendments.

On January 14, 2020, the Town Council unanimously approved the first reading of Ordinance 20-01 with a modification to Section 3 of the proposed ordinance. This modification revises Subsection 5.2.11.J.3 to allow small cell facilities to extend up to ten feet (10'), rather than two feet (2'), above the height of the light pole, traffic signal, or other facility to which they are attached.

**Financial Impact:** Adoption of this ordinance will have no financial impact to the budget.

**Alignment with Strategic Plan:** Adoption of this ordinance aligns with the Quality Core Services strategic priority of the 2019-2020 Town of Frisco Strategic Plan.

**Environmental Sustainability:** Adoption of this ordinance will have no impact to environmental sustainability as it does not alter any existing environmental review standards or procedures related to telecommunications facilities.

**Staff Recommendation:** Staff recommends Town Council approve Ordinance 20-01 on second reading.

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

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

**Attachments:** Ordinance 20-01

**TOWN OF FRISCO  
COUNTY OF SUMMIT  
STATE OF COLORADO  
ORDINANCE 20-01**

AN ORDINANCE AMENDING CHAPTER 180 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING ZONING, BY AMENDING SECTION 5.2.11 THEREOF, CONCERNING TELECOMMUNICATIONS FACILITIES, TO REVISE REGULATIONS CONCERNING SMALL CELL WIRELESS FACILITIES TO CONFORM TO FEDERAL COMMUNICATIONS COMMISSION REQUIREMENTS AND LIMITATIONS.

WHEREAS, pursuant to its home rule authority under Sec. 6 of Article XX of the Colorado Constitution and pursuant to Article 23 of Title 31, C.R.S., the Town of Frisco, Colorado ("Town") possesses the authority to regulate the zoning of land within its jurisdiction; and

WHEREAS, pursuant to this authority, the Town previously adopted zoning regulations, codified as Chapter 180 of the Code of Ordinances of the Town of Frisco ("Code"); and

WHEREAS, Section 5.2.11 of Chapter 180 governs the zoning of wireless communications facilities, including "small cell" facilities; and

WHEREAS, the Frisco Town Council ("Council") wishes to amend said Section 5.2.11 to address the recent Ruling and Order of the Federal Communications Commission, affecting small cell wireless facilities; and

WHEREAS, the Council finds and determines that such amendments are desirable in furtherance of the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the Town.

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

Section 1. Subsection 5.2.11.I of Chapter 180 of the Code, concerning definitions of terms related to telecommunications facilities, is hereby amended to revise the definition of a "small cell facility" to read as follows:

**10. Small Cell Facility Facilities shall mean either**

(1) shall mean facilities that either:

(a) are mounted on structures 50 feet or less in height including their antennas;

(b) are mounted on structures no more than 10 percent taller than other adjacent structures; or

(c) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and

(2) Each antenna associated with the deployment is no more than three cubic feet in volume; and

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

~~(1) A personal wireless service facility as defined by the Federal Telecommunications Act of 1996, as amended as of August 6, 2014; or~~

~~(2) A wireless service facility that meets both of the following qualifications:~~

~~a. Antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and~~

~~b. Primary equipment enclosures are not larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch; or~~

~~(3) A Micro Cell Facility, as defined in this Section.~~

Section 2. Subsection 5.2.11.J of Chapter 180 of the Code, concerning standards for small cell facilities and networks, is hereby amended to read as follows:

## **J. Standards for Small Cell Facilities and Networks**

### **1. Applicable Requirements**

Small cell facilities and small cell networks, shall comply in all respects with the requirements of this Subsection J., in addition to all other requirements of this Section 5.2.11 applicable to all wireless telecommunication services facilities, with the following exceptions:

- a. Setback;
- b. Design; and
- c. Location, and;
- d. Any requirement or standard that an applicant demonstrates to operate in a manner that effectively prohibits or materially inhibits the provision of wireless service within the Town, in the context of the particular proposed application.

### **2. Location**

Small cell facilities are permitted in Town rights-of-way, upon facilities in these rights-of-way and on public easements owned by the Town under the following priority:

- a. First, on a Town-owned utility pole, if any, which shall be removed and replaced with a pole designed to contain all antennae and equipment within the pole to conceal any ground-based support equipment and ownership of which pole is conveyed to the Town.
- b. Second, a Town-owned utility pole with attachment of the small call facilities in a configuration approved by the Town.



- c. Third, on an existing third-party owned utility pole, (with the consent of the owner thereof), with attachment of the small cell facilities in a configuration approved by the Town.
- d. Fourth, on an existing traffic signal pole or mast arm in a configuration approved by the Town, or in the case of a CDOT facility, by CDOT.
- e. Fifth, on an existing freestanding or ground-mounted facility which meets the definition of and requirements for an alternative tower structure in a location and configuration approved by the Town.
- f. Sixth, on a new freestanding or ground-mounted facility, which meets all applicable requirements and standards of this Section.

### 3. Height

All small cell facilities shall not exceed ~~two ten~~ ten feet above the light pole, traffic signal or other facility or structure to which they are attached, or, for such facilities located outside of the public right-of-way, the lesser of: (a) ten feet above the pole or other facility or structure to which they are attached; or (b) the maximum height in the relevant zone district, whichever is less. When new utility poles are proposed as an alternative tower, their height shall be similar to existing utility/light poles in the vicinity.

### 4. Spacing

No small cell facility shall be located within one thousand feet (1000 ft) of any other such facility or such lesser distance as proven by the applicant to be necessary to locate an operational small cell facility within the Town, given all reasonably available location sites,, existing technology, and other small cell facilities in the vicinity at the time of application.

### 5. Design Standards

The purpose and goals of these design standards are to: (i) ensure that the design, appearance, and other features of small cell facilities are compatible with nearby land uses; (ii) manage the Town's rights-of-way to ensure traffic safety and coordinate and accommodate various uses; and (iii) protect the integrity of the Town's historic, cultural, and scenic resources and quality of life.

All small cell facilities shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the Town, consistent with this Code.

- (i) Camouflage/Concealment. All small cell facilities shall, to the extent possible, use camouflage and concealment techniques designed to minimize or eliminate the visual impact of such facilities to surrounding uses, including, but not limited to the use of materials, colors, textures, screening, undergrounding, or other design options that will blend the facilities to the surrounding natural setting and/or built environment. Design, materials and

colors of small cell facilities shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation located on the public right-of-way and on adjacent parcels. All visible exterior features of a small cell facility shall be constructed out of or finished with non-reflective metals.

- (ii) Proximity to Residential Uses. Small cell facilities shall be sited in a manner that evaluates the proximity of the facility to residential structures and uses and, to the extent practical, equitably distributes any visual impacts of such facilities among adjacent residential uses and properties.

~~Small cell facilities shall be designed to blend with and be camouflaged in relation to the structure upon which they are located (e.g.: painted to match the structure or same material and color as adjacent utility poles). To the greatest degree possible, support equipment shall be located underground.~~

## **6. Relocation and Removal**

All facilities in Town right-of-way or easements shall be removed and/or relocated at the applicant's expense in the event the Town's use of the right-of-way or easement precludes the continued presence of such facilities.

## **7. Permitting and Shot Clocks**

All small cell facilities and networks shall be reviewed pursuant to the procedure within this Section 5.2.11. Small cell facilities and networks shall also make application for a permit for work in the right-of-way, as applicable. The Town may accept applications for a small cell network, provided each small cell facility shall be separately reviewed. ~~The Town may take up to ninety days to process a complete application.~~ Once determined to be complete by the Community Development Department, an application to locate a small cell facility shall be acted upon: (a) within sixty days, for a facility collocating on an existing structure; or (b) within ninety days, for a facility locating on a new site or structure. For purposes of this subsection, an application to locate a small cell facility means and includes all applications for Town-approvals necessary to locate and operate said facility.

## **8. Indemnification**

The operator of a small cell facility which is permitted to locate on a Town right-of-way or easement or on a Town-owned utility pole, traffic signal or other structure owned by the Town, or within a Town-owned right-of-way or easement, shall, as a condition of permit approval, indemnify the Town from and against all liability and claims arising as a result of that location or attachment, including repair and replacement of damaged poles and equipment, in a form approved by the Town attorney.

## **9. Bonding**

All permits for location of small cell facilities on real property not owned by the small cell permittee shall include as a condition of approval a bond, in form approved by the Town

attorney, to guarantee payment for any damages to the real property and removal of the facility upon its abandonment.

**10. Permit Timing and Expiration**

Notwithstanding the seasonal limitation imposed by Section 87-4 of this Code on excavations, if a small cell facility installation requires an excavation permit in order to complete the facility's installation without undue delay, the Town Manager may permit an excavation permit to be issued if the Manager determines that the welfare of the Town's residents and visitors will not be unnecessarily adversely affected by said excavation. Applicants for small cell installations requiring excavation permits must state on their application the reasons why such excavation must occur between November 1 and April 14, in order to assist the Manager in making a determination.

A permit for a small cell facility shall expire nine (9) months after approval unless construction of the permitted structure has been initiated, unless extended as a result of the seasonal time limits imposed by Section 87-4.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remaining sections or provisions of this Ordinance, it being the intent of the Town Council of the Town of Frisco that such invalid or unenforceable provisions are severable.

Section 4. Safety Clause. The Town Council hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare, and that this ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. Effective Date. This ordinance shall become effective in accordance with the Home Rule Charter of the Town of Frisco.

ADOPTED ON SECOND AND FINAL READING AND PUBLICATION BY TITLE ORDERED THIS 28TH DAY OF JANUARY, 2020.

\_\_\_\_\_  
Gary Wilkinson, Mayor

ATTEST:

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Deborah Wohlmuth, CMC  
Town Clerk