

TWO BELOW ZERO DINNER SLEIGH RIDES CONCESSIONAIRE AGREEMENT

THIS TWO BELOW ZERO DINNER SLEIGH RIDES AND CONCESSIONAIRE AGREEMENT (this "Agreement") is made and entered into this 11th day of June, 2024, by and between JCBS CORP., a Colorado corporation ("Concessionaire") d/b/a Two Below Zero Dinner Sleigh Rides/Wagon Rides, and the TOWN OF FRISCO, a Colorado municipal corporation ("Frisco" or the "Town").

WHEREAS, On or about April 25, 2017, the Town and Concessionaire entered into that certain Two Below Zero Dinner Sleigh Ride Concessionaire Agreement (the "Concessionaire Agreement"); and

WHEREAS, under the Concessionaire Agreement, Concessionaire has provided, and the parties desire that Concessionaire continue to provide, an evening dinner sleigh ride/wagon ride in the Town of Frisco on property owned or controlled by Frisco; and

WHEREAS, the Concessionaire Agreement ended April 30, 2024, and the Concessionaire desires an extension to its concession rights for a period of five (5) years from the date of this Agreement; and

WHEREAS, the Town is willing to extend the term of the concession as desired by the Concessionaire.

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

GENERAL CONDITIONS

1. Service Standards. Concessionaire shall provide, and shall have the exclusive right to provide, an evening dinner sleigh ride/wagon ride in the Town of Frisco Peninsula Recreation Area. Concessionaire shall operate out of the various locations that are described in Section 2 below and depicted in the several exhibits to this Agreement. The base operations shall be located on Town-owned land; however, rides may on occasion make use of the U.S. Forest Service property provided any required permits allowing such use are obtained by the Concessionaire at Concessionaire's sole cost and expense. The Frisco Town Council ("Council") has adopted the following Service Standards, which shall be the operative goals of the services to be provided by the Concessionaire. The Concessionaire agrees to:

- a. Provide a high quality and professional operation. Ensure that its operations are conducted in a timely manner, including being open for business during posted or advertised hours and conducting sleigh and/or wagon rides generally in accordance with scheduled hours; and
- b. Engage in proper animal husbandry practices so as to maintain all livestock used in its operation in good health; and
- c. Maintain all equipment and tack in good condition; and

- d. Operate its rides and provide food and beverage service in accordance with all applicable state and local laws and regulations; and
- e. Ensure that courteous and friendly service will be provided to all guests without regard to age, sex, race or disability; and
- f. Work cooperatively with and support Frisco and the USFS with respect to mutually beneficial programs; and
- g. Provide a clean and orderly operation at each location occupied or used for purposes allowed or required by this Agreement; and
- h. Uphold and support applicable programs and policies of Frisco, including implementation of the 2017 Peninsula Recreation Area Land Use Plan, the 2019 Frisco Nordic Center Master Development Plan, the 2020 Comprehensive Vision and Project Implementation Plan and other Town adopted plans while serving as a good will ambassador of Frisco; and
- i. Work, in a cooperative and supportive manner, with other concessionaires, or recreational operations which may be implemented within the Peninsula Recreation Area.

2. Location(s). Concessionaire shall conduct its welcome tent operations only within the approximately 3,600 square foot area depicted on Exhibit A hereto, which exhibit is incorporated herein by reference. Concessionaire shall conduct its stable and storage operations only within the approximately 74,356 square foot area depicted on Exhibit B hereto, which exhibit is incorporated herein by reference. Concessionaire shall conduct its guest camp operations only within the approximately 89,000 square foot area depicted on Exhibit C hereto, which exhibit is incorporated herein by reference. Concessionaire shall conduct its summer reception operations only within the approximately 29,755 square foot area depicted on Exhibit D hereto, which exhibit is incorporated herein by reference. Any part of the foregoing or any other provision of this Agreement notwithstanding, the Town has the right, in its sole discretion, to substitute any area within the Peninsula Recreation Area in place of any or all of the locations described in this Section 2, so long as the substituted area is substantially similar in size and usefulness for the purposes set forth herein with respect to each area. In the event of such substitution, the Town shall use reasonable efforts to minimize the impact of the substitution on the Concessionaire's operations, but Concessionaire agrees that in the event of substitution, Concessionaire shall be solely responsible for the costs of relocating any temporary or other improvements, as well as any other costs attendant thereto.

3. Master Planning. Concessionaire agrees to cooperate with Frisco regarding the Master Planning and/or construction of the amenities within the Peninsula Recreation Area.

4. Term, Possession, and Interest. The term of this Concessionaire Agreement (the "Term of this Agreement" shall be from the date first written above to June 11, 2025. Thereafter the term of his agreement will be renewed for four (4) successive one year renewal terms unless, not less

than 30 days prior to the end of the initial term or any renewal term, the Concessionaire or the Town provides written notice to the other party of its desire to terminate this Agreement, which notice shall cause this Agreement to terminate at the end of the then-current term or renewal term. The initial term of this Agreement together with any automatic renewal term of this Agreement is referred to herein as the "Term of this Agreement." Concessionaire understands, acknowledges and agrees that this Agreement does not create an interest or estate in Concessionaire's favor in any real property. The Town retains legal possession of the full boundaries of all of the real property described or depicted in this Agreement, and this Agreement merely grants to the Concessionaire the personal privilege to use such property in strict accordance with the terms of this Agreement. This Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the Concessionaire. Concessionaire shall expend any time, money or labor upon the property at Concessionaire's own risk and peril.

5. Compensation. On a monthly basis, Concessionaire will compensate Frisco at a rate of five (5%) percent of the gross revenues from any or all revenues generated through activities conducted pursuant to this Agreement.

6. Concessionaire Responsibilities. Concessionaire agrees to operate in accordance with the following General Plan of Operation and in conformance with the Service Standards.

- a. Services. Concessionaire will provide a variety of services that satisfactorily meet the objectives of the Service Standards listed above.
- b. Winter Sleigh Rides Operations. During the months of November through April of each year during the term of this Agreement, Concessionaire shall provide a "cowboy experience" by providing sleigh rides to a dinner camp for the enjoyment of the guests as described in the Winter Safety and Operations Plan prepared pursuant to this agreement from time to time. Such plan will be reviewed by Town staff to assure compliance with applicable Town codes.
- c. Summer Operations. During the months of May through October of each year during the term of this Agreement, Concessionaire may provide a summer evening experience to guests similar to that described above and as further described in the Summer Safety and Operations Plan, prepared pursuant to this Agreement from time to time. Such plan shall be reviewed by Town staff to assure compliance with applicable Town codes. Summer operations shall be evaluated and approved on an annual basis at the sole and absolute discretion of the Town of Frisco.
- d. Winter and Summer Operations. Winter and summer operations will be performed at separate locations not less than 100' from one another to comply with applicable Town codes. Both locations are contiguous to one another and any unused land between these two locations is included in this Agreement.
- e. Livestock. Only livestock relating to the operation shall be allowed on Town property. Livestock, such as horses and mules, may be kept overnight at a corral or stable within the area depicted in Exhibit B hereto.

- f. **Retail Sales.** At the option of the Concessionaire, retail food and beverages may be provided. Concessionaire agrees to comply with all applicable food, beverage, alcohol and sales tax requirements of the State of Colorado, Summit County, the Town and the Town's Liquor Licensing Authority. Concessionaire shall not sell or permit the use of alcohol in connection with its operations without a permit to do so. Drinking water shall be provided. Retail sales of clothing and other related accessories may also be conducted. Concessionaire shall collect applicable State, County, and Frisco sales taxes and shall remit same to the Town of Frisco and the State of Colorado.
- g. **Other Services.** Concessionaire may subcontract services which are within the scope of this Agreement. However, any subcontractor must first be approved by the Town in its sole discretion. A written agreement between the Concessionaire and any subcontractor must be reviewed and approved by the Town in its reasonable discretion.
- h. **Marketing.** Concessionaire will be responsible for all marketing, advertising and promotion of their general operations. Prior to the commencement of the season and at least annually thereafter, Concessionaire will provide Frisco with a marketing plan for the upcoming season. Frisco agrees to distribute the Concessionaire's brochure at trade shows in which Frisco is a participant. In addition, Frisco will maintain links at Frisco's Internet site to the Concessionaire's site.
- i. **Maintenance.** Concessionaire agrees to maintain in good and neat condition all areas, improvements and equipment used in connection with Concessionaire's operations under this Agreement. In addition, Concessionaire agrees to keep well-maintained camps and agrees to clean up the dining areas as more expressly described in the Winter and Summer Safety and Operations Plans. If at any time during the term of the Agreement, Concessionaire wishes to remove the dining camps (dining tents), Concessionaire agrees to make every effort to return the area back to its natural vegetative state, including reseeding. At the end of every working day, the trails shall be cleared of manure. A final trail inspection at the close of each season shall be performed by the Town to ensure aesthetic and vegetative qualities. Any cost to return the area back to reasonable, original condition shall be borne by Concessionaire.
- j. **Reporting of Sales and Annual Audit Requirement.** The primary Town contact of the Concessionaire with respect to operational management is the Adventure Park General Manager. The primary Town contact of the Concessionaire for financial management is the Finance Director.

- k. Concessionaire shall keep within the limits of Summit County, Colorado, true and complete records and accounts of the total revenues derived by Concessionaire pursuant to this Agreement, including daily bank deposits. Concessionaire shall provide its own point of sales system, to include cash registers and a system of accounting that tracks revenue on both a day-to-day and event-by-event basis. Concessionaire shall further maintain a system of bookkeeping reasonably satisfactory to the Finance Director. The Finance Director shall have the right to inspect and copy such books and records during normal business hours. Concessionaire shall keep and preserve all sales slips, cash register tapes, sales books, bank books or duplicate deposit slips, and all other supporting evidence of Concessionaire's Monthly and Annual Revenue Reports (each as defined below) for at least three (3) years, or until sooner audited by Town. On or before the 25th day of the month following each month of operation, Concessionaire shall submit to the Town Finance Director a report separately itemizing, by sales category, all of Concessionaire's revenue for the prior month (the "Monthly Revenue Report"). By July 15th of each year Concessionaire shall furnish to Town a true and accurate report of all revenues derived by Concessionaire pursuant to this Agreement within the immediately prior one-year period (the "Annual Revenue Report"). Such Reports may be prepared and certified to be true and correct by Concessionaire's bookkeeper; provided, however, that if the Finance Director has a reasonable objection to the use of Concessionaire's bookkeeper to prepare such statement, Concessionaire will engage, at Concessionaire's expense, an independent certified public accountant, or other qualified person acceptable to the Finance Director, to prepare and certify such Reports. The Finance Director shall have the right at any time upon 15 days' written notice to audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating to the Monthly and Annual Revenue Reports. Concessionaire, within 10 days of written notice of the request to audit, shall make all such documents available for examination at the Agreement Premises. If the Town determines after an audit that the Monthly and/or Annual Revenue Reports for any reporting period as shown by Concessionaire's statement(s) have been understated by more than three percent (3%), Concessionaire shall pay to Town the cost of such audit, the amount of any deficiency, and interest on such amount at the rate specified in this Section 7, subparagraph (l). The Town's right to perform such an audit shall expire three (3) years after Concessionaire's Annual Revenue Report has been delivered to the Town. If the audit conducted by the Finance Director shows that the Concessionaire's Monthly and/or Annual Revenue Report for any reporting period have been understated by more than three percent (3%), Concessionaire shall have the right to have an independent audit conducted at its expense. Such audit shall be completed within thirty (30) days from the date Concessionaire is notified of the results of the Finance Director's audit. The Finance Director and the independent auditor shall attempt to reconcile any discrepancies between the two audits. If the Finance Director and the independent

auditor are unable to reconcile any such discrepancies, either party may enforce its right or remedies under this Section by appropriate judicial action as provided by law. Concessionaire expressly agrees that Finance Director may inspect any sales tax return or report and accompanying schedules and data which Concessionaire may file with Town pursuant to the Town's Retail Sales Tax Ordinance, and Concessionaire waives any claim of confidentiality which it may have in connection therewith.

- l. Late Payment Charges and Guest Reporting Requirement. An interest charge of two (2%) percent will be applied to each month's revenues for each day such revenues due to Frisco are not received after the day on which the Monthly Revenue Report is due. All Monthly Revenue Reports will note the number of guests who the Concessionaire served that month and each Annual Revenue Report will note the number of guests who the Concessionaire served during the season.
- m. Daily Operations. Prior to each summer season, Concessionaire shall submit a Safety and Operations Plan detailing the proposed use of the property and trails, the season opening and closing procedures, and safety program for the upcoming season. Prior to each winter season, Concessionaire shall provide the Town with a Safety and Operations Plan detailing the proposed use of the property and trails, the season opening and closing procedures and safety program for the upcoming season. Frisco shall meet (at a time reasonable for both parties) with Concessionaire to review, comment, and approve or conditionally approve the operations plans, in its reasonable discretion. Any operations using Forest Service lands must include an approved USFS special use permit granted to Concessionaire or the Town to be kept on file at Town Hall. Although the purpose of this Agreement is to establish a collaborative relationship between Town and Concessionaire with respect to the provision of sleigh and wagon rides and dining opportunities for the residents and visitors to the Town of Frisco, Concessionaire understands and acknowledges that the Concessionaire's use of the property to conduct Concessionaire's business shall be subject to the Town's ultimate right and authority to determine the degree to which sleigh/wagon rides and dining operations will be conducted on Town-owned property, and, if so, how such operations will be conducted with respect to days and hours of operation. Concessionaire's business on the property shall be conducted in keeping with generally accepted industry practices and procedures for sleigh/wagon rides and associated dining operations throughout the United States.
- n. Concessionaire will relay all pertinent information regarding the general operation of its business to the Adventure Park General Manager. Additional administrative decisions outside the purview of this contract must first be approved by Frisco in writing.

7. Insurance. During the Term of this Agreement, Concessionaire shall procure and maintain, at its own expense, the following policy or policies of insurance:

- a. Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products and completed operations. The policy shall name Frisco, its employees and agents as additional insureds and shall include severability of interests, waiver of subrogation and cross-liability endorsement provisions.
- b. Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of six hundred thousand dollars (\$600,000) disease -policy limit, and six hundred thousand dollars (\$600,000) disease -each employee.
- c. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of Concessionaire's owned, hired and non-owned vehicles assigned to or used in performance of services under this Agreement. The policy shall name Frisco, its employees and agents as additional insureds and shall include severability of interests, waiver of subrogation and cross-liability endorsement provisions.
- d. Every policy required under this Section 7 shall be primary insurance and any insurance carried by Frisco, its officers or its employees or carried by or provided through any insurance pool of Frisco, shall be excess and not contributory insurance to that provided by Concessionaire. Concessionaire shall be solely responsible for any deductible losses under any policy required above. Any insured policy required under this Agreement shall be written by a responsible company.
- e. Prior to commencement of this Agreement, Concessionaire shall provide Frisco with a certificate of insurance completed by Concessionaire's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Frisco.
- f. Concessionaire shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Section 7 or any other provision of this Agreement by reason of Concessionaire's failure to procure or maintain insurance,

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

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

8. Termination and Provision of Operating Information.

- a. Either party may terminate this Agreement by written notice to the other in the event that the other party is in breach of its obligations hereunder. A party shall be deemed to be in breach if it fails to remedy any default, or failure to perform hereunder within fifteen (15) days after written notice from the other party of such default or failure, or in the event such default or failure is non-monetary and cannot reasonably be cured within fifteen (15) days, if the party in breach fails to initiate such cure within fifteen (15) days of the notice and to diligently pursue such cure to its conclusion thereafter.
- b. Without limiting Frisco's right to declare and give notice of a default or failure to perform by Concessionaire based on Frisco's reasonable determination that Concessionaire is in default or has failed to perform its obligations under this Agreement, including but not limited to, complying with all State Standards and paying fees in a timely manner, Concessionaire shall be deemed to be in breach if Frisco has received three or more written complaints within any twelve month period concerning any similar default or failure to perform by Concessionaire. In the event of a breach based upon Frisco's receipt of three or more written complaints as described herein, Concessionaire shall be deemed to be in breach without the need for Frisco to provide written notice of a default or failure to perform, provided that Frisco has provided Concessionaire with a copy of each of the first two written complaints within seven days of Frisco's receipt thereof, and has provided Concessionaire an opportunity to respond to each such complaint within seven days of delivery of the same to Concessionaire. After receipt of the third such written complaint, Frisco may terminate this Agreement if, after mediation between the parties before a neutral third party, Frisco determines, in its reasonable direction, that Concessionaire is unlikely to remedy the defaults or failures to perform that gave rise to the written complaints. The costs of any such mediation shall be divided equally between the parties, and the parties shall bear their own attorney fees, if any, incurred in connection with the mediation. If the parties are unable to agree upon a neutral third party mediator, each shall engage its own mediator and, together, such mediators shall designate a neutral third-party mediator.
- c. Nothing herein shall constitute a multiple fiscal year obligation pursuant to

Colorado Constitution Article X. Section 20. In the event that the Frisco Town Council shall fail to appropriate sufficient sums to meet the Town's financial obligations hereunder in fiscal years beyond that of the date first written above, this Agreement shall automatically terminate and neither party shall owe any other or further duties to the other. The Town shall promptly give the Concessionaire written notice of the Town Council's failure to appropriate sums that may be necessary to meet the Town's obligations hereunder in such future fiscal years.

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

10. Indemnification.

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

11. Assignment. Concessionaire shall not voluntarily, by operation of law or otherwise, assign, encumber or otherwise transfer its rights under this Agreement, or any interest herein without the prior written consent of Frisco in each instance. Frisco may withhold such consent in its sole and

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

12. Cooperation with other Concessionaires and Operations. During the winter season, Concessionaire agrees to operate cooperatively with the operators and staff of the Frisco Nordic Center and Frisco Adventure Park. Concessionaire agrees to work in a cooperative and supportive manner with other concessionaires or recreational operations, including the Town, within the Peninsula Recreation Area.

Miscellaneous Standards:

- a. Large rocks, logs, fallen branches and other debris are to be removed by Concessionaire from the trail surface prior to the onset of each winter season and ongoing during the season.
- b. No motorized vehicles (other than trail-grooming, other trail-maintenance equipment and Concessionaire vehicles used to equip campsite and accommodate Two Below Zero employees) shall be permitted outside the established roadways and parking areas.
- c. Concessionaire shall minimize damage to any existing vegetation, including trees. Damaged vegetation shall be documented, assessed, and repaired or removed. The documentation shall be submitted to the Town for review and approval prior to repair or removal, except where a failure to repair or remove presents an imminent danger.
- d. Willows shall not be cut lower than 24 inches above ground (after leaf drop) to minimize disturbance to wetland vegetation.
- e. Any grooming instances potentially affecting wildlife or vegetation are to be reported to the Town and mitigation measures agreed upon and implemented.
- f. Concessionaire shall not permit any hazardous materials or substances regulated under any environmental law or ordinance to be stored or deposited on town property or on or about wetlands in contravention of applicable law. Concessionaire shall develop and submit to Town for its review and approval a written safety and operations plan detailing how Concessionaire would handle a

mechanical and equipment failure which results in fuel and/or chemical leaks or spills which impact the property or wetlands. Town shall not unreasonably withhold its approval of Concessionaire's plan. Once approved by Town, Concessionaire shall implement and adhere to the approved safety and operations plan throughout the term of this Agreement.

13. Clean Up. Concessionaire is responsible for the end of season clean-up of the areas within which its operations are conducted.

14. Signage. Signage for primary operations such as trails and parking will be provided by Frisco and installed by the Concessionaire. When possible, Frisco will assist in the removal of any seasonal or temporary signs as outlined in the General Plan of Operation. In order to maintain consistency and follow the guidelines established by Frisco's Permit with the USFS, all trail signage will be produced by Frisco. The signs may be inspected by the USFS. Discretionary signage requested by the Concessionaire will be provided by Frisco at Concessionaire's expense. Installation of all trail signage shall be the responsibility of Concessionaire. All discretionary and temporary signage and markers shall be removed by the concessionaire no later than April 30 of each winter season.

15. Special Events. Concessionaire shall consider participating in a host of appropriate special events throughout the winter and summer seasons.

16. Town Events. Concessionaire shall work and cooperate with Town event organizers in coordinating Town sponsored or Town approved winter activities and events at the Peninsula Recreation Area. Concessionaire shall not charge any fees to participants in any Town sponsored event or race. Nothing in this Agreement shall be construed as restricting the Concessionaire's right to submit a competitive proposal for organizing and conducting any Town sponsored event or race when the event or race is put up for competitive proposals.

17. Town Event Parking. Concessionaire will cease operation OR adjust sleigh ride hours as to not impact on-site parking during the following annual Town event/races to be held at the Frisco Nordic Center. These include but are not limited to; Gold Rush Nordic Ski Race, Frisco Freeze Fat Bike Race, Brewski. These events take place in February and March. Concessionaire shall communicate with Town event staff to confirm annual event dates each year.

18. Frisco's Responsibilities. Frisco agrees to provide the following services to the Concessionaire:

- a. Provision of land, as set forth herein, upon which to operate a sleigh/wagon ride operation, base facilities, base building, trail system and parking. The definition of the service levels for each of these shall be at the sole discretion of Frisco.
- b. Evaluation and approval, which approval shall not be unreasonably withheld, of trail signage and any sign improvements shall first be approved by Frisco with the exception of signs that pertain to prudent risk management practices (ice, ice falling, deck slippery, etc.)
- c. The Frisco Adventure Park General Manager shall be responsible for a

monthly report on the condition of the concessionaire's operations, to include condition of the trails, the tents, and hours, with a general statement as to the overall operation of the Concessionaire's business. The Frisco Adventure Park General Manager will schedule a monthly meeting with the Concessionaire's primary contact at a mutually convenient time.

- d. Frisco shall be responsible for all snowplowing of roads and parking areas in the Peninsula Recreation Area. Service level shall be that access to roads and parking is maintained at all times during the recreation area's operating hours and during extended Town sponsored event hours.
- e. Frisco shall have the sole right and responsibility, in its sole discretion, for all snowmaking efforts at the Frisco Adventure Park / Peninsula Recreation Area. Such efforts include snowmaking for the Town of Frisco operations, concessionaire operations, and any other snowmaking efforts deemed appropriate and necessary by the Town of Frisco. Frisco shall solely be responsible, in its sole discretion, for determining when snowmaking operations begin and end, including specific dates and hours of operation. Frisco shall be responsible, in its sole discretion, for prioritizing the snowmaking efforts of all the operational needs at the Frisco Adventure Park / Peninsula Recreation Area. Frisco shall also be responsible, in its sole discretion, for the snowmaking labor, equipment, and snow-gun placement for all snowmaking efforts at the Frisco Adventure Park / Peninsula Recreation Area. Frisco shall be responsible for all applicable state reports associated with snowmaking activities.
- f. As limited by the foregoing, Frisco shall provide water for snowmaking for the concessionaires at the Frisco Adventure Park / Peninsula Recreation Area, in an amount not to exceed three (3) acre feet in any given season. The maximum of three (3) acre feet is for all concessionaire operations at the Frisco Adventure Park / Peninsula Recreation Area. All water and snowmaking related agreements are solely between the Town of Frisco and the respective concessionaires. No additional water or snowmaking agreements between concessionaires shall be valid nor have any impact upon the Town's rights, responsibilities and discretion as set forth in this Subsection 16(f). As Public Works' work schedule permits, Frisco shall provide appropriate equipment and labor to move and transport the snow to locations deemed by the Town to be most beneficial for all concessionaire operations.
- g. Frisco will provide all water, electricity and propane gas needed to serve the welcome tent to be placed in the welcome tent area depicted in Exhibit A hereto. Except for the cost of providing such water, electricity and propane, and except as otherwise expressly set forth herein, the

Concessionaire shall be solely responsible for any and all costs incurred by Concessionaire in connection with its operations under this Agreement, including but limited to the costs of any and all equipment, improvements, tents, maintenance or labor deemed necessary or desirable by the Concessionaire in connection with the performance of its operations or the meeting of its obligations under this Agreement.

19. Evaluation. The Concessionaire will be evaluated at the end of each completed season. A conference will be scheduled within 60 days at the end of the season, with the Assistant Town Manager and/or the Town Manager, to discuss the previous season with respect to the Service Standards outlined herein. Further, following the 2024/2025 winter season, Concessionaire and Town agree to meet and discuss recreation and operational changes and discuss whether this Agreement is serving the best needs of the Concessionaire, Town, community, and visiting guests.

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

TOWN: Town Manager
Town of Frisco
Box 4100
Frisco CO 80443

CONCESSIONAIRE: JCBS CORP
Two Below Zero Dinner Sleigh Rides
John Lampe, President
4511 Christensen Cir
Littleton, CO 80123

21. Entire Agreement, Amendments. Except as otherwise expressly provided in this Agreement, this Agreement sets forth the entire agreement of the parties, supersedes all prior negotiations and understandings, and shall govern any services by the Concessionaire. Except as otherwise expressly provided in this Agreement, this Agreement may be modified or amended only upon the signed written agreement of both parties.

22. Disclaimer. Town has not made and does not hereby make any representations or warranties to Concessionaire that the property is suitable or adequate in any respect for the activities or uses that Concessionaire intends to conduct or may conduct thereon. All express and implied warranties are hereby disclaimed. Concessionaire acknowledges and agrees that there are no promises, representations, agreements, warranties (whether express or implied), conditions or understanding, whether oral or written, between the parties related to the property, or the use thereof other than those expressly stated in this agreement.

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

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

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

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

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

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

TOWN OF FRISCO, a Colorado municipality

Frederick J. Ihnken, Mayor

ATTEST:

Stacey Nell, CERA, Town Clerk,

JCBS CORP, a Colorado corporation

John Lampe, President



Exhibit A

Two Below Zero Welcome tent

-Bearing 117 Degrees

-Tent 96 feet from backstop

-Approx. 3,600 Sq. Ft.



Exhibit B

Two Below Zero Stable / Storage Area

115.36 feet, bearing 1.11 degrees from
NE corner of PRA Maint. Building.

Approx. 74,356 Sq. Ft.



Exhibit C
Two Below Zero Guest Camp Area
1,343 feet, bearing 33.3 degrees
from NE corner of PRA Maint.
Building.
Approx 89,000 Sq. Ft.

