

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

THIS AGREEMENT ("Agreement"), made this 12<sup>th</sup> day of April 2022, between the Town of Frisco, a Colorado home rule municipal corporation, hereinafter referred to as "FRISCO" and Diversified Construction Services, Inc. dba Diversified Consulting Solutions, Inc., a corporation under the laws of the State of Colorado., as an independent contractor, hereinafter referred to as "CONTRACTOR," provides as follows:

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

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

Section 1.2 Scope of Services: FRISCO agrees to retain CONTRACTOR to complete the Project. CONTRACTOR shall commence work upon direction to proceed and complete the Project on or before July 31, 2024. Additional services beyond those listed in Attachment A, if requested, shall be provided only when authorized in writing by FRISCO.

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

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

### **ARTICLE II** **ADMINISTRATION OF THIS AGREEMENT**

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

workmanship and conform strictly to the specifications, drawings or samples specified or furnished. This Section 2.1 shall survive any inspection, delivery, acceptance or payment by FRISCO.

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

Section 2.3 Ownership and Use of Documents:

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

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

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

Section 2.4 Insurance:

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

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

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

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

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

(f) Every policy required under this Section 2.4 shall be primary insurance, and any insurance carried by FRISCO, its officers, or its employees, or carried by or provided through any insurance pool of FRISCO, shall be excess and not contributory insurance to that provided by CONTRACTOR. CONTRACTOR shall be solely responsible for any deductible losses under any policy required above. Any insurance policy required under this Agreement shall be written by a responsible company.

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

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

Town of Frisco  
P.O. Box 4100  
Frisco, Colorado 80443  
Attn: Leslie Edwards, Finance Director

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

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

Section 2.5 Indemnification:

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

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

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

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

Section 2.7 Termination of Agreement:

(a) This Agreement shall terminate: (a) at such time as the work described in the Scope of Services is completed and the requirements of this Agreement are satisfied, (b) on July 31, 2024, or (c) upon FRISCO providing CONTRACTOR with seven (7) days advance written notice, whichever occurs first. After termination, FRISCO shall pay CONTRACTOR for all work previously authorized and completed prior to the date of termination. If, however, CONTRACTOR has substantially or materially breached this Agreement, FRISCO shall have any remedy or right of set-off available at law and equity. If this Agreement is terminated for any reason other than cause prior to completion of the Scope of Services, any use of documents by FRISCO thereafter shall be at FRISCO's sole risk, unless otherwise consented to by CONTRACTOR. This Agreement may be terminated by CONTRACTOR upon thirty (30) days' written notice, provided that such termination is based upon a substantial failure by FRISCO to perform in accordance with the terms in this Agreement. In the event of such termination, FRISCO will pay CONTRACTOR for all services performed to date of termination. If payment is otherwise due upon completion, FRISCO will pay CONTRACTOR for the pro rata value of the completed portion of the Project that will be incorporated into the Project. FRISCO will require the release of all lien rights as a condition of such payment.

(b) Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, FRISCO's obligations under this Agreement are subject to annual appropriation by the Town Council of FRISCO. Any failure of a Town Council annually to appropriate adequate monies to finance FRISCO's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to CONTRACTOR of any failure to appropriate such adequate monies.

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

Section 2.9 Notice and Communications: Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by

United States mail or hand-delivery shall be utilized. Facsimile and/or e-mail addresses are provided for convenience only.

FRISCO:

Town of Frisco  
P.O. Box 4100  
Frisco, Colorado 80443  
Attn: Addison Canino, Asst. Public  
Works Director  
Electronic mail:  
AddisonC@townoffrisco.com

CONTRACTOR:

Diversified Consulting Solutions, Inc.  
1550 Wewatta Street, Suite 200  
Denver, CO 80202  
Attn: John Sattler, President\_\_\_\_  
Electronic mail: johnsattler@dcs-cm.com

**ARTICLE III**  
**RESPONSIBILITIES OF FRISCO**

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

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

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

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

## **ARTICLE IV**

### **COMPENSATION FOR SERVICES**

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

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

## **ARTICLE V**

### **PROHIBITION ON EMPLOYING OR CONTRACTING WITH WORKERS WITHOUT AUTHORIZATION**

Section 5.1               The CONTRACTOR hereby certifies that at the time of executing this Agreement it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement and that it will participate in either the E-Verify Program or Department Program as those terms are defined in C.R.S. §§ 8-17.5-101(3.7) and (3.3), respectively, (the "Programs") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Section 5.2               The CONTRACTOR shall not knowingly employ or contract with a worker without authorization 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 a worker without authorization to perform work under this Agreement.

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

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

Section 5.5               If the CONTRACTOR obtains actual knowledge that a subcontractor performing the work under this Agreement knowingly employs or contracts with a worker without authorization, the CONTRACTOR shall: (a) notify the subcontractor and the FRISCO within three (3) days that the CONTRACTOR has actual knowledge that the subcontractor is knowingly employing or contracting with a worker without authorization; 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 worker

without authorization; except that the CONTRACTOR shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

Section 5.6 The CONTRACTOR shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

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

## **ARTICLE VI**

### **MISCELLANEOUS**

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

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

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

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

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

FRISCO

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

Attest:

\_\_\_\_\_



Deborah Wohlmuth, Town Clerk

CONTRACTOR

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

Name: John Sattler \_\_\_\_\_

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

## **ATTACHMENT A**

### **SCOPE OF WORK**

#### **Scope of Work and Responsibilities: Owner's Representative Services: Slopeside Hall**

Providing Owner's Representative services for the Town of Frisco will include but are not limited to:

##### **Scope Category 1-A – Design:**

1. Analyze or continue to analyze construction drawings for value engineering suggestions, plan reviews or revisions, building system evaluations which can assist the Town of Frisco in getting the most for its investment.
2. Continue to coordinate and work with project teams to finalize designs.
3. Finalize budget numbers for associated projects, develop timeline(s) and project coordination between Town staff and design firms.

##### **Scope Category 1-B – Bidding Process and Pre-Con:**

1. Ensure that plan drawings are developed well enough to go out to bid using the Town of Frisco's procurement methods as set forth in Frisco Town Code.
2. Develop and produce a request for proposal (RFP) with assistance from Town staff.
  - a. Create a timeline in RFP which construction can begin in the Fall of 2022, if applicable.
  - b. Coordinate utility location for mandatory site visit(s), as set forth in the RFP's.
  - c. Coordinate geotechnical data to present to prospective bidders, or the awarded bidder, depending on the timing of the RFP, as the current building area is under several feet of snow.
  - d. Create a clear and concise bid schedule, with assistance from design teams, so project team(s) can see a clear picture of what each line item costs.
  - e. Once bids are received, organize data in a clear and concise manner in which Town staff can see a side by side comparison of all prospective bidders.
  - f. Coordinate with Town staff and prospective bidders for interviews.
3. Assist Town staff in selecting the fairest and most responsible bid for the Town of Frisco.
4. Present bids results and prospective bidder selection to Frisco Town Council.
5. Organizing a productive preconstruction meeting between all necessary parties, outlining duties of all parties involved, timelines, critical path items, and best practices moving forward into construction.

##### **Scope Category 1-C – Construction:**

1. Weekly construction meetings between all necessary parties; owner's rep, Town staff, contractor, necessary subcontractors.
2. Up to date budget tracking so Town staff know where the project stands at all times.
3. On site visits at least once per week.
  - a. To see and understand critical path items, to ensure that all parties work together to achieve success.
4. Ensure that the presented project timeline is being followed, and that any deviations from the approved schedule are approved by Town staff or their designee (this Owner's Rep).
5. Ensure that all change orders are being submitted, presented and processed according to the Town of Frisco's Construction Agreement.

- a. Present any sizeable change orders Frisco Town Council (if needed), with assistance from Town staff.
6. Receive invoices, analyze, verify and present to Town staff for payment of each invoice received.
  - a. Set up a method of payment that works for both the Town of Frisco and the prime contractor (i.e., checks or electronic transfers).
7. Coordinate any testing and provide any quality assurance recommendations to Town staff.

**Scope Category 1-D – Post-Construction:**

1. Finalize disbursements with the prime contractor.
2. Ensure that all warranty work has been completed to a satisfactory level.
3. Ensure prime contractor has completed their duties according to the Town of Frisco's standard Construction Agreement.
  - a. Verify that all necessary items have been taken care of for project closeout.
4. File notices of completion and acceptance with all necessary parties.
5. Turn over all necessary information or training(s) associated to the new project(s).

## **ATTACHMENT B**

### **COMPENSATION**

#### **Slopeside Hall:**

- a. Fixed Fee of \$184,963.00 plus a Reimbursable Expense Allowance of \$1,500.00.
  - i. Our Fees assume a Project Budget of approximately \$7,500,000.00
  - ii. Our Fixed Fee reflects some “economy of scale” we expect to harness by working with similar folks on both projects and making use of time on site to address issues with both projects.
  - iii. Our Fixed Fee includes adjustments to our current Hourly Rates
    1. Project Managers are a blended \$160/hr.
    2. Principal in Charge is reduced to \$200/hr.
  - iv. Our Fixed Fee includes ALL mileage expense for the project.
  - v. Our Fixed Fee includes 20 months of duration for Category 1-C “Construction”. If it becomes apparent that Construction will extend significantly beyond 20 months, we may request additional fees on a pro-rata basis.