

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

THIS AGREEMENT ("Agreement"), made to be effective as of the 1<sup>st</sup> day of January, 2021, 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:

HL 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 - 9**

**(Town Hall, Public Works, Marina, FAP Day Lodge, FAP Nordic Center, Historic Park, Visitor Information Center, Community Center, Water Treatment Plant)**

##### **\$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:	\$180.00 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 and laptops	x 125 PCs	= \$5000.00
\$120	Monthly per Server and virtual VMWare Environment	X 20 Servers	= \$2400.00
\$200	Monthly Network Management per Office	x 9 Offices	= \$1800.00
			Monthly Total = \$ 9200.00

### \*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