

## **CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT is made and entered into this 25th day of April, 2023, by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation with an address of 1 Main Street, Frisco, CO 80443 (the "Town"), and Columbine Hills Construction, a Colorado Limited Liability Corporation ("Contractor") (collectively the "Parties").

For the consideration described herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Scope of Work. Contractor shall perform the following described work (the "Project"), in accordance with this Agreement and the Contract Documents, which Contract Documents are as defined in the General Conditions attached hereto and incorporated herein by this reference as Exhibit "A". The Project is generally described as follows:

### **2023 MEDIAN & ROUNDABOUT IMPROVEMENT PROJECT.**

The Project is described and/or depicted with particularity in the "Scope of Work" attached hereto as Exhibit B, which Exhibit is incorporated herein by this reference.

1. Bonds. Within ten (10) days of the date of this Agreement, Contractor shall provide the performance and payment bonds and certificate of insurance required by the Contract Documents.

2. Commencement and Completion of Work. Contractor shall commence the Project within ten (10) days of date of the Notice to Proceed. Substantial Completion of the Project shall be accomplished 80 days of the date of the Notice to Proceed, unless the period for completion is extended otherwise in accordance with the Contract Documents. Final Completion of the Project shall be accomplished within ten (10) days of the date of Substantial Completion.

3. Compensation/Contract Price. The Town agrees to pay Contractor, subject to all of the terms and conditions of the Contract Documents, for the Project, an amount not to exceed **TWO MILLION, TWO HUNDRED SEVENTY-SEVEN, TWO HUNDRED NINETY-THREE AND 00/100 DOLLARS (\$2,277,293.00)** (the "Contract Price"). The Town shall pay Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents. The Town has appropriated funds equal to or in excess of the Contract Price.

4. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Summit County, Colorado.

5. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

6. Integration. This Agreement and any attached exhibits constitute the entire Agreement between Contractor and the Town, superseding all prior oral or written communications.

7. Third Parties. There are no intended third-party beneficiaries to this Agreement.

8. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed to:

The Town: Jeff Goble, Public Works Director  
Project Manager  
P.O. Box 4100  
Frisco, CO 80443

Contractor: James Letson, President  
Columbine Hills Construction, LLC  
PO Box 2369  
Silverthorne, Colorado 80498-2369

9. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

10. Modification. This Agreement may only be modified upon written agreement of the Parties.

11. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other.

12. Governmental Immunity. The Town, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently three hundred eighty-seven thousand dollars (\$387,000) per person and one million ninety-three thousand dollars (\$1,093,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers or employees.

13. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

IN WITNESS WHEREOF, this Construction Agreement has been executed by the Parties as of the date first above written, whether or not the date of signing is some other date.

**TOWN OF FRISCO, COLORADO**

\_\_\_\_\_  
Hunter Mortensen, Mayor

ATTEST:

\_\_\_\_\_  
Stacey Nell,  
Town Clerk

**CONTRACTOR**

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

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

## **EXHIBIT A TO CONSTRUCTION AGREEMENT**

### **GENERAL CONDITIONS**

#### **PART 1. DEFINITIONS**

##### **1.01 CONTRACT DOCUMENTS:**

- A. Invitation to Bid;
- B. Bid Form;
- C. Bid Schedule;
- D. Construction Agreement;
- E. General Conditions;
- F. Special Conditions;
- G. Technical Specifications;
- H. Notice of Award;
- I. Notice to Proceed;
- J. Payment Bond;
- K. Performance Bond;
- L. Construction Drawings;
- M. Documentation submitted by Contractor prior to Notice of Award; and
- N. Addenda 1 through 3.

##### **1.02 CHANGE ORDER:**

A written order issued by the Town after execution of the Construction Agreement authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time.

##### **1.03 CONTRACT:**

The entire written agreement covering the performance of the Work described in the Contract Documents including all supplemental agreements thereto and all general and special provisions pertaining to the Work and materials therefor.

##### **1.04 CONTRACT PRICE:**

The amount set forth in Paragraph 3 of the Construction Agreement.

##### **1.05 CONTRACT TIME:**

The time for completion of the Project as set forth in Paragraph 2 of the Construction Agreement.

##### **1.06 DAY:**

Calendar day, unless otherwise specified. When the last day for the occurrence of an event falls on a Saturday, Sunday or legal holiday as recognized by the Town, the time for performance shall be automatically extended to the next business day.

**1.07 FINAL COMPLETION:**

The date as certified by the Project Manager when all of the Work on the Project is completed and final payment may be made.

**1.08 PROJECT:**

The construction task or tasks more fully described in the “Scope of Work” provisions (Exhibit B) of the Construction Agreement.

**1.09 PROJECT MANAGER:**

The Town's duly authorized representative in connection with the Project.

**1.10 SUBCONTRACTOR:**

Any person, firm or corporation with a direct contract with Contractor who acts for or in behalf of Contractor in executing any part of the Contract, excluding one who merely furnishes material.

**1.11 SUBSTANTIAL COMPLETION:**

The date as certified by the Project Manager when the Town occupies or takes possession of all or substantially all of the Project, or when the Town may occupy or take possession of all or substantially all of the Project and put it to beneficial use for its intended purposes.

**1.12 TOWN**

The Town of Frisco, Colorado, a Colorado municipal corporation.

**1.13 WORK:**

All the work specified, indicated, shown or contemplated in the Contract Documents to construct the Project, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Project Manager.

**PART 2. TIME**

**2.01 TIME OF THE ESSENCE:**

All times stated in the Contract Documents are of the essence.

**2.02 FINAL ACCEPTANCE:**

Upon Final Completion, the Project Manager will issue final acceptance.

**2.03 CHANGES IN THE WORK:**

The Town reserves the right to order changes in the Work, in the nature of additions, deletions or modifications, without invalidating the Contract, and to make corresponding adjustments in the Contract Price and the Contract Time. All changes shall be authorized by a written Change Order signed by the Project Manager. The Change Order shall include appropriate changes in the Contract Documents and the Contract Time. The Work shall be changed and the Contract Price and Contract Time modified only as set forth in the written Change Order. Any adjustment in the Contract Price resulting in a credit or a charge to the Town shall be determined by mutual agreement of the parties before the work set forth in the Change Order is commenced. If a Change Order results in an increase in the Contract Price, approval of the Frisco Town Council may be required.

The Town shall provide Contractor with written assurance of additional appropriations should any change in the Work result in an increase in the Contract Price exceeding the amount originally appropriated for the Work.

## **2.07 DELAYS:**

A. If Contractor is delayed in the progress of the Work by fire, unusual delay in transportation, adverse weather conditions not reasonably to be anticipated, or other unavoidable casualties beyond Contractor's control, the Contract Time shall be extended for a reasonable period of time.

B. Any request for extension of the Contract Time shall be made in writing to the Project Manager not more than seven (7) days after commencement of the delay; otherwise it shall be waived. Any such request shall contain an estimate of the probable effect of such delay on the progress of the Work.

C. Contractor shall not be entitled to any increase in the Contract Price, or to damages, or to additional compensation as a consequence of any such delays.

## **2.08 NO DAMAGES FOR DELAY:**

The Town shall not amend the Contract Price nor shall Contractor be entitled to additional compensation of any sort for costs or damages incurred as a result of any delays in performance unless such delay is the direct result of the acts or omissions of the Town or persons acting on behalf of the Town, in accordance with C.R.S. § 24-91-103.5.

## **PART 3. CONTRACTOR'S RESPONSIBILITIES**

### **3.01 COMPLETION/SUPERVISION OF WORK:**

Contractor shall be responsible for completion of all Work in a timely and workmanlike manner in accordance with the terms and specifications of the Contract Documents, including the techniques, sequences, procedures and means. Contractor shall be responsible for the coordination of all Work. Contractor shall supervise and direct the Work and give it all attention necessary for proper supervision and direction. Contractor shall maintain a supervisor on site at all times when Contractor or any subcontractor is performing Work.

### **3.02 DUTY TO INSPECT AND CONTRACTOR'S REPRESENTATIONS:**

Contractor shall inspect all Contract Documents, tests and reports, including soil tests and engineering tests, if applicable, and shall conduct a site or field review prior to executing the Contract. Contractor assumes the risk of all conditions which are disclosed, or which are reasonably suggested by any such tests or reports, or which would be disclosed by a field or site review. Contractor shall have the affirmative duty to advise the Town of any concerns which Contractor may have regarding construction conditions prior to executing the Contract.

In order to induce Town to enter into the Contract, Contractor makes the following representations:

- a. Contractor has examined and carefully studied the Contract Documents and the other related data identified in or related to the Contract Documents;

- b. Contractor has visited the site(s) and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;
- c. Contractor is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the Work; and
- d. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site(s), reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

### **3.03 FURNISHING OF LABOR AND MATERIALS:**

- A. Contractor shall provide and pay for all labor, materials and equipment, including: tools; construction equipment and machinery; utilities, including water; transportation; and all other facilities and services necessary for the proper completion of the Work.
- B. While engaged in the performance of the Work, Contractor shall maintain employment practices that do not violate the provisions of the Colorado Antidiscrimination Act of 1957, C.R.S. § 24-34-301, *et seq.*, as amended.

### **3.04 EMPLOYEES AND SAFETY:**

- A. Contractor shall maintain at all times strict discipline of its employees, and Contractor shall not employ on the Project any person unfit or without sufficient knowledge, skill, and experience to perform properly the job for which the employee was hired.
- B. Contractor shall be fully responsible to the Town for the acts, negligence and omissions of all direct and indirect employees and subcontractors. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the Town.
- C. Contractor shall provide for and oversee all safety orders and precautions necessary for the safe performance of the Work. Contractor shall take reasonable precautions for the safety of all employees and others whom the Work might affect, all work and materials incorporated into the Work, and all property and improvements on the Project site(s) and adjacent property.

### **3.05 CLEANUP:**

- A. Contractor shall keep the Project site(s) and adjoining ways free of waste material and rubbish caused by its employees or subcontractors. Contractor shall remove all such waste material and rubbish daily during construction, together with all tools, equipment, machinery and surplus materials. Contractor shall, upon termination of its Work, conduct general cleanup operations on the Project site(s), including the cleaning of all surfaces, paved streets and walks, and steps. Contractor shall also conduct such general cleanup operations on adjacent properties which were disturbed by the Work.
- B. If Contractor fails to perform the cleanup required by this Section, after written notice, the Town may cause the cleanup to be performed at Contractor's expense. Upon receipt of a statement for such cleanup, Contractor shall pay to the Town the costs incurred by the Town for such cleanup, or the Town shall have the right to withhold said amount from any final payment due to Contractor.

### **3.06 PAYMENT OF ROYALTIES AND LICENSE FEES:**

Contractor agrees to pay all royalties and license fees necessary for the Project, and to defend against all actions for infringement of copyright or patent rights, and to save and hold the Town harmless from such actions.

### **3.07 TAXES, LICENSES AND PERMITS:**

Contractor shall pay all taxes imposed by law in connection with the Project and shall procure all permits and licenses necessary for the prosecution of the Work.

### **3.08 SAMPLES AND SHOP DRAWINGS:**

Contractor shall furnish, upon the request of the Project Manager, samples and shop drawings to the Project Manager, who shall review them for conformance with the Contract Documents. All Work shall comply with approved samples and drawings.

### **3.09 COMPLIANCE WITH LAWS AND REGULATIONS:**

Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and orders in any manner relating to the Project. If any provision of the Contract Documents is at variance therewith, Contractor shall notify the Project Manager promptly.

### **3.10 SUBCONTRACTORS:**

A. Contractor shall furnish to the Project Manager at the time the Construction Agreement is executed, a list of names of subcontractors to whom Contractor proposes to award the portions of the Work to be subcontracted by Contractor.

B. Contractor shall not employ a subcontractor to whose employment the Project Manager reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment Contractor reasonably objects.

C. All contracts between Contractor and subcontractor shall conform to the provisions of the Contract Documents, and shall incorporate the relevant provisions of the Contract Documents.

### **3.11 CORRECTIVE WORK:**

When any Work does not conform to the Contract Documents, Contractor shall make the necessary corrections so that the Work will so conform. Such corrections shall be accomplished within the time period approved by the Project Manager. Failure to complete such required corrections within the time period required shall constitute a breach of the Contract.

### **3.12 OTHER CONTRACTS:**

The Town reserves the right to let other contracts in connection with the Project. Contractor shall cooperate with all other contractors so that their work is not impeded by the Work, and Contractor shall give other contractors access to the Project site(s) necessary to perform their contracts.

### **3.13 COMMUNICATION:**

Contractor shall direct all communications to the Town regarding the Project to the attention of the Project Manager.



## **PART 4. TERMINATION**

### **4.01 LABOR DISPUTES:**

Notwithstanding any other provision contained in this Contract, in the event of any picket or other form of labor dispute at the construction site(s), Contractor shall continue to perform the Work without interruption or delay. If Contractor ceases performance of the Work because of such picket or other form of labor dispute, the Town may terminate the services of Contractor after giving forty-eight (48) hours' written notice of its intent to do so.

### **4.02 DEFAULT:**

The Town may terminate this Contract upon seven (7) days' written notice to Contractor if Contractor defaults in the timely performance of any provision of the Contract Documents, or otherwise fails to perform the Work, or any part thereof, in accordance with the Contract Documents. Termination of the Contract by the Town shall not be the Town's exclusive remedy, and the Town may pursue such other remedies and actions lawfully available to the Town including, but not limited to, an action at law for damages against Contractor or any bonding agency issuing a bond hereunder, or an action in equity for injunctive relief.

## **PART 5. WARRANTIES:**

### **5.01 WARRANTY OR FITNESS OF EQUIPMENT AND MATERIALS:**

Contractor represents and warrants to the Town that all equipment and materials used in the Project, and made a part of the Project, or placed permanently in the Project, shall be new unless otherwise specified in the Contract Documents. All equipment and materials used shall be of good quality, free of defects and in conformity with the Contract Documents. All equipment and materials not in conformity with the Contract Documents shall be considered defective.

### **5.02 GENERAL WARRANTY:**

Contractor shall warrant and guarantee all material furnished and work performed by Contractor for a period of two (2) years from the date of final acceptance of the Project by the Project Manager. Under this warranty, Contractor agrees to repair or replace, at its own expense and under the direction of the Project Manager, any portion of the Project which fails or is defective, unsound, unsatisfactory because of materials or workmanship, or which is not in conformity with the provisions of the Contract. Should Contractor fail to perform any such work within the warranty period after a request by the Town, the Town may withdraw from the Performance and/or Payment Bonds any and all amounts necessary to complete the required work. The expiration of the warranty period shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

## **PART 6. BONDS, INSURANCE AND INDEMNIFICATION**

### **6.01 INDEMNIFICATION:**

Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise

out of or are in any manner connected with this Agreement or the Scope of Services if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

## **6.02 NOTICE OF CLAIM:**

If Contractor receives any claim arising from the performance of the Work, Contractor shall notify the Town in writing of the nature of the claim within twenty-four (24) hours of receipt of the claim by Contractor. In this notice, Contractor shall provide evidence that Contractor has notified Contractor's insurer of the claim. Contractor shall keep the Town apprised of the disposition of the claim, and Contractor shall take all necessary action to resolve the claim and make restitution, if required, as quickly as possible.

## **6.03 INSURANCE:**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.

B. Without limiting the generality of the foregoing, Contractor shall procure and maintain, and shall cause any subcontractor of Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers with a current Best's Insurance Guide Rating of A- or better and authorized to do business in the State of Colorado. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of Work under the Contract, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, one million dollars (\$1,000,000) disease – policy limit, and one million dollars (\$1,000,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

2. Commercial general liability insurance with minimum combined single limits of at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general 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, products, and completed operations. The policy shall contain a severability of interests provision, and shall be endorsed to include the Town and the Town's officers, employees, and consultants as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. “All Risk” Builder’s Risk insurance in a form acceptable to the TOWN upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall

include, as named insureds, the Town, Contractor, and any Subcontractors. This insurance shall include "all risk" insurance for physical loss or damage including without duplication of coverage, at least theft, vandalism, malicious mischief, transit, materials stored off site, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design, workmanship or materials. The Contractor shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The insurance shall be written without a co-insurance clause.

C. Any insurance carried by the Town, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy of insurance required by this Section 6.03.

D. Contractor shall provide to the Town a certificate of insurance as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify this Contract and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

#### **6.04 PERFORMANCE AND PAYMENT BONDS:**

Contractor shall furnish a Performance Bond and a Payment Bond, each in the full amount of the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including the warranty. These bonds shall remain in effect at least until two (2) years after the date of Final Completion.

### **PART 7. PAYMENT**

#### **7.01 PROGRESS PAYMENTS:**

A. The Town shall make periodic progress payments to Contractor within fifteen (15) days following the Project Manager's approval of the Work completed. A progress payment shall be made only after Contractor has submitted an application for a progress payment on a form approved by the Project Manager, and if requested by the Project Manager, Contractor shall submit copies of invoices from subcontractors or supplies and partial waivers executed by each.

B. Progress payments shall be in an amount equal to ninety-five percent (95%) of the Work actually completed, as determined by the Project Manager.

C. If Contractor fails to complete any required Work within the time period agreed between Contractor and the Project Manager, or within any time period set forth in the Contract Documents, as modified or extended, the Town is expressly authorized to withhold any progress payment for such Work until such Work is completed.

D. Whenever Contractor receives payment pursuant to this Contract, Contractor shall make payments to each of its Subcontractors of any amounts actually received that were included in Contractor's request for payment to Town for such subcontracts. Contractor shall make such payments within fifteen (15) days of receipt of payment from Town in the same manner as Town is required to pay Contractor pursuant to the Contract Documents if the Subcontractor is satisfactorily performing under its contract with Contractor. Nothing in this paragraph shall be construed to affect the retention provisions of the Contract Documents.

## **7.02 FINAL PAYMENT:**

Upon final acceptance of the Project, the Town shall pay the Contractor the remainder of the Contract Price theretofore unpaid. Notwithstanding any other part of this Section, the Contractor agrees that the Town shall, when required by C.R.S. § 38-26-107(1), publish a “notice of final payment” in a legal Summit County newspaper prior to making final payment to the Contractor. This notice of final payment advertises the date, time, and place when final payment will be made and is intended to alert subcontractors so they can present any claims for unpaid amounts to the Town. The final payment procedure typically delays the final payment made to the Contractor of the retainage amount.

Regardless of whether “notice of final payment” is required by state statute, final payment shall not be made to the Contractor until the Town has complied with all applicable requirements of C.R.S. § 38-26-107 and all claims, if any, have been resolved to the satisfaction of the Town.

## **7.03 LIQUIDATED DAMAGES:**

A. Because time is of the essence and delayed performance constitutes a compensable inconvenience to the Town and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day Final Completion is delayed after the Final Completion date stated in the Construction Agreement, as modified through approved change orders, Contractor shall be assessed the following amounts:

<b>Contract Price</b>	<b>Amount per day</b>
\$0-\$50,000	\$350
\$50,000-\$100,000	\$380
\$100,000-\$250,000	\$440
\$250,000-\$500,000	\$520
\$500,000-\$1,000,000	\$640
\$1,000,000-\$2,000,000	\$820
\$2,000,000-\$4,000,000	\$1,080
\$4,000,000-\$8,000,000	\$1,450
\$8,000,000-\$12,000,000	\$1,820
\$12,000,000 or greater	\$2,250

B. Allowing Contractor to continue and finish the Work or any part thereof after the Final Completion date shall not operate as a waiver on the part of the Town of any of its rights under the Contract Documents. Any liquidated damages assessed shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to complete the Work in the Contract Time. Liquidated damages may be deducted from any payment due Contractor or the retainage. If the liquidated damages exceed the amount owed to Contractor, Contractor shall reimburse the Town.

## **7.04 ORAL AGREEMENTS PROHIBITED:**

This Contract is expressly subject to the provisions of C.R.S. § 29-1-110(1), and Contractor acknowledges that neither the Town nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the Frisco Town Council. The Town acknowledges and agrees that sufficient funds have been appropriated to pay the Contract Price, but Contractor shall not rely upon the appropriation of any monies or

other funds in addition to those already appropriated unless and until the same are lawfully appropriated by the Frisco Town Council.

**7.05 ITEMS NOT INCLUDED IN BID:**

No additional compensation shall be paid for any costs or services listed in the Contract Documents but not specifically listed in the Bid as a Bid item.

**7.06 CHANGES IN QUANTITY:**

- A. Except as provided in Section 7.07, the unit Bid price shown in the Bid Schedule shall be used to determine the payment owed Contractor for any changes in quantity.
- B. The actual quantity placed, as determined by the Project Manager, shall be used to calculate the payment due to Contractor.
- C. Prior to any Work being performed in excess of any of the Bid Schedule quantities, Contractor shall notify the Town, in writing, of every quantity that will exceed one hundred five percent (105%) of the quantity listed on the Bid Schedule.
- D. Except as provided in Section 7.08, Contractor shall not be entitled to compensation for any increased expense, loss of expected reimbursement or loss of anticipated profits, directly or indirectly caused by any changes in quantity.

**7.07 BID PRICE ADJUSTMENTS:**

- A. When a major item is increased to more than one hundred twenty five percent (125%) or decreased below seventy five percent (75%) of the original quantity stated on the Bid Schedule, the unit Bid price shall be modified by written change order. Payment for major items shall be calculated by multiplying the actual quantity placed by the modified Bid price.
- B. For purposes of this Section, a major item is any item having a Bid value, determined by multiplying the Bid quantity by the unit Bid price, that exceeds ten percent (10%) of the original Contract Price.

**7.08 ELIMINATED ITEMS:**

Should any items contained in the Bid Schedule be found unnecessary for completion of the Work, the items shall be eliminated. The Contract Price shall be modified through written change order, and the amount of the change order shall be the eliminated quantity multiplied by the unit Bid price stated in the Bid Schedule, minus any reasonable costs incurred by Contractor for the eliminated items. Reasonable costs shall be determined by the Project Manager based on information provided by Contractor, and may include mobilization of eliminated materials and equipment mobilization costs, if the sole purpose of the equipment was to place the eliminated material. In no case shall the costs exceed the amount of the eliminated items.

**7.09 MATERIALS STORED BUT NOT INCORPORATED:**

Payments may be made to Contractor for materials stored on the Project site(s) but not incorporated into the Work as evidenced by invoices or cost analyses of material produced, if the material has been fabricated or processed and is ready for installation into the Project and conforms with the Contract Documents. Payments shall not exceed eighty-five percent (85%) of the price shown in the Bid Schedule or one hundred percent (100%) of the certified invoice cost of the stockpiled material, whichever is less. Payment for stockpiled materials shall not relieve

Contractor of responsibility for loss or damage to the material. Payment for living plant materials or perishable materials shall not be made until the living or perishable material is made an integral part of the finished Work.

#### **7.10 COST RECORDS:**

Contractor shall make cost records available to the Town if the Town deems it necessary to determine the validity and amount of any item claimed.

### **PART 8. MISCELLANEOUS**

#### **8.01 PUBLICATIONS:**

Any and all publications relating to the Project and authored by Contractor or any of its subcontractors shall be submitted to the Town for its prior written approval of the content of the publication. If the Town disapproves of the content of the publication, the author shall withdraw it from publication. The term "publication" as used herein shall include articles or letters to be published in any newspaper, magazine, trade journal or other periodical.

#### **8.02 CONFIDENTIALITY:**

Any and all reports, information, data, statistics, forms, designs, plans, procedures, systems, studies and any other communication form of knowledge given to or prepared or assembled by Contractor under this Contract shall, to the extent authorized and permitted by law, be kept as confidential and not be made available by Contractor to any individual, company or organization without the prior written consent of the Town. Notwithstanding the foregoing, Contractor shall not be restricted from releasing information in response to a subpoena, court order, or legal process, but Contractor shall notify the Town in writing before responding.

#### **8.03 INDEPENDENT CONTRACTOR:**

Contractor, for all purposes arising out of this Contract, is an independent contractor and not an employee of the Town. It is expressly understood and agreed that Contractor shall not be entitled to any benefits to which the Town's employees are entitled, such as overtime, retirement benefits, worker's compensation, injury leave or other leave benefits.

#### **8.04 CONFLICTS:**

Should any conflict arise in the Contract Documents, the order of precedence is as follows:

1. Construction Agreement.
2. Special Conditions.
3. General Conditions.
4. Supplemental Specifications.
5. Detailed Plans (Calculated dimensions will govern over scaled dimensions).
6. Standard Plans (Calculated dimensions will govern over scaled dimensions).

## **PERFORMANCE BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

(Firm)\_\_\_\_\_

(Address)\_\_\_\_\_

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm)\_\_\_\_\_

(Address)\_\_\_\_\_

hereinafter referred to as "the Surety", are held and firmly bond unto the Town of Frisco, Colorado, a municipal corporation hereinafter referred to as "the Owner", in the amount of \_\_\_\_\_ Dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Construction Agreement with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the performance of certain Work (the "Construction Contract"), which is by reference made a part hereof,

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Agreement during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without Notice to the Surety and during the life of the guaranty period, and if shall satisfy all claims and demands incurred under such Agreement, and shall fully indemnify and save harmless the Owner from all cost and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and then this obligation shall be void;

Otherwise the Principal and Surety shall have the following obligations:

1. If Owner is not in Default under the Construction Contract, Surety's obligation under this Bond shall arise after:

1.1 Owner has notified Principal and Surety at its address listed herein that Owner by seven days' written notice intends to terminate the services of Principal or otherwise declare Principal to be in default of its obligations under the Construction Contract; and

1.2 Owner has declared Principal to be in Default and formally terminated Principal's right to complete the Construction Contract; and

1.3 Owner has agreed to pay the Unpaid Balance of the Contract Price to Surety in accordance with the terms of the Construction Contract or to a Principal selected to perform the Construction Contract in accordance with the terms of the Construction Contract with Owner.

2. When Owner has satisfied the conditions of paragraph 1, Surety shall promptly and at Surety's expense take one of the following actions:

2.1 Arrange for Principal, with consent of the Owner, to perform and complete the Construction Contract; or

2.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent Principals; or

2.3 Obtain bids or negotiated proposals from qualified Principals acceptable to Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by Owner and the Principal selected with Owner's concurrence, to be secured with the performance and payment bonds executed by a qualified Surety equivalent to the Bonds issued on the Construction Contract, and pay to Owner the amount of damages as described in paragraph 4 in excess of the Unpaid Balance of the Contract Price incurred by Owner resulting from the Principal's Default; or

2.4 Waive its right to perform and complete, arrange for completion, or obtain a new Principal and with reasonable promptness under the circumstances, after investigation, determine the amount for which it is liable to Owner and, as soon as practicable after the amount is determined and approved by Owner, tender payment therefor to Owner.

3. If Surety does not proceed as provided in paragraph 2 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in subparagraph 2.4 and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice, Owner shall be entitled to enforce any remedy available to Owner.

4. After Owner has terminated Principal's right to complete the Construction Contract, and if Surety elects to act under subparagraph 2.1, 2.2, or 2.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Principal under the Construction Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the unpaid balance of the Contract Price and to mitigation of costs and damages on the Construction Contract, Surety is obligated without duplication for:

4.1 The responsibilities of Principal for correction of defective work and completion of the Construction Contract; and

4.2 Additional legal, design professional and delay costs resulting from



Principal's Default, and resulting from the actions or failure to act of Surety under paragraph 2; and

4.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of Principal.

5. Surety hereby waives notice of any change, including changes to the Construction Contract or to related subcontracts, purchase orders and other obligations.

6. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Owner declares Principal to be in default or within two years after Principal ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to Sureties in the State of Colorado shall be applicable.

7. Any notice to the parties required under this Bond 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 e-mail addresses may be provided for convenience only.

OWNER:     The Town of Frisco  
              Project Manager: Jeff Goble  
              P.O. Box 4100  
              Frisco, CO 80443

PRINCIPAL: \_\_\_\_\_  
              \_\_\_\_\_  
              \_\_\_\_\_  
              \_\_\_\_\_

SURETY:    \_\_\_\_\_  
              \_\_\_\_\_  
              \_\_\_\_\_  
              \_\_\_\_\_

8. This Bond is to be governed by the laws of the State of Colorado.

9. Definitions.

9.1 Unpaid Balance of the Contract Price: The total amount payable by Owner to Principal under the Construction Contract after all proper adjustments have been made, including allowance to Principal of any amounts received or to be received by Owner in settlement of insurance or other claims for damages to which Principal is entitled, reduced by all valid and

proper payments made to or on behalf of Principal under the Construction Contract.

9.2 Default: Failure of the Principal or Owner, as the case may be, that has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

IN WITNESS WHEREOF, this instrument is executed in five (5) counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL

ATTEST:

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

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

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

(Corporate Seal)

SURETY

ATTEST:

Surety: \_\_\_\_\_

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

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

Attorney-in-Fact: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

(Surety Seal)

NOTE: Date of Bond must not be prior to date of Construction Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the Owner.

## **PAYMENT BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) \_\_\_\_\_

(Address) \_\_\_\_\_

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) \_\_\_\_\_

(Address) \_\_\_\_\_

hereinafter referred to as "the Surety", are held and firmly bond unto the Town of Frisco, Colorado, a municipal corporation, hereinafter referred to as "the Owner", in the amount of \_\_\_\_\_ Dollars in lawful money of the United States, whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, to the Owner to pay for labor, materials and equipment furnished for use in the performance of that Construction Agreement with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, for the performance of certain Work (the "Construction Contract"), which is by reference made a part hereof,

NOW, THEREFORE, if the Principal shall make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in the Construction Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor performed in such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER,

1. That Surety shall have no obligation to Claimants under this Bond until:

1.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

1.2 Claimants who do not have a direct contract with Contractor:

1.2.1 Have furnished written notice to Contractor and sent a copy, or notice thereof to Owner, up to and including the date of final settlement under the Construction Contract, stating with substantial accuracy the amount of the claim and the name of the party to whom materials were furnished or supplied or for whom labor was done or performed; and

1.2.2 Have either received a rejection in whole or in part from Contractor, or not

received within 30 days of furnishing the above notice any communication from Contractor by which Contractor has indicated the claim will be paid directly or indirectly; and

1.2.3 Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.

2. If a notice required by Section 1 is given by Owner to Contractor or to Surety, that is sufficient compliance.

3. When a Claimant has satisfied the conditions of paragraph 1, Surety shall promptly and at Surety's expense take the following actions:

3.1 Send an answer to the Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

3.2 Pay or arrange for payment of any undisputed amounts.

4. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.

5. Amount owed by Owner to Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under the Construction Performance Bond. By Contractor's furnishing and Owner's accepting this Bond, they agree that all funds earned by Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

6. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

7. Surety hereby waives notice of any change, including changes to the Construction Contract or to related subcontracts, purchase orders and other obligations.

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Owner declares Contractor to be in default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to Sureties in the State of Colorado shall be applicable.

9. Any notice to the parties required under this Bond 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 e-mail addresses may be provided for convenience only.

OWNER:      The Town of Frisco  
                 Project Manager: Jeff Goble  
                 P.O. Box 4100  
                 Frisco, CO 80443

PRINCIPAL: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SURETY: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. This Bond is to be governed by the laws of the State of Colorado.

11. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

12. Definitions.

12.1 Claimant: Any person, partnership, or corporation, or other entity that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by Contractor or its Subcontractor in or about the performance of the Work under the Construction Contract, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work, or architectural and engineering services required for performance of the Work of the Contractor and the Contractor's Subcontractors.

12.2 Default: Failure of the Contractor or Owner, as the case may be, that has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

IN WITNESS WHEREOF, this instrument is executed in five (5) counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

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

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

PRINCIPAL

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_

(Corporate Seal)

SURETY

ATTEST:

Surety:\_\_\_\_\_

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

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

Attorney-in-Fact: \_\_\_\_\_

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

Address:\_\_\_\_\_

\_\_\_\_\_

(Surety Seal)

NOTE:      Date of Bond must not be prior to date of the Construction Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the Owner.

**NOTICE OF AWARD**

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_

Dear \_\_\_\_\_:

Thank you for submitting a bid for the Town of Frisco's \_\_\_\_\_.

Your firm has been selected as the successful Bidder, and accordingly, this letter is your Notice of Award for the contract amount of \$\_\_\_\_\_ for the above mentioned project.

Enclosed please find an original and duplicate original Construction Agreement. Please review and sign both, then within ten (10) days return one copy to me along with your Payment Bond and Performance Bonds, each in the full amount of the Contract Price, as well as your Certificate of Insurance in the amounts required by the Agreement. When dating these documents, make sure all dates on all documents are the same. Return all the documents at the same time, in the same envelope.

Upon receipt of the fully executed copy of the Construction Agreement, as well as all bonding and insurance documents the Town will send you a Notice to Proceed.

Should you have any questions, please call me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE TO PROCEED**

Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_

Dear \_\_\_\_\_:

This letter is your Notice to Proceed, effective as of the date of this letter. This notice is in reference to the Construction Agreement between you and the Town of Frisco concerning \_\_\_\_\_.

Please note that the Work shall commence within ten (10) days from the date of this letter, and that the Work shall be substantially completed within \_\_\_\_\_ days from the date of this letter.

Should you have any questions, please call me at (\_\_\_\_) \_\_\_\_-\_\_\_\_.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_