

FUEL SALE AGREEMENT

This Fuel Sale Agreement (“**Agreement**”) is dated _____, 2023 and is between the TOWN OF FRISCO, a Colorado municipal corporation (“**Seller**”) and _____ (“**Purchaser**”). Seller and Purchaser are sometimes each individually referred to as a “**Party**” and are collectively referred to as the “**Parties.**”

WHEREAS, Seller owns and maintains above ground fuel storage tanks; and

WHEREAS, Seller is willing to sell to Purchaser gasoline and diesel fuel from its above ground fuel storage tanks, all in accordance with, and subject to the terms and conditions of this Agreement; and

WHEREAS, Purchaser desires to purchase gasoline and diesel fuel from Seller, all in accordance with, and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein, and intending to be legally bound, the parties agree as follows:

1. Authority. This Agreement is entered into by the Parties pursuant to the authority granted by Section 29-1-110, C.R.S., regarding intergovernmental agreements.

2. Sale of Gasoline and Diesel Fuel. Subject to availability, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller gasoline and diesel fuel (collectively, “**Fuel**”) from Seller’s above ground fuel storage tanks (“**Seller’s Fuel Facilities**”). Except as provided in Section 3, there is no limit on the amount of Fuel that Purchaser may purchase from Seller pursuant to this Agreement.

3. Limitation on Amount of Fuel Purchased. Notwithstanding anything contained herein to the contrary, Purchaser may not purchase more than 150 gallons of Fuel in a single transaction unless required for unusual, unforeseen, or emergency circumstances.

4. Price; Payment. The rate for the Fuel charged to and paid by Purchaser shall be the same per gallon charge as Seller paid for the Fuel, plus a \$0.10 per gallon administrative processing fee. Purchaser shall pay Seller’s invoice for Fuel pumped by Purchaser within 30 days of receipt. Interest at the rate of 1% per month shall be paid by Purchaser on any amount not paid within 30 days of receipt of Seller’s invoice.

5. Access To Fuel. Seller shall make available to Purchaser, at the same cost the Seller pays, a sufficient number of chip-keys and/or access cards and /or other methods of sale authorization that may become available in the future, to allow reasonable access by Purchaser to Seller’s Fuel Facilities. Each chip-key and/or access card and /or other methods of sale authorization that may become available in the future, shall be clearly identified, and Purchaser is responsible and shall pay for all Fuel taken from Sellers Fuel Facilities by use of the chip-keys and/or access cards and/or other methods of sale authorization that may become available in the future assigned to Purchaser.

6. Use of Fuel. All Fuel purchased by Purchaser pursuant to this Agreement shall be used by Purchaser exclusively in the performance of Purchaser's governmental functions and activities.

7. No Resale of Fuel. Purchaser shall not resell any Fuel to any person or entity.

8. Fuel Tax. Purchaser represents to Seller that it has a fuel tax exemption certificate. Purchaser shall be solely responsible for the payment of any state or federal tax imposed on Purchaser's purchase of Fuel from Seller under this Agreement.

9. Seller's Operating Costs. The Parties acknowledge that it is necessary for Seller to incur costs in connection with the operation, maintenance, repair, and replacement of Seller's Fuel Facilities, and that it is the mutual interest of the Parties that such costs be paid in order to allow for the continued sale of Fuel to Purchaser under this Agreement. As used in this Agreement, "**Seller's Operating Costs**" include those expenses actually and necessarily incurred by Seller in connection with the operation, maintenance, repair, and replacement of Seller's Fuel Facilities. Purchaser agrees to pay a pro rata share of Seller's Operating Costs. Purchaser's pro rata share of Seller's Operating Costs shall be based upon the total number of gallons of Fuel pumped by Purchaser during a calendar year compared to the total number of gallons of Fuel pumped by Seller for its own use, together with the total number of gallons of Fuel pumped by all other parties to whom Seller sells Fuel. Seller shall notify Purchaser of the estimated amount of Seller's Operating Costs for the following calendar year during Seller's annual budget process. The actual amount of Purchaser's pro rata share of Seller's Operating Costs for a given year shall be calculated by Seller and invoiced to Purchaser not later than the end of the first quarter of the following calendar year. Purchaser shall pay Seller's invoice within 30 days of receipt. Interest at the rate of 1% per month shall be paid by Purchaser on any amount not paid within 30 days of receipt of Seller's invoice. The provisions of this Section shall survive the termination of this Agreement, and shall be fully enforceable thereafter, subject to any applicable statute of limitation. If this Agreement is terminated prior to the end of a calendar year. Purchaser shall still be obligated to pay its pro rata share of Seller's Operating Costs for the year in which the Agreement was terminated.

10. Term; Termination. The term of this Agreement commences as of the date of this Agreement and continues until terminated by either Seller or Purchaser as provided in the following sentence. Either Party may terminate this Agreement, without cause and without liability for breach, upon not less than 60 days' prior written notice to the other Party. Purchaser shall pay for all Fuel pumped by Purchaser prior to the effective date of termination, together with Purchaser's pro rata share of the costs described in Section 8. Seller may also terminate this Agreement if Purchaser fails to pay any invoice for fuel purchased or Purchaser's pro rata share of Seller's Operating Costs as required by Section 8 within 60 days of Purchaser's receipt of Seller's invoice.

11. Non-Exclusive Agreement. Purchaser understands and acknowledges that Seller sells Fuel to other governmental entities. The provisions of this Agreement are non-exclusive. Seller shall be permitted to continue to sell Fuel to other governmental entities, and Purchaser may purchase Fuel from sources other than Seller.

12. Indemnification. Purchaser agrees, to the extent permitted by law, if at all, that it shall indemnify and defend Seller, its officers, employees, insurers, and self-insurance pool against all liability, claims, and demands, 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, to the extent that such injury, loss, or damage is caused by the negligence or intentional wrongful act of Purchaser, or any officer, employee, representative, or agent of Purchaser; except to the extent such liability, claim or demand arises through the negligence or intentional wrongful act of Seller, its officers, employees, or agents. To the extent indemnification is required under this Agreement, Purchaser agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees. The provisions of this Section shall survive the termination of this Agreement, and shall be fully enforceable thereafter, subject to any applicable statute of limitation.

13. Disclaimer. Purchaser acknowledges that the Fuel is sold by Seller “**AS IS**” and “**WITH ALL FAULTS**”, and that Seller does not warrant or make any representations, express or implied, relating to the **MERCHANTABILITY**, quality, condition, suitability or **FITNESS FOR ANY PURPOSE WHATSOEVER**.

14. Governmental Immunity. The Parties do not waive or intend to waive by any provision of this Agreement, the monetary limitation or any other rights, immunities, and protections provided to the Parties by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other law or limitation otherwise available to each party, its officers, or employees.

15. Annual Appropriation. The obligations of each Party under this Agreement are subject to an annual appropriation being made by that Party’s governing body in an amount sufficient to allow the Party to perform its obligations under this Agreement. If sufficient funds are not appropriated by the governing body of either Party for the payment of any sum due hereunder by such Party, this Agreement may be terminated by either Party. Neither Party’s obligations under this Agreement constitutes a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

16. Notices. Except as otherwise provided, all notices provided for or required under this Agreement shall be in writing, signed by the Party giving the notice, and shall be deemed properly given when actually received or two days after being mailed, by certified mail, return receipt requested, addressed to the other Parties hereto at their addresses appearing on the signature page(s). Either Party, by written notice to the other Party, may specify any other address for the receipt of such instruments or communications.

17. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the sale and purchase of Fuel and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.

18. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto. Oral amendments to this Agreement are not permitted.

19. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be considered an original for all purposes and all of which together shall constitute but one and the same instrument.

20. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

21. No Adverse Construction. Each Party acknowledges having had the opportunity to participate in the drafting of this Agreement. This Agreement is not to be construed against either Party based upon authorship.

22. No Partnership. Nothing in this Agreement creates a partnership between the Parties.

23. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successor governing boards.

TOWN OF FRISCO, a Colorado
municipal corporation

Hunter Mortensen, Mayor

ATTEST:

Stacey Nell, Town Clerk

Seller's Address:
P.O. Box 4100
Frisco, CO 80443

Purchaser: _____

By _____

Title: _____

Purchaser's Address: _____