



MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: DIANE MCBRIDE, ASSISTANT TOWN MANAGER
RE: FRISCO BAY MARINA – SOLE SOURCE CONTRACT WITH MATTHEW STAIS ARCHITECTS
DATE: AUGUST 27, 2019

Summary and Background: At the August 13, 2019, Council meeting, staff gave Council an update on the marina projects completed in 2019 or near completion at this time. The projects included the Big Dig, Phase 1 site improvements, fuel dock/relocation, wetlands mitigation, lift station/sanitation, and fire standpipe design and installation.

Staff also reviewed the budget with Council. Accounting for all projected Phase 1 costs, there is currently \$3.3M in the Marina capital fund balance. Initially, it was thought the marina office and guest services building, intersection/entry improvements and sidewalks, paths and parking areas could be constructed in 2020, with a rough estimate of \$3.6M cost. However, with the new layout of the marina and the projects completed in 2019, along with less available funding, staff brought forward the marina discussion seeking Council direction and prioritization of projects.

Council directed staff to complete the entire design of the Phase 2 site, as depicted in the picture on page two, before any additional construction is begun to ensure the final outcomes meet the Council's complete vision for the Marina.

To complete the design of the Phase 2 site, including the design of the new food and beverage building and the scaled back review and design of the office and guest services building, staff is recommending a sole source contract with Matthew Stais Architects. Mr. Stais designed the marina office and guest services building. Mr. Stais also served on the Advisory Committee for the Frisco Marina Park Master Plan. He is knowledgeable, professional, understands the projects, including the financial limitations, and is able to give the project a fresh look, while still respecting the integrity of the master plan.

Analysis: Through the Town's budgeting process, Council authorized staff to pursue funding (bond revenues), in addition to projected marina fund revenues and reserve accounts, for 2019 marina capital projects totaling \$3,996,700 and an estimated list of projects in 2020 totaling \$3,602,500.

The Big Dig and Phase 1 site improvements are complete at this time. Per the Frisco Marina Park Master Plan, the Phase 2 site is slated for the construction of both the office and guest services building and the food and beverage building, landscape, finished sidewalks/paths/and drop off areas, and a splash pad and skating pond.

Finishing the design of the Phase 2 site area will ensure future construction is aligned with the Council's priorities and vision for the area. Finishing the architectural designs as identified on the Master Plan, or per Town Council's direction, would complete the vision for the area.

The process will also help Council answer questions about the future of the Lund House and the Island Grill buildings, the seasonal or year-round nature of the spaces, as well as any other proposed amenities in this area. The process will also help depict the scale and scope of all buildings to be constructed in the project site area in order to scale the buildings and facilities together, and to identify efficiencies and impacts to both buildings.

Frisco Bay Marina - Phase 2 Site:



Financial Impact: On January 22, 2019, the Town Council approved Ordinance 19-01 authorizing issuance of Marina Enterprise Revenue Bonds in an amount not to exceed \$6,000,000 to provide funding for capital projects to expand capacity at the Marina to complete the first two phases of the Frisco Marina Park Master Plan. Note: with initial project costs estimated at \$7.6M, and bond proceeds of \$5M, it was understood the Town would need an additional \$2.5M or more to complete all of the proposed projects at the Marina.

The projected cost estimated for 2019 projects (Big Dig, Phase 1) was \$3,996,700. The actual cost is estimated at approximately \$4,300,000. There is currently \$3.3M in the Marina capital fund balance, accounting for all projected Phase 1 costs. Construction costs for new buildings are estimated between \$400/ft² and \$600/ft² at this time, based on estimates received in 2019. Such costs will impact the design of the buildings. The new office and guest services building was originally designed as a 4,846ft² space, and the F&B building was proposed as a stand-alone 2,500ft² building with indoor and outdoor seating. Both buildings will be reviewed and designed for functionality and economy with future expansion options as appropriate.

The proposed agreement with Matthew Stais Architects for \$123,000 will come out of the Marina Fund Capital Improvements (90-9000-4444). There are sufficient funds in this account for this work.

Alignment with Strategic Plan: Per the 2019-2020 Town of Frisco Strategic Plan, the improvement of the waterfront marina is a goal for Council. The Town recognizes the importance of its recreational opportunities as essential to the Town's vibrancy, providing unique opportunities for visitors and locals to explore, play, experience, and share with the broader community. Such vibrant recreation is central to the community's economic vitality and therefore a high priority for the Town Council to maintain, sustain, and protect for future generations.

Staff Recommendation: Staff recommends a sole source contract with Matthew Stais Architects for the design of the Phase 2 site improvements. Under section 9-3 of the Town Code, the Town Council is authorized to approve a contract for goods or services without a competitive bidding process when, in the opinion of the Council, the goods or services are best obtained from a single source due to specialized skills, knowledge or experience, unique and relevant experience, knowledge of the Town or exceptional qualifications or reputation in the field. Mr. Stais served on the Advisory Committee for the Frisco Marina Park Master Plan and designed the marina office and guest services building. He has the knowledge and the unique and relevant experience associated with this project, as well as the ability to take a fresh look at the area to design structures and amenities that meet the goals of Council while managing the financial realities of the project. The proposed agreement with Matthew Stais Architects is fair and reasonable in light of the market for similar services.

Another option for Council to consider would be to release an RFP for the work. Given the dollar amount of \$123,000 for the project, Council may opt to release a competitive bidding process. This process may take a few months to complete and bids may come in higher or lower than the \$123,000 proposal.

Reviews and Approvals:

This report has been reviewed and approved by:
Bonnie Moinet, Finance Director – Approved

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
RESOLUTION 19-28**

A RESOLUTION APPROVING AN AGREEMENT WITH MATTHEW STAIS ARCHITECTS FOR THE DESIGN OF PHASE TWO SITE IMPROVEMENTS AT THE FRISCO BAY MARINA WITHOUT A COMPETITIVE BIDDING PROCESS.

WHEREAS, under section 9-3 of the Town Code, the Town Council is authorized to approve a contract for goods or services without a competitive bidding process when, in the opinion of the Council, the goods or services are best obtained from a single source due to specialized skills, knowledge or experience, unique and relevant experience, knowledge of the Town or exceptional qualifications or reputation in the field; and

WHEREAS, the Frisco Bay Marina (the "Marina") desires to work with Matthew Stais Architects on the design of Phase Two site improvements to successfully plan for future construction projects; and

WHEREAS, Matthew Stais Architects has previously been engaged by the Town to design the marina office and guest services building; and

WHEREAS, as a result of Matthew Stais Architects' previous work in designing the marina office and guest services building and serving on the Advisory Committee for the Frisco Marina Park Master Plan, the Town Council finds that Matthew Stais Architects has specialized knowledge and experience that is unique and relevant to the Town and to the Marina's operations and, accordingly, the design of Phase Two is best obtained from a single source without a competitive bidding process; and

WHEREAS, the Town Council finds that the price set forth in the attached agreement with Matthew Stais Architects is fair and reasonable, relative to the general market prices for the goods and services to be provided by Matthew Stais Architects.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT:

The attached agreement between the Town and Matthew Stais Architects, is hereby approved and the Town Mayor and Town Clerk are hereby authorized to execute the same on behalf of the Town of Frisco.

INTRODUCED, READ AND ADOPTED THIS 27TH DAY OF AUGUST, 2019.

Town of Frisco, Colorado:

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

CONTRACT FOR GOODS AND/OR SERVICES

THIS AGREEMENT ("Agreement"), made this 27th day of August 2019, between the Town of Frisco, a Colorado home rule municipal corporation, hereinafter referred to as "FRISCO" and Matthew Stais Architects, a Colorado Corporation, as an independent contractor, hereinafter referred to as "CONTRACTOR," provides as follows:

ARTICLE I SCOPE OF SERVICES

Section 1.1 Services: CONTRACTOR agrees to perform the work, personal services and/or furnish the necessary equipment, supplies or materials in accordance with and/or as described in Attachment A hereto, hereinafter referred to as the "Project." Attachment A hereto is hereby incorporated by reference and made a part of this Agreement. Attachment A includes consultant's services for all Phase 2 site improvements at the Frisco Bay Marina. For the purposes of this contract, the scope of services is for programming services (1), conceptual design services (2), schematic design services (3), and design development services (4).

Section 1.2 Scope of Services: FRISCO agrees to retain CONTRACTOR to complete the Project. CONTRACTOR shall commence work upon direction to proceed and complete the Project on or before March 1, 2020. Additional services beyond those listed in Attachment A, if requested, shall be provided only when authorized in writing by FRISCO.

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

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

ARTICLE II ADMINISTRATION OF THIS AGREEMENT

Section 2.1 Project Performance: In consideration of the compensation provided for in this Agreement, CONTRACTOR agrees to perform or supply the Project,

in accordance with generally accepted standards and practices of the industry, and warrants all materials incorporated in the Project to be free from defect of material or workmanship and conform strictly to the specifications, drawings or samples specified or furnished. This Section 2.1 shall survive any inspection, delivery, acceptance or payment by FRISCO.

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

Section 2.3 Ownership and Use of Documents:

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

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

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

Section 2.4 Insurance:

(a) CONTRACTOR agrees to procure and maintain, at its own cost, the following policy or policies of insurance sufficient to insure against all liability,

claims, demands, and other obligations assumed by CONTRACTOR under this Agreement or arising as a result of this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law.

(b) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall name FRISCO, its employees and agents as additional insureds and shall include the following provisions: (i) severability of interest; (ii) waiver of subrogation; and (iii) cross liability endorsement.

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

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

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

(f) Every policy required under this Section 2.4 shall be primary insurance, and any insurance carried by FRISCO, its officers, or its employees, or carried by or provided through any insurance pool of FRISCO, shall be excess and not contributory insurance to that provided by CONTRACTOR. CONTRACTOR shall be solely responsible for any deductible losses under any policy required above. All insurance policies must be written by a reputable insurance company with a current Best's Insurance Guide Rating of A- or better and authorized to do business in the State of Colorado.

(g) Prior to commencement of this Agreement, CONTRACTOR shall provide FRISCO with a certificate of insurance completed by CONTRACTOR's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to FRISCO. The completed certificate of insurance shall be sent to:

Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Bonnie Moinet, Finance Director

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

(i) The parties hereto understand and agree that FRISCO is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$387,000 per person and \$1,093,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to FRISCO, its officers, or its employees.

Section 2.5 Indemnification:

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

(b) In any and all claims against FRISCO or any of its agents or employees by any employee of CONTRACTOR, any subcontractor of CONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose act any of them may be liable, the indemnification obligation under this Section 2.5 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's or workman's compensation actions, disability benefit acts or other employee benefit acts.

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

Section 2.7 Termination of Agreement:

(a) This Agreement may be terminated by either party upon thirty (30) days' written notice, provided that such termination is based upon a substantial failure by the other party to perform in accordance with the terms in this Agreement. Failure to proceed in a timely manner, and/or deviation from the aforesaid Agreement without prior written approval of FRISCO, shall constitute authority for issuance of a termination notice, except wherein circumstances beyond the control of CONTRACTOR shall warrant alteration, adjustment or deviation from this Agreement. In the event of termination, FRISCO will pay CONTRACTOR for all services performed to date of termination. If payment is otherwise due upon completion, FRISCO will pay CONTRACTOR for the pro rata value of the completed portion of the Project that will be incorporated into the Project. FRISCO will require the release of all lien rights as a condition of such payment.

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

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

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

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

FRISCO:

Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Diane McBride
Electronic mail:
dianem@townoffrisco.com

CONTRACTOR:

Matthew Stais Architects
P.O. Box 135
Breckenridge, Colorado 80424
Attn: Matthew Stais
Electronic mail: matt@staisarchitects.com

ARTICLE III **RESPONSIBILITIES OF FRISCO**

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

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

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

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

ARTICLE IV
COMPENSATION FOR SERVICES

Section 4.1 Compensation: CONTRACTOR shall be compensated for its services under this agreement on a time and materials basis, but in no event to exceed the sum of \$123,000. A schedule of hourly rates and reimbursable expenses for the CONTRACTOR's work under this Agreement is set forth in Attachment B hereto. Attachment B hereto is hereby incorporated by reference and made a part of this Agreement.

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

ARTICLE V
PROHIBITION ON EMPLOYING OR CONTRACTING WITH ILLEGAL ALIENS

Section 5.1 The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

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

Section 5.5 If the CONTRACTOR obtains actual knowledge that a subcontractor performing the work under this Agreement knowingly employs or contracts with an illegal alien, the CONTRACTOR shall: (a) notify the subcontractor and the FRISCO within three (3) days that the CONTRACTOR has actual knowledge that the subcontractor is knowingly employing or contracting with 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 CONTRACTOR shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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

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

ARTICLE VI

MISCELLANEOUS

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

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

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

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

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

FRISCO

By: _____
Name: _____
Title: _____

Attest:

Deborah Wohlmuth, Town Clerk

CONTRACTOR

By: _____
Name: _____
Title: _____

ATTACHMENT A
SCOPE OF WORK



exhibit A
consultant's services

phase 2 site improvements
frisco bay marina
frisco, colorado

27 august 2019

Consulting services for this project shall include:

1. Programming Services:

- a. Review of previous Marina Office Building program, design, size, location and costs with respect to current direction from Town staff regarding program, budget, location and other site improvements, after completion of 'Big Dig' and Phase I Site Improvement per Marina Master plan.
- b. Analysis of existing site conditions and coordination of required survey work (8 hours maximum).
- c. Assist Town staff in development of program, scope and costs for Food & Beverage Building.
- d. Assist Town staff in development of program, scope and costs for other Phase 2 Site Improvements.
- e. Deliverables: project program memo and 'neighborhood map' showing approximate boundary of Phase 2 Site Improvements.

2. Conceptual Design Services:

- a. Development of Conceptual Design options, including a maximum of two conceptual schemes studying possible configurations of Client's program on the subject property:
 - a. 'Economy Version' based on Town staff and Council direction to date.
 - b. Expansion of scope to give Town staff and Council options for consideration should additional funding be made available.
- b. Studies of future expansion of building(s) in order to give flexibility for the facilities to evolve top meet future demands, which may be unforeseen at this time.
- c. Presentation of Conceptual Design options to Client at time and location specified by Client.
- d. Pre-application meeting with Town Planning staff.
- e. Deliverables to include:
 - a. Hand drawn site/floor plan diagrams, based on input provided by Client.
 - b. Preliminary program/area worksheets.

3. Schematic Design Services:

- a. Development of Schematic Design, based on Client input on conceptual design, to include:
 - a. Neighborhood Map.
 - b. Preliminary Site Plan.
 - c. Preliminary floor plans, per municipal requirements.
 - d. Preliminary building massing and exterior elevations.
 - e. Preliminary indications of exterior materials and fenestration.

- f. Preliminary indications of exterior lighting.
- g. Updated program/area worksheets.
- b. 'Sketch Plan' submission Town planning staff. Required application fees shall be considered reimbursable expenses and not part of the base fee.
- c. Coordination with consulting designers and engineers including landscape design and civil engineering.
- d. One 'Sketch Plan' presentation to Town planning commission hearing is included in base fee; additional submissions and meetings shall be considered additional services. No guarantee of municipal approvals is implied by this agreement.
- e. One presentation of Schematic Design to Town Council is included in base fee; additional submission materials and meetings shall be considered additional services. No guarantee of municipal approvals is implied by this agreement.

4. Design Development Services:

- a. Design Development documentation to include:
 - a. Neighborhood Map.
 - b. Site Plan.
 - c. Coordination with landscape and civil engineering site plans.
 - d. Floor and roof plans.
 - e. Exterior elevations.
 - f. Exterior renderings of 3D building information model (Autodesk REVIT software) per municipal requirements.
 - g. Building and wall sections of 3D building information model (Autodesk REVIT software) at key areas to show preliminary indications of building systems.
 - h. Preliminary building code study, based on current and anticipated building and accessibility codes adopted by the Town.
 - i. Coordination with building and fire departments to ascertain local code amendments and their requirements specific to this project.
- b. Coordination with consulting designers and engineers including landscape design, civil, structural and MEP engineering.
- c. 'Major Site Plan Application' submission Town planning staff. Required application fees shall be considered reimbursable expenses and not part of the base fee.
- d. One 'Major Site Plan Application' presentation to Town planning commission hearing is included in base fee; additional submissions and meetings shall be considered additional services. No guarantee of municipal approvals is implied by this agreement.
- e. Coordination of GBI 'Green Globes NC' schematic design phase submission, as required by municipal requirements. Required application fees shall be considered reimbursable expenses and not part of the base fee.

5. Construction Documents Services:

- a. Architectural and engineering design documents sufficient for Client to obtain project pricing and building permits, including:
 - a. Site plans, including coordination with landscape and civil engineering.
 - b. Phasing plan, if applicable.
 - c. Construction staging plan, if applicable.
 - d. Floor and roof plans.
 - e. Construction assembly types and details, per municipal requirements.
 - f. Door and window schedules.
 - g. Exterior elevations indicating materials, finishes and details.

- h. Building sections showing critical construction assemblies and details.
- i. Reflected ceiling plans.
- j. Structural, mechanical, electrical and plumbing engineering design documents.

6. Bidding/Permitting/Preconstruction Phase Services:

- a. Responses to permitting requirements from pertinent review authorities.
- b. Responses to contractor and subcontractor questions during bidding.
- c. Issuance of consolidated 'construction set' of plans or supplemental SK drawings, based on feedback from review authorities and contractors.
- d. Coordination of GBI 'Green Globes NC' construction documents submission, as required by GBI and municipal requirements.

7. Construction Phase Services (240 staff hours maximum):

- a. Construction duration: 9 months is anticipated.
- b. Attend (1) preconstruction kickoff meeting on site.
- c. Review of shop drawings and submittals, to a maximum of 60 staff hours.
- d. Responses to RFI's, to a maximum of 60 staff hours.
- e. Provide ASI as required, to a maximum of 60 staff hours.
- f. Attendance at (16) semi-monthly jobsite meetings during construction, to a maximum of 60 hours.
- g. Attendance at (1) final punch list meeting on site.
- h. Coordination of GBI 'Green Globes NC' program, as required by GBI and municipal requirements.

The Base Fee for the Services noted above shall be billed on an hourly basis to a maximum of \$309,000, in accordance with Exhibit B, Design Fee Schedule, which is hereby made a part of this Exhibit A.

Specific exclusions from scope of work included in Base Fee include:

- a. Boundary and topographical survey (required prior to commencement of work).
- b. Wetlands delineation or environmental design services.
- c. Soils report or geotechnical engineering services.
- d. Traffic or parking studies.
- e. Additional submissions or presentations to town council or planning commission beyond that outlined above.
- f. Physical models of the project.
- g. Design revisions or 'value engineering' requested by Owner after completion of Design Development documentation.
- h. Project manual or written specifications.
- i. Development and/or documentation of Contractor's final punch list.
- j. Items noted herein as provided or coordinated by Client, General Contractor, or others.
- k. Reimbursable expenses, per attached Exhibit C which is hereby made a part of this Exhibit A.

Specific exclusions from the scope of work included in the Base Fee shall be considered Additional Services and invoiced in accordance with Exhibit C.

exhibit A - consultant's services
phase 2 site improvements
frisco bay marina
page 4

In the event of differences between this Exhibit A and Exhibit B or Exhibit C, the information contained in Exhibit A shall govern. In the event of differences between Exhibits B and C, the information contained in Exhibit B shall govern.

Execution of this Agreement between the Town and MSA will supersede and extinguish previous Owner-Architect Agreement B132-2009 dated 28 August 2018 for 'Frisco Bay Marina Main Office and Bathrooms'.

file: data\0002\contracts\FBM\FBM 2019\exhibits\FBM exhibit A-services.doc

ATTACHMENT B
COMPENSATION SCHEDULE



exhibit B
design fee schedule
 phase 2 site improvements
 frisco may marina
 frisco, colorado
 27 august 2019

assumed const costs:	new const	renovation
area:	6,000	-
unit cost:	\$500	n/a
subtotal:	\$3,000,000	\$0
% total:	100%	0%

notes: 1. Est project budget:	\$3,000,000
2. Est const cost/sq ft:	\$500
3. Resultant building sq ft:	6,000

design fee by discipline:	%	\$
architectural & general	4.00%	\$120,000
civil	1.00%	\$30,000
landscape	1.20%	\$36,000
structural	1.20%	\$36,000
mech/elec	1.80%	\$54,000
energy/green	0.30%	\$9,000
interiors	0.80%	\$24,000
total:	10.30%	\$309,000

fees as % const costs	cost/sq ft
architectural & general	\$20.00
civil	\$5.00
landscape	\$6.00
structural	\$6.00
mech/elec	\$9.00
energy/green	\$1.50
interiors	\$4.00
total:	\$0.00

base fee percentages by project phase:

discipline	programming	CD/SD	DD	WDs	B/P	CA	total
arch/general	10%	15%	20%	25%	5%	25%	100%
civil	0%	20%	30%	25%	5%	20%	100%
landscape	5%	15%	30%	25%	5%	20%	100%
structural	0%	0%	25%	60%	5%	10%	100%
mech/elec	0%	0%	25%	55%	5%	15%	100%
energy/green	0%	0%	60%	15%	0%	25%	100%
interiors	0%	0%	20%	40%	5%	35%	100%
total:	4.47%	9.51%	24.76%	35.19%	4.85%	21.21%	100.00%

base fee amounts by project phase:

discipline	programming	CD/SD	DD	WDs	B/P	CA	total
arch/general	12,000	18,000	24,000	30,000	6,000	30,000	120,000
civil	-	6,000	9,000	7,500	1,500	6,000	30,000
landscape	1,800	5,400	10,800	9,000	1,800	7,200	36,000
structural	-	-	9,000	21,600	1,800	3,600	36,000
mech/elec	-	-	13,500	29,700	2,700	8,100	54,000
energy/green	-	-	5,400	1,350	-	2,250	9,000
interiors	-	-	4,800	9,600	1,200	8,400	24,000
total:	13,800	29,400	76,500	108,750	15,000	65,550	309,000

cumulative base fee per phase:	43,200	119,700	228,450	243,450	309,000
5.00% estimated reimbursable exp:	1,470	3,825	5,438	750	3,278
cumulative design budget per phase:	44,670	123,525	233,888	244,200	312,278



phase 2 site improvements
frisco bay marina
frisco, colorado

27 august 2019

article 1 : billing procedures

- 1.1 Standard billing rates for Matthew A. Stais, Architect, P.C. (hereinafter referred to as MSA) personnel:
 - .1 Principal Architect: \$220.00 per hour
 - .2 Project Architect: \$150.00 per hour
 - .3 Architectural Staff Level 3: \$120.00 per hour
 - .4 Architectural Staff Level 2: \$100.00 per hour
 - .5 Architectural Staff Level 1: \$80.00 per hour
 - .6 Interiors Staff Level 3: \$120.00 per hour
 - .7 Interiors Staff Level 2: \$100.00 per hour
 - .8 Interiors Staff Level 1: \$80.00 per hour
 - .9 Administrative Staff Level 2: \$80.00 per hour
 - .10 Administrative Staff Level 1: \$60.00 per hour
 - .11 MSA shall determine billing rates for MSA personnel.
- 1.2 Consultants arranged for and billed through MSA (if not included in basic services) shall be billed in addition to compensation for Basic Services, as follows: cost + 10%
- 1.3 Reimbursable expenses include expenses incurred by MSA in the interest of the project. Expenses shall be billed in addition to compensation for Basic Services, as follows, unless otherwise noted in this Agreement.
 - .1 All expenses, unless otherwise noted: cost + 15%
 - .2 Computer plots and reproductions:
 - 24x36 bond (B&W): \$2.50 each
 - 24x36 bond (color): \$5.00 each
 - 24x36 photo (color or B&W): \$20.00 each
 - 8.5x11 photo (color or B&W): \$10.00 each
 - .3 Photographs: \$0.50 each
 - .4 Mileage: per current IRS regulations
- 1.4 Initial payment is waived per MSA 'continuing client' policy.
- 1.5 Invoices:
 - .1 Invoices shall be sent on a monthly basis, unless otherwise determined by MSA.
 - .2 Amount due for portions of this Agreement to be performed on an hourly basis shall be determined by MSA per rates and conditions outlined herein.
 - .3 Amount due for lump sum portions of this Agreement shall be determined by MSA as the percentage of the work for project phase completed at that time.
 - .4 Invoices are payable upon receipt by Client. Invoices thirty days past due shall be considered substantial nonperformance on the part of the Client and shall accrue interest at the rate of 1.75% per month from date of original invoice.
- 1.6 Overtime labor, performed at the request of the Client, shall be billed at 150% of standard rates.
- 1.7 MSA shall be entitled to reimbursement for time and expenses incurred to collect any past due amounts, including attorney's fees, court costs, interest, and any other related expenses.
- 1.8 These Supplemental Conditions, including billing rates for labor and reimbursable expenses, shall be reviewed and adjusted on an annual basis.

article 2 : MSA services

- 2.1 The Scope of Work (also referred to as 'Basic Services') covered in this Agreement shall be limited to those items specifically outlined in Exhibit E. Changes in the Scope of Work, and resulting changes in compensation, must be agreed to by both parties before services will be rendered for such changes.
- 2.2 Work considered to be additional services shall be billed at standard rates in addition to basic compensation for the project, unless otherwise indicated through written agreement signed by both parties.
- 2.3 If the Basic Services covered by this Agreement have not been completed within six months of the date hereof, through no fault of MSA, extension of the MSA services beyond that time shall be compensated as additional services, unless otherwise noted in this Agreement.
- 2.4 MSA services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. MSA makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.

article 3 : client's responsibilities

- 3.1 MSA shall rely on the information provided by the Client. This includes surveys and drawings of existing conditions. In the event that such information changes, the Client agrees to promptly inform MSA.
- 3.2 The Client understands and agrees that time and communication are critical issues in any building project and that prudent decisions must be made in order to maintain the project schedule. Accordingly, the Client shall promptly approve the progress of the work at project milestones or as required by MSA for timely progress of MSA work.
- 3.3 Substantial revisions to the scope of work shall be accompanied by adequate revisions to the project budget, size, quality, and/or schedule.
- 3.4 Substantial revisions to the work after approval of pertinent project phase shall be considered additional services and billed as such.
- 3.5 In recognition of the relative risks, rewards and benefits of this Project to both the Client and MSA, the Client agrees that the total aggregate liability of MSA, its officers, employees, agents and consultants for negligent acts, errors and omissions shall not exceed \$50,000.00 or the amount of basic compensation for this project, whichever is less.

article 4 : ownership of designs and documents

- 4.1 All creative work, designs, drawings, specifications, calculations and computer files are instruments of service; as such they belong to and remain the property of MSA, and are protected under copyright law. MSA shall make copies for the Client's appropriate use on this project only. Unauthorized use for other projects is prohibited.
- 4.2 MSA will not be liable for any improper or illegal use of creative work, designs, drawings, specifications, or other instruments of service.

article 5 : dispute resolution

- 5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of MSA services, MSA may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.
- 5.2 The Client and MSA shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period of agreement of the parties or court order.
- 5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- 5.4 MSA and the Client waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 5 of these Conditions.
- 5.5 If the Client fails to make payments to MSA in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at MSA option, cause for suspension of performance of services under this Agreement. If MSA elects to suspend services, prior to suspension of services, MSA shall give seven days written notice to the Client. In the event of suspension of services, MSA shall have no liability to the Client for delay or damage caused to the Client because of such suspension of services. Before resuming services, MSA shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of MSA services. MSA fees for the remaining services and the time schedules shall be equitably adjusted.
- 5.6 If the Project is suspended or MSA services are suspended for more than 90 consecutive days, MSA may terminate this Agreement by giving not less than seven days' notice.
- 5.7 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 5.8 This Agreement may be terminated by the Client upon not less than seven days' written notice to MSA for the Owner's convenience and without cause.
- 5.9 In the event of termination not the fault of MSA, MSA shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 5.10.
- 5.10 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which MSA is not otherwise compensated, plus an amount for MSA profit on the value of services not performed by MSA.
- 5.11 This Agreement shall be governed by the law of the principal place of business of MSA, unless otherwise provided herein.
- 5.12 To the extent damages are covered by property insurance during construction, the Client and MSA waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Client and MSA, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.
- 5.13 The Client and MSA, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Client nor MSA shall assign this Agreement without the written consent of the other, except that the Client may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Client's rights and obligations under this Agreement. MSA shall execute all consents reasonably required to facilitate such assignment.
- 5.14 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or MSA.