

## **DESIGN-BUILD CONSTRUCTION CONTRACT**

THIS DESIGN-BUILD CONSTRUCTION CONTRACT (“Agreement”) is dated as of the XX<sup>th</sup> day of XXXXX, XXXX, by and between the Town of Frisco, Colorado, a Colorado home rule town and municipal corporation, (hereinafter called TOWN), and CONTRACTOR, whose address is XXXX (hereinafter called CONTRACTOR). CONTRACTOR agrees to work for TOWN as an independent contractor, on the terms and conditions contained in this Agreement.

TOWN and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **ARTICLE 1 DEFINITIONS**

1.1 “Project”: The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Design and construction of a Maintenance and Office Building consistent with the RFQP issued 2/7/2019 and attached as Exhibit B to this contract.

1.2 “Work”: CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Design services in accordance with Article 3 below, and construction services in accordance with Article 4 below, including the Conceptual Design Phase, Final Design Phase, Design Documents, Construction Documents, and Construction (hereinafter defined), including, but not limited to, all of the labor, materials and equipment necessary to complete the Project in accordance with the Contract Documents. CONTRACTOR shall be responsible for procuring the design and construction of the Work, and shall exercise reasonable skill and judgment in the performance of the Work.

1.3 “Site”: The Site is the place where the Project is located, specifically, the site of the PRA Office and Maintenance Building within the Peninsula Recreation Area.

### **ARTICLE 2 PROJECT REPRESENTATIVE**

TOWN shall designate a PROJECT REPRESENTATIVE who is to act as TOWN's representative and on TOWN's behalf, assume all duties and responsibilities and have the rights and authority assigned to the PROJECT REPRESENTATIVE in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### **ARTICLE 3 DESIGN SERVICES**

3.1 This Project will be designed by CONTRACTOR, who shall assume all duties and responsibilities and have the rights and authority assigned to CONTRACTOR in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

3.2 CONTRACTOR shall visit the Site, become familiar with the local conditions, and correlate observable conditions with the requirements of the TOWN's Project.

3.3 *Conceptual Design Phase:* CONTRACTOR shall provide conceptual design services for the Project. This phase shall include design meetings with Town officials, Peninsula Recreation Area stakeholders and the community in general to gather feedback for the design. CONTRACTOR shall provide to the TOWN a reproducible color version plan, a 2' x 3' color illustrative facility plan, a site plan, and a reproducible 8.5" x 11" black and white plan.

3.4 *Final Design Phase:* CONTRACTOR, working from the conceptual design of the Project, shall prepare and present final design drawings to the TOWN for review and approval from the TOWN. This phase shall include providing to the TOWN a reproducible color version plan, a 2' x 3' color illustrative facility plan, and a reproducible 8.5" x 11" black and white plan.

3.5 *Design Documents:* CONTRACTOR shall submit to the TOWN through the PROJECT REPRESENTATIVE the Design Documents for the Project and for the performance of the Work. The "Design Documents" consist of all plans, drawings, specifications and other conceptualized documents establishing the size, quality and character of the Project, its architectural, structural, foundation, plumbing, mechanical, solar, and electrical systems, and the materials and such other elements of the Project as may be appropriate to accurately and completely describe the Project and the Work.

3.6 *Construction Documents:* CONTRACTOR shall prepare and provide, for the TOWN's review, all plans necessary (except a site plan) to comply with the TOWN's Planning, Zoning and Building Code requirements for the approved design, specifically including architectural, structural, electrical, plumbing, solar, foundation, and mechanical plans, which must be stamped, if required. CONTRACTOR shall also provide itemized construction cost estimates for all aspects of plan design.

3.7 CONTRACTOR shall research diligently and review laws and regulations applicable to design and construction of the Project and correlate such laws and regulations with the TOWN's requirements. In the performance of this obligation, CONTRACTOR shall make all commercially reasonable efforts to ensure that the design of the Project complies with applicable laws, codes, regulations and requirements, including, but not limited to, Title I of the American with Disabilities Act 1990, as amended, and all fire safety laws, codes, regulations or requirements, including but not limited to all local, state and federal laws, codes, regulations and requirements.

3.8 In development of the Project, CONTRACTOR shall ascertain TOWN's requirements for the Project and shall verify and review such requirements with the TOWN and PROJECT REPRESENTATIVE. CONTRACTOR's review shall also provide to the TOWN a preliminary evaluation of the Site with regard to access, traffic, drainage, parking, building placement and other considerations affecting the building. CONTRACTOR shall also prepare architectural, civil, structural, mechanical, electrical and other systems for review by the TOWN. Design services required under this Agreement shall be performed by registered, independent design professionals. The standard of care for architectural and engineering services performed under this Agreement shall be the highest degree of care and skill used by design professionals practicing under the same time and locality conditions.

3.9 The contractual obligations of such professional persons or entities are undertaken and performed in the interest of TOWN. CONTRACTOR shall be responsible to the TOWN for the acts and omissions of CONTRACTOR's employees, subcontractors and their agents and employees, and other persons, including the Architectural Engineer and other design professionals, performing any portion of CONTRACTOR's obligations under this Article 3.

3.10 CONTRACTOR shall submit to the TOWN through the PROJECT REPRESENTATIVE the Design Documents for the Project and for the performance of the Work. The "Design Documents" consist of all plans, drawings, specifications and other conceptualized documents establishing the size, quality and character of the entire Project, its architectural, structural, foundation, plumbing, mechanical and electrical systems, and the materials and such other elements of the Project as may be appropriate to accurately and completely describe the Project and the Work.

3.11 Upon the effective date of this Agreement, one set of the Design Documents shall be promptly furnished to the TOWN's PROJECT REPRESENTATIVE. Upon delivery of the Design Documents, the TOWN shall timely review such documents for its approval in its sole discretion.

3.12 CONTRACTOR agrees that it will use commercially reasonable efforts to provide that the design it creates for the Project will satisfy the functional requirements of the TOWN as set forth in the TOWN's Request for Qualifications and Proposal, attached hereto as Exhibit C. CONTRACTOR shall also ensure that its design is of a building that is generally of the size and scope that was set forth in CONTRACTOR'S proposal to the TOWN.

3.13 CONTRACTOR shall commence the design services upon the effective date of this Agreement, and shall conduct the design services required herein in a timely fashion to permit the Project to be completed in accordance with the Contract Times (Article 5).

#### **ARTICLE 4 CONSTRUCTION SERVICES**

4.1 The construction services to be performed hereunder shall commence upon the issuance of a NOTICE TO PROCEED.

4.2 CONTRACTOR shall submit the Construction Documents to the PROJECT REPRESENTATIVE for review and approval by the TOWN. When CONTRACTOR submits the Construction Documents, CONTRACTOR shall identify in writing all material changes and deviations that have taken place from the Design Documents or the Contract Documents in existence. "Construction Documents" shall include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- 4.2.1 be consistent with the intent of the TOWN's Project and the Design Documents;
- 4.2.2 provide information for the use of those in the building trades; and
- 4.2.3 include documents customarily required for regulatory agency approvals.

4.3 Pursuant to the terms of this Agreement, CONTRACTOR shall provide or cause to be provided and shall pay for construction services, installation, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.4 CONTRACTOR shall comply with laws and ordinances legally enacted at the date of execution of the Agreement that govern the proper performance of the Work.

4.5 CONTRACTOR shall conduct the Work in accordance with the Contract Times (Article 5). CONTRACTOR shall adhere to the Contract Times and any changes made to such shall be mutually agreed to and evidenced by a Change Order.

4.6 CONTRACTOR shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

4.7 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including safety of all persons and property during performance of the Work. This requirement will apply continuously with respect to the Work at the Site and not be limited to normal working hours.

4.8 CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss in connection with the Work. CONTRACTOR shall erect and maintain, as required by law based upon existing conditions and progress of the Work, all reasonable safeguards for safety and protection including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

4.9 CONTRACTOR shall pay royalties and license fees for patented designs, processes or products in connection with the Work. CONTRACTOR shall defend suits or claims

for infringement of patent rights and shall hold the TOWN harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the TOWN. However, if CONTRACTOR has knowledge that the use of a required design, process or product in connection with the Work is an infringement of a patent, CONTRACTOR shall be responsible for such loss unless such information is promptly furnished to the TOWN.

4.10 CONTRACTOR shall maintain at the Site for the TOWN and its PROJECT REPRESENTATIVE one set of Construction Documents, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the TOWN upon final completion of the Project.

4.11 CONTRACTOR shall deliver all written warranties and equipment manuals with respect to the Work to the TOWN through the PROJECT REPRESENTATIVE upon final completion of the Project. CONTRACTOR shall warrant that the Work performed under this Agreement shall be free from material defect in workmanship or materials for a period of two years from the date of completion of the Work.

4.12 Upon final completion of the Project, CONTRACTOR shall produce and deliver to the TOWN through the PROJECT REPRESENTATIVE a reproducible record set of "as built" plans and specifications reflecting significant changes in the Work made during construction and the Project as actually built.

4.13 The Site and surrounding area shall be kept free from accumulation of waste materials or rubbish caused by CONTRACTOR's operations under this Agreement. At the completion of the Work, CONTRACTOR shall promptly remove from the Site waste materials, rubbish, CONTRACTOR's tools, construction equipment, machinery, and surplus materials and leave the Site and surrounding area in a neat and clean manner.

4.14 CONTRACTOR shall coordinate with the PROJECT REPRESENTATIVE and utility companies to connect utilities to the Project. The expense of delivering such utilities to the Site will be paid for by TOWN, separate and apart from the terms of this Agreement.

4.15 CONTRACTOR will be responsible for staffing a field office with the expertise necessary to properly execute the supervision and construction of the Project. CONTRACTOR shall be responsible for providing a competent Project Manager and Superintendent for the duration of the Project (the "Key Personnel"). The Key Personnel will be the on-Site point of contacts for CONTRACTOR and will coordinate construction efforts with the TOWN. The Key Personnel assume all duties and responsibilities for supervision and scheduling of all facets of construction including those of any subcontractors or suppliers for the Project. The Key Personnel shall be satisfactory to the TOWN, in its reasonable opinion, and shall not be removed or replaced, unless the Key Personnel are unable to perform their duties due to illness or injury. In such case, Key Personnel of similar experience and qualifications shall be substituted. CONTRACTOR shall be additionally responsible for providing on the Project labor foremen and workmen skilled in the crafts and trades that they are supervising or performing.

4.16 CONTRACTOR shall confine operations at the Site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Site with any materials or equipment.

4.17 In connection with the Work, CONTRACTOR shall at all times be responsible for the conduct and discipline of its employees and to the extent within its reasonable control any Subcontractor or persons employed by Subcontractors. All workmen must have sufficient knowledge, skills and experience to perform properly the work assigned to them.

4.18 CONTRACTOR is solely responsible for scheduling and coordinating the performance and furnishing of the Work. Any construction subcontract, sub-agreement, supply or material contract entered into by CONTRACTOR shall be for the benefit of the TOWN.

## **ARTICLE 5 CONTRACT TIMES**

5.1 If the TOWN shall issue its Notice to Proceed with the Work on or before March 11<sup>th</sup>, 2019, then the Work will be substantially completed within XXX days after the date when the Notice to Proceed is issued, and completed and ready for final payment in accordance with paragraph 7.02 of the General Conditions within XXX days after said date.

## **ARTICLE 6 CONTRACT PRICE**

TOWN shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 6.1. below:

6.1. For all Work, a lump sum **not to exceed**:

6.2. TOWN has appropriated funds equal to or in excess of the Contract Price.

## **ARTICLE 7 CONTRACT DOCUMENTS**

The Contract Documents that comprise the entire agreement between TOWN and CONTRACTOR concerning the Work consist of the following:

7.1. This Agreement (pages 1 to 10, inclusive).

- 7.2. Exhibits to this Agreement
- 7.3. Performance, Payment, and other Bonds, to be provided pursuant to this Agreement.
- 7.4. Notice to Proceed.
- 7.5. General Conditions attached hereto as Exhibit A.
- 7.6. Construction Documents, Specifications and plans, to be developed pursuant to this Agreement.
- 7.7. Design Documents, to be developed pursuant to this Agreement.
- 7.7. CONTRACTOR's Proposal, dated March 4<sup>th</sup>, 2019.
- 7.8. TOWN's Request for Proposals.

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 2.3 and 3.5 of the General Conditions.

## **ARTICLE 8 MISCELLANEOUS**

8.1. 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 e-mail addresses are provided for convenience only.

TOWN of Frisco  
 P.O. Box 4100  
 Frisco, Colorado 80443  
 Attn: Diane McBride  
 Telephone: 970-668-2559  
 E-mail: [dianem@townoffrisco.com](mailto:dianem@townoffrisco.com)

CONTRACTOR:

### **Project**

**Representative:** Diane McBride  
 TOWN of Frisco

8.2. Terms used in this Agreement that are defined in the General Conditions will have the meanings indicated in the General Conditions.

8.3. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.4. This Agreement is between TOWN and CONTRACTOR and no other person or organization shall be entitled to enforce any of its provisions or have any right under this Agreement.

8.5. TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

8.6. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, TOWN's obligations under this Agreement are subject to annual appropriation by the TOWN Council of the TOWN. Any failure of the TOWN Council annually to appropriate adequate funds to finance TOWN'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.

8.7. This Agreement is to be governed by the laws of the State of Colorado.

8.8. Except as set forth in the General Conditions, this Agreement may only be amended, supplemented, or modified in a written document signed by both parties.

8.9. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TOWN and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.10. 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.

8.11. In the event of default of any of the provisions herein, the defaulting party shall be liable to the non-defaulting party for all reasonable attorney fees, legal expenses and costs incurred as a result of the default.



8.12 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 obligations of this Agreement.

**\*\*\*EXECUTION PAGE FOLLOWS\*\*\***

This Agreement is effective as of the date first written above.

TOWN OF FRISCO

Contractor

\_\_\_\_\_  
Gary Wilkinson, Mayor

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

ATTEST:

\_\_\_\_\_  
TOWN Clerk

# EXHIBIT A TO DESIGN BUILD CONSTRUCTION CONTRACT

## GENERAL CONDITIONS

### PART 1. DEFINITIONS

**1.01 CONTRACT DOCUMENTS:** The documents specified in Article 7 of the Design Build Construction Contract.

**1.02 CHANGE ORDER:**

A written order issued by the Town after execution of the Design Build Construction Contract 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 Design Build Construction Contract.

**1.05 CONTRACT TIME:**

The time for completion of the Project as set forth in Paragraph 5.1 of the Design Build Construction Contract.

**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 design and construction task or tasks more fully described in the Contract Documents.

**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 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 acceptable to the Town. 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 percent (90%) of the Work actually completed until fifty percent (50%) of the total Work on the Project, as determined by the Project Manager, is completed. Such determination shall include materials and equipment not incorporated in the Work but delivered to the Project Site and suitably stored. After fifty percent (50%) of the total Work is completed, no additional retainage shall be held.

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 Substantial Completion is

delayed after the Substantial Completion date stated in the Design Build Construction Contract, as modified through approved change orders, Contractor shall be assessed the following amounts:

\$XXXXXX Per day

B. Allowing Contractor to continue and finish the Work or any part thereof after the Substantial 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 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.

### **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. Design Build Construction Contract.
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).

**EXHIBIT B TO DESIGN BUILD CONSTRUCTION CONTRACT**

**Town of Frisco  
REQUEST FOR PROPOSALS**

Sealed proposals will be received at the Town of Frisco, 1 Main Street, PO Box 4100, Frisco, Colorado 80443 until 4:00p.m., March 4<sup>th</sup>, 2019, at which time the proposals will be opened and reviewed, for the following Town of Frisco project. Proposals should be to the attention of Diane McBride, Assistant Town Manager.

**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 Design Build Construction Contract 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: Diane McBride  
              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 certain Design Build Construction Contract 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:
- 2.

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 provide for convenience only.

OWNER:       The Town of Frisco  
              Project Manager: Diane McBride  
              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\_\_\_\_\_.

PRINCIPAL

ATTEST:

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

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

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

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

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

\_\_\_\_\_

(Corporate Seal)

SURETY

ATTEST:

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

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

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

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

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 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 Design Build Construction Contract 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,

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