



217 FLUME STREET, SUITE 200, CHICO, CA 95928  
 PHONE (530) 343-9600 FAX (530) 343-4245  
 CONTRACTOR LICENSE NO. 567469

## COMMERCIAL CREDIT APPLICATION

### APPLICANT INFORMATION

Business Name ("Customer"): \_\_\_\_\_  
 Entity:  Corporation  LLC  Sole Proprietorship  Partnership  Other: \_\_\_\_\_  
 Mailing Address (City, State, Zip): \_\_\_\_\_  
 Street Address (City, State, Zip): \_\_\_\_\_  
 State of Incorporation: \_\_\_\_\_ / Registration Number: \_\_\_\_\_ / EIN: \_\_\_\_\_  
 Telephone: (\_\_\_\_) \_\_\_\_\_ / Cellphone: (\_\_\_\_) \_\_\_\_\_  
 Email: \_\_\_\_\_ / Website: \_\_\_\_\_  
 License No.: \_\_\_\_\_ / State of Licensure: \_\_\_\_\_ / Classification(s): \_\_\_\_\_  
 Contractor's Bond Surety: \_\_\_\_\_  
 Customer's Authorized Agent: \_\_\_\_\_ / Title: \_\_\_\_\_  
 Agent's Address (City, State, Zip): \_\_\_\_\_

### CREDIT REFERENCES

Name: \_\_\_\_\_ / Phone: \_\_\_\_\_ / Fax: \_\_\_\_\_  
 Address: \_\_\_\_\_ / City: \_\_\_\_\_ / State/Zip: \_\_\_\_\_  
 Name: \_\_\_\_\_ / Phone: \_\_\_\_\_ / Fax: \_\_\_\_\_  
 Address: \_\_\_\_\_ / City: \_\_\_\_\_ / State/Zip: \_\_\_\_\_  
 Name: \_\_\_\_\_ / Phone: \_\_\_\_\_ / Fax: \_\_\_\_\_  
 Address: \_\_\_\_\_ / City: \_\_\_\_\_ / State/Zip: \_\_\_\_\_  
 Name: \_\_\_\_\_ / Phone: \_\_\_\_\_ / Fax: \_\_\_\_\_  
 Address: \_\_\_\_\_ / City: \_\_\_\_\_ / State/Zip: \_\_\_\_\_  
 Name: \_\_\_\_\_ / Phone: \_\_\_\_\_ / Fax: \_\_\_\_\_  
 Address: \_\_\_\_\_ / City: \_\_\_\_\_ / State/Zip: \_\_\_\_\_

### PARTNERSHIPS, LIMITED LIABILITY COMPANIES, AND CORPORATIONS COMPLETE THE FOLLOWING

Title	Name & Address	S.S.N.	CA Driver's Lic.
President			
Secretary			
Treasurer			
Manager			
Manager			
Partner			

Partner \_\_\_\_\_

Has this business filed bankruptcy within the last 10 years?  YES  NO

Has any officer, director, shareholder, member, guarantor, or partner of this business filed bankruptcy within the last 10 years?  
 YES  NO

If you answered yes to either or both of the above questions, for each yes answer please provide the case number and jurisdiction (attach additional pages as necessary): \_\_\_\_\_

I, the undersigned, represent and warrant that I am the authorized agent for the aforementioned Customer. I certify that I am seeking credit for business use only, and not for personal, family, or household purposes. I hereby authorize FRANKLIN CONSTRUCTION, INC. ("FCI") to verify the information provided in this Commercial Credit Application, Guaranty, And Credit Agreement (the "Credit Application") and I authorize the credit reporting agency selected by FCI to release Customer's credit information to FCI and its authorized representative. I hereby authorize FCI to perform supplemental credit checking during the time business is conducted with FCI. I, on behalf of myself and Customer, understand, acknowledge and agree that if credit is extended to Customer by FCI, Customer and I, personally, guaranty the repayment of all sums due and owing on this account, agree to fully perform under, the terms and conditions set forth in this Credit Application.

I, the undersigned, declare under penalty of perjury under the laws of the State of California that foregoing is true and correct.

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Driver's License Number: \_\_\_\_\_ State: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

**CREDIT STATUS**

**CREDIT APPROVED:**  YES  NO | BY: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_ CREDIT LIMIT: \_\_\_\_\_

**CREDIT AGREEMENT**

For good and valuable consideration, FCI and Customer agree that at such time as credit is approved FCI, if at all, this Credit Agreement (the "Agreement") sets forth the terms, covenants, and conditions under which FCI may extend credit to Customer for purchases from FCI, as follows:

1. Incorporation by Reference. Customer and FCI covenant and agree that the Standard Terms & Conditions (the "Terms & Conditions"), which are attached hereto and incorporated herein by this reference, are hereby made a part of this Agreement. The term "Agreement" as used herein, shall also mean and refer to the Terms & Conditions. FCI and Customer further agree that the purchase of any goods or services from FCI on credit constitute Customer's intent to be bound by this Agreement and the Terms & Conditions.

2. Extension of Credit. This Agreement shall become effective at such time, if at all, as Customer is approved for Credit by FCI. FCI may or may not extend credit to Customer in FCI's sole, subjective, and absolute discretion, for any reason or no reason. If FCI approves Customer's application and agrees to extend credit to Customer, FCI may establish a credit account (the "Account") for Customer with a maximum approved credit limit (the "Credit Limit"), which may be increased or decreased by FCI for any reason or no reason in FCI's sole, subjective, and absolute

discretion. The amount of credit available to Customer at any given time shall be the Credit Limit less the unpaid balance of Customer's Account.

a. Customer understands, acknowledges, and agrees that in making its decision as to whether credit shall be extended to Customer, FCI is relying on the creditworthiness of Customer as well as that of the owners, partners, shareholders, directors, officers, members, and managers of Customer. Therefore, the person signing this Agreement covenants and agrees that said person is personally liable, jointly and severally with Customer for the debts of Customer under this Agreement.

b. Customer acknowledges and agrees that if FCI agrees to extend credit to Customer, FCI may, in FCI's sole, subjective, and absolute discretion, cancel Customer's account, at any time for any reason or for no reason. Upon cancellation of Customer's account, the unpaid balance of the Customer's account shall become instantly due and payable. FCI's agreement to increase a credit limit for any one purchase shall not be construed as an agreement by FCI to increase Customer's credit limit for any other purchase or any particular period of time.

3. Customer Purchase Orders and Contracts. FCI shall not, under any circumstances, be obligation to accept or sign the terms and conditions set forth in any order, purchase order, voucher, or contract provided by Customer and, if FCI does accept or sign any order, purchase order, voucher, or contract provided by Customer, Customer understands, acknowledges, and agrees that the provisions of this Agreement and the Terms & Conditions shall prevail and this Agreement and the Terms and Conditions shall establish the rights and remedies of the parties.

4. Payment Terms. Customer agrees to pay all sums due on the Account as and when due, as follows:

a. Payment terms are net 30 days from the date of each invoice;

b. Customer shall make all payments due hereunder in accordance with this these terms and conditions and that certain Commercial Credit Agreement signed by Customer, without any right of setoff for retention and without regard to any agreement Customer may have with other parties;

c. Customer expressly understands, acknowledges, and agrees that Customer's receipt of payment by Customer for any services performed by Customer for a third party, is not, nor shall it be construed as, a condition precedent to Customer's obligation to timely and fully make all payments to FCI as and when due;

d. If Customer fails to pay any invoice in full when due, Customer agrees to pay a monthly late payment charge in an amount equal to ONE AND ONE-HALF PERCENT (1 ½ %) of the past due account balance until paid in full, for each month that all or any portion of Customer's account remains unpaid. The finance charge is not, nor shall it be construed as, a loan or an agreement by FCI that Customer may pay for the goods purchased over time; and

e. All costs of collection, including reasonable attorney's fees and costs, shall be paid by Customer. The late payment charge set forth herein is not, and shall not be construed as, a loan of money or an agreement that payment under this Agreement may be paid in installments or over time.

5. No Modification. The Credit Agreement and the Terms and Conditions may be modified only by a writing signed by both FCI and Customer.

6. Security Agreement and Grant of Security Interest. The person or persons signing this Agreement hereby represent to FCI that such person or persons as the actual authority of Customer so sign this Agreement on Customer's behalf and that Customer hereby grants to FCI a security interest in all goods purchased by Customer from FCI on Customer's Account. Customer agrees that this document is and shall be construed as a "security agreement" as that term is defined under the California Uniform Commercial Code, covering all goods purchased by Customer from FCI. Customer shall sign all documents and do all such things deemed necessary by FCI to perfect FCI's security interest in the goods. If at any time FCI, for any reasons, has any reason for insecurity that Customer is or may be unwilling or unable to pay all or a portion of the amounts owed to FCI by Customer, FCI may demand full or partial payment of all sums due on the Account or demand adequate assurance of performance by Customer before FCI orders, prepares, or ships any goods to Customer. FCI reserves all rights to suspend its performance until such adequate assurance of performance is provided by Customer in form satisfactory to FCI, in FCI's sole, subjective, and absolute discretion. If Customer is in default under this Agreement or any of its agreed contracts or obligations with FCI, FCI may at its option and without notice, take any one, all, or a combination of the following actions: (a) declare the entire unpaid balance owed by Customer due and payable; (b) postpone further deliveries until such default is remedied; (c) terminate any and all obligations under any contract; and (d) refuse further performance without any liability to Customer. The term "goods" as used herein, shall also mean and refer to rock, sand, gravel, aggregates, asphalt, concrete mix, and other rock and sand products sold by FCI.

7. Quotations. Unless otherwise stated, quotations expire 30 days from date thereof, and may be modified or withdrawn by FCI prior to any acceptance. All quotations and prices are subject to change without notice. Prices do not include any present or future sales, use, excise, value-added or similar taxes, and where applicable, such taxes shall be billed as a separate item and paid by the Customer. FCI reserves the right to correct all errors and omissions in any Quotation once such errors or omissions are discovered by FCI. Quantities and unit prices are for the specific quotations only. Any increase or decrease in quantities shall not be permitted without the express written agreement of FCI. FCI assumes no responsibility for quoted materials meeting any project specifications or requirements unless specifically stated in a written quotation from FCI.

8. Representation and Warranty. Customer acknowledges and understands that each representation and warranty made by Customer to FCI herein is relied upon FCI and a material inducement to FCI in making the decision of whether or not it shall agree to extend credit to Customer. With that in mind, Customer represents and warrants as follows: (a) All information supplied by Customer to FCI is accurate and complete; (b) The person or persons signing any documents on behalf of Customer including, but not limited to, the Credit Application, this Credit Agreement,

and any financing statement, bills of lading, delivery receipts, and confirmation of acceptance is the authorized agent of Customer with the actual authority to fully bind and secure the performance of Customer; (c) Any and all financial statements, credit information, information supplied by Customer or by others on Customer's behalf, are part of this Agreement and Customer acknowledges and agrees that any false or misleading information provided by Customer to FCI may subject Customer and Customer's agent to personal liability; (d) Customer is solvent and that any financial information provided reflects the present financial condition of Customer; (e) Neither Customer nor any of its owners, partners, members, managers, venturers, affiliates, shareholders, directors, or officers have filed for bankruptcy in any jurisdiction within the United States within the past ten (10) years and that Customer shall have no plan to file for bankruptcy, in any form, as of the date on which Customer purchases any goods on Customer's account; and (f) Customer shall notify FCI immediately in the event of any change in Customer's financial condition or ability to make payment to FCI as and when due under this Credit Agreement. These representations and warranties are continuing and renewed by Customer with each order placed by Customer with, and with each purchase made by Customer from, FCI on Customer's account.

9. Inspection Upon Delivery. It shall be the Customer's responsibility to verify the count and quantity of the goods upon receipt of delivery, and any claims of shortages must be made to FCI in writing at the time of delivery. No goods will be accepted for return without the written permission of FCI.

10. Limitation on Damages. In the event FCI is held liable to Customer for any loss or damage claimed by Customer under any theory of recovery, Customer agrees that its damages would be impossible or extremely difficult to calculate, and as an inducement to FCI to sell the goods to Customer, and not as a penalty, FCI and Customer agree that FCI's maximum liability in any and every event, happening, or circumstance shall not exceed the price charged by FCI for such goods or parts thereof involved in the claim. FCI may exercise the right of set-off under this Agreement as to any sums owed by Customer and/or its affiliates under any other contract or agreement, oral or written, with FCI and/or its affiliates. If FCI is unable to complete delivery of any part of an order, Customer shall accept such part of the order as FCI is able to deliver and Customer shall pay for the part delivered at the actual cost of the particular goods agreed to be sold and on the same terms of payment.

11. No Damages for Delay. In no event shall FCI assume any responsibility for delays in shipment or delivery of any goods to Customer. Delivery dates are not guaranteed and, if any delivery date is provided by FCI to Customer, that date is based upon the best information then available and, unless otherwise specifically stated in writing, is subject to change without notice. All promises of shipment or delivery are approximated as closely as possible by FCI, but are subject to weather conditions, fires, strikes, disputes with workmen, floods, accidents, embargoes, delays in transportation, mechanical breakdowns, shortages of fuel, water or other material, shortages of labor, action by governmental agencies or military authorities, riots or other civil disturbances, insolvency or other inability to perform by third parties, or any other commercial impracticabilities or other causes beyond the reasonable control of FCI and for those reasons, Customer understands and agrees that Customer shall not rely upon any delivery date or time provided by FCI to Customer.

12. Preliminary Notice. Customer agrees to provide to FCI, in writing, timely and accurate information in form sufficient to allow FCI to fully and timely file the California Preliminary Notice including, but not limited to, the name of the owner or reputed owner, contractor or reputed contractor, lender or reputed lender, the address or location where the goods will be used, planted, or installed, and the County Assessor's Parcel Number for that location. Customer represents and warrants that the goods designated to a specific project which shall be identified by Customer at the time of purchase or when an order is placed, will be delivered to be used and made part of said project.

13. General Terms. The following general terms shall apply: (a) Time is of the essence; (b) If any term provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated; (c) The Parties agree that this Agreement is the product of negotiation and that in the event of any conflict in the terms of this Agreement, the conflict shall be construed accordingly; (d) Any notice sent to FCI shall be in writing and sent by Certified Mail, return receipt requested, to the address set forth on the first page of this document, or such other address as may be designated by either party from time to time in a writing delivered to the other party; and (e) Customer shall not assign the Agreement or any interest herein without the prior written consent of FCI, and any attempted assignment, whether by operation of law or otherwise, shall be void without such prior written consent. This Agreement together with any specific additional terms agreed by FCI and Customer, embody the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof. No course of prior dealing between the Parties, no usage of the trade, and no parole or extrinsic evidence of any nature shall be used or be relevant to supplement, explain, or modify any term used herein.

14. Disputes. In the event legal action is taken by either party for the enforcement of this Agreement, the prevailing party, shall recover from the other party the prevailing party's reasonable attorney's fees, expert's fees, and costs in an amount reasonably calculated to compensate the prevailing party for the fees and costs incurred and not in accordance with the any local rules or court fee schedules. The Parties agree that this Agreement shall be construed under California law and that any action arising hereunder shall be heard by a court of competent jurisdiction located in Butte County, California. As a material inducement to FCI to extend credit to Customer, Customer waives the right to trial by jury in any proceeding arising out of or related to the enforcement of this Agreement including, but not limited to, the provisions pertaining to the delivery, condition, and acceptance of the goods.

Dated: \_\_\_\_\_

Customer: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

**CONTINUING PERSONAL GUARANTY**

In consideration of the extension of credit to the Customer identified herein, for the purchase of goods from FCI under the terms and conditions set forth in the Credit Agreement, above, the undersigned guarantors, and each of them (collectively, the "Guarantors") guaranty the full and faithful performance by Customer under the Terms & Conditions and as provided under this Continuing Personal Guaranty (the "Guaranty"). This Guaranty begins on the date on which FCI agrees to extend credit to Customer, if at all, and shall continue until the Guarantors are released, in writing, by FCI.

If Customer fails to make any payment or pay any charge to FCI in full and when due under the Terms & Conditions, for any reason, Guarantors shall immediately make timely payment of all amounts then due to FCI or FCI's agent on behalf of Customer. Payments due shall include all amounts due under the Terms & Conditions including, but limited to, current and unpaid account balances, finance charges, interest, late payment fees, costs of suit and collection, attorney's fees, and expert's fees. Guarantors, and each of them, waive any rights to receive notice of any acceptance, modification, extension, renewal, or breach of this Guaranty.

Guarantors, and each of them, and Customer are and shall be jointly and severally liable for the full performance of all of Customer's obligations under the Terms & Conditions as well as the provisions of this Guaranty. In the event of a dispute arising under or related to this Guaranty including, but not limited to actions to enforce this Guaranty, the prevailing party shall be entitled to recover its attorney's fees, expert's fees, and costs of suit. FCI shall have no obligation to take any action against Customer as a condition precedent to FCI taking action against the Guarantors, or any of them. This Guaranty shall be construed under the laws of the State of California and venued in Butte County, California. The Guarantors, and each of them, covenant and agree that all such disputes shall be resolved through Judicial Reference under Section 638 of the California Code of Civil Procedure, or any successor statute of similar effect. If any term of this Guaranty is held to be invalid or unenforceable, then this Guaranty, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

This Guaranty and the Credit Agreement attached to this Credit Application, together with any specific additional terms agreed by FCI and Customer, embody the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof. No course of prior dealing between the Parties, no usage of the trade, and no parole or extrinsic evidence of any nature shall be used or be relevant to supplement, explain, or modify any term used herein.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Guarantor Signature

\_\_\_\_\_  
Print Name

Dated: \_\_\_\_\_

\_\_\_\_\_  
Guarantor Signature

\_\_\_\_\_  
Print Name