

TOWN OF SUPERIOR
RESOLUTION NO. R-21
SERIES 2018

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN AGREEMENT WITH EARTH GREEN FENCE PRODUCTS, INC. FOR FENCE PAINTING, STAINING AND REPAIR SERVICES

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. The Agreement between the Town of Superior and Earth Green Fence Products, Inc. for fence painting, staining and repair services is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 23rd day of April, 2018.

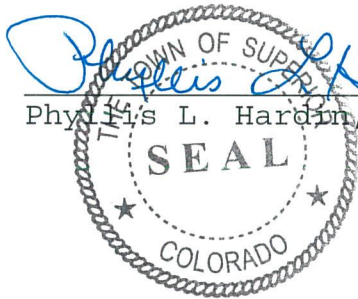
Clint Folsom

Clint Folsom, Mayor

ATTEST:

Phyllis L. Hardin

Phyllis L. Hardin, Town Clerk-Treasurer



AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this 3rd day of May, 2018 (the "Effective Date"), by and between the Town of Superior, 124 East Coal Creek Drive, Superior, Colorado 80027, a Colorado municipal corporation (the "Town"), and Earth Green Fence, an independent contractor with a principal place of business at 408 SE. 14th St., Loveland, Colorado 80537 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required services.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor an amount not to exceed \$65,033.04, as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. Contractor shall only be paid for work completed to the satisfaction of the Town.

IV. RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

VII. 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. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, 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 include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice 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. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. 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 which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

IX. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.
2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

X. 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 that all of the work described in the Scope of Services is delayed beyond the deadline set forth in Exhibit A, Contractor shall be assessed the amount of \$100 per day.

B. Allowing Contractor to continue and finish the Scope of Services or any part thereof after the deadline set forth in Exhibit A shall not operate as a waiver on the part of the Town of any of its rights under this Agreement. 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 Scope of Services. Liquidated damages may be deducted from any payment due Contractor. If the liquidated damages exceed the amount owed to Contractor,

Contractor shall reimburse the Town within 30 days of notice thereof.

XI. MISCELLANEOUS

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

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

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

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

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

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

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

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

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

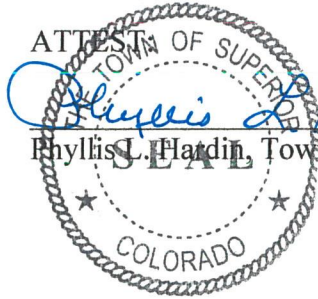
K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO

Clint Folsom
Clint Folsom, Mayor

ATTEST
Rhylis L. Hardin
Rhylis L. Hardin, Town Clerk



CONTRACTOR

By: [Signature] Earth Green, Inc

STATE OF COLORADO)
COUNTY OF Larimer) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 3rd day of May, 2018, by Paul Hein as owner of Earth Green Fence.

My commission expires: March 13, 2020

(S E A L)

[Signature]
Notary Public

AARON M UNDERWOOD
Notary Public
State of Colorado
Notary ID 20124015412
My Commission Expires Mar 13, 2020

EXHIBIT A SCOPE OF SERVICES

Contractor's Duties

Contractor shall perform the following duties, as directed by the Town, and shall complete all work by August 31, 2018:

- Contractor shall paint/stain 40,662 linear feet of fence, drop structures and wooden bridges as identified on the attached map as "Second Year and Fence Type".
- Contractor shall stain and paint only the fence surfaces that face Town-maintained property. No fencing on private property of shall be painted or stained.
- Contractor shall prepare the fence by scraping or power washing.
- Contractor shall contact affected residents 2 weeks prior to the scheduled work via a Town-approved form of communication.
- Contractor shall take steps to minimize paint overspray onto existing landscaping and other improvements, and Contractor repair any damage to existing landscaping and improvements during fence staining and painting.
- Contractor shall use the following stain on all dog-ear fence (6' privacy), stained three-rail fence, wooden bridges and drop structures: 3077 Behr Stain in place of Sherwin Williams – Woodscapes – Solid Wood Stain – Match Number 02-0521 "Rock Creek Fence Stain".
- Contractor shall use Boiled Linseed Oil as stain on rough cut cedar split rail fence.
- Contractor shall supply contact information to the Town to be used in the event of an emergency. Contractor shall respond within 24 hours following the notification of an emergency situation.
- Contractor shall be notified by the Town of any deficient or unsatisfactory work by telephone, email, or other agreed-upon method, and Contractor will have 48 hours in which to correct the deficiency, excluding weekends and holidays.
- Contractor shall provide the Town a monthly status report of all work performed. The status report shall be provided no later than the second Tuesday of each month that work is performed and shall identify all fence sections painted and stained.

**EXHIBIT B
COMPENSATION**

For painting and staining of existing fencing as set forth in Exhibit A, the Town shall pay Contractor a total amount of \$65,033.04, in monthly installments as work is completed. Contractor shall submit monthly invoices to the Town in conjunction with a monthly status report required by Exhibit A.

2018 PAINT AND FENCE TYPE MAP OF LOCATIONS



DEPARTMENT PROGRAM AFFIDAVIT

[To be completed only if Contractor participates in the Department of Labor Lawful Presence Verification Program]

I, Paul Hein for EarthGreen, as a public contractor under contract with the Town of Superior (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

Signature

Date

5/2/18

STATE OF COLORADO)
) ss.
COUNTY OF Larimer)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 3rd day of May, 2018, by Paul Hein as owner of EarthGreen Fence.

My commission expires: March 13 2020

(S E A L)

Notary Public

