

TOWN OF SUPERIOR  
RESOLUTION NO. R-27  
SERIES 2018


A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN AGREEMENT WITH QUALITY WATER BIOSYSTEMS, INC. FOR POND MAINTENANCE 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 Quality Water Biosystems, Inc. for pond maintenance services is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 14<sup>th</sup> day of May, 2018.

  
\_\_\_\_\_  
Clint Folsom, Mayor

ATTEST.  
  
\_\_\_\_\_  
Phyllis L. Hardin, Town Clerk



The seal is circular with a double-line border. The outer ring contains the text 'THE TOWN OF SUPERIOR' at the top and 'COLORADO' at the bottom, separated by two stars. The inner circle contains the word 'SEAL' in the center.

## AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this 14<sup>th</sup> 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 QUALITY WATER BIOSYSTEMS INC. an independent contractor with a principal place of business at 9999 Old Wadsworth Blvd. Broomfield, Colorado 80021 ("Contractor") (each individually 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, the Town shall pay Contractor an amount not to exceed \$40,000, as more particularly set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town

for such fees, costs and expenses. Contractor shall not be paid until the Scope of Services is 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. 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.

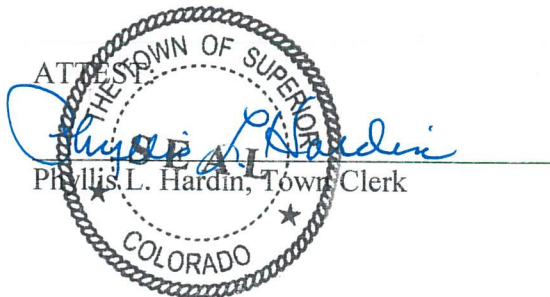
K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory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



CONTRACTOR

By:

[Signature] President

STATE OF COLORADO )  
COUNTY OF Boulder ) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 27<sup>th</sup> day of April, 2018, by Anthony P. Smith as President of Quality Water Biosystems Inc.

My commission expires: 09/27/2021

(S E A L)

**SAMANTHA STANTONFITZGERALD  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20174040098  
MY COMMISSION EXPIRES 09/27/2021**

[Signature]  
Notary Public

**EXHIBIT A**  
**SCOPE OF SERVICES**

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- Contractor shall monitor and maintain 19 ponds in the Town.
- Contractor shall maintain a level of water quality through an intensive, integrated water quality preventative management program specifically designed for each site.
- Contractor shall manage the ponds in a clean, odor-free manner and maintain the ponds in accordance with pond management best practices.
- Contractor shall conduct weekly site visits from May through September, at least two visits per month in March, April, October, and November, and at least one visit per month in January, February, and December.
- Contractor shall insure that submerged aquatic plants are controlled to the extent that they do not interfere with the recreational use of the pond (fishing, etc.). Submerged aquatic plants that are allowed to reach the surface are unacceptable.
- Contractor shall maintain an average 30% of submerged aquatic plants that will provide acceptable habitat conditions for the fish populations (where applicable).
- Contractor shall insure that in the event herbicide applications are necessary to control submerged aquatic plants, that no more than 1/3 of the pond water volume is treated per application.
- Contractor shall insure that algae (filamentous and planktonic) are controlled. It is considered unacceptable for algae to occupy 20% or more of the pond water volume.
- Contractor shall insure that floating aquatic plants (duckweed, etc.) are controlled. Floating aquatic plants that appear are unacceptable. Cattail growth shall be monitored and chemically pruned as necessary to prevent excessive regrowth.
- Contractor shall call Town staff in the event of an emergency.
- Contractor shall supply phone numbers to the Town to be used in an emergency. Contractor shall respond within 24 hours of notification of an emergency.
- If the Town deems work to be deficient or unsatisfactory, the Town shall notify Contractor by telephone, facsimile transmission, or other agreed-upon method, and Contractor shall correct the issue within 48 hours, excluding weekends and holidays.
- Chemicals shall be applied by personnel trained and licensed by the Division of Plant Industry, Colorado Department of Agriculture.
- Contractor shall notify the Town at least 48 hours prior to any algaecide application and 2 weeks prior to any aquatic herbicide application. If an aquatic herbicide application is warranted, Contractor shall be responsible for notifying the public and posting at the pond. Prior to any pesticide or chemical application, Contractor shall submit a list of pesticides and other materials to be used for the purposes of pond maintenance to the Town, as well as accompanying MSDS sheets. In addition, Contractor shall submit to the Town a pesticide application record for any pesticide or other product used in the pond. Contractor shall forward application to the Town no later than 48 hours following application.



- Contractor shall place yellow flags around the pond during herbicides/algaecides treatment where the application is made. A banner containing pertinent information (time, date, material applied, precautions) shall be attached to at least one flag.
- Contractor shall maintain the property between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, excluding weekends and holidays. Contractor may request a variance in work hours if the request is received at least 24 hours in advance.
- Contractor shall provide site visits, inspections and water quality monitoring including the following items:
  - Monitoring and assessing aquatic weed and algae growth.
  - Collecting, monitoring and analyzing water samples for clarity and to establish levels of key water quality characteristics.
  - Monitoring changes in the water biodiversity.
  - Conducting other tests as directed by the Town including: chlorophyll A, algae count and predominant species, ammonia, Water Quality Index and specific conductance.
  - Monitoring, inspection, and basic maintenance of aeration systems and fountains shall be covered by Contractor.
- Contractor shall conduct bacterial bio augmentation and necessary treatments.
- Contractor shall monitor, inspect, and perform basic maintenance of aeration systems and fountains.
- Contractor shall inform the Town if changes occur in ponds which necessitate a change in inoculation.
- Contractor shall put the following ponds on a periodic inoculation schedule to receive specific strains of laboratory cultured bacteria to accelerate the decomposition of organic matter and to consume nitrates and phosphorous:
  - Pond 2
  - Pond 8
  - Pond 9
- Pond water levels will be maintained by the Town.
- No later than the second Tuesday of every month, Contractor shall provide to the Town a monthly status report of all work performed at the ponds, including:
  - Monthly overall pond water quality conditions.
  - Water quality conditions to include, but not be limited to: pH, temperature (C), dissolved oxygen (mg/l), specific conductance (mmhos/cm), ammonia (mg/l), algae count (ml) and predominant species and chlorophyll a (ug/l).
  - All pesticide and other biological applications.
  - All mechanical and cultural operations performed.
  - All other Work performed.
- Contractor shall provide an annual report of overall water quality conditions from all ponds, including without limitation:
  - Monthly breakdown of overall water quality conditions.
  - Bar graph illustrating annual water quality conditions (dissolved oxygen, etc.).
  - List of all pesticide and other applications.

**EXHIBIT B  
COMPENSATION**

For maintaining ponds as set forth in **Exhibit A**, Contractor shall submit monthly invoices to the Town each month.

POND	COST PER YEAR
1- Purple Park	<b>\$2,150.00</b>
2- Purple Park	<b>\$2,150.00</b>
3- Purple Park	\$2,150
4- Purple Park	\$2,150
5- Purple Park	\$2,150
6- Purple Park	\$1,000
7- Purple Park	\$1,000
8- Riverbend Pond	\$6,750
9- Bowes Reservoir	\$6,750
10- Flor Storage	\$1,000
11- 88 <sup>th</sup> St Storage	\$1,250
12- 88 <sup>th</sup> St Detention	\$1,000
13- Foothills Storage	\$1,000
14- Knolls Storage	\$2,000
15- Parkway Storage	\$1,000
16- Coalton Pond	\$1,500
17- Community Pond East	\$2,000
18- Community Pond West	\$2,000
19- East Storage Facility	\$1,000
<b>Total</b>	<b>\$40,000</b>

**NO EMPLOYEE AFFIDAVIT**

*[To be completed only if Contractor has no employees]*

**1. Check and complete one:**

I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Superior (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

I, \_\_\_\_\_, am the sole owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

I am a United States citizen or legal permanent resident.

*The Town must verify this statement by reviewing one of the following items:*

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.*

OR

I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

DEPARTMENT PROGRAM AFFIDAVIT

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

I, \_\_\_\_\_, 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 4/27/18

STATE OF COLORADO )  
COUNTY OF Boulder ) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 27<sup>th</sup> day of April, 2018, by Anthony P. Smith as President of Quality-Water-Systems Inc.

My commission expires: 09/27/2021

**SAMANTHA STANTONFITZGERALD**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
**NOTARY ID 20174040098**  
**MY COMMISSION EXPIRES 09/27/2021**

Notary Public \_\_\_\_\_