

TOWN OF SUPERIOR
RESOLUTION NO. R-47
SERIES 2018

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING AN AGREEMENT WITH SUPERIOR
MAINTENANCE, INC. FOR SNOW REMOVAL AND ICE CONTROL
SERVICES

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

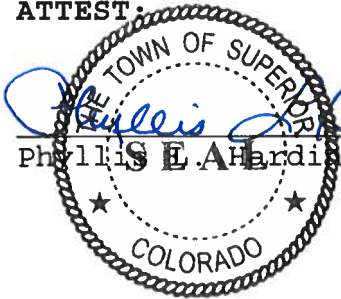
Section 1. The Agreement between the Town of Superior
and Superior Maintenance, Inc. for snow removal and ice control
services is hereby approved in substantially the same form as
attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 24th day of September, 2018.



Clint Folsom, Mayor

ATTEST:



Phyllis E. Hardin, Town Clerk-Treasurer

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (the "Agreement") is made and entered into this 24th day of September, 2018 (the "Effective Date"), by and between the TOWN OF SUPERIOR, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, Colorado 80027 (the "Town"), and Superior Maintenance, Inc., an independent contractor with a principal place of business at 7520 W. Coal Creek Drive, Superior, Colorado 80027 ("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. The term of this Agreement shall commence on October 1, 2018, and shall terminate on September 30, 2019, unless terminated earlier as provided herein.

B. The Town may terminate this Agreement by providing Contractor with 60 days advance written notice. In such case, 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 in equity.

III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference.

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.

D. Contractor shall promptly remove any employee who is not performing in a professional manner, as may be determined in the Town's reasonable discretion.

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 shall 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 under this Agreement, including the following, at a minimum:

1. Worker's compensation insurance as required by law; and
2. Commercial general liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate naming the Town and the Town's officers, employees, and consultants as additional insured. The policy shall be

with a carrier and in a form acceptable to the Town at the Town's sole discretion. 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 required policies are in full force and effect.

VIII. BOOKS AND RECORDS

Contractor's books and records in connection with this Agreement shall be kept in accordance with nationally recognized and accepted accounting principles and practices, and will be made available for the Town's inspection at all reasonable times at the places where the books and records are normally kept. Contractor shall retain such books and records for 3 years after termination of this Agreement.

IX. 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 or the Scope of Services 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 any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

X. 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 United States 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:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
2. 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:
 - a. Notify the subcontractor and the Town within three 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
 - b. 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.

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 and any attached exhibits constitute the entire Agreement between Contractor and the Town, 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 hereto, 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.

EXHIBIT A SCOPE OF SERVICES

Background

Standard snow removal in the Town shall consist of work on approximately 10 centerline miles of Priority Level 1 roadways which are a mix of high volume 2-lane, 4-lane, and 4-lane divided streets all with bike lanes; approximately 7 centerline miles of Priority Level 2 roadways which are 2-lane streets with bike lanes or parking lanes; and approximately 8.5 centerline miles of Priority Level 3 streets that require a single clearing pass; and approximately 11 centerline miles of Priority 4 streets that may require a single pass during major snowstorms. The attached map indicates the location of these streets.

Scope of Work

Contractor shall perform snow and ice control operations for the streets identified in the attached map per the levels of service listed below. Where any question arises regarding the performance of the listed duties, it shall be the responsibility of Contractor to bring these to the attention of the Town.

Contractor shall be responsible for monitoring weather forecasts and observing road conditions with alerts sent to the Town via e-mail or text message. Contractor shall commence snow or ice control operations when:

- Directly instructed by the Town Manager, Public Works Director, or Boulder County Sheriff's Department; or
- Upon Contractor's own observations and after receiving specific authorization by the Town Manager, Public Works Director, or other designated Town representative; or
- Upon Contractor's own observations and after making two documented unsuccessful attempts to contact Town authorities to commence plowing operations.

The Town must maintain a special environmental awareness and sensitivity in the use of chemicals for snow and ice control. Environmental considerations include controlling runoff, protecting groundwater, protecting vegetation, and minimizing air quality and street safety impacts associated with the use of abrasives. To achieve this goal, Contractor shall implement the latest strategies and Best Management Practices. It is the goal of the Town to reduce or eliminate the reliance on sand during snow and ice control operations as it contributes to the amount of small particulate matter in the air.

Colorado Department of Transportation ("CDOT") Standards for use of liquid de-icers sets a maximum distribution rate of 40 gallons per lane mile. The standard for the application of straight salt or "Ice-Slicer" deicer is a maximum distribution rate of 100 pounds per lane mile. Salt/sand mixes at 30% concentration has a distribution rate of 200 pounds per lane mile to a maximum rate of 400 pounds per lane mile. Contractor shall demonstrate that equipment being

provided can meet these rates. Adjustments to these rates under actual usage shall be made dependent on individual storm conditions.

Contractor shall make all efforts to mechanically clear roadways as close to bare pavement to the maximum extent practical prior to the application of any chemicals.

Levels of Service

Priority Level 1 – Arterial and Major Collector Streets

McCaslin Boulevard, 76th Street, Sycamore Street, Rock Creek Parkway, 88th Street, Coalton Road, Indiana Street.

These roadways shall be the primary focus of Contractor's work during any storm. These roadways may be pretreated prior to storm events and shall be plowed once snow accumulates to a depth of 2 inches or when icy conditions exist. These roadways shall be cleared curb to curb or to the outside of the paved shoulders in the case of McCaslin Blvd. south of Rock Creek Parkway. Priority Level 1 streets shall be plowed by 2 tandem axle plows operating in echelon formation to maximize the width of the street to be cleared while snow is falling and should be plowed curb to curb, including auxiliary lanes within 12 hours after the completion of the snowfall.

Priority Level 2 – Secondary Collector Streets

Torreys Peak Drive, Rock Creek Circle, Coal Creek Drive, Castle Peak Avenue, Huron Peak Avenue, Eldorado Drive, Pitkin Avenue, Mt. Sopris Way and Yarrow Circle.

These roadways shall be the secondary focus of Contractor's work during storms. These routes may also be pretreated prior to storm events and shall be plowed once snow accumulates to a depth of 2 inches as time permits. Operations may begin on these streets concurrently with the Priority Level 1 routes. These routes shall be plowed to open the driving lanes in both directions to the extent allowable dependent on parking and snow conditions.

Priority Level 3 – Neighborhood Collector Streets

See Exhibit C map for specific routes.

These routes shall be cleared to provide a single drivable lane once snow accumulates to a depth of 2 inches or more or at the direction of the Town. Spot treatment for ice control shall be applied at intersections or problem areas only.

Priority Level 4 – Residential Streets

See Exhibit C for specific routes.

These routes shall be plowed for a single pass upon direction of the Town without application of de-icing material.

Ice Cutting – The Town may request that Contractor provide labor and equipment necessary to remove ice buildup in specific locations throughout the Town. Ice cutting may include the application of de-icing material, heat, mechanical equipment or other means. Ice cutting must be done in a manner which will prevent damage to public improvements such as curb, gutter and sidewalks. Contractor shall be responsible for excessive damage to the improvements.

Materials for Ice Control

The Town has partnered with CDOT to allow the Town's use of CDOT's facility on Marshall Road/SH 170 for stockpiling of salt/sand, Ice-Slicer, and liquid de-icers. The Town shall purchase all materials directly and arrange for delivery to this facility. Contractor's duties shall include the moving and piling of delivered materials into the storage facility. Contractor shall be paid hourly for this work.

Equipment

The Town shall not provide any equipment, vehicles, or personnel to complete the work on Priority 1 or 2 streets. It shall be the responsibility of Contractor to provide all items necessary for the completion of the snow removal, and surface treatment application of ice control materials.

Contractor shall stage, at a minimum, the following equipment at the Town's storage yard, located at 2125 Honeycreek Lane (or at a mutually agreed upon location within the Town), between the dates of October 1st and May 1st:

- 1 truck equipped with a 10' hydraulically adjustable plow and sanding box with a 4 CY minimum capacity.
- 3 tandem rear axle dump trucks, each equipped with a 12' minimum, hydraulically adjustable plow and combination sanding box with a 4 CY minimum capacity and a liquid deicer distributor of 1200 gallon minimum capacity.

Contractor shall stage at the CDOT facility located on Marshall Road between the dates of October 1st and May 1st for the duration of the Agreement:

- 1 rubber tire front end loader with a minimum 1½ CY bucket capable of loading the granular material into the plow trucks.

All equipment shall:

1. Comply with all CDOT regulations and state vehicle registration laws and regulations;
2. Be clean and in good working order;
3. Be equipped with adequate and operable safety beacons and backup alarms; and
4. Undergo a safety inspection before and after being utilized on a shift.

Snowplow trucks shall be equipped with Town-provided GPS trackers, if desired by the Town. Upon request by the Town, GPS data collection shall include information on plow up or down, material application and any other information requested by the Town. All distribution equipment including distributors, hydraulic systems, and controls shall be less than 10 years old. All equipment for the distribution of granular or liquid ice control materials shall include controls to vary the application rates. Electronically controlled distribution equipment shall be calibrated at the beginning of the season. Distributors without electronic controls shall be calibrated at least bi-monthly. Drivers shall be familiar with the use of these controls and be able adjust the amount of material being spread during operation.

Contractor shall maintain all equipment in a state of constant readiness at Contractor's expense. Any equipment failure resulting in reduced service levels shall be reported to the Town immediately. Contractor shall make sufficient plans to provide substitute equipment, at Contractor's expense, within 24 hours of determining that one or more pieces of equipment are not able to operate in a safe manner in full compliance with federal, state and local laws and regulations.

Penalties

If Contractor fails to respond and perform in a timely manner as required by this Scope of Services, Contractor shall pay to the Town \$500 for each hour Contractor failed to provide timely snow and ice removal services, and \$500 for each 24-hour period Contractor failed to perform other duties. The Town may deduct any such payments from the compensation it otherwise owes Contractor.

EXHIBIT B COMPENSATION

1. Annual Fee. The Annual Fee for completion of the Scope of Services shall be \$263,860.50, which shall be paid in seven equal monthly installments of \$37,694.36, commencing on October 1, 2018 and terminating on May 1, 2019.

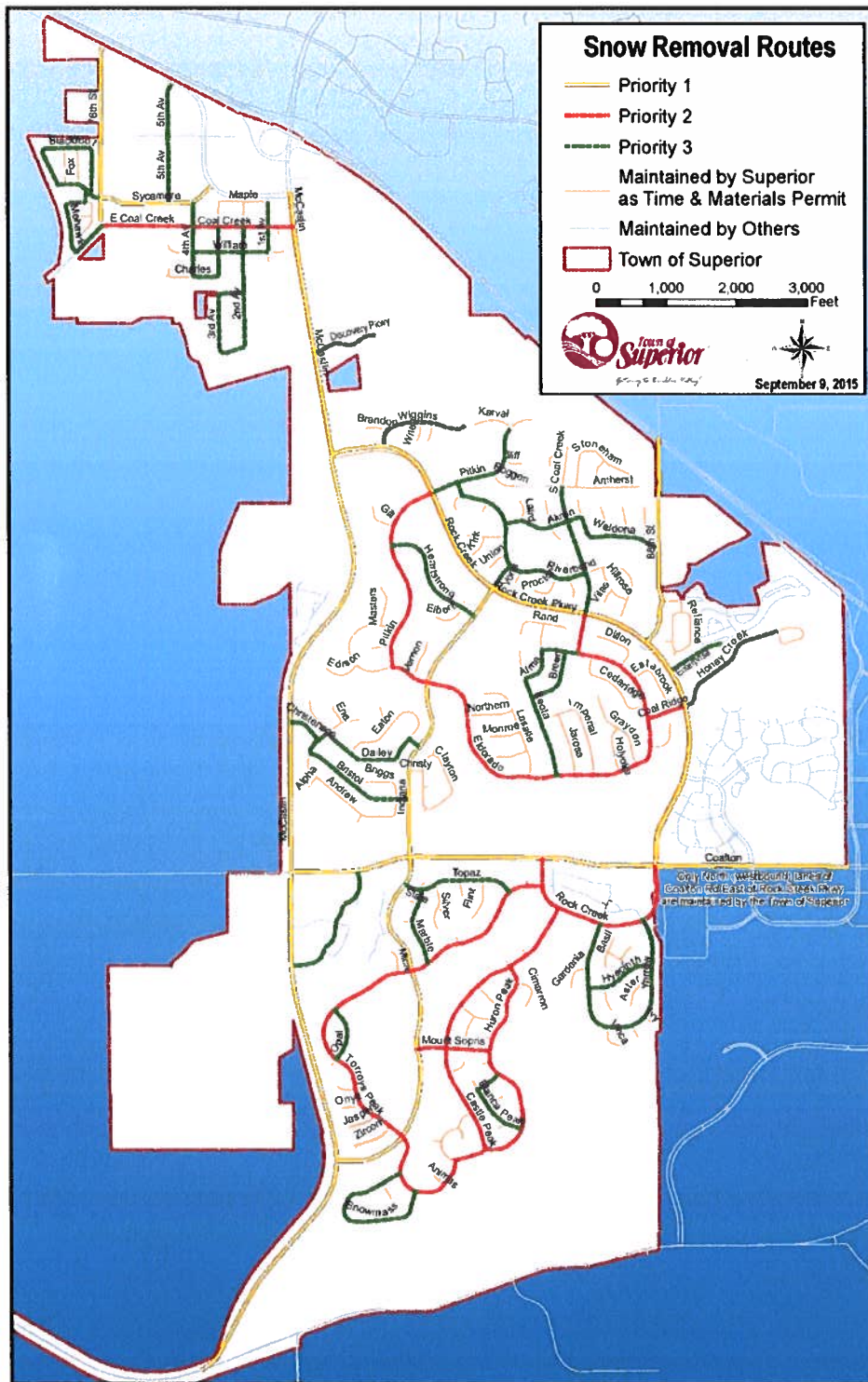
2. Additional Services. In addition to the Annual Fee, Contractor shall submit monthly invoices to the Town for the following services rendered during the preceding month, in a form and detail reasonably acceptable to the Town:

- Hourly rate including overhead, transportation and ancillary costs for snowplow equipment operators: \$113.
- Hourly rate including overhead, transportation and ancillary costs for loader operators: \$128.
- Hourly rate for additional snowplow vehicles and operators requested by the Town for heavy snow events or for services outside the October 1 to May 1 retainer window: \$267.
- Hourly rate for additional loader services and operators requested by the Town for heavy snow events or for services outside the October 1 to May 1 retainer window: \$267.
- Hourly rate for ice cutting (including two dump trucks, one loader and operators and one supervisor): \$758.

3. Invoicing and Payment for Additional Services. Contractor shall include on each invoice an itemized description of the Additional Services performed. In addition, Contractor shall submit complete Storm Reports for each incident during the preceding month. The Town shall pay Contractor the invoice amount within 30 days of receipt, provided that the invoice is presented as described in this subsection. The Town may adjust or reject an invoice if Contractor fails to perform the Services to the Town's reasonable satisfaction or if Contractor's performance of the Services causes loss or damage for which the Town may be liable, and Contractor fails to correct defective work in an expeditious manner. The Town shall give written notice to Contractor of any adjustment to or rejection of an invoice and the reasons therefor. The Town shall pay Contractor when Contractor has satisfactorily addressed or corrected the reasons for the adjustment or rejection of the invoice.

4. Fuel Adjustment. If the average retail cost of diesel fuel increases by more than 50% based on the average Town price on the Effective Date, the Parties shall negotiate in good faith to make a *pro rata* adjustment to the Annual Fee.

EXHIBIT C SNOW REMOVAL ROUTE MAP



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

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ___ day of _____, 2018, by _____ as _____ of _____.

My commission expires:

(S E A L)

Notary Public