

TOWN OF SUPERIOR  
RESOLUTION NO. R-34  
SERIES 2019

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF  
SUPERIOR APPROVING AN AGREEMENT WITH PROS CONSULTING  
FOR THE 2020 PROST MASTER PLAN UPDATE

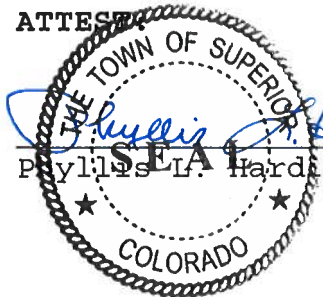

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF  
SUPERIOR, COLORADO, as follows:

Section 1. The Agreement between the Town of Superior  
and PROS Consulting for the 2020 PROST Master Plan Update is  
hereby approved in substantially the same form as attached  
hereto, subject to final approval by the Town Attorney.

ADOPTED this 11<sup>th</sup> day of May, 2020.

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

ATTEST

  
  
\_\_\_\_\_  
Phyllis L. Hardin, Town Clerk-Treasurer

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this 11<sup>th</sup> day of May, 2020 (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 PROS Consulting, Inc., an independent contractor with a principal place of business at 201 South Capitol Avenue, Suite 505, Indianapolis, Indiana ("Contractor") (each individually a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional 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 meruit 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 \$63,492. 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. PROFESSIONAL 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 professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms 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.

B. 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 \$2,000,000 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.

3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

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**

A. 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. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **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 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 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 United States 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 or 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.

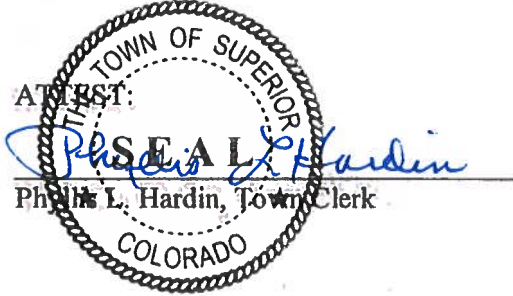
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO

Clint Folsom

Clint Folsom, Mayor

ATTEST:



Phillip L. Hardin

Phillip L. Hardin, Town Clerk

CONTRACTOR

By:

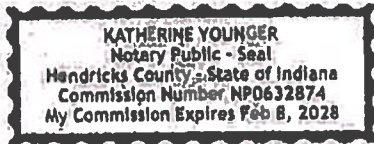
Leon Younger

STATE OF Indiana )  
 ) ss.  
COUNTY OF Hendricks )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 4 day of May, 2020, by Leon Younger as President of PROS Consulting INC

My commission expires:

Katherine Younger  
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 complete the Parks, Recreation and Open Space Master Plan Update (Plan) for the Town of Superior.

### Contractor's Deliverables

In performance of the duties described above, Contractor shall deliver the following items to the Town, during the timeframes established by the Town:

#### **A. Goals, Objectives, Work Plan, Action Steps, and Timelines**

The Contractor shall define Plan project goals, objectives, work plan, action steps, and timelines associated with the project that will meet the needs of the Town and reflect the values of the community. Contractor shall strive to provide innovative solutions to meet project objectives and add cost efficiencies and value for residents.

#### **B. Community Input /Outreach**

Contractor shall provide an avenue for public participation as well as an opportunity to capture community member needs and desires. Plan shall ensure citizens and user groups, associations and other stakeholders are provided an opportunity to participate in the development of the Plan. Activities shall include public meetings, stakeholder interviews and other outreach methods. To obtain feedback from as many people as possible, including users and non-users of the existing parks and facilities, methods and strategy used by the Contractor shall include:

- Two (2) community meetings.
- Two (2) focus group meetings.
- Contractor shall meet with the Parks, Recreation, Open Space and Trails Advisory Committee (PROSTAC) at key decision points throughout the project.
- Contractor shall gather input from the Town Board, advisory committees and partner user groups.
- Contractor shall provide assistance with and recommendations for associated Parks, Recreations and Open Space Department (PROS) public relations materials.
- Contractor shall manage a citizen survey by conducting a formal survey(s) to identify assets and constraints of the existing system, identify standards for future development, and assess the current and future needs and priorities of the system. Potential survey question examples:
  - Resident use of parks/facilities/programs.
  - General questions about parks in Superior.
  - Resident recreation habits and recommendations for improvements.
  - Importance/benefit of parks and recreation activities on resident life and sense of community.



- How to fund/willingness to pay for parks and recreation facilities.
- General information on survey participants.
- Contractor shall perform monthly status reporting and meetings with Parks, Recreation and Open Space Department staff.
- Contractor shall provide written informational materials, graphics and all engagement materials required for meetings.
- Contractor shall provide meeting summaries for all committee meetings and community engagements. Summary information shall include information such as attendance numbers, significant issues raised, resolutions of any issue, and recommendations made. Summary shall be provided as soon as possible and not exceed one week following a meeting.

**C. Demographics, Inventory and Assessment**

- PROSTAC and staff shall provide existing documentation for inventorying and assessing existing facilities that can affect the current and future provision of programs and services.
- Contractor shall review plans and documents that are relevant to the development of the Plan including relevant background information such as the Comprehensive Plan, to-be-built parcels, current and expected demographic data for a 10-year development plan.
- Contractor shall review and interpret demographic trends and characteristics of the Town of Superior.
- Contractor shall include a comparative analysis of communities of similar size and density, with the utilization of national standards.
- Contractor shall include current and future comparative analysis based on current and projected demographic information.

**D. Program Inventory and Assessment**

- PROSTAC and staff shall provide existing documentation for program inventory and assessment.
- Contractor shall assist in identification of recreation opportunities and providers in the service area of the Town and assist with recommendations concerning future providers of services that optimize programs for all populations and will minimize the duplication of services.
- Contractor shall assess the capacity of each element (playgrounds, ballfields, natural areas, trails, etc.) and its functionality including accessibility, capacity, condition, comfort, convenience, and user experience.

**E. Development of Parks and Recreation Standards, Best Practices and Key Performance Indicators**

- Contractor shall provide updated Level of Service Standards including the identification of essential facilities needed to provide and sustain the level of park and recreation services supported and desired by residents and necessary to support anticipated future residents.
- Contractor shall provide standards that provide a clear direction plan for the delivery of parks and recreation facilities, programs and services.
- Contractor shall ensure that best management practices are addressed and key performance indicators are defined to evaluate success.



**F. Regional Coordination**

- Contractor shall work with other agencies, both public and private, to ensure the developed standards, desires and/or existing plans are integrated into the updated Plan process.

**G. Facility, Service and Program Needs and Priorities**

Based on the data collected, the Contractor shall assist with the determination of priorities as items relate to both current and future facilities and services including but not limited to:

- Open space acquisition and management.
- Maintenance, accessibility, operations and critical issues.
- Program needs and priorities for a multitude of services items, for example: Library services for book check & drop-off, story-time, and other community programming; Recreation services for aquatics, out of school, sports, outdoor/environmental, health & wellness, seniors, events; Building community services at events, meeting spaces, and engagements; Art & Cultural Services for placemaking, public art, art walk, events, and artist support; Connectivity including trail, bike and pedestrian improvements; New, different and renovated park amenities; New indoor spaces.
- Assessment of the latent and potential demand for services with consideration for location, size, type, number, and uses aligned with demographic projections and community interests.
- Budget, funding options, revenue strategies, fees and charges

**H. Financial Estimates and Mechanisms**

Contractor shall provide financial estimates. Estimates shall be based upon future facility needs and services. Mechanisms to realize and identify potential projects and services.

**I. High Level Concept Designs**

Broad high-level/basic representations concept designs shall be included for any new amenity identified within the list of priorities.

**J. Implementation and Action Plan**

Contractor shall develop a set of prioritized recommendations for improvements. Evaluation criteria shall be based on the expressed values of the Town and community. Recommend an overall strategy for the implementation of all aspects of the Plan including timeline.

**K. Presentation to Board of Trustees and Planning Commission**

Provide presentations to PROSTAC, Planning Commission and the Board of Trustees.

**L. Final Products**

Contractor shall provide the following final products:

- High level concept designs, GIS data and maps, where not already provided, are desirable outcomes.

- GIS mapping data shall be provided with Open Geospatial Consortium (OGC) standards (for instance KML or GeoJSON).
  - A draft copy of the Plan shall be created and provided electronically to staff who will provide the document to each member of the Board of Trustees, PROSTAC and other Town Committees as required or requested by the Town Board.
  - Once final approval and feedback is given to the Contractor by all of the appropriate groups, Contractor shall make any necessary changes to the draft and provide one final hard copy and one electronic copy of the Plan to staff with maps and any other related documents.
  - Contractor shall provide a professional layout of the Plan in a publication ready document that includes maps, photographs, and any pertinent graphics.
  - Contractor shall provide 16 final Plan Hardcopies.
  - A completion date in November 2020.
  - Final presentation with Board of Trustees in November 2020.

**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 \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(SEAL)

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