TOWN OF SUPERIOR
RESOLUTION NO. R-19
SERIES 2022

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN AGREEMENT FOR SERVICES WITH MCDONALD FARMS ENTERPRISES, INC., FOR THE REMOVAL OF ASH AT TERMIMAL RESERVOIR

WHEREAS, The Marshall Fire impacted the Town's water treatment facilities in several ways, one of which was the deposit of windblown ash into Terminal Reservoir and along the rip rap banks.

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

Section 1. The Agreement between the Town and McDonald Farms Enterprises, Inc., for the Removal of Ash at Terminal Reservoir is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 28th day of February, 2022.

THE TOWN OF SUPERIOR SEAL COLORADO

Clint Folsom

Clint Folsom, Mayor

ATTEST:

Patricia Leyva

Patricia Leyva, Town Clerk

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (the "Agreement") is made and entered into this 28th day of February, 2021 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, CO 80027 (the "Town"), and McDonald Farms Enterprises, Inc., an independent contractor with a principal place of business at 7440 East I-25 Frontage Rd., Frederick, CO 80516 ("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

A. In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor an amount not to exceed $350,000. 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.

B. Notwithstanding the maximum amount specified in this Section, Contractor shall be paid only for work performed at rates and terms set forth in **Exhibit B**. If Contractor completes the Scope of Services for less than the maximum amount, Contractor shall be paid the lesser amount, not the maximum amount.

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. 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.

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.

C. Contractor shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

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; provided that Contractor shall have no liability for any work that has been modified by the Town.

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.

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. WORKERS WITHOUT AUTHORIZATION

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 a worker without authorization 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 a worker without authorization 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 a worker without authorization 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 a worker without authorization 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 a worker without authorization 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 worker without authorization 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 a worker without authorization 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 Town, 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 other terms or obligations 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.

XI. FEDERAL PROVISIONS

A. *General.* The Parties acknowledge that the Agreement is subject to the provisions of 2 C.F.R. Part 200 for projects funded in whole or in part by federal funds and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121, *et seq.*) for projects resulting from Declared Presidential Disasters.

B. *Equal Employment Opportunity.*

1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include without limitation the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.

4. Contractor shall send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Contractor shall furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the Secretary of Labor pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of Contractor's noncompliance with this section, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. Contractor shall include these provisions in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, so that such provisions will be binding upon each subcontractor or vendor. Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

C. *Davis-Bacon Act and the Copeland "Anti-Kickback" Act.* Contractor shall comply with 40 U.S.C. § 3141-3144 and 40 U.S.C. § 3146-3148, as supplemented by 29 C.F.R. Part 5. set forth below.

1. Minimum Wages.

a. All laborers and mechanics will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and *bona fide* fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under § 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics. Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the payroll records accurately set forth the time spent

in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and subcontractors at the work site in a prominent and accessible place where it can be easily seen by workers.

b. Contractor shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under this Agreement shall be classified in conformance with the wage determination. Contractor shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

ii. The classification is utilized in the area by the construction industry; and

iii. The proposed wage rate, including any *bona fide* fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

c. If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Contractor agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Contractor to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. T he Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise Contractor, or notify Contractor that additional time is necessary.

2. If Contractor and the laborers or mechanics to be employed in the classification or their representatives do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Contractor shall refer the questions, including the views of all interested parties and the recommendation of Contractor, to the Administrator for determination. The Administrator or an authorized representative will issue a determination within 30 days of receipt and so advise Contractor or will notify Contractor that additional time is necessary.

3. The wage rate (including fringe benefits where appropriate) determined pursuant to this Section shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

4. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another *bona fide* fringe benefit or an hourly cash equivalent thereof.

5. If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided that that the Secretary of Labor has found, upon the written request of Contractor,

that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

6. The Town shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Contractor under this Agreement or any other federal contract with Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements that is held by Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, the Town may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Payrolls and basic records.

a. Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in § 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in § 1(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. If Contractor employs apprentices or trainees under approved programs, Contractor shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. Submittals.

i. Contractor shall submit weekly for each week in which any work is performed a copy of all payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the federal funding agency. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only include an individually identifying number for each employee. The required weekly payroll

information may be submitted in any form desired. Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractor and subcontractors shall maintain the full social security number and current address of each covered worker, and shall submit them to the Town for transmission to the federal funding agency, Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for Contractor to require a subcontractor to provide addresses and social security numbers to Contractor for its own records, without weekly submission to the sponsoring government agency or the applicant, sponsor, or owner.

ii. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or subcontractor or their agent who pays or supervises the payment of the persons employed under the Agreement, certifying the following: that the payroll for the payroll period contains the information required to be provided under § 5.5(a)(3)(ii) of 29 C.F.R. Part 5, the appropriate information is being maintained under § 5.5(a)(3)(i) of 29 C.F.R. Part 5, and that such information is correct and complete; that each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3; and that each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.

iii. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance".

iv. The falsification of any of the above certifications may subject Contractor or any subcontractor to civil or criminal prosecution under 31 U.S.C. § 231.

c. Contractor or subcontractor shall make the records required by this section on available for inspection, copying, or transcription by authorized representatives of the federal funding agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

8. Apprentices and trainees.

a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

9. Contractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the federal funding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

10. A breach of the clauses in 29 C.F.R. 5.5 may be grounds for termination of this Agreement, and for debarment as provided in 29 C.F.R. 5.12.

11. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this Agreement.

12. Disputes concerning the labor standards provisions of this Agreement, including disputes between Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives, shall be resolved in accordance with 29 C.F.R. parts 5, 6, and 7.

13. Certification of eligibility.

a. Contractor certifies that neither it nor any person or firm who has an interest in Contractor is a person or firm ineligible to be awarded government contracts by virtue of § 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

b. No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of § 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

D. *Contract Work Hours and Safety Standards Act.* Contractor shall comply with the following:

1. Neither Contractor nor any subcontractor employing laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which they are employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. In the event of any violation of the clause set forth in subsection (1) hereof, Contractor and any subcontractor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subsection (1) hereof, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of required overtime wages required.

3. The Town shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages.

4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with this Section.

5. The requirements of 40 U.S.C. § 3704 apply. No laborer or mechanic may be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

E. *Rights to Inventions Made.* If the federal award providing funding for this Agreement meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and this Agreement is between the Town and a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement, the Parties shall comply with and be bound by 37 C.F.R. Part 401 and any implementing regulations issued by the awarding agency.

F. *Clean Air Act and Clean Water Act.* Contractor shall comply with the Clean Water Act and shall report each violation to the Town, and understands and agrees that the Town will, in

turn, report each violation as required to assure notification to the State of Colorado, the federal awarding agency, and the appropriate Environmental Protection Agency Regional Office, and shall require all subcontractors to these requirements in each subcontract exceeding $100,000 financed in whole or in part with a federal award. Contractor shall comply with the Federal Water Pollution Control Act and shall report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the State of Colorado, federal awarding agency, and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with a federal award.

G. *Energy Efficiency.* Contractor shall comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201), and shall include this clause in each third-party subcontract financed in whole or in part with federal assistance.

H. *Debarment and Suspension.*

1. Contractor affirms that neither it nor its principals are suspended or debarred or otherwise excluded from procurement by the Federal Government and do not appear in the SAM Exclusions, which is a list maintained by the General Services Administration.

2. If the Agreement is for $25,000 or more:

a. Contractor verifies that neither Contractor nor its principals (defined at 2 C.F.R. §180.995) or affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935);

b. Contractor shall comply with 2 C.F.R. Part 180, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction;

c. This certification is a material representation of fact relied upon by the Town, and if it is later determined that Contractor did not comply with 2 C.F.R. Part 180, subpart C, in addition to remedies available to the State of Colorado and the Town, the Federal Government may pursue available remedies, including without limitation suspension and debarment.

3. Throughout this Agreement, Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C. Contractor agrees to include a provision requiring such compliance in its lower tiered covered transactions.

I. *Byrd Anti-Lobbying Amendment.* Contractors who apply or bid for an award of $100,000 or more shall file the required certification set forth in the Certification Regarding Lobbying for the specific funding source. Each tier certifies to the tier above that it will not and has not used federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining a federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying

with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.

J. *Procurement of Recovered Materials*. In the performance of this Agreement, where the purchase price of a product exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: competitively within a timeframe providing for compliance with the Agreement performance schedule; meeting Agreement performance requirements; or at a reasonable price. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. The list of EPA-designated items is available at https://www.epa.gov/sites/production/files/2016-02/documents/cpg-fs.pdf.

K. *Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms*. If subcontracts are to be let, Contractor shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

L. *Federal Law, Regulations, and Executive Orders*. Contractor acknowledges that funding under this Agreement may include federal, state, and local money, and that financial assistance from federal agencies will be used to fund specific projects under this Agreement only. For those projects, Contractor agrees to comply with all applicable law, rule, regulation, executive order, policies of the applicable federal funding agency, procedure, and directives.

M. *No Obligation by Federal Government*. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Contractor, or any other party pertaining to any matter resulting from the Agreement.

N. *Program Fraud and False or Fraudulent Statements or Related Acts*. Contractor acknowledges that 31 U.S.C. § 38 applies to this Agreement.

O. *Department of Homeland Security Seal, Logo, and Flags.* Contractor shall not use Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without FEMA pre-approval.

P. *Housing and Community Development Act.*

1. The work to be performed under this Agreement is subject to Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u (Section 3). The Parties agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. The Parties certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

2. Contractor agrees to send to each labor organization or representative or workers with which Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Contractor's commitments under the Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

3. Contractor shall include the Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. Contractor shall not subcontract with any subcontractor where Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

4. Contractor shall certify that any vacant employment positions, including training positions, that are filled (1) after Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent Contractor's obligations under 24 C.F.R. Part 135.

5. Noncompliance with 24 C.F.R. Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD-assisted contracts.

6. With respect to work performed in connection with Section 3 covered Indian housing assistance, § 7(b) of the Indian Self-Determination and Education Assistance Act. (25 U.S.C § 450e) applies to the work to be performed under this Agreement and requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties that are subject to the provisions of Section 3 and § 7(b) agree to

comply with Section 3 to the maximum extent feasible, but in derogation of compliance with § 7(b).

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

TOWN OF SUPERIOR, COLORADO

Clint Folsom, Mayor

ATTEST:

Patricia Leyva, Town Clerk

CONTRACTOR

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ___ day of _____, 2022, by _____ as _____ of _____.

My commission expires:

(S E A L)

_____
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:

- Vacuum and remove 80-90% of burnt grass and ash from the shoreline and rip rap around terminal reservoir located at 1300 McCaslin Blvd. McDonald Farms will provide two baghouse vacuum trucks with operators, 2 laborers and all miscellaneous supplies and hoses. All ash will be hauled to a state approved landfill.

EXHIBIT B
COMPENSATION

Contractor shall be paid on an hourly basis for the time spent by Contractor's employees performing the work described in **Exhibit A**, Scope of Services. Contractor shall provide itemized invoices detailing the work performed, and shall bill in increments of not less than 15 minutes. Such invoices shall be submitted to the Town on a monthly basis.

The hourly rates for Contractor's employees are as follows:

Baghouse Vacuum Trucks:	$275.00 per hour Port to Port each
Laborers:	$95.00 per hour Port to Port each
Miscellaneous Supplies & Hoses:	$150.00 per day
Disposal:	$47.50 per yard
Time for Completion:	Approximately 30-40 days

Note: Due to time of year weather may alter time of completion.

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 _____, 2022, by _____ as _____ of _____.

My commission expires:

(S E A L)

_____
Notary Public