

TOWN OF SUPERIOR
RESOLUTION NO. R-27
SERIES 2023

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING AN AGREEMENT WITH SAVATREE FOR
HOLIDAY LIGHTING SERVICES

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 of Superior and
SavaTree for the installation, maintenance, and removal of the
Town's holiday lighting is hereby approved in substantially the
same form as attached hereto, subject to final approval by the
Town Attorney

ADOPTED this 12th day of June, 2023.



Mark Lacis, Mayor

ATTEST:



Lydia Yecke, Town Clerk



AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 11th day of September, 2023 (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 SaveATree, an independent contractor with a principal place of business at _____, CO _____ ("Contractor") (each 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 merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

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

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

III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor \$89,469. 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.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work under the Scope of Services.

D. 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

All décor materials are leased by the Town. Any materials, items, and work specified in the Scope of Services, and any and all related documentation 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.
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. 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.

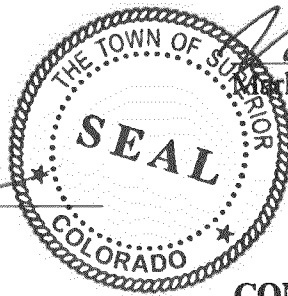
I. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. §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



[Signature]
Mark Lacis, Mayor

ATTEST:

[Signature]
Lydia Yecke, Town Clerk

CONTRACTOR

By: Donald C Becker

STATE OF New York COLORADO)
) ss.
COUNTY OF Westchester)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 23 day of August, 2023, by Donald C Becker as Chief Operating Officer of SavATree, LLC.

My commission expires: October 21, 2025

(S E A L)

Celeste Smith
Notary Public
CELESTE SMITH
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SM6081995
Qualified in Westchester County
My Commission Expires October 21, 2025

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 install; maintain and remove holiday lighting 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:

- Contractor shall install lighting display and maintain in working order a minimum of 10 days prior to Thanksgiving each year.
- Contractor shall deactivate lighting on or near the second week of January and completely remove by the second week of February.
- Contractor is responsible for display purchase, installation, removal, replacement, maintenance, inspection, storage and upkeep of displays for working period.
- Contractor shall perform inspections weekly from date of installation to lighting deactivation to ensure fully operational displays.

Contractor shall focus Holiday Lighting on the following areas of Town:

Town Center Ore Cart

- Outline outside edge with warm white 15" C-9s lights, double wrap on both sides (300 each).
- Wrap four (4) wheels with red mini lights (200).
- Lay 20' strand of RBG in the inside of cart on ore, set to fade orange, red, or amber (16 RBG plus set program).

Town Hall

- Install warm white lights on 15" center on the following building lines: north, south and east sides to include entire lower gutter edge, two gable ends on east side, and all on south side. **THIS DOES NOT** include ridge lines or the elevated area of roof over the main entry. (Approximately 511 linear feet /408 C-9 warm white bulbs). Glue tab inside gutter on east side over entrance every other/between clips to prevent hanging.
- One cottonwood located in Town Center's North parking lot with warm white canopy scatter and red mini trunk wrap (250, C-9 warm white bulbs and 700 red

mini lights) Light one remaining spruce on east side of parking lot red mini lights (1,500 mini red lights).

- One honey locust west of car charging station and one maple in parking lot median — customer shall provide power to these areas (600, C-9 warm white lights).
- Signature Tree: autumn purple ash on east side strip near monument Town Hall sign with 650, C-9 canopy scatter multi-color lights, and trunk and branch wrap out three feet from trunk to scaffolding limbs with 2000 warm white mini lights.
- Light one large crabapple near front, entrance walk with warm white canopy scatter with a mix of green and warm white trunk wrap (100, C-9 warm white bulbs and 900 green/white mini lights).
- Wrap twenty-nine smaller light poles along Coal Creek Drive with warm white pre-lit garland. Owner or Town shall make sure to connect power to these elements. Last three poles are located on the south side of Coal Creek Drive with power duplex mounted on the poles (252 linear feet = 17 sticks of garland).
- Six pear trees in pull outs along this area (one block is missing, will go all the way to large park with C-9 warm white canopy green mini trunk wrap (total 500 C-9 lights, 2,500 mini lights).

McCaslin Boulevard and Marshall Road (NW Corner)

- Install pre-lit garland along top of "Superior Marketplace" portion of monument sign (70' pre-lit garland = 15 sticks).
- Install two large, padded bows on each side of monument sign, street end.
- Light three spruces behind monument sign to west of the sign on south side with blue lights (750, C-9 warm white bulbs).
- Light three Austrian pines north of monument sign on southwest corner of east bound exit off HW36 to McCaslin Blvd. (300, C-9 cool white bulbs).
- Light two spruces in bed and one small spruce in turf of same area as above, blue canopy (200, C-9 blue bulbs).

McCaslin Boulevard and Marshall Road (SW Corner)

- Install 20, 2-D snowflakes in four cottonwoods located on south side of Marshall Road from McCaslin Blvd., west along Conoco side of sidewalk (power tap off Conoco sign) (12, 18" and 8, 24" snowflakes lit with warm white bulbs/climber).
- Install a total of seven faders on the above snowflakes.

Coalton and Rock Creek Parkway (NW Corner)

Rock Creek Village Sign:

- Light five spruce trees located behind monument sign and closest to it (625, C-9 cool white bulbs).
- Install two, 36" pre-lit wreaths on each side of monument sign for "Rock Creek Village" (Two, 36" pre-lit wreaths with padded bows).

1500 Coalton Rd

- Fascia lighting along front street side, and angle roof over and along west main entrance (110' of 90 warm white bulbs)
- Install 8' pre-lit wreath from Denver and in iron grid structure over street side of main entrance. Bucket with pulley up and anchor. (One (1) 8' pre-lit wreath warm white with padded bow.

Superior Community Center

- Fascia lighting along front street side and angle roof over and along west main entrance (110' of 90 warm white bulbs)).
- Install 8' pre-lit wreath in iron grid structure over street side of main entrance. Bucket with pulley up and anchor (one 8' pre-lit wreath warm white with padded bow).
- Signature Tree: one crabapple in center parking lot island north center in front of building with 600, C-9 multicolor canopy scatter, and 1,000 mini trunk and branch wrap warm white – wrapping three feet out from trunk.

McCaslin and Christenson (NE corner)

- Install 25, 36" and 24" warm white lit snowflakes in four Cottonwoods (25 snowflakes).
- Install 13 faders on the above snowflakes.
- Install four, 48" swarm white swag (teardrop) lit with bow on monument columns (four, 48" swag).

McCaslin and Christenson (SE corner)

- Install one, 48" lit wreath with bow installed on monument sign between "Rock Creek" and end of column, closer to end column (one, 48" wreath warm white with bow).
- Install 25, 36" and 24" warm white lit snowflakes in four larger Cottonwoods (25 snowflakes)
- Install 12 faders on the above snowflakes.

McCaslin and Indiana (SE corner)

- Install 48" lit wreath with bow installed between "Rock Creek" and column (one, 48" warm white wreath with bow).
- Light six spruces with warm white C-9 canopy (450 total C-9, warm white lights).

McCaslin and Indiana (NE corner)

- Install one, 48" lit warm white (teardrop) with bow on monument column (one, 48" swag).
- Light (6) Spruce from McCaslin side onto Indiana alternate entire tree colors from one tree ALL warm white to one tree ALL blue c9 canopy (100 each / total 300 blue c9 and 300 warm white c9).

Indiana and Coalton Road (SE Corner)

- Install two, 48" lit warm white wreath with bow – one on each side of "Rock Creek" sign (2, 48" wreaths with bows).
- Light four spruces behind "Rock Creek" sign with warm white C-9 canopy (475 total C-9).
- Light five spruces along sides of monument sign with blue C-9 canopy (600 total blue C-9).

Rock Creek Parkway and McCaslin

- Install two, 48" pre-lit LED wreaths with padded bows on each side of "Rock Creek" (two, 48" pre-lit wreaths lit with warm white bulbs with padded bows.)

South side

- Install 30, 36" and 10, 24" 2-D warm white lit snowflakes hung in random pattern throughout 11 cottonwoods behind "Rock Creek" sign. (40, 2-D snowflakes lit with warm white bulbs).
- Install approximately 12 faders to snowflakes above.
- Light four spruce trees south side canopy (500, C-9 blue bulbs).

North side

- Install 30, 36" and 10, 24" 2-D snowflakes hung in random pattern throughout eleven cottonwoods behind "Rock Creek" sign (40 snowflakes lit with warm white bulbs).
- Install approximately 13 faders to the snowflakes above.
- Light four spruce trees north side closest to monument sign with blue canopy (400, C-9 blue bulbs).

Pool Area – SW Corner of Indian and Rock Creek Parkway

- Install two, 36" pre-lit wreaths and padded bows on each side of "Town of Superior" sign (Two, 36" pre-lit wreath with warm white bulbs and padded bow).
- Light four, large middle spruce trees behind the "Town of Superior" sign with warm white lights (800, C-9 warm white bulbs).
- Light two, outside edge spruce trees with blue lights (400, C-9 blue bulbs).

Coalton and Rock Creek Parkway, NW Corner Rock Creek Village Sign

- Light five (5) spruce trees behind monument sign and closest to it. (625 C-9 cool white bulbs).
- Install two (2) 36" pre-lit wreath on each side of monument sign "Rock Creek Village"(Two (2) 36" pre-lit wreaths with padded bows.)

Retail Portion – Marshall Rd Retail

- Light three plum trees between monument signs with multi-color and cool white mini trunk wrap (250, C-9 multicolored bulbs and 1,500 cool white mini bulbs).
- Light six crabapple trees, three on each side of Marshall Road and 5th Avenue with multi-colored lights and trunk wrap with cool white mini (450, C-9 multi-colored bulbs and 1,800 cool white mini bulbs).

Intersection of Marshall Rd and Sycamore (SE Corner)

- Install 18, 18" 2-D snowflakes in cottonwood trees behind Superior Marketplace sign (2-D pre-lit snowflakes warm white bulbs).
- Install above snowflakes on faders (3 faders).

Intersection of Marshall Rd and Sycamore (SW Corner)

- Install 12, 18" snowflakes in two cottonwood trees behind Superior Marketplace sign (12, 18" 2-D snowflakes with warm white bulbs).
- Install 3 faders on the above snowflakes.

Intersection of Marshall Rd and Sycamore Downtown Superior (NE Corner)

- Light four pine trees behind the Superior Marketplace sign on the northeast corner with warm white lights (800, C-9 warm white bulbs).
- Light four spruce trees north side closest to the Superior Marketplace sign with blue canopy (400, C-9 blue bulbs).

88th Street Roundabout Lighting (Inside)

- Three largest spruce trees in center of round-a-bout with 1,000 warm white C-9 lights.

Main Street Roundabout

Center:

- Light three spruce trees with multi-color mini lights (900 mini).

Outside:

- Light four, small Norway maple canopy and trunk in multicolor mini

Main Street to east through Marshall St to Promenade Lane

North side (trees with grates around them do not have electric and do not get lights)
(Amber C-9 canopy and trunk wrap multi-color)

North Side:

- Three crabapples
- One crabapple
- One oak
- One Kentucky coffee tree
- One oak
- One pear
- Two honey locust
- One pear
- Two honey locust
- One oak
- One crabapple

South side:

- Five honey locust
- One crabapple
- Two honey locust
- One oak
- One Kentucky coffee tree
- Two oak
- One pear
- Two honey locust
- One oak

Between Promenade Lane to Superior Drive (Sports Stable endpoint)

Amber C-9 canopy and trunk wrap multi-color

North side:

- Three crabapple
- Two maple
- One Pear
- One oak
- One hackberry
- One pear
- One Kentucky coffee tree
- One maple

South side:

- Three Kentucky coffee tree
- One pear
- One oak
- One pear
- One Kentucky coffee tree
- One Maple
- One Kentucky coffee tree