

TOWN OF SUPERIOR  
RESOLUTION NO. R-35  
SERIES 2023

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN AGREEMENT WITH A-1 CHIPSEAL COMPANY FOR THE MCCASLIN BOULEVARD CAPE SEAL PROJECT

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 A-1 Chip Seal Company for the McCaslin Cape Seal Project is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 26<sup>th</sup> day of June, 2023.



Mark Lacis, Mayor

ATTEST:

  
Lydia Tecke, Town Clerk

## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (the "Contract") is made and entered into this 26 day of June, 2023 (the "Effective Date"), by and between the Town of Superior, 124 East Coal Creek Drive, Superior, CO 80027, a Colorado municipal corporation (the "Town"), and A-1 Chipseal Company, an independent contractor with a principal place of business at 2505 E. 74<sup>th</sup> Avenue, Denver, CO 80229 ("Contractor") (each a "Party" and collectively the "Parties").

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Scope of Work.** Contractor shall perform the following described work (the "Work"), in accordance with this Contract and the Contract Documents, attached hereto and incorporated herein by this reference:

Patch asphalt, crack seal pavement, install a cape seal, and place asphalt markings as indicated on the attached documents.

2. **Bonds.** Within 10 days of the date of this Contract, Contractor shall provide the payment and performance bond and certificate of insurance required by the Contract Documents.

3. **Commencement and Completion of Work.** Contractor shall commence the Work within 10 days of date of the Notice to Proceed. Substantial Completion of the Work shall be accomplished by the 30 day of September, 2023, unless the period for completion is extended otherwise in accordance with the Contract Documents. Final Completion of the Work shall be accomplished within 30 days of the date of Substantial Completion.

4. **Compensation/Contract Price.** The Town agrees to pay Contractor, subject to all of the terms and conditions of the Contract Documents, for the Work, an amount not to exceed \$583,935.40. The Town shall pay Contractor in the manner and at such times as set forth in the General Provisions such amounts as required by the Contract Documents.

5. **Keep Jobs In Colorado Act.** Pursuant to the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, *et seq.* (the "Act"), and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the "Rules"), Contractor shall employ Colorado labor to perform at least 80% of the work under this Contract and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, "Colorado labor" means a person who is a resident of the state of Colorado at the time of this Contract, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a *bona fide* qualification. A resident of the state of Colorado is a person with a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last 30 days. Contractor represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed \$500,000 in the aggregate for any fiscal year.

6. **Governing Law and Venue.** This Contract 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.

6/22/2023

7. **No Waiver.** Delays in enforcement or the waiver of any one or more defaults or breaches of this Contract by the Town shall not constitute a waiver of any of the other terms or obligation of this Contract.

8. **Integration.** This Contract and any attached exhibits constitute the entire Contract between Contractor and the Town, superseding all prior oral or written communications.

9. **Third Parties.** There are no intended third-party beneficiaries to this Contract.

10. **Notice.** Any notice under this Contract shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed to:

The Town: Project Manager  
Town of Superior  
124 East Coal Creek Drive  
Superior, CO 80027

Contractor: John Parks  
A-1 Chipseal Company  
2505 E. 74<sup>th</sup> Avenue  
Denver, CO 80229

11. **Severability.** If any provision of this Contract 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.

12. **Modification.** This Contract may only be modified upon written agreement of the Parties.

13. **Assignment.** Neither this Contract nor any of the rights or obligations of the Parties shall be assigned by either party without the written consent of the other.

14. **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 Contract, 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.

15. **Rights and Remedies.** The rights and remedies of the Town under this Contract are in addition to any other rights and remedies provided by law. The expiration of this Contract 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.

16. **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 or liability beyond the current fiscal year.

IN WITNESS WHEREOF, this Construction Contract has been executed by the Parties as of the Effective Date.

TOWN OF SUPERIOR, COLORADO

Mark Lacis, Mayor

ATTEST:

Lydia Yecke, Town Clerk



CONTRACTOR

By:

Josh Krueger, Vice President

STATE OF COLORADO )

) ss.

COUNTY OF Adams )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 23 day of June, 2023 by Josh Krueger as Vice President of A-1 Chipseal Co..

My commission expires: 4-2-2025

(SEAL)

STEPHANIE WALLIS  
Notary Public  
State of Colorado  
Notary ID # 20054012221  
My Commission Expires 04-02-2025

  
Notary Public

**PAYMENT AND PERFORMANCE BOND**

Bond No. 30194912

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) A-1 Chipseal Company

(Address) 2505 E. 74th Avenue, Denver, CO 80229

(~~an individual~~), (~~a partnership~~), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) Western Surety Company

(Address) 151 N. Franklin St., Chicago, IL 60606

hereinafter referred to as "the Surety", are held and firmly bound unto the Town of Superior, Colorado, a Municipal Corporation, hereinafter referred to as "the Owner", in the penal sum of Five Hundred Eighty-Three\* Dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents. \*Thousand Nine Hundred Thirty-Five and 40/100---(\$583,935.40)

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract with the Owner, dated the 26 day of June, 2023, a copy of which is hereto attached and made a part hereof for the performance of the Work, Patch asphalt, crack seal pavement, install a cape seal, and place asphalt markings.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without Notice to the Surety and during the life of the guaranty or warranty period, and shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all cost and damages which it may suffer by the Principal's failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor performed in such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

J-1

5/18/2023

IN WITNESS WHEREOF, this instrument is executed in 5 counterparts, each one of which shall be deemed an original, this 26 day of June, 2023.

ATTEST:

By: [Signature]

Title: Corporate Secretary



ATTEST:

By: [Signature]

~~Witness~~ Witness

PRINCIPAL A-1 Chipseal Company

By: [Signature]

Title: Vice President

Address: 2505 E. 74th Avenue  
Denver, CO 80229

SURETY

Surety: Western Surety Company

By: [Signature]  
Jody L. Anderson

Title: Attorney-in-Fact

Address: 151 N. Franklin St.  
Chicago, IL 60606

(Surety Seal)

NOTE: Date of Bond must not be prior to date of Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the Town.

# WESTERN SURETY COMPANY

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Jody L Anderson, Evan E Moody, Karen A Feggestad, Tina Marie Post, Bradley J Moody, Andrew J Waterbury, Elizabeth Ostblom, Individually**

of Denver, CO, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed

This Power of Attorney is made and executed pursuant to and by authority of the By Law printed on the reverse hereof, duly adopted as indicated by the shareholders of the corporation

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 22nd day of December, 2021



WESTERN SURETY COMPANY

*Paul T. Bruflat*

Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha }

On this 22nd day of December, 2021, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say that he resides in the City of Sioux Falls, State of South Dakota, that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument, that he knows the seal of said corporation, that the seal affixed to the said instrument is such corporate seal, that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation

My commission expires

March 2, 2026



*M. Bent*

M. Bent, Notary Public

### CERTIFICATE

I, I. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney herinabove set forth is still in force, and further certify that the By Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this \_\_\_\_\_ day of \_\_\_\_\_, 2023



WESTERN SURETY COMPANY

*I. Nelson*

I. Nelson, Assistant Secretary

Form E-4280 1-2017

Go to [www.cnasurety.com](http://www.cnasurety.com) > Owner / Obligor Services > Validate Bond Coverage, if you want to verify bond authenticity.

**Authorizing By-Law**

**ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY**

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7 All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.