

TOWN OF SUPERIOR
RESOLUTION NO. R-12
SERIES 2022

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING A CONSTRUCTION CONTRACT WITH JAG'S ENTERPRISES, INC. FOR THE US 36 BIKEWAY EXTENSION PROJECT

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

Section 1. The Construction Contract between the Town and Jag's Enterprises, Inc., for the US 36 Bikeway Extension Project is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 14th day of February, 2022.



ATTEST:


Patricia Leyva, Town Clerk


Clint Folsom, Mayor



**A Faster
Way to Build**

PURCHASE AGREEMENT

DATE: November 10, 2022

BETWEEN: SUPERIOR METRO DISTRICT NO.1
124 E. Coal Creek Drive
Superior, Colorado 80027

("Buyer")

and

SPRUNG INSTANT STRUCTURES, INC.

("Sprung")

Under this Purchase Agreement (the "Agreement"), Buyer agrees to purchase from Sprung the below described structure (the "Structure") on the following terms:

SITE LOCATION: Superior, Colorado

SIZE: 40' x 60' Signature Series Structure; measured maximum width by maximum length with the following accessories:

ACCESSORIES:

- 1 - 8' Leg Extensions
- 3 - Bays of Cable Bracing
- 1 - Superior Metro District No.1 Graphic Logo at Entrance
- 1 - Entrance Vestibule (Insulated) 10' wide x 6' long c/w Double Personnel Door XL Frame only - c/w face panel (no door in face panel)
- 1 - Insulated Rolling Service Door 10' W X 12' H c/w Electric Operator (110V/220V - NEMA1 - 1/2HP Single Phase) c/w frame *
- 1 - Insulated Single Personnel Door c/w High Traffic Panic & Closer (3'0" x 7'0") in flat end
- 2 - Engineered Flat Ends
- 2 - LED Hood Lights 120-277, 50 or 60 Hz c/w Bracket and Photocell
- 8 - Standard Framed Openings for insulated structure - size 4' wide by 4' high and smaller
- 8 - Stellar 60" LED Light Packages (RT60L) - 208V/16130 Lumens, 240V/19134 Lumens or 277V/17932 Lumens - 30A/60Hz - c/w hanging brackets, electrical box with cap and Plug and Play cable
- 16 - 75 lb. Hanging Brackets - Interior suspension eye-nuts, powder coated or mill finish
 - 8" (R-25) blanket of foil backed fiberglass insulation c/w white interior liner membrane
 - Conduit Holes Set as per diagram provided by Sprung
 - Engineered Stamped Drawings
 - Perimeter Flat Bar

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*Rolling Service Doors: Although the Sprung Structure above can normally be delivered in a very short time period, the Rolling Service Doors listed generally have a much longer lead time and will likely arrive and be installed by a local installer after our technical consultant has left the site. You will be required to supply a forklift (or hoisting equipment) and a small manlift, to lift the door in place and install. Electrical hookup, if applicable, is not included. For remotes sites, not easily accessible from a major center, the Sprung Technical Consultant will supervise the installation of the Rolling Service Door(s). In these cases, two workers will be required for approximately two (2) 8 hour working days per door and you will be required to supply the forklift and small manlift for the installation.

**EXTERIOR
ARCHITECTURAL
MEMBRANE:**

Tedlar® or Kynar coated opaque membrane.

Membrane Color: Salem Blue

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PURCHASE PRICE:

F.O.B. Sprung Factory and Depot, Salt Lake City, Utah , 2010 Incoterms	\$307,420.00
Sales and/or Use tax extra	
Technical Consultant Fees:	\$ 8,342.00
Freight to Buyers Site:	<u>\$ 5,710.00</u>
Total Purchase Price:	<u>\$321,472.00</u>

**SHIPPING AND
TAXES:**

All transportation and shipping costs from Salt Lake City, Utah incurred by Sprung to deliver the Structure and all related components and equipment to the location where Buyer will utilize the Structure shall be paid in full by Buyer upon delivery of the Structure to such location. Sprung will use commercially reasonable efforts to deliver the Structure by the delivery date. Notwithstanding the foregoing, Sprung shall be excused for any delay caused by an occurrence beyond the reasonable control of Sprung such as fires, floods, epidemic and pandemic restrictions, strikes, unusually severe weather, Force Majeure events and delays of common carrier. Sprung shall notify Buyer reasonably promptly upon notification of delay and shall make reasonable efforts to remedy such occurrence.

PAYMENT TERMS:

50% shall be paid with order; the balance shall be paid upon delivery.

If Buyer delays delivery beyond 90 days from execution of this Agreement, Buyer shall pay the entire balance due under this Agreement 91 days after execution of this Agreement.

Buyer's obligation to make payment, and otherwise to perform its obligations under this Agreement are and shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, including any right of setoff, counterclaim, recoupment, deduction, defense or other right which Buyer may have against Sprung or anyone else, for any reason whatsoever. Time is of the essence.



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**STRUCTURE
 ERECTION:**

Sprung will supply a Technical Consultant on site to provide advice on the best method of structure assembly and erection. Sprung's Technical Consultant is not authorized to perform any other services, other than to provide information to Buyers construction supervisor (or equivalent), about structure assembly and erection. The Buyer alone is responsible for supervision of and safety compliance in connection with workers and others on the site and structure location, assembly, erection, anchorage, and dismantling. The Technical Consultant is not a project manager, Buyer is solely responsible for project management if this is a requirement.

The Technical Consultant's travel, accommodations, meals and ground transportation in connection with the Structure erection will be charged to and shall be paid by Buyer at a fixed cost of \$8,342.00, as shown under PURCHASE PRICE.

Equipment and manpower to be obtained by Buyer:

- a) Manlifts and scissor lifts.
- b) Appropriate fall protection (including, but not limited to, body harness and lifeline).
- c) Electrical power to site.
- d) Required 6 workmen for approximately 17, 8 hour working days, approximately half of which should be manlift qualified. Total manhours to complete estimated at 816.
- e) A supervisor with appropriate construction experience.

The Technical Consultant's travel, accommodations and meals will be charged at a fixed cost for the number of days specified above provided manpower and equipment levels are also met. If Buyer chooses to use less manpower or equipment to erect the Structure, this will extend the number of days. The extra charge for the Technical Consultant's time, meals, accommodation, and ground transportation will be \$945.00 for each day over and above the time allowance above for up to an additional 17 days beyond the time listed above.

Sprung estimates time to complete the assembly and installation based upon historical installation timelines; actual timelines can vary significantly depending upon construction conditions on site. Factors that influence days/manhours on site include weather delays, understaffed manpower and equipment levels, congested construction sites, erecting over obstacles and any site-specific requirements (safety meetings, orientation, specific guidelines, etc.) that may take additional time to perform.

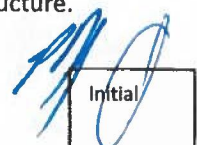
**STRUCTURE
 OPENINGS:**

If equipment for openings are unable to be delivered and installed at the same time as the rest of the structure, Sprung shall ensure the openings are sealed with architectural membrane until the appropriate equipment is delivered. Equipment is including, but not limited to, the Insulated Rolling Service Door, Insulated Single Personnel Door, and heating, ventilation, and cooling appurtenances (as applicable).

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- PICKER:** Sprung requests that the Buyer obtain a picker, with operator and rigger to assist in raising the free span aluminum beams. It will be needed for approximately 4 hours.
- OVERTIME:** The Sprung Technical Consultant is supplied for an 8 hour day, 5 days per week. Any request for overtime must be agreed to in writing by Buyer prior to overtime taking place and will be charged to the Buyer at the rate of \$80.00 per hour.
- INTERIOR HANGING DETAILS:** Sprung Instant Structures offers a large selection of brackets and hangers which can be utilized for the hanging of lighting, HVAC and any other items that may need to be suspended from the interior of the Structure. The type and size in each case will depend on weight and proposed position.
- The Structure is designed to carry a 2 psf uniformly distributed utility load. Care must be taken in placing hanging brackets on the Structure to ensure equal loading. All the utility loads on the Structure should be reviewed by an engineer prior to the installation of the brackets.
- DELIVERY:** Sprung will arrange, on behalf of Buyer, delivery of the Structure by commercial carrier to Buyer's site in Superior, Colorado at a fixed cost of \$5,710.00 as shown under PURCHASE PRICE.
- Sprung will both insure and remain responsible for the Structure up until delivery to Buyer's site in Superior, CO.
- DELIVERY SCHEDULE:** All Accessories listed in the Agreement shall be delivered within ten (10) weeks of the work order submittal. The work order shall be submitted within one (1) week of the executed Agreement. If all accessories are not delivered within ten (10) weeks from the date that the work order is submitted, Sprung will be charged \$100.00 per day until the Accessories are delivered to the site. This delivery schedule excludes the Insulated Rolling Service Door.
- NON-PAYMENT / BREACH:** If Buyer shall fail to make any payment required hereunder as and when due, or upon the occurrence of any other failure by Buyer to perform its obligations under this Agreement as and when required, Sprung shall give Buyer written notice of such failure. If such failure to pay or perform is not fully cured within fifteen (15) calendar days from transmittal of such notice, Buyer shall be in breach of this Agreement.
- GUARANTEE:** Guarantee Certificate number H-0500 is hereby incorporated into this Agreement.
- PERMITS, LICENSES AND COMPLIANCE WITH LAWS:** Buyer hereby unconditionally and irrevocably acknowledges and agrees that Buyer shall be solely responsible for obtaining all required permits, licenses or clearances of any type for erection and use of the Structure and solely responsible for compliance with all laws in connection with Buyer's erection and use of the Structure.


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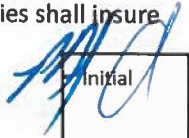
INDEMNITY: Sprung agrees to indemnify and hold harmless the Buyer and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, 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 Sprung, any subcontractor of Sprung, or any officer, employee, representative, or agent of Sprung, or which arise out of a worker's compensation claim of any employee of Sprung or of any employee of any subcontractor of Sprung.

LIMITATION ON DAMAGES: In all events, regardless of legal theory, neither party shall be liable for special, indirect, incidental, exemplary, or consequential damages, including any loss or damage to business, production, reputation or profits.

INSURANCE: Until such time as (i) Buyer shall have paid the entire Purchase Price for the Structure to Sprung, and (ii) the assembly and erection of the Structure shall have been completed, Buyer shall obtain and keep in force a Commercial General Liability Policy of Insurance protecting Buyer and Sprung against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, possession, use, storage, assembly, erection, anchorage, dismantling, occupancy or maintenance of the Structure and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$2,000,000 (such coverage may be met via umbrella/excess coverage). The Policy shall not contain any intra-insured exclusions as between insured persons or organizations but shall include coverage for liability assumed under this Agreement as an "insured contract" for the performance of Buyer's indemnity obligations under this Agreement. The limits of said insurance shall not, however, limit the liability of Buyer nor relieve Buyer of any obligation hereunder. All insurance carried by Buyer shall be primary to and not contributory with any similar insurance carried by Sprung, whose insurance shall be considered excess insurance only.

Until such time as (i) Buyer shall have paid the entire Purchase Price for the Structure to Sprung, and (ii) the assembly and erection of the Structure shall have been completed, Buyer shall obtain and keep in force a policy or policies in the name of Sprung, with loss payable to Sprung insuring loss or damage to the Structure and the tools provided by Sprung for erection of the Structure.

The amount of such insurance shall be equal to the sum of (a) the greater of the Purchase Price for the Structure or the full replacement cost of the Structure and (b) the full replacement cost of the tools provided. Such policy or policies shall insure


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against all risks of direct physical loss or damage (including, but not limited to, to the perils of flood, earthquake, hurricanes and/or tornadoes), including coverage for debris removal as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, and a waiver of subrogation. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$10,000 per occurrence, and Buyer shall be liable for such deductible amount.

All policies of insurance required to be maintained by Buyer shall be issued by an insurer which has an A.M. Best rating of not less than A-VIII. All such policies shall contain endorsements that the insurer(s) shall give Sprung at least 30 days' advance written notice of any cancellation, termination, material change or lapse of insurance. Buyer shall provide Sprung with a certificate of insurance evidencing all required insurance as a condition precedent to the shipment of the Structure to Buyer's facility, and thereafter as necessary to assure that Sprung always has current certificates evidencing such insurance.

- SNOW CLEARANCE:** Sprung Structures, by design, shed snow. During times of heavy snowfall and accumulation, Buyer is responsible for keeping the sides of the Structure clear to permit the shedding action to take place.
- BUILDING CODE:** The 2018 International Building Code will be utilized. Wind speed shall be established as one hundred fifty-four (154) miles per hour V (basic design wind speed), equivalent to a one-hundred twenty (120) mile-per-hour VASD (allowable stress design wind speed). Roof live load shall be established as a minimum of twelve (12) pounds per square foot and a ground load of thirty (30) pounds per square foot.
- RESPONSIBILITY FOR TOOLS:** Although specialized hand tools are supplied for Buyer's use at no charge, Buyer is responsible for such tools and their security at Buyer's site until picked up by Sprung following completion of the erection of the Structure. Buyer shall pay the full replacement cost of any tools that are lost, stolen or damaged.
- RESTOCKING:** Should Buyer seek to cancel this Agreement after manufacturing has begun and prior to shipment, and should Sprung consent to such cancellation, a charge of \$199,203.00 for mobilization, restocking and custom items shall be paid by Buyer.
- ASSIGNMENT:** Neither party shall assign, delegate, transfer or encumber any of its rights or obligations hereunder, without the express prior written consent of the other party, which consent may be withheld at that party's sole and unfettered discretion.
- SEVERABILITY** If any provision or term of this Agreement is held to be unenforceable, then this Agreement will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Agreement, valid and enforceable. If a


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court declines to amend this Agreement as provided herein, the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining terms and provisions, which shall be enforced as if the offending term or provision had not been included in this Agreement.

COUNTERPARTS: This Agreement may be executed by the parties in separate counterparts via facsimile or email, each of which shall be deemed an original and both of which together shall be deemed to be one and the same instrument.

ENTIRE AGREEMENT: This Agreement shall constitute the entire agreement between Sprung and the Buyer and neither party makes any representations, guarantees, undertakings, promises or warranties with respect to the matters contained herein, either expressed or implied, except those which are set forth herein or attached.

NOTICES: All Notices hereunder shall be in writing, personally delivered, delivered by overnight courier service, sent by facsimile transmission (with confirmation of receipt), or sent by certified mail, return receipt requested, addressed to the other party at its respective address stated above, of such party or at such other address as such party shall from time to time designate in writing to the other party; and shall be effective from the date of receipt.

GOVERNING LAW JURISDICTION: This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of Colorado (without regard to any conflict of laws principles), including all matters of construction, validity and performance, regardless of the location of the Structure. Buyer agrees that any action or proceeding arising out of or relating to this Agreement may be commenced by Sprung in Boulder County, Colorado.

FORCE MAJEURE: Sprung shall not be responsible for any claims or damages resulting from any delays in performance or for non-performance due to unforeseen circumstances or causes beyond Sprung's reasonable control. Although Sprung's high level of inventory have to date insulated Sprung from supply chain issues, as Governments continue to apply new restrictions on travel, or even the possibility of mandated shutdowns, should such restrictions cause delays in Sprung's ability to perform its obligations under this Agreement, Sprung will not be liable for costs associated with such delays.


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ACCEPTED BY:

SUPERIOR METRO DISTRICT NO.1

SPRUNG INSTANT STRUCTURES, INC.

Per: Clint Folsom

Per: _____

Print Name: Clint Folsom

Title: President

Per: _____

Dated 11/14/2022

Dated: _____



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ACCEPTED BY:

SUPERIOR METRO DISTRICT NO.1

SPRUNG INSTANT STRUCTURES, INC.

Per: _____

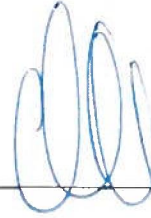
Per: _____



Print Name: _____

Title: _____

Per: _____



Dated _____

Dated: Nov 17, 22



Ronald D. Cleveland
A Commissioner of Oaths
In and for the Province of Alberta
My Commission Expires
March 04, 2023