

TOWN OF SUPERIOR
RESOLUTION NO. R-63
SERIES 2022

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING AN AGREEMENT WITH COLORADO BARRICADE
COMPANY FOR THE GREEN BIKE LANE MARKINGS PROJECT

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

Section 1. The agreement between the Town and Colorado
Barricade Company for the Green Bike Lane Marking Project is hereby
approved in substantially the same form as attached hereto, subject
to final approval by the Town Attorney.

ADOPTED this 12th day of September, 2022.



ATTEST:

Patricia Leyva
Patricia Leyva, Town Clerk

Clint Folsom
Clint Folsom, Mayor

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (the "Agreement") is made and entered into this 12th day of September, 2022 (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 Colorado Barricade Company, an independent contractor with a principal place of business at 2295 S. Lipan Street, Denver, CO 80223 ("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 \$232,323. 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. 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 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.

EXHIBIT A SCOPE OF SERVICES

Contractor shall perform the following services:

1. Contractor shall install additional pavement markings within existing bike lanes to further enhance the visual impact to both motorists and bicyclists where these two types of transportation merge or mix. The locations are on McCaslin Boulevard, Rock Creek Parkway and Coalton Road. All of the project locations are within the existing roadway prism and will provide additional markings within the existing bike lane markings. The work activities will only require temporary traffic control to allow the new markings to be installed. Contractor shall install the pavement marking materials in strict conformance with the manufacturer's recommended preparation and application methods and procedures. The pavement markings manufacturers will be responsible for warranty of the materials used. The contractor shall be responsible for a one-year warranty for workmanship.

2. Standard Specifications – All work shall be performed in accordance with:

- *Colorado Department of Transportation Standard Specifications for Road and Bridge Construction, 2011* and as revised in these Special Conditions.
- *Colorado Department of Transportation Standard Plans M & S Standards, 2006*
- *Manual on Uniform Traffic Control Devices, 2009*

In the case of any conflicts between Town standards and CDOT standards, the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction, 2021.

3. Work Hours – All work shall be performed during regular working hours, 7:00 A.M. until 5:00 P.M., Monday through Friday. Restricted hours may be included as dictated by the Town Engineer. Contractor shall not perform work outside of regular working hours, or on Saturday, Sunday, or any Town-observed holiday without receiving prior written consent from the Town Engineer. If the Contractor wishes to work outside regular working hours, a request to work shall be received by the Town two working days prior to the proposed date of the work.

4. Surface Preparation – Contractor shall be responsible for cleaning the roadway surface in preparation for the application for the epoxy pavement markings. All roads to be marked shall be properly prepared and cleaned prior to application. Roadway cleaning and preparation will not be paid separately, but shall be included in the unit cost of epoxy pavement marking.

5. Traffic Control – Contractor's method of handling traffic shall include details of a mobile pavement marking zone. This shall include advance warning signage and cone placement/pickup.

6. Removal – At the Town's direction, Contractor shall remove pavement markings from selected streets. The following are required procedures/practices for removal:

- a. Pavement markings shall be removed using a rotary type grinder (a drum type manufactured for this purpose), sandblasting, or by hydro-blasting.
- b. The roadway shall have no more than 1/4" damage after removal of pavement markings.
- c. Legal disposal of materials as a result of removal is Contractor's responsibility.

**EXHIBIT B
COMPENSATION**

Contractor shall be paid according to the following schedule:

Town of Superior Green Bike Lane Marking					
BASE BID					
				Colorado Barricade, Co	
ITEM NUMBER	ITEM	UNIT	QTY	Unit Price	COST
202-00250	Removal of Pavement Marking	SF	1,534	\$1.00	\$1,534.00
208-00035	Aggregate Bag	LF	48	\$12.00	\$576.00
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627-00070	Preformed Thermoplastic Pavement Marking (Green)	SF	10,680	\$13.00	\$138,840.00
630-00000	Flagging	HOUR	500	\$35.00	\$17,500.00
630-00012	Traffic Control Management	DAY	45	\$500.00	\$22,500.00
630-80341	Construction Traffic Sign (Panel Size A)	EACH	25	\$10.00	\$250.00
630-80350	Vertical Panel	EACH	20	\$10.00	\$200.00
630-80358	Advanced Warning Flashing or Sequencing Arrow Panel (C Type)	EACH	4	\$750.00	\$3,000.00
630-80380	Traffic Cone	EACH	300	\$5.00	\$1,500.00
700-70010	F/A Minor Contract Revisions	FA	1	\$5,000.00	\$5,000.00
700-70380	F/A Erosion Control	FA	1	\$1,000.00	\$1,000.00
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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.

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