

TOWN OF SUPERIOR
RESOLUTION NO. R-74
SERIES 2023

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN AGREEMENT WITH J&T CONSULTING, INC. FOR THE 2024 ROCK CREEK PARKWAY IMPROVEMENTS 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 J&T Consulting, Inc. for the 2024 Rock Creek Parkway Improvements Project is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 11th day of December, 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 DECEMBER, 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 J&T Consulting, Inc., an independent contractor with a principal place of business at 305 Denver Avenue, Suite D, Fort Lupton, Colorado 80621 ("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 \$123,570. 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

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.
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.

EXHIBIT A SCOPE OF SERVICES

Scope includes final design and bid documents for the reconstruction of Rock Creek Parkway from McCaslin Blvd to S Pitkin Avenue. Design drawings will include roadway subgrade, asphalt, concrete replacement, and striping. Additionally, improvements in the McCaslin Boulevard/ Rock Creek Parkway will include the asphalt section and necessary concrete flat work to improve drainage and drivability. Final construction drawings, specifications, bidding support, special provisions, and cost estimate will be prepared based on discussion with the Town to provide the ideal solution based on use, construction concerns, and budget.

Task 1 Management and Meetings:

The kick-off meeting will set the project on a path for success by better defining roles, lines of communication, goals, objectives, success factors, alternative design options, and associated performance measures for the project. It is important that all team members attend the kick-off meeting.

Progress meetings allow for discussion of specific issues and will be held as necessary to accomplish project goals. Review Workshops will be held at approximately the 30%, 60%, and 90% design levels. It is anticipated that more well-defined items may not require review at every design level.

Holding design workshops should shorten review times, provide an opportunity for Town staff to identify and discuss issues and express desires. It will also provide a time for the team to discuss some of the decision factors related to the design.

Task 2 Design of Roadway Rehab – Construction Drawings & Specifications

Construction drawings and technical specifications for all improvements will be developed and submitted for review at the 30%, 60%, and 90% stages for review and comment by Town staff. Some of the more well-defined items may be taken directly to the 90% stage. A special conditions section will be developed for review by the Town during this phase. The construction drawings will consist of existing condition plans, site plans, demolition plans, erosion control plans, landscape plans, traffic and pedestrian control plans, standard details, and notes, and specific utility/interference details.

JT will produce an opinion of probable construction costs at the 30%, 60%, and 90% design levels that will provide unit costs for installation of the main infrastructure improvements. Construction cost contingencies will be included to account for incidentals not

Task 3 Bidding Services:

JT will assist during the bidding phase by:

- Preparing bid addenda and bid tabulation tools and documentation
- Work to resolve design issues and respond to bidders' question
- Facilitate the bid opening
- Check references and make a recommendation of award to recommended contractor(s)
- Develop "for construction" sets of construction drawings and specifications, incorporating any addenda

PROPOSED PROJECT SCHEDULE

Kickoff Meeting	December 18, 2023
Survey/Geotech/Potholing	December 18, 2023 – January 12, 2024
30% Design Phase	January 4 – 25, 2024
30% Design Review Meeting	January 29, 2024
60% Design Phase	January 30 – February 27, 2024
60% Design Review Meeting	February 29, 2024
90% Design Phase	March 1 – 20, 2024
90% Design Review Meeting	March 22, 2024
100%/ Final Design Phase	March 25 - April 1, 2024
100%/ Final Design Meeting	April 3, 2024
Provide Complete Bidding Package to City	April 9, 2024
Project Posted for Bid	April 11, 2024
Bids Received	May 3, 2024
Town Board of Trustees Award Contract	May 13, 2024
Construction Begins	June 3, 2024