

TOWN OF SUPERIOR  
RESOLUTION NO. R-21  
SERIES 2024

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF  
SUPERIOR APPROVING THE CONTRACT WITH PAVEMENT  
RESTORATION, INC., FOR THE RECLAIMITE REJUVENATION  
PROJECT

WHEREAS, the Town desires to seal and maintain streets within Superior, extending their useful life and delaying costly street reconstruction projects; and

WHEREAS, the Board of Trustees finds it is in the best interest of the public health, safety and welfare to contract with Pavement Restoration, Inc., to seal and maintain Town streets.

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

Section 1. The Contract between the Town and Pavement Restoration, Inc., is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 22nd day of April, 2024.

  
\_\_\_\_\_  
Mark Lacia, Mayor

ATTEST:

  
\_\_\_\_\_  
Lydia Yecke, Town Clerk



**CONSTRUCTION CONTRACT (SHORT FORM)**

THIS CONSTRUCTION CONTRACT (the "Contract") is made and entered into this 22 day of April, 2024 (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 Pavement Restoration, Inc., an independent contractor with a principal place of business at 5423 N. 59th Street, Tampa FL 33610 ("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:

**I. SCOPE OF WORK**

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 Work set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. No change to the Scope of Work, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the Town.

**II. TERM AND TERMINATION**

A. Contractor shall complete the Scope of Work on or before September 30, 2024.

B. This Contract shall terminate when all the work described in the Scope of Work is completed to the Town's satisfaction (final acceptance), or upon the Town's providing Contractor with 30 days advance written notice, whichever occurs first; provided that the indemnification and warranty provisions of this Contract shall survive termination.

**III. COMPENSATION**

Upon final acceptance by the Town of the work set forth in the Scope of Work, the Town shall pay Contractor an amount not to exceed \$169,350 (the "Contract Price") as set forth in Exhibit B, subject to the requirements of C.R.S. § 38-26-107. If Contractor completes the Scope of Work for a lesser amount than the Contract Price, Contractor shall be paid the lesser amount.

**IV. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any other provision of this Contract, all personnel assigned by Contractor to perform work under the terms of this Contract 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.

**V. 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. The services performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and 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.

**VI. OWNERSHIP**

Any materials, items, and work specified in the Scope of Work, 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 Work 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.

**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**

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, 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 Contract, to the extent that such injury, loss or damage is attributable to 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 of any subcontractor of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims, damages, losses, expenses or demands at the sole expense of Contractor, or at the option of the Town, Contractor agrees to pay the Town or reimburse the Town for defense costs incurred by the Town in connection with any such liability, claims, damages, losses, expenses or demands. Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent. This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent. Contractor's liability under this 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 Contract, the extent of Contractor's obligation to defend, 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 of the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **IX. 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.

**X. WARRANTY**

Contractor shall warrant and guarantee all materials furnished and work performed by Contractor under this Contract for a period of 2 years from the date of final acceptance by the Town. Under this warranty, Contractor agrees to repair or replace, at its own expense and under the direction of the Town, any portion of the work or materials that fails or is defective, unsound, unsatisfactory because of materials or workmanship, or that is not in conformity with the provisions of the Contract. The expiration of the warranty period 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.

**XI. BONDS**

Within 10 days of the date of this Contract, Contractor shall furnish a Payment and Performance Bond in the full amount of the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under this Contract, including the warranty. The bond shall remain in effect at least until 2 years after the date of final acceptance.

**XII. LIQUIDATED DAMAGES**

A. Because time is of the essence and delayed performance constitutes a compensable inconvenience to the Town and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day that all of the work described in the Scope of Work is delayed beyond the deadline set forth in Section II hereof, Contractor shall be assessed the amount of \$250 per day.

B. Allowing Contractor to continue and finish the Scope of Work or any part thereof after the deadline set forth in Section II hereof shall not operate as a waiver on the part of the Town of any of its rights under this Contract. Any liquidated damages assessed shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to complete the Scope of Work. Liquidated damages may be deducted from any payment due Contractor or any retainage held. If the liquidated damages exceed the amount owed to Contractor, Contractor shall reimburse the Town within 30 days of notice thereof.

**XIII. MISCELLANEOUS**

A. *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.

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

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

D. *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 to the Party at the address included on the first page of this Contract.

E. *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.

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

G. *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.

H. *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.

I. *Rights and Remedies.* 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. 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.

J. *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.

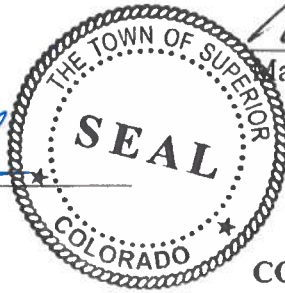
IN WITNESS WHEREOF, the Parties have executed this Contract as of the Effective Date.

TOWN OF SUPERIOR, COLORADO

[Signature]  
Mark Lacis, Mayor

ATTEST:

[Signature]  
Lydia Yacke, Town Clerk



CONTRACTOR

By: [Signature]

STATE OF Florida )  
 ) ss.  
COUNTY OF Hillsborough )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 5 day of April, 2024, by Hubbert Beasley as VP of Pavement Restoration, Inc.

My commission expires: March 16, 2027

(SEAL)

[Signature]  
Notary Public



## **EXHIBIT A SCOPE OF WORK**

Contractor will provide the following services, for the application of the asphalt rejuvenator RECLAMITE, on the streets selected by Town Staff and as shown in Exhibit C.

- A) Contractor will facilitate a pre-project meeting with all personnel that would be associated with the project. Contractor's onsite project manager will discuss in detail how the project will be completed.
- B) Contractor will manage all resident notification. This will entail the posting of our resident notification DOOR HANGERS 24-48 hours before actual work begins. The Notification details the process that our crews will be completing in the subdivision and includes our onsite operations manager's cell phone number for any questions or issues that might arise from residents.
- C) Contractor will provide all needed traffic control for RESIDENTIAL streets. This will include flagman at intersections where work is being completed, all traffic cones, and all traffic signage, needed to complete a timely and safe operation. Traffic control for collectors, arterial streets will be by a certified licensed contractor and will be billed additional to the contract.
- D) Contractor will provide RECLAMITE ASPHALT REJUVENATOR. Reclamite will be applied at a field determined application rate. The rate of application will be determined by Contractor's operations manager, after a test section of RECLAMITE is applied to the street, and an absorption test is completed. The typical application rate is normally 0.07 to 0.10 per square yard.
- E) Contractor will provide all needed equipment, Distributor, Sand Truck Spreader, Sweeper to complete project.
- F) Contractor will provide and apply wash concrete sand to roadway after the RECLAMITE has been absorbed into the existing asphalt binder. Sand will then be applied by our sand truck spreader.
- G) Contractor will sweep sand off roadway within 24 hours of application and dispose of sand appropriately.
- H) Contractor will have before and after street core samples taken 8-10 weeks after application and will submit the samples to an independent lab for analysis. Contractor will patch all core holes. Contractor will deliver the results of the lab test to Staff.



**EXHIBIT B  
COMPENSATION SCHEDULE**

Contractor shall be paid on a unit cost basis for the time spent by Contractor's employees performing the work described in **Exhibit A**, Scope of Services. Such invoices shall be submitted to the Town on a monthly basis and the total amount billed shall be based on the unit pricing below.

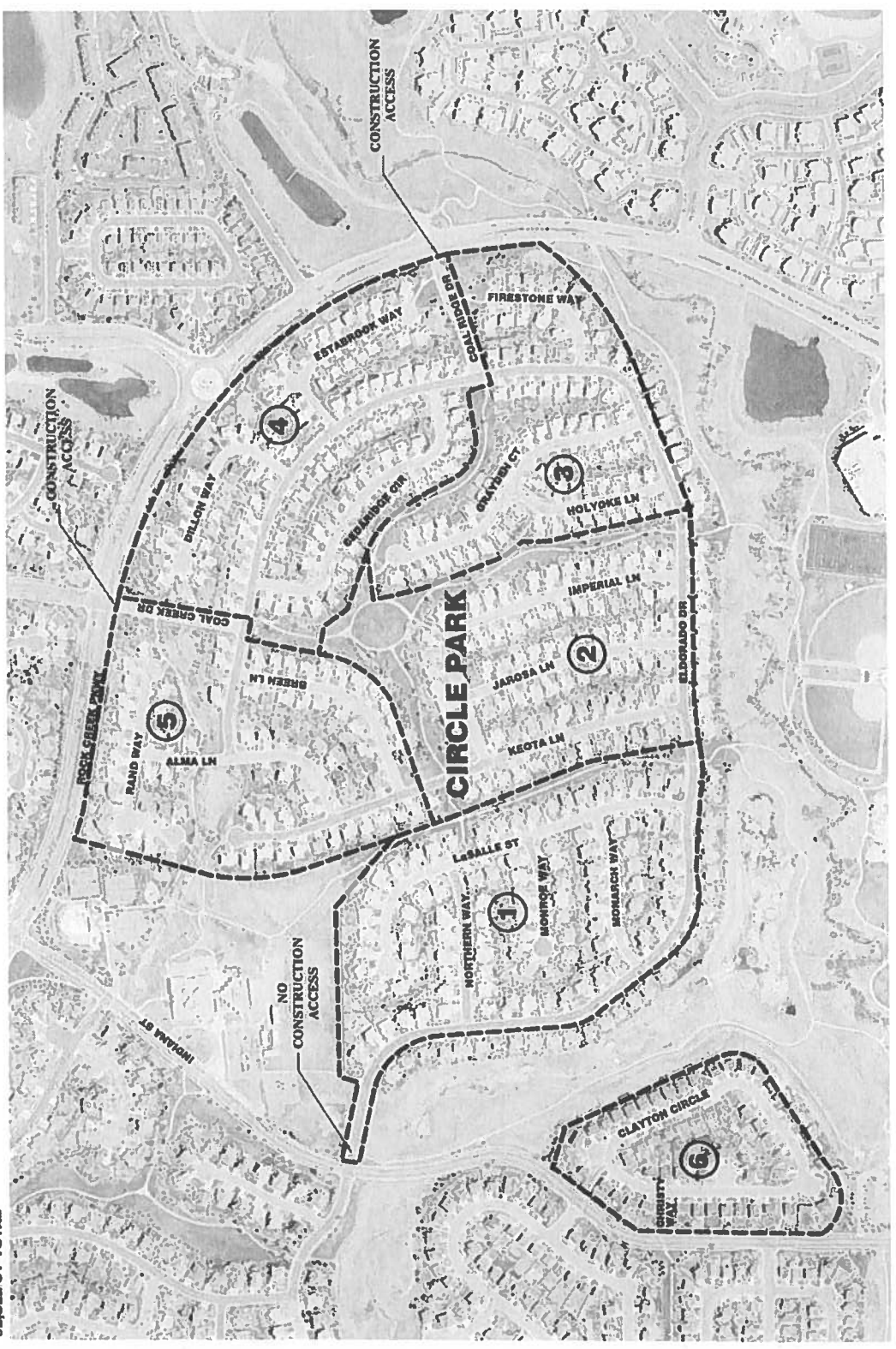
- 1) Application of Reclamite on Residential Streets \$1.55 per Square Yard.
- 2) Quantities to be field determined by Contractors operation manger and Town Staff Inspector.
- 3) Estimated Quantities 107,000 Sq. Yd.
- 4) Total Cost: 107,000 Yds @ \$ 1.55 per Sq Yd = \$ 165,850.00
- 5) Mobilization \$3,500.00

Total Project Cost: \$169,350

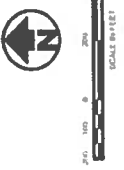
Note, traffic control for collectors and arterial streets will be by a certified licensed contractor and will be billed additional to the contract, and cost plus a 15% mark-up.

**EXHIBIT C  
RECLAMITE STREETS**

REVISIONS	
No.	Description



92,922 SY TOTAL

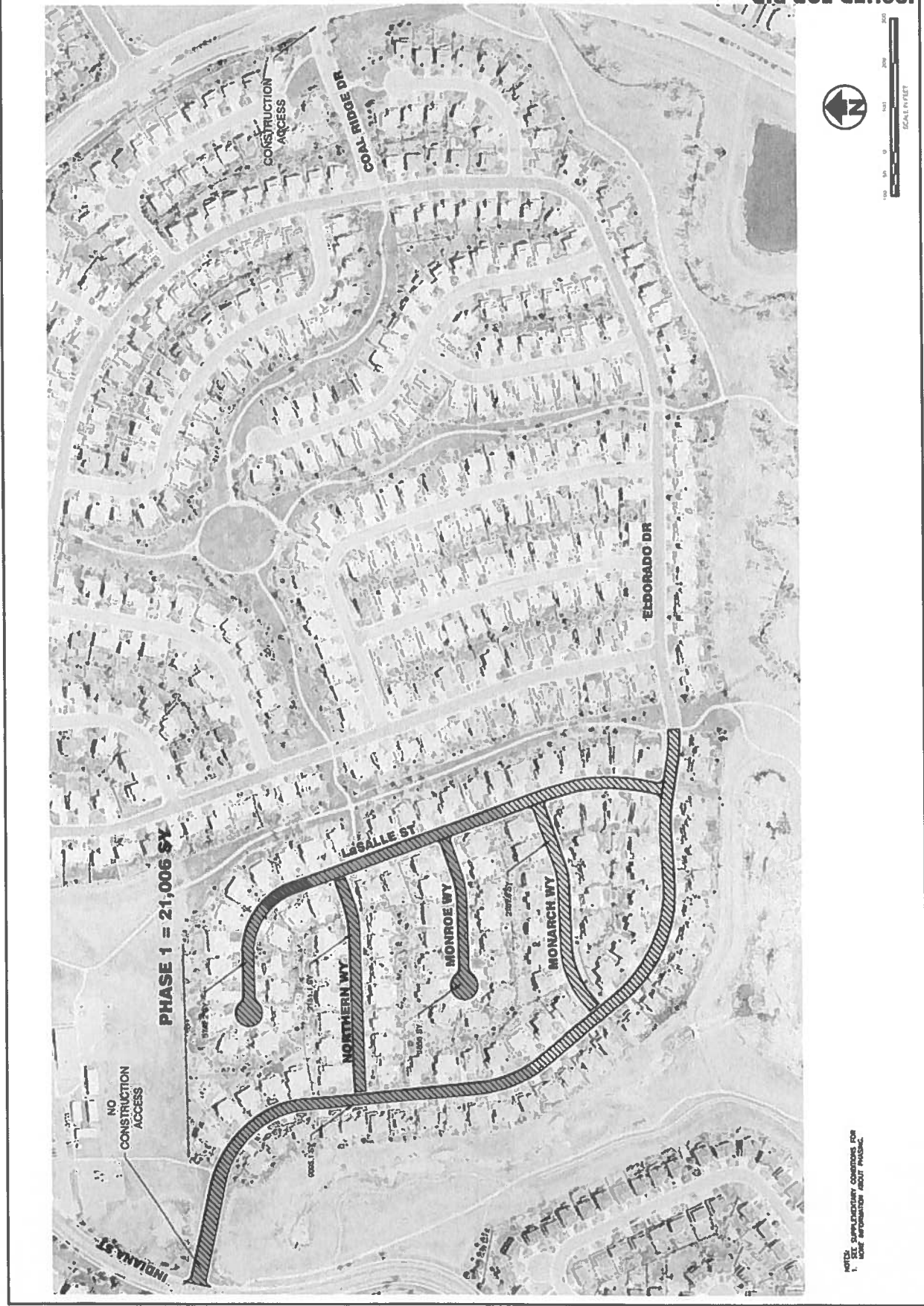


LEGEND

① PAVEMENT

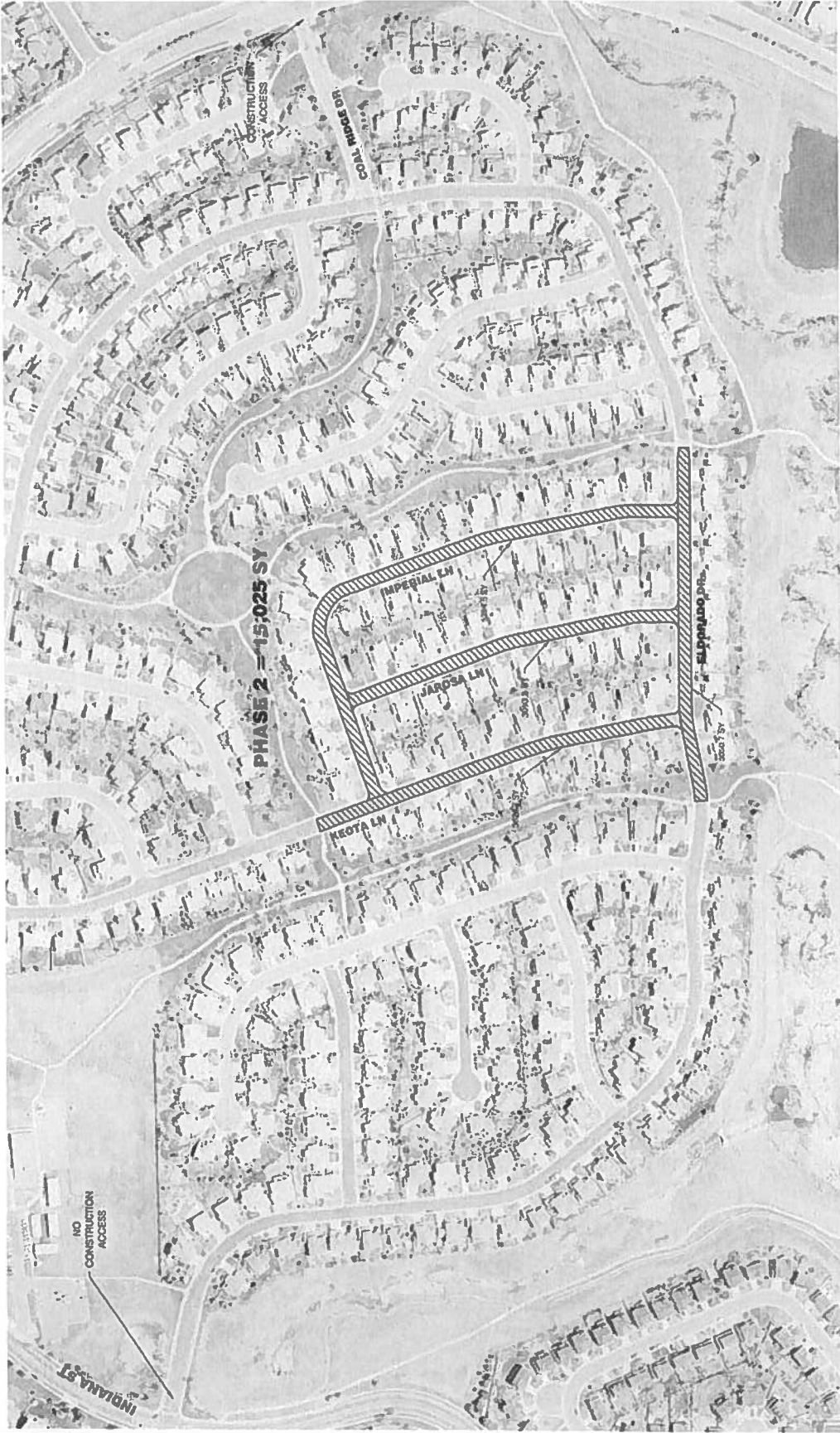
SEE SUPPLEMENTARY CONDITIONS FOR MORE INFORMATION ABOUT PAVEMENT.

NO.	DATE	BY	CHK.	DESCRIPTION



NOTE: SUPPLEMENTARY CONDITIONS FOR BIDDING ARE ATTACHED TO THE BIDDING DOCUMENTS.

NOTE: SUPPLEMENTARY CONDITIONS FOR LOCAL INFORMATION ABOUT PROJECT



Sheet 6 of 16

ISSUED FOR BID

NO.	DATE	BY	DESCRIPTION

Town Of Superior

Street Improvements 2024  
Phase 2

J&T Consulting, Inc.

305 Denver Avenue - Suite 3  
 Fort Lupton, CO 80211  
 Phone: 303.637.4222  
 www.jandtc.com



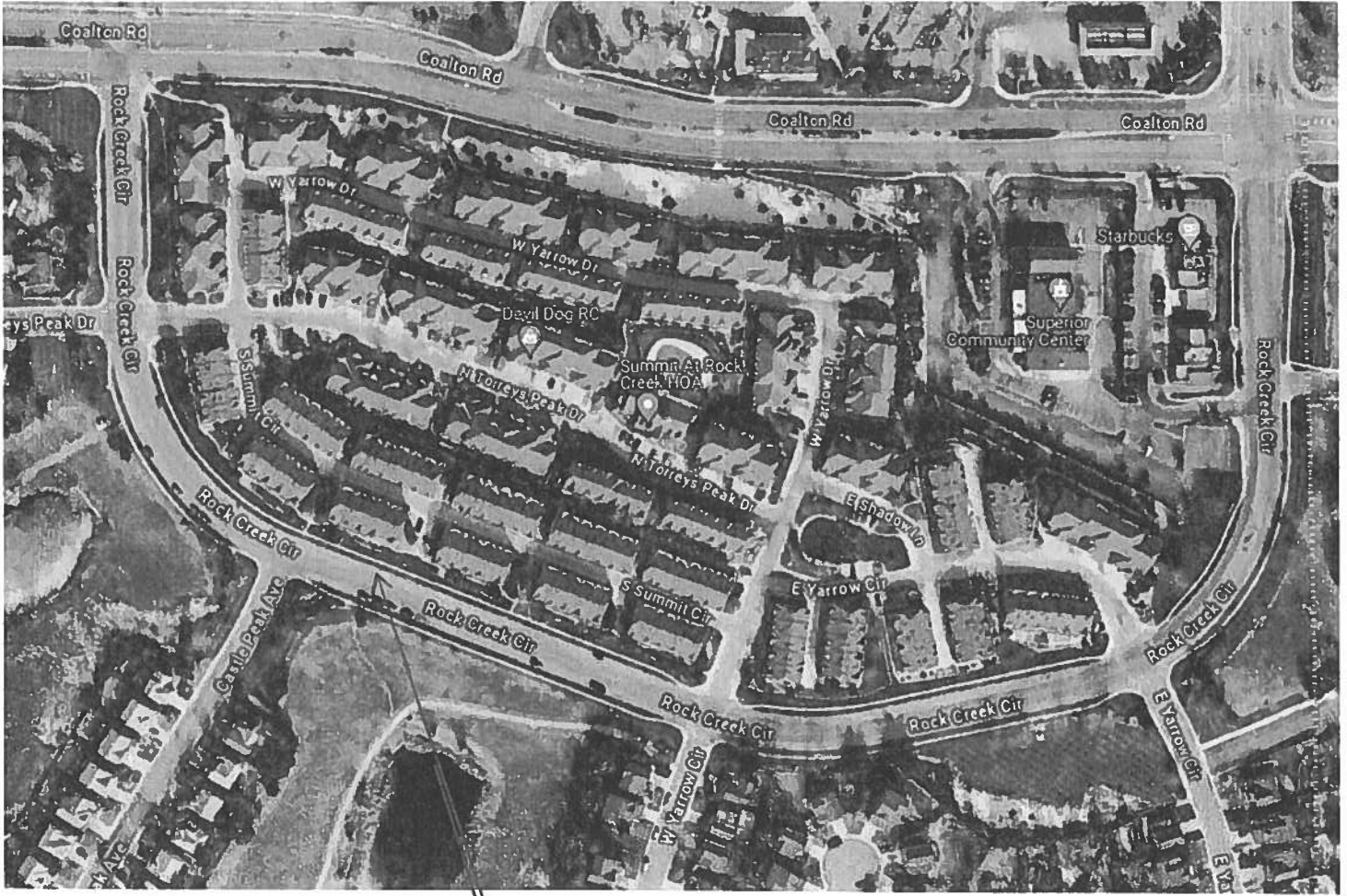












Rock Creek Circle  
from Coalton Road to Coalton Road  
13,750 SY