

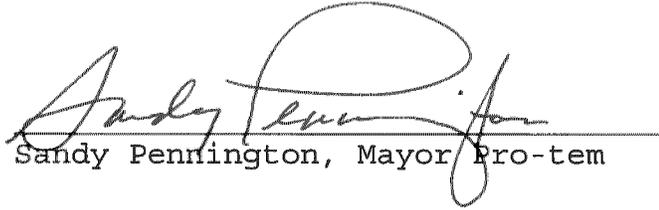
TOWN OF SUPERIOR
RESOLUTION NO. R-16
SERIES 2018

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING AN AGREEMENT WITH ROCKSOL
CONSULTING GROUP FOR CONSTRUCTION MANAGEMENT SERVICES

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

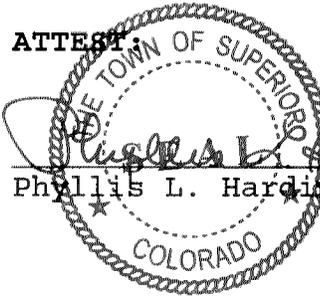
Section 1. The Agreement between the Town of Superior
and RockSol Consulting Group for Construction Management
Services is hereby approved in substantially the same form as
attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 12th day of March, 2018.


Sandy Pennington, Mayor Pro-tem

ATTEST:


Phyllis L. Hardin, Town Clerk-Treasurer



AGREEMENT FOR PROFESSIONAL SERVICES (HOURLY)

THIS AGREEMENT is made and entered into this 12th day of March, 2018 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, Colorado 80027 (the "Town"), and the RockSol Consulting Group, an independent contractor with a principal place of business at 12076 Grant Street, Thornton, Colorado 80241 ("Contractor") (each individually 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 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 work performed by Contractor under the Scope of Services, the Town shall pay Contractor as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference.

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.

B. 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.

C. 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.

D. 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.

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.

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 \$1,000,000 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 \$1,000,000 general aggregate.

C. 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.

D. 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. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

X. 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.

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.

K. 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

EXHIBIT A SCOPE OF SERVICES

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties related to construction management for the Superior Trail Project (BRT Station to Davidson Mesa US 36 underpass) as directed by the Town:

- Manage construction to ensure conformity with the plans, specifications, and purpose of design
- Review all required submittals
- Oversee contractor's activities, documentation, reports, and billing
- Maintain project files, billings, progress reports, materials testing records, and construction diaries
- Track schedules, equipment usage, and material quantities
- Attend all meetings
- Prepare field change orders and minor contract revision requests for the Town to review
- Prepare responses to contractor questions, field change orders, and other requests
- Anticipate and identify constructability issues and offer recommendations for solving problems
- Compliance with Davis-Bacon wage rates and EEO requirements
- Control construction costs by ensuring compliance of all work elements
- Coordinate and complete all quality assurance materials testing
- Assist Town Staff with public involvement and coordination with adjacent projects
- Maintain accurate inspection and testing records
- Notify contractor and Town PM of non-compliance issues
- Perform any special tests, investigations, or monitoring required to fulfill the obligations specified by the project manual or as directed by the Town
- Submittal of daily work reports and other documentation
- Review Methods of Handling Traffic (MHTs) and offer recommendations for approval to the Town
- Perform final project walk-through, development of punch list items, and preparation of final project documentation, including all CDOT and FHWA forms required

**EXHIBIT B
COMPENSATION**

Contractor shall be paid on an hourly basis for the time spent by Contractor's employees performing the work described in **Exhibit A**, Scope of Services. Contractor shall provide itemized invoices detailing the work performed, and shall bill in increments of not less than 15 minutes. Such invoices shall be submitted to the Town on a monthly basis.

1. LABOR COSTS			
<u>Employee Classification</u>	<u>Estimated Hours</u>	<u>Hourly Rate</u>	<u>Estimated Cost</u>
Project Manager	40	\$167.05	\$6,682
Construction Inspector/Tester	480	\$65.00	\$31,200
Finals Documentation Review	4	\$72.49	\$290
Pre-construction Review	16	\$167.05	\$2,673
Admin and Project Control	4	\$72.49	\$290
Environmental Services*	6	\$115.35	\$692
CDOT Permitting*	6	\$115.35	\$692
			\$42,519
* If requested			
Hours listed are estimated only. Actual hours will be negotiated during the contract process.			
2A. OTHER DIRECT COSTS (In-house):			
<u>Item</u>	<u>Estimated Units</u>	<u>Rate</u>	<u>Estimated Cost</u>
Mileage (at current federal fiscal rate)	2000	\$0.535	\$1,070
2B. OTHER DIRECT COSTS (Outside):			
<u>Item</u>	<u>Estimated Units</u>	<u>Rate</u>	<u>Estimated Cost</u>
Miscellaneous	Each		\$500
TOTAL COSTS			\$44,089

NO EMPLOYEE AFFIDAVIT

[To be completed only if Contractor has no employees]

1. Check and complete one:

I, _____, am a sole proprietor doing business as _____ . I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Superior (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

I, _____, am the sole owner/member/shareholder of _____, a _____ [specify type of entity – *i.e.*, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

I am a United States citizen or legal permanent resident.

The Town must verify this statement by reviewing one of the following items:

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.*

OR

I am otherwise lawfully present in the United States pursuant to federal law.

Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.

Signature

Date

