

**TOWN OF JOHNSTOWN  
SMALL VENDOR CONTRACTOR AGREEMENT**

**THIS SMALL VENDOR CONTRACTOR AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of November 2021 (the “Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and Modstreet, [a Colorado Company] (“Contractor”) (collectively, the “Parties”).

**WHEREAS**, the Town desires to engage the services of Contractor and Contractor wishes to provide those services more fully described on Exhibit A, attached hereto and incorporated herein by reference (“Services”), for the Town; and

**WHEREAS**, the Parties wish to memorialize their contractual relationship.

**NOW, THEREFORE**, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

**SECTION 1: PARTIES**

1.01 Town. The Town is a home-rule municipal corporation located in Johnstown, Colorado.

1.02 Contractor. Contractor has the background, expertise and education to provide the Services. Contractor is a private, independent business entity who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement. Contractor shall use its own judgment and skills in determining the method, means and manner of performing this Agreement. Contractor shall be responsible for the proper performance of this Agreement in accordance with the terms hereof and any and all applicable federal, state, and municipal laws, regulations and orders.

**SECTION 2: SERVICES, TERM AND COMPENSATION**

2.01 Services. Contractor agrees to perform the Services for the Town.

2.02 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through May 2022, and shall not extend beyond that date absent the written approval of the Town.

2.03 Duties and Compensation. The Contractor’s duties and compensation shall be as set forth on Exhibit A. In the event of a conflict between the provisions in this Agreement and

Exhibit A, the provisions in this Agreement shall control. Payment for Services shall be provided to Contractor within thirty (30) days of Contractor providing a detailed invoice to the Town.

2.04 Background Check. The Town may, in its sole discretion, conduct a background check of Contractor, its owners and employees. Contractor agrees to execute any forms necessary to facilitate the background check.

### **SECTION 3: OPERATIONS**

3.01 Expenses: Contractor shall not incur any expense or debt on behalf of the Town without the Town's prior written authorization.

3.02 Federal, State, and Municipal Laws and Regulations. Contractor agrees to abide by all applicable federal, state, and municipal laws and regulations and rules.

### **SECTION 4: INSURANCE AND INDEMNITY PROVISIONS**

4.01 Insurance. Contractor shall maintain and keep in force during the term of this Agreement one or more policies of liability insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado, which will include protecting and indemnifying the Town in the following amounts:

- a) Comprehensive General Liability - \$1,000,000 combined aggregate
- b) Workers Compensation – as required by law

Contractor shall furnish to the Town appropriate certificates of coverage for such insurance. The insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town. Any required deductible or co-insurance amount shall be paid by the Contractor.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities under by this Agreement. Contractor agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person arising from Contractor's activities as authorized by this Agreement.

### **SECTION 5: TERMINATION**

5.01 Termination. The Town or Contractor may terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to Contractor. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to Contractor effective immediately.

## **SECTION 6: INDEPENDENT CONTRACTOR**

6.01 Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT.** As long as there is not a conflict of interest with the Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

## **SECTION 7: NOTICE**

7.01 Notices. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested as follows:

TO THE TOWN:  
Town of Johnstown  
Attn: Town Clerk  
450 S. Parish Avenue  
Johnstown, CO 80534  
Email: [dseele@johnstownco.gov](mailto:dseele@johnstownco.gov)

TO CONTRACTOR:  
Modstreet  
Attn: Roger Zalneraitis  
736 Main Ave, Suite A  
Durango, CO 81301  
Email: [roger@modstreet.co](mailto:roger@modstreet.co)

The addresses for notices may be changed by written notice given to the other Party in the manner provided above. Notice may also be sent via e-mail delivery and shall be effective upon confirmation of receipt of the email.

## **SECTION 8: MISCELLANEOUS**

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for

which funds are not appropriated.

8.03 Illegal Aliens. Contractor shall comply with the statutory provisions prohibiting employment of illegal aliens, as set forth on Exhibit B, attached hereto and incorporated herein by such reference.

8.04 Assignment; Third Party Rights. Contractor may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

8.05 Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

8.06 Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court authoritatively determines that the relationship between the Town and Contractor is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

8.07 Waiver. No consent or waiver, express or implied, by a Party to or of any breach or default by the other Party in the performance by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the non-defaulting Party. Failure on the part of any Party to complain of any act or failure to act or to declare any other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

8.08 Governmental Immunity. The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

8.09 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.10 Mediation. In the event of any dispute arising under this Agreement, except in the case of injunctive relief as set forth in Paragraph 8.11, the Parties shall submit the matter to mediation prior to commencing legal action and shall equally share the cost of the mediation.

8.11 Right to Injunction. The Parties hereto acknowledge that the services to be rendered by the Contractor under this Agreement and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which may not be reasonably or adequately compensated by damages in any action at law, and the breach by the Contractor of any of the provisions of this Agreement may cause the Town irreparable injury and damage. The Contractor agrees that the Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in

the event of, or to prevent, a breach of any provision of this Agreement by the Contractor.

8.12 Costs and Attorney's Fees. If any judicial proceedings may hereafter be brought to enforce any of the provisions of this Agreement, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

8.13 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Contractor and supersede all prior negotiations, representations and agreements, whether written or oral.

8.14 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the Town.

8.15 No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

8.16 Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

[Remainder of page intentionally left blank.]



## **EXHIBIT A SERVICES**

### **Parklet**

- Design and build of high quality, flexible outdoor parklets including platform, barricades and railings
- Parklet 1 Dimension: 48ft x 8ft *approximate size of 2 parallel parking spots; size can vary to meet budget*
- Parklet 2 Dimension: 24ft x 8ft *approximate size of 1 parallel parking spot; size can vary to meet budget*
- Parklets must allow for proper water drainage
- Parklets must be ADA accessible (transition plate to cover gap between parklet and curb)
- Parklet surface must be non-slip
- Design installation, and material must be safe and durable for outdoor use
- Parklet structure must allow for on-site assembly and disassembly
- Canopy or other roofing options must be provided
- Preference will be given to parklet designs that enhance the existing aesthetics of the downtown corridor

### **Outdoor Furniture & Design Elements**

- Parklet 1 design should include furniture, seating, and design elements to allow for principle use of outdoor dining
- Parklet 2 design should include furniture, seating, and design elements to allow for a more general outdoor public seating use that can easily be converted towards specific uses such as outdoor dining
- All furniture and design elements should be ADA accessible
- Design installation, and material must be safe and durable for outdoor use
- Outdoor elements should include outdoor heaters and coolers, umbrellas, lighting, planters (that can serve as seating potentially), and other elements and features that enhance the parklet

### **Safety & Marketing Elements\***

- Safeguard reflective signs and/or decals that ensure pedestrian safety
- Wayfinding signage and traffic signaling signs
- On-site marketing such as concrete decals, feather flags, etc.

*\*Safety and Marketing elements are not required but preference will be given to firms that can provide this service or can provide the Town contacts of qualified firms to complete the specified work. Please indicate in your cover letter/executive summary.*

**Schedule of Work**

- November-January 2021: Design/order parklets and all exterior elements/furnishing
- April 2022: All ordered materials and items must be delivered to the Town of Johnstown

**TOTAL BUDGET COSTS WILL NOT EXCEED \$77,000**

**EXHIBIT B**  
**REQUIRED PROVISIONS FOR CONTRACT FOR SERVICES**  
**PROHIBITING EMPLOYMENT OF ILLEGAL ALIENS**

Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this public contract for services; or
2. Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the Department of Labor and Employment program.

Contractor is prohibited from using either the e-verify program or the Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

1. Notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph 1 of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days that subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department made in the course of an investigation that the Department of Labor and Employment is undertaking pursuant to the authority established in subsection (5) of Section 8-17.5-102 of the Colorado Revised Statutes.

**IF CONTRACTOR VIOLATES ANY OF THE AFOREMENTIONED REQUIREMENTS, THE TOWN MAY TERMINATE THE CONTRACT FOR BREACH OF CONTRACT. IF THIS CONTRACT IS SO TERMINATED, CONTRACTOR SHALL BE LIABLE FOR ACTUAL AND CONSEQUENTIAL DAMAGES TO THE TOWN OF JOHNSTOWN.**