

Construction Contract
(2025 Street Maintenance Project (P25-1011-2))

This Construction Contract (the "Contract") is made and entered into this _____ day of _____, 2025 (the "Effective Date"), by and between the Town of Erie, 645 Holbrook Street, P.O. Box 750, Erie, CO 80516, a Colorado home rule municipality (the "Town"), and Asphalt Specialties Co. Inc., an independent contractor with a principal place of business at 345 West 62nd Avenue, Denver CO 80216 ("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:

1. Scope of Work. Contractor shall perform the following described work (the "Work"), in accordance with this Contract and the Contract Documents, attached hereto and incorporated herein by this reference:

Application of a 2" mill & overlay on portions of various roads in Kenosha Farms—approximately 62,428 SY. All areas in Erie Village will require repair of premarked subgrade failures, profile milling, following the milling the surface will be inspected for cracking and addressed as needed, valves and manholes will be adjusted and all pavement marking replaced.

- **Lombardi Street-** approximately 15,687 SY
- **Kanemoto Way-** approximately 2,377 SY
- **Kanemoto Lane-** approximately 3,325 SY
- **South Egrew Court-** approximately 1,479 SY
- **North Egrew Court-** approximately 1,711 SY
- **South Davenport Court-** approximately 1,859 SY
- **North Davenport Court-** approximately 2,377 SY
- **Cooke Court-** approximately 2,448 SY
- **Banner Circle-** approximately 10,579 SY
- **Flannagan Court-** approximately 2,593 SY
- **German Court-** approximately 2,219 SY
- **Holden Court-** approximately 1,851 SY
- **James Way-** approximately 1,764 SY
- **Carlson Avenue-** approximately 7,205 SY
- **Nonaham Lane-** approximately 3,562 SY
- **Kempton Court-** approximately 1,392 SY

Application of a 2" mill & overlay on portions of various roads in Erie Village—approximately 54,160 SY. All areas in Erie Village will require repair of premarked subgrade failures, profile milling, following the milling the surface will be inspected for cracking and addressed as needed, valves and manholes will be adjusted and all pavement marking replaced.

- **Washburn Avenue-** approximately 10,399 SY
- **Washburn Street-** approximately 4,600 SY
- **Washburn Court-** approximately 858 SY
- **Richards Court-** approximately 1,412 SY
- **Padfield Place-** approximately 1,292 SY
- **Tyler Place-** approximately 2,499 SY
- **Conway Court-** approximately 1,284 SY
- **Conway Street-** approximately 2,526 SY
- **Allen Court-** approximately 2,790 SY
- **Allen Avenue-** approximately 8,003 SY
- **Greening Avenue-** approximately 4,715 SY
- **St John Street-** approximately 5,254 SY
- **Davis Court-** approximately 1,706 SY
- **Brennan Court-** approximately 1,717 SY
- **White Lane-** approximately 392 SY
- **Oakley Lane-** approximately 1,198 SY
- **Nonaham Lane-** approximately 1,783 SY
- **Flowers Court-** approximately 1,732 SY

2. Bonds. Within 10 days of the date of this Contract, Contractor shall provide the payment and performance bond and certificate of insurance required by the Contract Documents. A payment and performance bond is not required for contract amounts under \$50,000 unless indicated differently in the Request for Bids or the Contract Documents.

3. Commencement and Completion of Work. Contractor shall commence the Work within 10 days of date of the Notice to Proceed. Substantial Completion of the Work shall be accomplished within 120 days of the Notice to Proceed, unless the period Substantial Completion is extended otherwise in accordance with the Contract Documents. Final Completion of the Work shall be accomplished within 7 days of the date of Substantial Completion.

4. Contract Price. The Town agrees to pay Contractor, subject to all of the terms and conditions of the Contract Documents, for the Work, an amount not to exceed \$1,844,131.00, which includes a base amount of \$1,676,482.92 and a contingency of \$167,648.08. The contingency amount will only be paid upon the Town's approval. The not-to-exceed amount shall include all fees, costs and expenses incurred by Contractor. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

5. 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.

6. 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. *No Waiver.* 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.

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

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

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 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.

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

h. *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.

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 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.

j. *Rights and Remedies.* 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.

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 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.

l. *Force Majeure.* No Party shall be in breach of this Contract if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

In Witness Whereof, this Construction Contract has been executed by the Parties as of the Effective Date.

Town of Erie, Colorado

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

Contractor

By: _____

State of Colorado)

County of _____) ss.
)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2025, by _____ as _____ of Asphalt Specialties Co. Inc.

My commission expires:

(Seal)

Notary Public