

Construction Contract

This Construction Contract (the "Contract") is made and entered into this _____ day of April 29, 2021 (the "Effective Date"), by and between the Town of Erie, 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, a Colorado municipal corporation (the "Town"), and **Asphalt Specialties Company, Inc.**, an independent contractor with a principal place of business at **10100 Dallas Street, Henderson, Colorado 80640** ("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 an overlay to:

- **Austin Avenue** from 119th Street east to County Line Road approximately 5,592 LF
- **Meller Street** from Jasper Road south to Westin Drive approximately 4,813 LF
- **Telleen Avenue** from County Line Road to Jasper Road approximately 2,915 LF
- **County Road 12** from County Road 5 to County Road 7 approximately 5,286 LF
- **Briggs Street/ County Road 1.5** from Town Limits east of Fletcher Drive to Perry Street approximately 7,625 LF
- **Cheesman Street** from County Line Road to Briggs Street approximately 2,242 LF
- **County Road 7** from Access Road to County Road 6 approximately 2,680 LF
- **Arapahoe Road** from 111th Street east to Lakota Ranch Road approximately 2,702 LF
- **Erie Parkway (east and west bound)** from 119th Street east to County Line Road approximately 5,350 LF.
- **Erie Parkway (east and west bound)** from Montgomery Drive east to Colliers Boulevard/Bonanza Drive approximately 1,168 LF

All areas are to be crack filled, valves and manholes adjusted and striped and repair of premarked subgrade failures.

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.
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 **90** days of the Notice to Proceed unless the period for Substantial Completion is extended otherwise in accordance with the Contract Documents. Final

Completion of the Work shall be accomplished within **120** days of the date of Substantial Completion.

4. Compensation/Contract Price. The Town agrees to pay Contractor, subject to all of the terms and conditions of the Contract Documents, for the Work, a base amount of \$1,918,556.15. 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; provided that the Town authorizes up to \$191,843.85 in additional compensation, which additional amount may only be paid upon approval of a written change order by the Town. The Town shall pay Contractor in the manner and at such times as set forth in the General Provisions such amounts as required by the Contract Documents.
5. Illegal Aliens.
 - A. Certification. By entering into this Contract, 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 Contract 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 in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.
 - B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract 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 Contract.
 - C. Verification.
 1. If Contractor has employees, Contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or the Department Program.
 2. Contractor shall not use the E-Verify or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
 3. If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien who is performing work under this Contract, 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 Contract; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection a hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Contract; except that Contractor shall not terminate the contract with the subcontractor 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 Contract.

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 Contract.

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

6. 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.


7. 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 or Weld] County, Colorado.

8. 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.

9. Integration. This Contract and any attached exhibits constitute the entire Contract between Contractor and the Town, superseding all prior oral or written communications.
10. Third Parties. There are no intended third-party beneficiaries to this Contract.
11. 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.
12. 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.
13. Modification. This Contract may only be modified upon written agreement of the Parties.
14. 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.
15. 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.
16. 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.
17. 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.

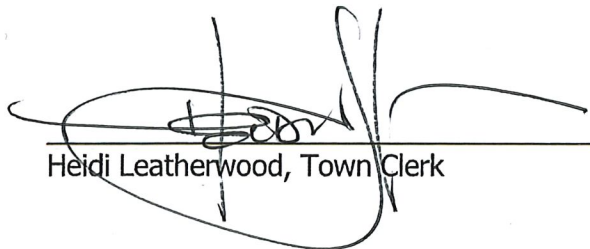
In Witness Whereof, this Construction Contract has been executed by the Parties as of the Effective Date.

Town of Erie, Colorado



Jennifer Carroll, Mayor

Attest:



Heidi Leatherwood, Town Clerk

Contractor

By: 

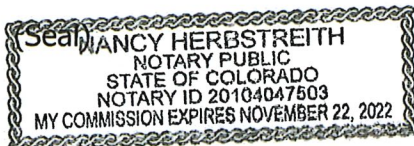
Daniel W. Hunt – President



State of Colorado)
County of Adams) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 12th day of April, 2021, by Daniel W. Hunt as President of Asphalt Specialties Company, Inc.

My commission expires: **11/22/2021**





Notary Public **Nancy Herbstreith**

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 Contract with the Town of Erie (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Contract.

OR

☒ I, **Daniel W. Hunt**, am the sole owner/member/shareholder of **Asphalt Specialties Company, Inc.**, a **Colorado Corporation** [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 Contract with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Contract.

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 **Daniel W. Hunt - President**

04/12/2021

Date

[To be completed only if Contractor participates in the Department of Labor Lawful Presence Verification Program]

D-7