

Town of Lyons, Colorado

**FIRST AMENDMENT TO
CONSTRUCTION AGREEMENT WITH ASPHALT SPECIALTIES COMPANY, INC.**

**Project Name: Roadway Repairs – Flood Recovery
Project Number 20-RDWY-01**

This FIRST AMENDMENT TO CONSTRUCTION AGREEMENT ("First Amendment") is made and entered into on the date upon which it is mutually executed by the Parties (the "Effective Date"), by and between the TOWN OF LYONS, COLORADO, a municipal corporation of the State of Colorado, with offices at 432 5th Avenue, Lyons, Colorado 80540 (the "Town"), and ASPHALT SPECIALTIES COMPANY, INC with offices at: 10100 Dallas Street, Henderson, CO 80640 (the "Contractor"). The Town and the Contractor may be referred to collectively as the "Parties" and each individually as "Party".

WITNESSETH

WHEREAS, pursuant to Resolution 2020-53, the Town and Contractor entered into that certain Construction Agreement, Project Number 20-RDWY-01, dated March 30, 2020 ("Original Agreement") for Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **ONE MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED SEVENTY-SEVEN DOLLARS AND NINE CENTS (\$1,275,277.09)** as part of the Roadway Repairs – Flood Recovery Project (the "Project"); and

WHEREAS, Section 5.00 of the Original Agreement permits the Town to adjust the Contract Price, and Section 7.00 of the Original Agreement requires that the Town pay for work beyond that described in the Original Agreement in a separate agreement signed by both the Parties prior to the commencement of the additional work; and

WHEREAS, the Town has requested that the Contractor submit a Change Order for necessary sidewalks and minor road repairs and the Contractor has submitted Change Order #1 in the amount of **TWELVE THOUSAND THREE HUNDRED SIXTY-SEVEN DOLLARS AND EIGHTY CENTS (\$12,367.80)**; and

WHEREAS, the Parties desire to enter into an amendment of the Original Agreement to increase scope as outlined in **Exhibit A – Bid Schedule** for a total increase to the Contract Price of **TWELVE THOUSAND THREE HUNDRED SIXTY-SEVEN DOLLARS AND EIGHTY CENTS (\$12,367.80)** for a new total not-to-exceed contract price of **ONE MILLION, TWO HUNDRED EIGHTY-SEVEN THOUSAND, SIX HUNDRED FORTY- FOUR DOLLARS AND EIGHTY- NINE CENTS (\$1,287,644.89)** ("First Amendment");

NOW, THEREFORE, for the consideration herein expressed, it is agreed by and between the Town and the Contractor that the Agreement shall be amended as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as though set forth in full.
2. **Original Terms and Conditions.** Except as amended herein, the original terms and conditions of the Original Agreement remain in full force and effect.

3. **Scope of Work.** The Original Agreement is hereby amended by adding the documents that indicate the correct quantities and costs for the Project as set forth specifically in documents attached hereto as **Exhibit A – Revised Bid Schedule** to this First Amendment and incorporated herein by reference.
4. **Contract Sum and Payment.** The first sentence of Section 5.00 of the Original Agreement entitled “Contract Sum and Payment” is hereby amended to read in full as follows:

The Owner shall pay to the Contractor for performance of the Work encompassed by this Agreement, and the Contractor will accept as full compensation therefore the not-to-exceed sum of: **ONE MILLION TWO HUNDRED EIGHTY-SEVEN THOUSAND, SIX HUNDRED FORTY-FOUR DOLLARS AND EIGHTY-NINE CENTS (\$1,287,644.89)** subject to adjustment as provided by the Contract Documents (“Contract Price”).
5. **Force and Effect of Amendment.** Notwithstanding anything in the Original Agreement to the contrary, the Original Agreement shall be amended such that all references in the Original Agreement to “Agreement” shall refer to the Original Agreement as amended by this First Amendment.
6. **Conflict.** This First Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this First Amendment and the Original Agreement, the provisions containing such inconsistency shall be reconciled with one another to the maximum extent possible, and then to the extent of any remaining inconsistency, the terms of this First Amendment shall control.

7. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this First Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this First Amendment may be executed by facsimile or electronic signature, and that any facsimile or electronic signature shall be binding upon the Party providing such signature as if it were the Party’s original signature.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Construction Agreement, Project/Service: Project Number 20-RDWY-01 (“Project”), to be effective as of the date of mutual execution by the Parties. By the signature of its representatives below, each Party affirms that it has taken all necessary action to authorize said representative to execute this First Amendment.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

SIGNATURE PAGE FOLLOWS

THIS FIRST AMENDMENT TO CONSTRUCTION AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS, COLORADO:

ATTEST:

Approval by:

Dolores M. Vasquez, CMC, Town Clerk

By: _____
Nicholas Angelo, Mayor

ASPHALT SPECIALTIES COMPANY, INC.:

By: _____

Printed name: _____

Its: _____

Date of execution: _____, 2020

STATE OF)
COUNTY OF) ss.

The foregoing First Amendment to the Construction Agreement was acknowledged before me this ____ day of _____, 2020, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public
(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))

Exhibit 1 – Asphalt Specialties Revised Bid Schedule