

**TOWN OF LYONS, COLORADO
RESOLUTION 2020-89**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO APPROVING A SECOND
AMENDMENT TO THE CONSTRUCTION AGREEMENT WITH ASPHALT SPECIALTIES
COMPANY, INC. FOR THE ROADWAY REPAIRS – FLOOD RECOVERY PROJECT**

WHEREAS, the Town of Lyons ("Town") has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

WHEREAS, the Town has obtained funding for the Project from both the U.S. Department of Federal Emergency Management Agency ("FEMA") under PW 1078 and the Department of Housing and Urban Development Community Development Block Grant Disaster Recovery ("CDBG-DR") administered by the Boulder County Collaborative under the Intergovernmental Agreement between the Town of Lyons and the City of Longmont (INF-00054); and

WHEREAS, pursuant to Resolution 2020-53, the Town and Asphalt Specialties Company, Inc. ("Contractor") entered into that certain Construction Agreement dated March 30, 2020 ("Original Agreement") for the 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 of Roadway Repairs – Flood Recovery Project, Project #: 20-RDWY-01 (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, pursuant to Resolution 2020-78 and to the amendment provisions of the Original Agreement, the Parties entered into that certain First Amendment to the Original Agreement for necessary sidewalks and minor road repairs at an increase to the contract amount by **TWELVE THOUSAND THREE HUNDRED SIXTY-SEVEN DOLLARS AND EIGHTY CENTS (\$12,367.80)**; and

WHEREAS, the Town has requested that the Contractor submit a quotation for replacement of the water line on 3rd Ave. between Railroad and Evans and the Contractor has submitted a quotation in the amount of **SIXTY-FOUR THOUSAND, ONE HUNDRED FORTY-SEVEN DOLLARS AND NO CENTS (\$64,147.00)**; and

WHEREAS, the scope of this amendment falls outside of the FEMA and CDBG-DR scopes and 100% of the increase will be paid by the Town from the Water / Wastewater Fund; and

WHEREAS, the Parties desire to enter into an amendment of the Original Agreement to increase scope as outlined in Exhibit 1 for a total increase to the Contract Price of **SIXTY-FOUR THOUSAND, ONE HUNDRED FORTY-SEVEN DOLLARS AND NO CENTS (\$64,147.00)** for a new total not-to-exceed contract price of **ONE MILLION THREE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED NINETY-ONE DOLLARS AND EIGHTY-NINE CENTS (1,351,791.89)** ("Second Amendment");

WHEREAS, the Board of Trustees desires to approve the Second Amendment,
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO:

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board of Trustees hereby:

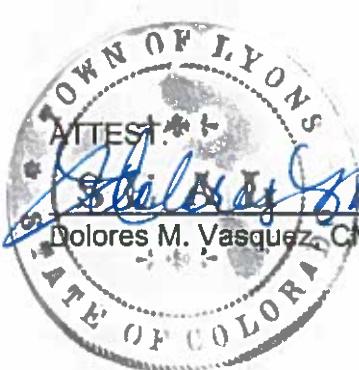
- (a) Approves the Second Amendment to the Construction Agreement for the Project in substantially the form attached as **Exhibit 2**.
- (b) Approves the Second Amendment which increases the scope and the not-to-exceed total contract amount by: **SIXTY-FOUR THOUSAND ONE HUNDRED FORTY-SEVEN DOLLARS AND NO CENTS (\$64,147.00);** for a new total not to exceed contract price of **ONE MILLION THREE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED NINETY-ONE DOLLARS AND EIGHTY-NINE CENTS (\$1,351,791.89)**, in substantially the form attached hereto.
- (c) Authorizes the Town Administrator and the Town Attorney, in consultation with the Mayor, to make such changes as may be necessary to correct any non-material errors or language in the Construction Agreement that does not increase the obligations of the Town.
- (d) Authorizes the Mayor or Mayor Pro Tem to execute the complete Construction Agreement on behalf of the Town after Contractor has signed the Construction Agreement and the Town Clerk to attest such signature.

Section 3. This resolution shall take effect immediately upon adoption.

ADOPTED this 18th day of MAY, 2020.

TOWN OF LYONS, COLORADO

By: Nicholas Angelo
Nicholas Angelo, Mayor



Dolores M. Vasquez, CMC Town Clerk

Exhibit 1

Town of Lyons
3rd Avenue Waterline Replacement
Evans Street to Railroad Avenue

4/23/2020

Item No.	Description	Qty	Units	Unit Price	Subtotal
1	Mobilization	1	LS	7,600.00	7,600.00
2	Traffic Control	1	LS	Per Contract Pricing *	
3	Erosion and Sediment Control	1	LS	712.00	712.00
4	8" C900 PVC Pipe w/ All Appurtenances, including Trenching, Bedding and Backfill	350	LF	126.50	44,275.00
5	Aggregate Base Course	25	CY	Per Contract Pricing	
6	Connect to existing 8" Gate Valve	2	EA	1,150.00	2,300.00
7	Connect to Existing 4" Waterline, including 8" x 6" Tee and 6" Gate Valve with 6" x 4" Reducer	1	EA	5,750.00	5,750.00
8	Connect to Existing Fire Hydrant with 8" x 6" Tee	1	EA	3,510.00	3,510.00
Base Bid Subtotal					\$ 64,147.00
Alternate Bid Item					
1	Remove Existing Fire Hydrant and Install New Fire Hydrant Assembly with 6" Gate Valve, Connecting to New Tee	1	EA	N/A	N/A
Total Project Cost					\$ 64,147.00

* If additional traffic control is required specific for this work pricing for traffic control to be negotiated.

Town of Lyons, Colorado

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

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

This SECOND AMENDMENT TO CONSTRUCTION AGREEMENT ("Second 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, pursuant to Resolution 2020-78 and to the amendment provisions of the Original Agreement, the Parties entered into that certain First Amendment to the Original Agreement for necessary sidewalks and minor road repairs at an increase to the contract amount by **TWELVE THOUSAND THREE HUNDRED SIXTY-SEVEN DOLLARS AND EIGHTY CENTS (\$12,367.80)**; and

WHEREAS, the Town has requested that the Contractor submit a Bid for replacement of the water line on 3rd Ave. between Railroad and Evans and the Contractor has submitted Change Order #2 in the amount of **SIXTY-FOUR THOUSAND, ONE HUNDRED FORTY-SEVEN DOLLARS AND NO CENTS (\$64,147.00)**; and

WHEREAS, the Parties desire to enter into an amendment of the Original Agreement to increase scope as outlined in Exhibit 1 – Bid Schedule for a total increase to the Contract Price of **SIXTY-FOUR THOUSAND, ONE HUNDRED FORTY-SEVEN DOLLARS AND NO CENTS (\$64,147.00)** for a new total not-to-exceed contract price of **ONE MILLION THREE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED NINETY-ONE DOLLARS AND EIGHTY-NINE CENTS (1,351,791.89)** ("Second 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 1 – Revised Quotation Schedule** to this Second 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 THREE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED NINETY-ONE DOLLARS AND EIGHTY-NINE CENTS (1,351,791.89)** 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 Second Amendment shall be amended such that all references in the Second Amendment to "Agreement" shall refer to the Second Amendment as amended by this Second Amendment.
6. **Conflict.** This Second Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this Second Amendment and the First Amendment, 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 Second Amendment shall control.
7. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this Second Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this Second 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 Second 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 Second Amendment.

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SIGNATURE PAGE FOLLOWS

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

TOWN OF LYONS, COLORADO:

Approval by:

By: Nicholas Angelo
Nicholas Angelo, Mayor



ASPHALT SPECIALTIES COMPANY, INC.:

By: Lawrence M. Olson

Printed name: Lawrence M. Olson

Its: Vice President

Date of execution: May 27, 2020

STATE OF Colorado)
COUNTY OF Adams) ss.

The foregoing Second Amendment to the Construction Agreement was acknowledged before me this 27th day of May, 2020, by Lawrence M. Olson as Vice President of Asphalt Specialties Co., a Corporation.

Witness my hand and official seal.

My commission expires: 4/29/2024

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

JAN NELSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19994030527
My Commission Expires April 29, 2024

Exhibit 1 – Asphalt Specialties Quotation Schedule

