

**TOWN OF LYONS, COLORADO
RESOLUTION 2020-135**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO RATIFYING A THIRD
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, pursuant to Resolution 2020-89 and to the amendment provisions of the Original Agreement, the Parties entered into that certain Second Amendment to the Original Agreement for replacement of the water line on 3rd Ave. between Railroad and Evans at an increase to the contract price in the amount of **SIXTY-FOUR THOUSAND ONE HUNDRED FORTY-SEVEN DOLLARS AND NO CENTS (\$64,147.00)** to be funded by the Town's water and wastewater fund; and

WHEREAS, the Town's Purchasing Policies allow the Town Administrator to authorize and sign amendments to construction contracts under \$10,000 and/or for date extensions; and

WHEREAS, the Contractor and the Town Administrator executed an amendment to the Original Agreement in order to extend the contract term until September 30, 2020 at no increase to the Contract Price for a 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)** ("Third Amendment");

WHEREAS, the Board of Trustees desires to ratify the Third Amendment in substantially the form attached hereto as Exhibit 1 for the purpose of entering the Amendment into the permanent Town record;

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) Ratifies the Third Amendment to the Construction Agreement for the Project in substantially the form attached as Exhibit 1.
- (b) 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.

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

ADOPTED THIS 8th DAY OF SEPTEMBER, 2020.

TOWN OF LYONS, COLORADO

By: Nicholas Angelo
Nicholas Angelo, Mayor

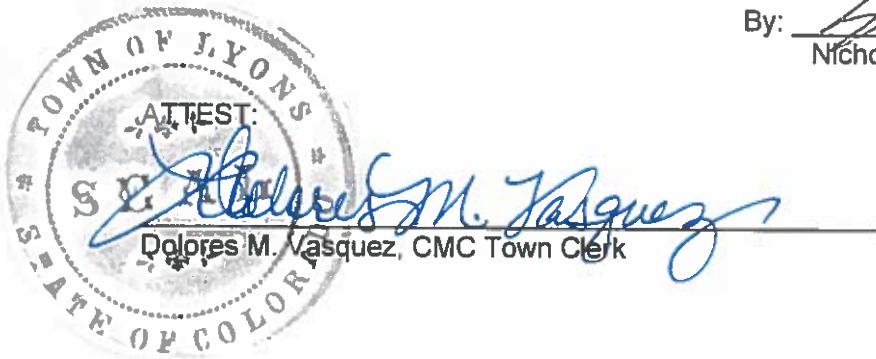


EXHIBIT 1 – Amendment 3



Town of Lyons, Colorado

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

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

This THIRD AMENDMENT TO CONSTRUCTION AGREEMENT ("Third 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, the Town has obtained funding for the Project from the Federal Emergency Management Agency under PW 1078 and the Department of Housing and Urban Development Community Development Block Grant Disaster Recovery ("CBDG-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, 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, pursuant to Resolution 2020-89 and to the amendment provisions of the Original Agreement, the Parties entered into that certain **Second Amendment** to the Original Agreement for replacement of the water line on 3rd Ave. between Railroad and Evans at an increase to the contract price in the amount of **SIXTY-FOUR THOUSAND ONE HUNDRED FORTY-SEVEN DOLLARS AND NO CENTS (\$64,147.00)** to be funded by the Town's water and wastewater fund; and

WHEREAS, the Parties desire to enter into another amendment of the Original

Agreement to extend the term of the contract until September 30, 2020 at no increase to the Contract Price for a 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)**("Third 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:

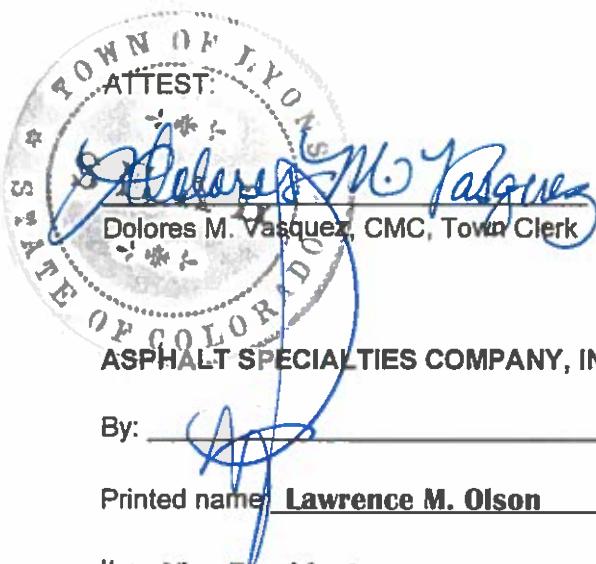
1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as though set forth in full.
2. **Original Terms and Conditions.** Except as amended herein, the original terms and conditions of the Original Agreement remain in full force and effect.
3. **Scope of Work.** There is no change to the scope of work with this amendment.
4. **Contract Sum and Payment.** There is no change to the contract price with this amendment.
5. **Term.** Section 3.00 of the Agreement, entitled "Time and Commencement of Completion," is hereby amended to read in full as follows:

This Agreement shall be effective on the day of full signature execution and shall terminate at the earlier of the date on which all obligations of the parties have been met (to include all Services have been completed) or **11:59 p.m. on the 30th day of September, 2020**, or on a prior date of termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation. Those provisions that survive termination, to include the indemnification obligations and any warranty obligations, shall remain in effect past termination.

6. **Force and Effect of Amendment.** Notwithstanding anything in the Original Agreement to the contrary, the Third Amendment shall be amended such that all references in the Third Amendment to "Agreement" shall refer to the Third Amendment as amended by this Third Amendment.
7. **Conflict.** This Third Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this Third 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 Third Amendment shall control.
8. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this Third Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this Third 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 Third 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 Third Amendment.

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



TOWN OF LYONS, COLORADO:

Approval by:

By: Victoria Simonsen
Victoria Simonsen, Town Administrator

ASPHALT SPECIALTIES COMPANY, INC.:

By: Lawrence M. Olson

Printed name: Lawrence M. Olson

Its: Vice President

Date of execution: September 1, 2020

STATE OF Colorado)
COUNTY OF Adams) ss.

The foregoing Third Amendment to the Construction Agreement was acknowledged before me this 1st day of September, 2020, by Lawrence M. Olson as Vice President of Asphalt Specialties Co., Inc., a Colorado Corporation.

Witness my hand and official seal.

My commission expires: 11/22/2022

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

