

TOWN OF SUPERIOR  
RESOLUTION NO. R-28  
SERIES 2019

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING A CONSTRUCTION CONTRACT WITH ASPHALT SPECIALTIES COMPANY, INC. FOR THE 2019 STREET REHABILITATION PROGRAM

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:


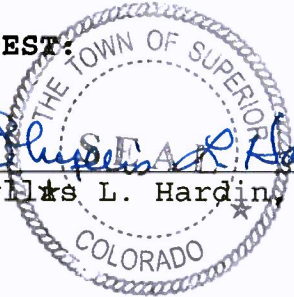
Section 1. The Construction Contract between the Town of Superior and Asphalt Specialties Company, Inc., for the 2019 Street Rehabilitation Program is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 13<sup>th</sup> day of May, 2019.



Clint Folsom, Mayor

ATTEST:

  
Phyllis L. Hardin, Town Clerk-Treasurer

## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (the "Contract") is made and entered into this 13<sup>th</sup> day of May, 2019 (the "Effective Date"), by and between the Town of Superior, 124 East Coal Creek Drive, Superior, Colorado 80027, 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, CO 80640 ("Contractor") (each individually 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:

Remove existing and construct new curb, gutter, sidewalk, medians, handicap ramps, and pavement necessary as indicated on the attached documents.

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 by the 15th of October, 2019, unless the period for completion is extended otherwise in accordance with the Contract Documents. Final Completion of the Work shall be accomplished within 30 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, an amount not to exceed \$2,834,705. 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 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 Contract shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed to:

The Town: Alex Ariniello  
Town of Superior  
124 East Coal Creek Drive  
Superior, Colorado 80027

Contractor: Project Manager  
Asphalt Specialties Company, Inc.  
10100 Dallas Street  
Henderson, CO 80640

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.

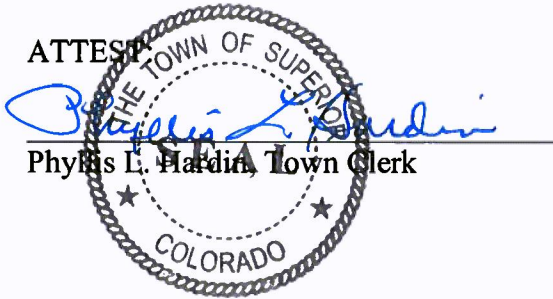
IN WITNESS WHEREOF, this Construction Contract has been executed by the Parties as of the Effective Date.

TOWN OF SUPERIOR, COLORADO

*Clint Folsom*

Clint Folsom, Mayor

ATTEST



Phyllis L. Hardin, Town Clerk

CONTRACTOR

By:

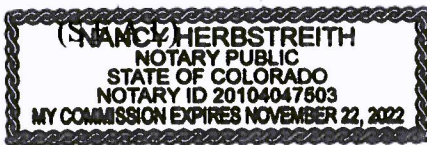
*Daniel W. Hunt*  
Daniel W. Hunt - President



STATE OF COLORADO )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 17th day of May, 2019 by Daniel W. Hunt as President of Asphalt Specialties Company, Inc.

My commission expires:



*Nancy Herbstreith*  
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 Superior (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Contract.

OR

I, \_\_\_\_\_, am the sole owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [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

\_\_\_\_\_  
Date



**DEPARTMENT PROGRAM AFFIDAVIT**

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

I, **Daniel W. Hunt**, as a public contractor under contract with the Town of Superior (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services (the "Contract") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a which verify the employment eligibility and identity of newly hired employees who perform work under the Contract; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under the Contract.

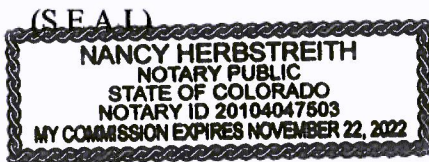
  
Signature **Daniel W. Hunt - President**

**May 17, 2019**  
Date

STATE OF COLORADO )  
 ) ss.  
COUNTY OF **Adams** )

The foregoing instrument was subscribed, sworn to and acknowledged before me this **17th** day of **May**, 20**19** by **Daniel W. Hunt** as **President** of **Asphalt Specialties Company, Inc.**

My commission expires:



  
Notary Public **Nancy Herbstreith**

**PAYMENT AND PERFORMANCE BOND**

Bond No. 3035899

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) Asphalt Specialties Co., Inc.

(Address) 10100 Dallas Street, Henderson, CO 80640  
(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) Great American Insurance Company

(Address) 301 East Fourth Street, Cincinnati, OH 45202

hereinafter referred to as "the Surety", are held and firmly bound unto the Town of Superior, Colorado, a Municipal Corporation, hereinafter referred to as "the Owner", in the penal sum of Two Million Eight Hundred Thirty \* Dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract with the Owner, dated the 13<sup>th</sup> day of May, 2019, a copy of which is hereto attached and made a part hereof for the performance of the Work, 2019 Street Rehabilitation Project.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without Notice to the Surety and during the life of the guaranty or warranty period, and shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all cost and damages which it may suffer by the Principal's failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor performed in such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.



IN WITNESS WHEREOF, this instrument is executed in 5 counterparts, each one of which shall be deemed an original, this 13<sup>th</sup> day of May, 2019.

ATTEST:

By: [Signature]  
Elizabeth Claflin  
Title: Secretary

PRINCIPAL Asphalt Specialties Co., Inc.

By: [Signature]  
Daniel W. Hunt  
Title: President

Address: 10100 Dallas Street  
Henderson, CO 80640



(Corporate Seal)

SURETY

Surety: Great American Insurance Company

ATTEST:

By: [Signature]  
Susan J. Lattarulo, Surety Witness

By: [Signature]  
Title: Attorney-In-Fact

Attorney-in-Fact: Florieta Acosta

Address: 301 E. Fourth Street  
Cincinnati, OH 45202

(Surety Seal)

NOTE: Date of Bond must not be prior to date of Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the Town.

**GREAT AMERICAN INSURANCE COMPANY®**

Administrative Office: 301 E 4TH STREET CINCINNATI, OHIO 45202 513-369-5000 FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than ONE

Bond No. 3035899

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, the specific bond, undertaking or contract of suretyship referenced herein; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below. The bond number on this Power of Attorney must match the bond number on the bond to which it is attached or it is invalid.

Name	Address	Limit of Power
Florieta Acosta	Greenwood Village, Colorado	\$100,000,000.00

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 14th day of May, 2019  
Attest GREAT AMERICAN INSURANCE COMPANY



*Stephen C. Beraha*  
Assistant Secretary

*Mark V. Vicario*  
Divisional Senior Vice President

MARK VICARIO (877-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON - ss:  
On this 14th day of May, 2019, before me personally appeared MARK VICARIO, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



**Susan A. Kohorst**  
Notary Public, State of Ohio  
My Commission Expires 05-16-2020

*Susan A. Kohorst*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

**CERTIFICATION**

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_



*Stephen C. Beraha*  
Assistant Secretary





## DESCRIPTIONS (Continued from Page 1)

All coverage terms, conditions and exclusions of the policy apply.

30 days notice of cancellation per policy forms; 10 days for non-payment of premium.



# OLD REPUBLIC GENERAL INSURANCE CORPORATION

## CHANGES ADDITIONAL INSURED PRIMARY WORDING SCHEDULE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

**Name of Additional Insured Person(s)  
Or Organization(s):**

**Location(s) of Covered Operations**

Where required by written contract.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The insurance provided by this endorsement is primary insurance and we will not seek contribution from any other insurance of a like kind available to the person or organization shown in the schedule above unless the other insurance is provided by a contractor other than the person or organization shown in the schedule above for the same operation and job location. If so, we will share with that other insurance by the method described in paragraph 4.o. of Section IV – Commercial General Liability Conditions.

All other terms and conditions remain unchanged.

Named Insured	ASPHALT SPECIALTIES CO., INC.		
Policy Number	A1DG09501803	Endorsement No.	000
Policy Period	04/01/2018-04/01/2019	Endorsement Effective Date:	04/01/2018
Producer's Name:	OLD REPUBLIC CONSTRUCTION INSURANCE AGENCY, INC.		
Producer Number:	7000		

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
DATE