

TOWN OF SUPERIOR
RESOLUTION NO. R-50
SERIES 2021

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING A CONTRACT WITH ASPHALT SPECIALTIES, INC. FOR THE MCCASLIN BOULEVARD PHASE 2 IMPROVEMENT PROJECT

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

Section 1. The Contract between the Town of Superior and Asphalt Specialties, Inc. for the McCaslin Boulevard Phase 2 Improvement Project is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 12th day of July, 2021.



Clint Folsom

Clint Folsom, Mayor

ATTEST:

Patricia Leyva

Patricia Leyva, Town Clerk

CR

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (the "Contract") is made and entered into this 12th day of July, 2021 (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, asphalt curb, concrete flatwork, asphalt pavement, grading, and asphalt resurfacings as 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 31st of October, 2021, 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 \$\$2,728,622.25. 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, PE
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



CONTRACTOR

By:

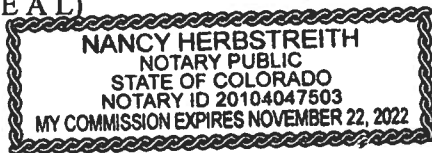
Daniel W. Hunt
Daniel W. Hunt - President

STATE OF COLORADO)
) ss.
COUNTY OF Adams)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 19th day of July, 2021, by Daniel W. Hunt as President of Asphalt Specialties Company, Inc.

My commission expires: **11/22/2022**

(S E A L)



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**

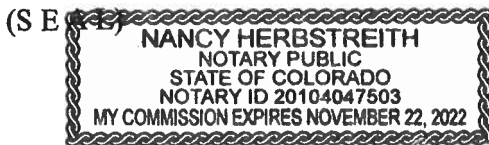
07/19/2021
Date



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

The foregoing instrument was subscribed, sworn to and acknowledged before me this **19th** day of **July**, **2021** by **Daniel W. Hunt** as **President** of **Asphalt Specialties Company, Inc.**

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




Notary Public **Nancy Herbstreith**