

**RESOLUTION NO. R21-31**

**A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH WHARTON ASPHALT LLC FOR THE SUPPLY AND INSTALLATION OF ASPHALT FOR A CITY PROJECT.**

BE IT RESOLVED by the City Council of the City of Laurel, Montana,

Section 1: Approval. The Independent Contractor Service Contract (“Contract”) recommended by the Mayor and Staff, is attached hereto and incorporated herein and by adoption of the resolution, hereby approved.

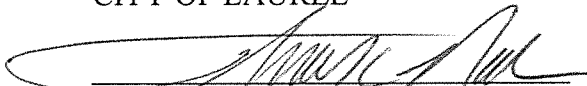
Section 2: Adoption and Execution. The Mayor and City Clerk are hereby authorized to execute the Contract on the City’s behalf.

Introduced at a regular meeting of the City Council on May 11, 2021, by Council Member Sparks.


PASSED and APPROVED by the City Council of the City of Laurel, Montana, this 11<sup>th</sup> day of May 2021.

APPROVED by the Mayor this 11<sup>th</sup> day of May 2021.

CITY OF LAUREL

  
Thomas C. Nelson, Mayor

ATTEST:

  
Bethany Dange, City Clerk/Treasurer

Approved as to form:

  
Sam S. Painter, Civil City Attorney

## **INDEPENDENT CONTRACTOR SERVICE CONTRACT**

This contract is made and entered into this 11<sup>th</sup> day of May, 2021, and is between the City of Laurel, a municipal corporation organized and existing under the laws of the State of Montana whose address is P.O. Box 10, Laurel, Montana 59044, hereinafter referred to as "City" and Wharton Asphalt LLC, 3962 PA Hollow Trail, Billings, MT 59106, hereinafter referred to as "Contractor".

### **SECTION ONE DESCRIPTION OF SERVICES**

A. Purpose. City shall hire Contractor as an independent contractor to perform for City the services described in the Bid dated April 29, 2021, attached hereto as Exhibit "A" and by this reference made part of this contract.

B. Effective Date. This contract is effective upon the date of its execution by both Parties. Contractor shall complete the services within 120 days of commencing work. The parties may extend the term of this contract in writing prior to its termination for good cause.

C. Scope of Work. Contractor shall perform his/her work and provide services in accordance with the specifications and requirements of this contract, any applicable Montana Public Work Standard(s) and Exhibit "A".

### **SECTION TWO CONTRACT PRICE**

Payment. City shall pay Contractor ten thousand dollars (\$10,000) for the work described in Exhibit A.

Any alteration or deviation from the described work that involves extra costs must be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree to extra payments or charges in writing. Prior to final payment, Contractor shall provide City with an invoice for all charges.

### **SECTION THREE CITY'S RESPONSIBILITIES**

Upon completion of the contract and acceptance of the work, City shall pay Contractor the contract price, plus or minus any additions or deductions agreed upon between the parties in accordance with Sections one and two, if any. As further consideration for this contract, City shall release Contractor's Bid Bond submitted with Contractor's Bid on the 2021 Asphalt Pavement Project, without penalty upon execution of this contract.

**SECTION FOUR**  
**CONTRACTOR'S WARRANTIES AND RESPONSIBILITIES**

A. Independent Contractor Status. The parties agree that Contractor is an independent contractor for purposes of this contract and is not to be considered an employee of the City for any purpose hereunder. Contractor is not subject to the terms and provisions of the City's personnel policies or handbook and shall not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings, agreements or sub-contracts in any dealings between Contractor and any third parties. The City is interested solely in the results of this contract. Contractor is solely responsible for all work and work product under this contract, including techniques, sequences, procedures, and means. Contractor shall supervise and direct the work to the best of his/her ability.

B. Wages and Employment. Contractor shall abide by all applicable State of Montana Rules, Regulations and/or Statutes in regards to prevailing wages and employment requirements. Contractor shall comply with the applicable requirements of the Workers' Compensation Act. Contractor shall maintain workers' compensation coverage for all members and employees of his/her business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA. Contractor understands that all contractors or subcontractors working on publicly funded projects are required to have withheld from earnings a license fee of one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more. This license fee is paid to the Montana Department of Revenue pursuant to Montana law.

C. Unless otherwise specified by the terms of this Agreement, all materials and equipment used by Contractor on the Construction Project shall be new and where not otherwise specified, of the most suitable grade for their intended uses.

D. All workmanship and materials shall be of a kind and nature acceptable to the City.

E. All equipment, materials, and labor provided to, on, or for the contract must be free of defects and nonconformities in design, materials, and workmanship for a minimum period beginning with the commencement of the work and ending one (1) year from completion and final acceptance by the City. Upon receipt of City's written notice of a defective or nonconforming condition during the warranty period, Contractor shall take all actions, including redesign and replacement, to correct the defective or nonconforming condition within a time frame acceptable to the City and at no additional cost to the City. Contractor shall also, at its sole cost, perform any tests required by City to verify that such defective or nonconforming condition has been corrected. Contractor warrants the corrective action taken against defective and nonconforming conditions for a period of an additional one (1) year from the date of City's acceptance of the corrective action.

F. Contractor and its sureties are liable for the satisfaction and full performance of all warranties.

G. Contractor has examined the facilities and/or has made field examinations. Contractor has knowledge of the services or project sought under this contract and he/she further understands the site conditions to be encountered during the performance of this contract. Contractor has knowledge of the types and character of equipment necessary for the work, the types of materials needed and the sources of such materials, and the condition of the local labor market.

H. Contractor is responsible for the safety of the work and shall maintain all lights, guards, signs, temporary passages, or other protections necessary for that purpose at all times.

I. All work is performed at Contractor's risk, and Contractor shall promptly repair or replace all damage and loss at its sole cost and expense regardless of the reason or cause of the damage or loss; provided, however, should the damage or loss be caused by an intentional or negligent act of the City, the risk of such loss shall be placed on the City.

J. Contractor is responsible for any loss or damage to materials, tools, work product or other articles used or held for use in the completion or performance of the contract.

K. Title to all work, work product, materials and equipment covered by any payment of Contractor's compensation by City, whether directly incorporated into the contract or not, passes to City at the time of payment, free and clear of all liens and encumbrances.

#### **SECTION FIVE INDEMNITY AND INSURANCE**

Contractor shall indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees.

#### **SECTION SIX COMPLIANCE WITH LAWS**

Contractor shall comply with all federal, state, local laws, ordinances, rules and regulations. Contractor shall either possess a City business license or shall purchase one, if a City Code requires a business license.

#### **SECTION SEVEN NONDISCRIMINATION**

Contractor agrees that any hiring of persons as a result of this contract must be on the basis of merit and qualification and further that Contractor shall not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin.

#### **SECTION EIGHT DEFAULT**

If either party fails to comply with any term or condition of this contract at the time or in the manner provided for, the other party may, at its option, terminate this contract and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law except for punitive damages. The Parties hereby waive their respective claims for punitive damages. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this contract.

**SECTION NINE  
TERMINATION**

Either party may terminate the contract for their convenience upon thirty days written notice sent postage prepaid, to the addresses provided herein.

**SECTION TEN  
GOVERNING LAW AND DISPUTE RESOLUTION**

The Parties agree that the laws of the State of Montana govern this contract. The Parties agree that venue is proper within the Courts of Yellowstone County, Montana. If a dispute arises, the Parties, through a representative(s) with full authority to settle a dispute, shall meet and attempt to negotiate a resolution of the dispute in good faith no later than ten business days after the dispute arises. If negotiations fail, the Parties may utilize a third party mediator and equally share the costs of the mediator or file suit.

**SECTION ELEVEN  
ATTORNEY FEES**

If any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either is ordered to pay, a reasonable sum for the successful party's attorney's fees and all costs charges and expenses related to the action.

**SECTION TWELVE  
ENTIRE AGREEMENT**

This contract and its referenced attachment and Exhibit A contain the entire agreement and understanding of the parties and supersede any and all prior negotiations or understandings relating to this project. This contract shall not be modified, amended, or changed in any respect except through a written document signed by each party's authorized respective agents.

**SECTION THIRTEENTH  
ASSIGNMENT OF RIGHTS**

The rights of each party under this contract are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

**SECTION FOURTEEN  
SEVERABILITY**

Each provision, section, or subsection of this contract shall stand separate and independent of every other. In the event that a court of competent jurisdiction shall find any provision, section, or subsection of this contract to be invalid, the remaining provisions, sections, and subsections of this contract shall remain in full force and effect.

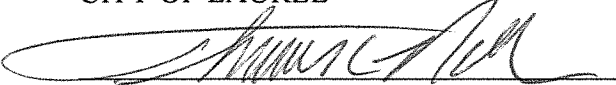
**SECTION FIFTEEN  
PARAGRAPH HEADINGS**

The titles to the paragraphs of this contract are solely for the convenience of the parties and shall not be used to explain, simplify, or aid in the interpretation of the provisions of this contract.

SIGNED AND AGREED BY BOTH PARTIES ON THE 11<sup>TH</sup> DAY OF MAY, 2021.

CITY OF LAUREL

CONTRACTOR

  
\_\_\_\_\_  
Thomas C. Nelson, Mayor

\_\_\_\_\_  
Wharton Asphalt LLC

ATTEST:

Employer Identification Number

  
\_\_\_\_\_  
Bethany Langve, Clerk/Treasurer

\_\_\_\_\_



# Contract

Date	Estimate #
4/29/2021	7856

Name / Address
City of Laurel Lyons Park Asphalt Trail

Project		
Lyons Park		
Sq. Ft.	Unit	Total
	1	10,000.00
<b>Total</b>		<b>\$10,000.00</b>

Item	Description
Pave Note	Supply and install 3120 sq yards of asphalt. This quote is contingent on the City of Laurel allowing Wharton Asphalt LLC to pull the quote submitted for the 2021 Asphalt Pavement Project form the City of Laurel with no penlites.

If any questions please contact Lena  
(406) 660-2280

Quote is good for 15 days. All material and workmanship carries a 1 year warranty. Work must fit into current working schedule. No guarantee on water drainage on a less than a 2% grade. No guarantee against the growth of vegetation. Not responsible for damage to concrete caused from equipment. Customer agrees to pay all legal fees in the event that it becomes necessary from default of payment of this contract. Customer agrees to pay upon completion of job unless otherwise specified. A \$20.00 late fee will be charged every month account is past due. The above prices, specifications and conditions are satisfactory and are herby accepted. You are authorized to do work as specified.

Signature \_\_\_\_\_

Date \_\_\_\_\_

3962 PA Hollow Trail Billings Mt 59106 P: 406-254-9571 F: 406-254-9572  
WhartonAsphalt@netzero.net WhartonAsphalt.com