

RESOLUTION NO. 2016-49

**A RESOLUTION APPROVING AN AGREEMENT
BETWEEN THE TOWN OF CASTLE ROCK
AND
PLM ASPHALT & CONCRETE, INC. FOR THE
PLUM CREEK PARKWAY INTERSECTION IMPROVEMENTS PROJECT**

WHEREAS, as part of the 2016 Capital Improvement Program, the Town of Castle Rock and PLM ASPHALT & CONCRETE, INC. have agreed to the terms and conditions by which they will provide services for the Plum Creek Parkway Intersection Improvements Project.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

Section 1. Approval. The Agreement in the form attached as ***Exhibit 1*** is hereby approved. The Mayor and other proper Town officials are hereby authorized to execute the Agreement by and on behalf of the Town of Castle Rock, Colorado.

Section 2. Encumbrance and Authorization for Payment. In order to meet the Town's financial obligation under the contract, the Town Council authorizes the expenditure and payment from the 2016 appropriation account 135-3175-431.78-17 in an amount not to exceed \$2,944,011 account 120-3140-431-40-35 in an amount not to exceed \$553,850, account 210-4275-442-75-38 in an amount not to exceed \$59,000 unless authorized in writing by the Town of Castle Rock.

PASSED, APPROVED AND ADOPTED this 3rd of May, 2016 by the Town Council of the Town of Castle Rock, Colorado, on first and final reading, by a vote of for and ___ against.

ATTEST:

Sally A. Misare, Town Clerk

Approved as to form:

Robert J. Slentz, Town Attorney

Town of Castle Rock

Paul Donahue, Mayor

Approved as to content:

Robert Goebel, P.E.
Director of Public Works

**TOWN OF CASTLE ROCK, COLORADO
AGREEMENT FOR CONSTRUCTION CONTRACT
PLUM CREEK PARKWAY INTERSECTION IMPROVEMENT PROJECT**

THIS CONTRACT is made at the Town of Castle Rock, Colorado, between the Town of Castle Rock, Colorado (Town), a municipal corporation, whose address is 100 N. Wilcox Street, Castle Rock, Colorado, and **PLM Asphalt & Concrete, Inc.** (Contractor) a corporation whose address is: 3313 Moline Street, Aurora, CO 80010

In consideration of these mutual covenants and conditions, the Town and Contractor agree as follows:

SCOPE OF WORK The Contractor shall execute the entire Work described in the Contract.

CONTRACT The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, written or oral representations and agreements. The Contract incorporates the following Contract Documents. In resolving inconsistencies among two or more of the Contract Documents, precedence will be given in the same order as enumerated.

LIST OF CONTRACT DOCUMENTS

The Contract Documents, except for Modifications issued after execution of this Agreement, are:

1. Change Orders;
2. Notice to Proceed;
3. Agreement for Construction Contract;
4. The following Addenda, if any:

Number	Date
Addendum No.1	April 11, 2016
Addendum No. 2	April 12, 2016

5. Special Conditions of the Contract:

Town of Castle Rock Construction Contract General Conditions

6. The following Specifications:
 - A. The Town of Castle Rock – Standard Specifications which includes:
 - a. Colorado Department of Transportation (CDOT) Standard Specifications for Road and Bridge Construction
 - b. CDOT M&S Standards;
 - c. The Town of Castle Rock Regulations
 - d. The Town of Castle Rock Details Plans List

- B. The Town of Castle Rock – Standard Special Provisions and Project Special Provisions

7. The following Drawings:

The Town of Castle Rock Public Construction Plans:

Project No. 2015-01, Plum Creek Parkway Intersection Improvements – Package 1 (All Sheets) Castle Rock GESC Standards (14 Sheets); Water Details (5 Sheets); Curb Ramp Standards (7 Sheets)
Project No. 2015-01, Plum Creek Parkway Intersection Improvements – Package 2 (All Sheets) Castle Rock GESC Standards (14 Sheets);

8. Notice of Award;
9. Invitation to Bid;
7. Information and Instructions to Bidders;
8. Notice of Substantial Completion;
9. Notice of Construction Completion;
10. Proposal Forms, including Bid Schedules;
11. Performance, and Labor and Material Payment Bonds;
12. Performance Guarantee; and
13. Insurance Certificates.

(List here any additional documents, which are intended to form part of the Contract Documents.)

CONTRACT PRICE. The Town shall pay the Contractor for performing the Work and the completion of the Project according to the Contract, subject to Change Orders as approved in writing by the Town, under the guidelines in the General Conditions. The Town will pay \$3,432,654.35 DOLLARS, (Three Million Four Hundred Thirty-Two Thousand Six Hundred Fifty-Four Dollars and 35/100 Cents), to the Contractor, subject to full and satisfactory performance of the terms and conditions of the Contract. The Contract Price is provisional based on the quantities contained in the Bid as attached to the end of this document. The final Contract Price shall be adjusted to reflect actual quantities incorporated into the Work at the specified unit prices. The Town has appropriated money equal or in excess of the Contract Price for this work.

COMPLETION OF WORK. The Contractor must begin work covered by the Contract within 10 calendar days, and must complete work within 70 days from and including the date of Notice to Proceed, according to the General Conditions.

Alternate 1 Phasing Plan: If the Alternate 1 Phasing Plan is selected, the total project work (Package 1 and 2) should be completed within 70 calendar days. Work within the Wilcox Street and Plum Creek Parkway intersection (Phases 2, 3, and 4), must be complete within 35 calendar days. An incentive (\$5,000 per day) shall be provided for completion prior to 35 calendar days, not to exceed a total of \$50,000. There will be no partial or substantial completion of Phases 2, 3, and 4. The 35 day period for work commences on the first day of work where a vehicle travel lane is closed within the intersection. Completion will be considered when all lanes of traffic are opened to use, with all pavement installed with compliant pavement markings. A disincentive (\$5,000 per day) shall be assessed for completion after the 35 calendar days. The disincentive amount will be subtracted from the contract payment until Phases 2, 3 and 4 within the intersection are completed and accepted. The Town will authorize work during nights, weekends and holidays upon request from Contractor.

Alternate 2 Phasing Plan: If the undetermined Alternate 2 Phasing Plan is selected at a future date, the Town Project Manager and the Contractor shall agree upon the number of calendar days and the contract shall be amended accordingly. An incentive/disincentive will be developed comparable to Alternate 1. The Town will authorize work during nights, weekends and holidays upon request from Contractor.

LIQUIDATED DAMAGES. If the Contractor fails to substantially complete the Work by the date set for substantial completion (70 calendar days) in the Contract, or if the completion date is extended by a Change Order, by the date set in the Change Order, the Town may permit the Contractor to proceed, and in such case, may deduct the sum of \$2,400 (per Special Provision 108.09) for each day that the Work shall remain uncompleted from monies due or that may become due the Contractor. This sum is not a penalty but is a reasonable estimate of liquidated damages. The amount of time for Contractor to substantially complete the work shall be equitably adjusted and extended for periods of time that progress of the work is delayed, due to: errors in the Contract Documents, site conditions not addressed in design, stop work orders, excusable delays, compensable delays, changes in scope of work, review of proposed changes in scope of work, or other factors outside the control of the Contractor. Liquidated damages shall not be assessed against the Contractor during periods of time that the progress of the work is delayed for the aforementioned reasons.

The parties agree that, under all of the circumstances, the daily basis and the amount set for liquidated damages is a reasonable and equitable estimate of all the Town's actual damages for delay. The Town expends additional personnel effort in administering the Contract or portions of the Work that are not completed on time, and has the cost of field and office engineering, inspecting, and interest on financing and such efforts and the costs thereof are impossible to accurately compute. In addition, some, if not all, citizens of Castle Rock incur personal inconvenience and lose confidence in their government as a result of public projects or parts of them not being completed on time, and the impact and damages, certainly serious in monetary as well as other terms are impossible to measure.

SERVICE OF NOTICES. Notices to the Town are given if sent by registered or certified mail, postage prepaid, to the following address:
TOWN OF CASTLE ROCK
100 N. Wilcox Street
Castle Rock, CO 80104

INSURANCE PROVISIONS. The Contractor must not begin any work until the Contractor obtains, at the Contractor's own expense, all required insurance as specified in the General Conditions. Such insurance must have the approval of the Town of Castle Rock as to limits, form and amount.

RESPONSIBILITY FOR DAMAGE CLAIMS. The Contractor shall indemnify, save harmless, and defend the Town, its officers and employees, from and in all suits, actions or claims of any character brought because of: any injuries or damage received or sustained by any person, persons or property because of operations for the Town under the Contract; including but not limited to claims or amounts recovered from any infringements of patent, trademark, or copyright; or pollution or environmental liability. The Town may retain so much of the money due the Contractor under the Contract, as the Town considers necessary for such purpose. If no money is due, the Contractor's Surety may be held until such suits, actions, claims for injuries or damages have been settled. Money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that the Contractor and the Town are adequately protected by public liability and property damage insurance.

The Contractor also agrees to pay the Town all expenses, including attorney's fees, incurred to enforce this Responsibility for Damage Claim clause.

Nothing in the **INSURANCE PROVISIONS of the General Conditions** shall limit the Contractor's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs resulting from its performance or nonperformance under the Contract.

STATUS OF CONTRACTOR. The Contractor is performing all work under the Contract as an independent Contractor and not as an agent or employee of the Town. No employee or official of the Town will supervise the Contractor. The Contractor will not supervise any employee or official of the Town. The Contractor shall not represent that it is an employee or agent of the Town in any capacity. **The Contractor and its employees are not entitled to Town Workers' Compensation benefits and are solely responsible for federal and state income tax on money earned.** This is not an exclusive contract.

THIRD PARTY BENEFICIARIES. None of the terms or conditions in the Contract shall give or allow any claim, benefit, or right of action by any third person not a party to the Contract. Any person, except the Town or the Contractor, receiving services or benefits under the Contract is an incidental beneficiary only.

INTEGRATION. This contract integrates the entire understanding of the parties with respect to the matters set forth. No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Contract.

DEFINITIONS. The Definitions in the General Conditions apply to the entire Contract unless modified within a Contract Document.

Executed this _____ day of _____, 2016.

TOWN OF CASTLE ROCK

ATTEST

Paul Donahue, Mayor

Sally A. Misare, Town Clerk

APPROVED AS TO FORM:

Robert J. Slentz, Town Attorney

CONTRACTOR: PLM Asphalt & Concrete, Inc.

Signature _____

Title: Vice President

(Insert either the Corporate or Partnership Certificate, as appropriate)

