



PUBLIC WORKS DEPARTMENT
MEMORANDUM # 2011 - 34

DATE: September 8, 2011
TO: Honorable Mayor Joyce Downing and City Council Members
FROM: William A. Simmons, City Manager 
David H. Willett, Director of Public Works 
SUBJECT: CR – 82, Spangler Drive Repair

BACKGROUND

Heavy rains have caused serious damage to the pavement on Spangler Drive. Staff is proposing to replace approximately 200 feet of pavement at the western end of the street. Staff requested quotes from Lafarge North America (Lafarge) and Brannan Sand and Gravel. The lowest quote received in the amount of \$16,661.75 was from Lafarge. Staff is requesting approval from City Council to use a portion of the remaining funds in the 2011 Residential Street Overlay appropriation to complete the work. Staff is also requesting a 10% contingency.

BUDGET/TIME IMPLICATIONS

The proposed emergency work would be funded out of the following account:

Residential Street Overlay	
Appropriation (ADCOT)	\$342,000.00
2011 Street Improvements Contract	\$281,659.85
2011 Street Improvements Contingency (10%)	<u>\$ 28,166.00</u>
Fund Balance	\$ 32,174.15
Spangler Drive Repair	\$ 16,661.75
Contingency (10%)	<u>\$ 1,666.18</u>
Revised Fund Balance	\$ 13,846.22

RECOMMENDATION

Attached to this memorandum is a Resolution that, if approved, would:

- 1) Authorize the City Manager to execute a contract between the City of Northglenn and Lafarge for the Spangler Drive repair in the amount of **\$16,661.75**, and;
- 2) Authorize **\$1,666.18** as a contingency (10%) and authorize the City Manager, on behalf of the City, to approve minor changes in the scope of work and execute relevant change orders up to the approved expenditure limit of **\$18,327.93**.

Staff recommends approval of the proposed Resolution.

STAFF REFERENCE

David H. Willett, P.E., Director of Public Works
Joliette Woodson, P.E., Transportation Engineer

dwillett@northglenn.org or 303.450.8783
jwoodson@northglenn.org or 303.450.8835

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-82
Series of 2011

Series of 2011

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND LAFARGE NORTH AMERICA FOR THE SPANGLER DRIVE ASPHALT REPAIR PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council hereby approves the Professional Services Agreement between the City of Northglenn and Lafarge North America for the Spangler Drive Asphalt Repair Project, in the amount of \$16,661.75 with a ten percent (10%) contingency of \$1,666.18, for a total amount not to exceed \$18,327.93.

DATED, at Northglenn, Colorado, this _____ day of _____, 2011.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2011, by and between the City of Northglenn, State of Colorado (hereinafter referred to as the "City") and Lafarge North America (hereinafter referred to as "Contractor").

RECITALS:

A. The City requires professional services.

B. Contractor has held itself out to the City as having the requisite expertise and experience to perform the required work for the Project.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Contractor shall provide to the City, professional consulting services for the Project.

I. SCOPE OF SERVICES

Contractor shall furnish all labor and materials to perform the work and services required for the complete and prompt execution and performance of all duties, obligations, and responsibilities for the Project which are described or reasonably implied from **Exhibit A** which is attached hereto and incorporated herein by this reference.

II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY

The City shall provide Contractor with reports and such other data as may be available to the City and reasonably required by Contractor to perform hereunder. No project information shall be disclosed by Contractor to third parties without prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Contractor shall be returned to the City. Contractor is authorized by the City to retain copies of such data and materials at Contractor's expense.

III. OWNERSHIP OF WORK PRODUCT

The City acknowledges that the Contractor's work product is an instrument of professional service. Nevertheless, the products prepared under this Agreement shall become the property of the City upon completion of the work.

IV. COMPENSATION

A. In consideration for the completion of the services specified herein by Contractor, the City shall pay Contractor an amount not to exceed sixteen thousand six hundred sixty two dollars (\$16,662.00). Payment shall be made in accordance with the schedule of charges in **Exhibit B** which is attached hereto and incorporated herein by this reference. Invoices will be itemized and include hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by Contractor in performing all services hereunder.

B. Contractor may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Contractor under this Agreement except as otherwise supplemented or accompanied by such supporting data as may be required by the City.

1. All invoices, including Contractor's verified payment request, shall be submitted by Contractor to the City no later than the twenty-fourth (24th) day of each month for payment pursuant to the terms of this Agreement. In the event Contractor fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Contractor defers its right to payment pursuant to said late invoice until the twenty-fourth (24th) day of the following month.

2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice as provided by this Agreement.

C. The City has the right to ask for clarification on any Contractor invoice after receipt of the invoice by the City.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Contractor may, after giving seven (7) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days written notice, Contractor may terminate this Agreement. Upon receipt of payment in full for services rendered, Contractor will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Contractor's certification that services required herein by Contractor have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF WORK

Within seven (7) days of receipt from the City of a Notice to Proceed, Contractor shall commence work on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by the City, the Project shall be complete and Contractor shall furnish the City the specified deliverables as provided in Exhibit A.

VI. CHANGES IN SCOPE OF SERVICES

A change in the Scope of Services shall constitute any material change or amendment of services or work which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective, or paid unless authorized by written amendment executed by the City. If Contractor proceeds without such written authorization, then Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VII. PROFESSIONAL RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

C. Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Contractor under this Agreement. Contractor shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the City for construction costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by the City of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Contractor of responsibility for technical adequacy of the work. Neither the City's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

VIII. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, 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 the Agreement 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 the Agreement.

B. Prohibited Acts. Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2. 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 Agreement.

C. Verification.

1. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

WY

2. Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Contractor shall:

a. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and

b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that Contractor shall not terminate the contract with the subcontractor if during such three (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 the Agreement.

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 Agreement.

E. If Contractor does not currently employ any employees, Contractor shall sign the NO Employee Affidavit attached hereto.

F. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the Department Program Affidavit attached hereto.

IX. INDEMNIFICATION

The Contractor, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the City, its officers, employees, agents and their insurers, from the against all liability, claims and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, which arises out of or is in any manner connected with this Contract, to the extent that such injury, loss or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of the Contractor, the Contractor's employees, subcontractors or anyone else employed directly or indirectly by the Contractor, Contractor's employees or subcontractor.

The Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims or demands at the sole expense of the Contractor, or at the option of the City, Contractor agrees to pay the City or reimburse the City for defense costs incurred by the City in connection with any such liability, claims, or demands. The Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent.

X. INSURANCE

A. The Contractor agrees to obtain and maintain during the life of this Contract, a policy or policies of insurance against all liability, claims, demands, and other obligations assumed by Contractor pursuant to Section IX. above. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section IX above, by reason of its failure to obtain or maintain during the life of this Contract insurance in sufficient amounts, durations, or types.

B. Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section IX. above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workmen's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Contract, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) disease - policy limit, and five hundred thousand dollars (\$500,000) disease - each employee.

2. General Public liability insurance to be written with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts,) including death, at any time resulting therefrom, sustained by any one person and not less than two million (\$2,000,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of General Public Liability Insurance for broad form property damage (including products and completed operations) shall not be less than one million dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one (1) accident and not less than two million dollars (2,000,000) for all damages arising out of injury to, or destruction of property, including the City's property, during the policy period. The General Public Liability Insurance policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision.

3. Professional liability insurance with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.

4. To the extent that liability results from the acts or omissions of the Contractor, the policy required by paragraph 2 above shall be endorsed to include the City and the City's officers, employees, and subcontractors as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, its employees, or its Contractors shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required by

paragraph 1 shall contain any exclusion for bodily injury or property damage arising from completed operations. Contractor shall be solely responsible for any deductible losses under any policy required above.

5. The certificate of insurance provided for the City shall be completed by Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. If the City is named as an additional insured on any policy which does not allow for the automatic addition of additional insureds, the Contractor's insurance agent shall also provide a copy of all accompanying endorsements recognizing the City as an additional insured. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Northglenn
Attn: Marti Robards
11701 Community Center Drive
Northglenn, Colorado 80233-8061

6. Failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement upon which the City may immediately terminate this Agreement, or at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.

7. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

8. The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101 et seq., Colo. Rev. Stat., as from time to time amended, or otherwise available to the City, its officers, or its employees.

XI. NON-ASSIGNABILITY

Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

XII. TERMINATION

This Agreement shall terminate at such time as the work in Section I is completed and the requirements of this Agreement are satisfied, or upon the City's providing Contractor with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Contractor for all

work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Contractor.

XIII. CONFLICT OF INTEREST

The Contractor shall disclose any personal or private interest related to property or business within the City. Upon disclosure of any such personal or private interest, the City shall determine if the interest constitutes a conflict of interest. If the City determines that a conflict of interest exists, the City may treat such conflict of interest as a default and terminate this Agreement.

XIV. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

XV. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is the employee of the City for any purposes.

XVI. NO WAIVER

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.

XVII. ENTIRE AGREEMENT

This Agreement and the attached Exhibits A and B is the entire Agreement between Contractor and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

XVIII. SUBJECT TO ANNUAL APPROPRIATION

Consistent with Article X, Section 20 of the Colorado Constitution, any financial obligations the City not to be performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal conflicting provisions in the Agreement establishing any monetary obligation beyond the current fiscal year.

XIX. NOTICE

Any notice or communication between Contractor and the City which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

The City: City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233-8061

Contractor: Lafarge North America
1590 W. 12th Avenue
Denver, CO 80204

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

CITY OF NORTHGLENN, COLORADO

By: _____
Joyce Downing Date

Mayor
Title

ATTEST:

Johanna Small, CMC Date
City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann Date
City Attorney

ATTEST:

By: _____

Print Name

Title Date

CONTRACTOR:

By: Brenda Skuler

Brenda Skuler
Print Name

General Manager 08.30.11
Title Date

City's Contract # _____

Name of City's Project Manager
Joliette Woodson

PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN

FROM: La farge West Inc.
(Prospective Contractor)

TO: City of Northglenn
PO Box 330061
11701 Community Center Drive
Northglenn, CO 80233


Project Name Spangler D. Asphalt Repair

Bid Number _____ Project No. _____

As a prospective Contractor for the above-identified bid, I (we) do hereby certify that, as of the date of this certification, I (we) do not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that I (we) will confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation 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.

Executed this _____ day of _____, 2011.

Prospective Contractor La farge West Inc.

By: 

Title: Brenda Shales, GM, Metro Denver Paving

Finance Dept Use Only	
Initials	_____
Date	_____
PO #	_____



Lafarge West, Inc.
1590 W. 12th
Denver, Colorado 80204
Phone (303) 657-4200
Fax (303) 657-4414

To:	CITY OF NORTHGLENN	Contact:	JOLIETTE WOODSON
Address:	11701 COMMUNITY CENTER DR NORTHGLENN, CO 80233	Phone:	303-450-8835
Project Name:	SPANGLER DR ASPHALT REPAIR	Fax:	303-450-8708
Project Number:		Estimate Number:	12177918
Project Location:	SPANGLER DR, NORTHGLENN, CO	Bid Date:	8/17/2011

IF PRICE ADJUSTMENTS ARE NEEDED WHEN THE PAVING BEGINS, LAFARGE WILL PROVIDE THE AC PRICE THE PROJECT WAS BID WITH TO ESTABLISH THE BENCHMARK. AN INVOICE WILL BE SUPPLIED FOR THE MONTH(S) THE WORK IS PLACED. THE PRICING WILL BE ADJUSTED DEPENDING ON THE VARIANCE AT THE TIME OF PLACEMENT.

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	ASPHALT REMOVAL: REMOVE 4" OF EXISTING MATERIAL. SUBGRADE PREP: FINEGRADE AND COMPACT SUBGRADE.	720.00	SY	\$5.45	\$3,924.00
2	4" ASPHALT PAVING. INCLUDES 6" THICKENED ASPHALT DEPTH AT FENCE LINE ON WEST END.	165.00	TON	\$70.35	\$11,607.75
3	TRAFFIC CONTROL	1.00	LS	\$530.00	\$530.00
4	MOBILIZATION	1.00	LS	\$600.00	\$600.00
				Total Bid Price:	\$16,661.75

- Notes:**
- The following Proposal, subject to terms and conditions, as noted, and on the attached page, if accepted, shall constitute a contract between the parties to this Proposal. This Proposal shall be valid for a period of Thirty (30) days from the date of Proposal unless otherwise specifically stated in the Proposal.
 - This contract is expressly conditioned upon approval of Customer's credit by Lafarge's credit department, and Lafarge shall have no obligation to perform its obligations hereunder until such approval has been obtained. Project scheduling is subject to receipt of accepted Proposal. Please sign in spaces provided to indicate acceptance and return original. Note terms and conditions of sale as listed on Proposal document.
 - Any soft or unstable areas will be corrected on an hourly basis at the direction of the Owner Representative. Final billing will be based on actual field measured quantities installed. This work can be scheduled only after receipt of signed contract. The above quotation includes 1 mobilization. Additional mobilizations will be billed at a rate of \$600.00 per mobilization. Directing or authorizing Lafarge West Inc. to pave without proper temperatures releases Lafarge West, Inc. of responsibility for our Warranty and the cost of any repairs. Water Valves add \$225.00 per each; Manholes add \$550.00 per each for adjustments. These exclusions, notes, and quotation are to become part of the subcontract agreement.

WE SPECIFICALLY EXCLUDE FROM THIS QUOTATION THE FOLLOWING:
Bonding, engineering, permits, seal coating, importing excess material, testing, subgrade processing or stabilization, striping, metal signage, drainage of less than 1% fall.



Lafarge West, Inc.
 1590 W. 12th
 Denver, Colorado 80204
 Phone (303) 657-4200
 Fax (303) 657-4414

To: CITY OF NORTHGLENN Address: 11701 COMMUNITY CENTER DR NORTHGLENN, CO 80233	Contact: JOLIETTE WOODSON Phone: 303-450-8835 Fax: 303-450-8708
Project Name: SPANGLER DR ASPHALT REPAIR Project Number: Project Location: SPANGLER DR, NORTHGLENN, CO	Estimate Number: 12177918 Bid Date: 8/17/2011

ACCEPTED: The above prices, specifications and conditions are satisfactory and hereby accepted. Buyer: _____ Signature: _____ Date of Acceptance: _____	CONFIRMED: Lafarge West, Inc. (Denver) _____ Dennis Martinez Estimator 303-6574027 dennis.martinez@lafarge-na.com
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LAFARGE NORTH AMERICA ("LAFARGE") AGREES TO FURNISH LABOR AND MATERIALS TO CUSTOMER AS SET FORTH ON THE ATTACHED PROPOSAL HEREOF, SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- 1) RESPONSIBILITIES OF CUSTOMER AND LAFARGE:** Customer shall reimburse Lafarge for all expenditures for any required permits or inspection fees assessed by any government entity and paid by Lafarge unless stated otherwise on the reverse hereof. Customer shall ensure that all manholes and other utility structures are on proper grade, in proper alignment, and are properly flagged. Lafarge shall not be liable for any damage to underground facilities caused by equipment used in the performance of this contract.
- 2) SUBBASE, AND/OR BASE COURSES:** If the subbase and/or base course has not been placed by Lafarge, then Lafarge shall not be liable for any defects in the finished pavement developing as a result of any subbase, and/or base course failure. If, after being advised of existing inadequate or defective subbase and/or base course conditions, Customer directs Lafarge to proceed with the work without first correcting those conditions, then Lafarge shall not be liable for any subsequently occurring paving defects or failures.
- 3) PAYMENT:** Lafarge will, from time to time, submit invoices to Customer for work performed and materials and equipment provided by Lafarge. Payment shall be due 30 days from the date of Lafarge's invoice. Interest at the rate of 18% per annum shall accrue on all invoice amounts not paid when due. In addition, Customer shall be liable for all costs and reasonable attorney's fees incurred by Lafarge in the collection of any unpaid balance. The Customer shall not withhold retention.
- 4) TAXES:** The quotation on the reverse side hereof includes sales or use taxes as applicable on job related materials.
- 5) SCHEDULING OF WORK:** Lafarge reserves the right to delay its work until, in its sole judgment, a sufficient area of the job is ready to be paved. If additional mobilizations are requested, they will be billed on a unit price basis. Customer recognizes that Lafarge's ability to perform paving work is dependent upon site, weather, and temperature conditions, and Customer agrees that any projected starting or completion date and any work schedule will remain subject to site, weather, and temperature conditions. Lafarge will use its best reasonable efforts to begin and complete all work promptly. However, Lafarge does not promise or warrant completion by any specific date.
- 6) ADDITIONAL WORK:** Unless otherwise agreed to in this contract, quantity increases will be billed either on a unit price basis, or at time and material rates as agreed to by Lafarge and Customer, so long as the extra work can be performed while Lafarge is at work at the job site performing the original work. Otherwise unit prices for any additional extra work will be negotiated by the parties prior to commencement of such additional work.
- 7) TERMINATION:** Lafarge shall have the right to terminate the contract and shall have no further obligation to perform the contract in the event of any one of the following occurrences:
- Lafarge is put on allocation for liquid asphalt, fuel, or other petroleum products, or its performance is otherwise restricted by governmental order or regulation.
 - Customer fails to make payments when due.
 - Circumstances or events beyond Lafarge's control prevent completion of the work.
 - If Lafarge becomes aware of any hazardous substance in, on, or under the property, Lafarge has the right to discontinue work until the hazardous substance is removed or dealt with in accordance with applicable law. Hazardous substance shall be mean any substance defined as hazardous in any federal, state or other applicable law or regulation. Lafarge shall not be responsible for removing or otherwise dealing in any manner with any hazardous substance on the property being improved. The Owner of the property shall indemnify Lafarge and hold it harmless against any loss, damage, or expense that may be incurred by Lafarge which is caused by or attributable to the presence of any hazardous substance in, on or under the property.
 - If national or regional shortages of crude oil and/ or other raw materials used for construction supplies occur, the parties agree that the contract price stated herein may be increased or decreased by the amount necessary to reflect increases or decreases after the date of this quotation. Lafarge shall give notice of any increase prior to commencing work, and Customer shall have the right to terminate this agreement within 24 hours after receipt of such notice of increase; provided, however, that the Owner or Customer shall pay Lafarge its actual expenses incurred through the date of such notice.
 - In the event Lafarge terminates the contract for any of the reasons set forth above, Lafarge shall provide Customer with an invoice for all work completed prior to termination, and Customer shall promptly pay the full amount of said invoice.
 - Under no circumstances shall Lafarge be liable for special, indirect or consequential damages incurred as a result of termination of work.
- 8) WARRANTY:** Lafarge warrants that its labor and services will be performed and its materials supplied in a good and workmanlike manner. All materials supplied by Lafarge shall be of standard grade unless otherwise specified in writing. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED.** THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. Lafarge's warranty shall continue for a period of one year from the date of substantial completion of its work hereunder. Any claim for defective workmanship or material or for breach of this warranty must be made in writing, delivered via certified mail, return receipt requested, to Lafarge within 20 days from the date of delivery of the materials or performance of the work by Lafarge. Failure to comply with the preceding clause shall constitute a full, complete, and unconditional acceptance of materials and work. Lafarge's liability hereunder, whether in contract, tort, under any warranty, in negligence or otherwise, shall be limited to the reasonable cost of any labor and/or materials shown to Lafarge's satisfaction to have been defective. Under no circumstances shall Lafarge be liable for special, indirect or consequential damages. The parties agree that, if soil sterilizer is required to be applied under the terms of this contract, a licensed contractor other than Lafarge will perform such application. Lafarge shall assign to Customer the manufacturer's warranty, if any, given in connection with such soil sterilizer. Lafarge shall not be liable for any damage caused by such application of soil sterilizer.
- 9) ATTORNEY'S FEES AND COSTS:** In the event that Lafarge either initiates or is named as a party in any legal action arising from or related to the furnishing of labor, services and/or materials to Customer, including any litigation to enforce a mechanic's lien, Customer shall be liable for all costs and reasonable attorney's fees incurred by Lafarge in such litigation.
- 10) INDEMNIFICATION:** To the fullest extent permitted by law, Customer shall indemnify Lafarge and hold it harmless from and against claims, damages, losses and expenses arising out of or resulting from performance of Lafarge's work under this contract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), but only to the extent caused by the negligent acts or omissions of Customer, Customer's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

The parties acknowledge that this document contains the entire understanding and agreement concerning the work to be done by Lafarge. There are no agreements, oral or otherwise, which are not set forth herein.