

Town of Lyons, Colorado

**THIRD AMENDMENT TO
CONSTRUCTION AGREEMENT WITH
Horrocks Engineering**

**Project/Services Name: St Vrain Trail Extension
Project #: 21-SVRT-01**

This THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT ("Third Amendment is made and entered into on the date upon which it is mutually executed by the Parties (the "Effective Date"), by and between the TOWN OF LYONS, COLORADO, a municipal corporation of the State of Colorado, with offices at 432 5th Avenue, Lyons, Colorado 80540 (the "Town"), and Horrocks Engineers, Inc. with offices at 5670 Greenwood Plaza Blvd. Suite 100W, Greenwood Village, Colorado 80111 (the "**Contractor**"). The Town and Contractor may be referred to collectively as the "Parties" or each individually as "Party".

WITNESSETH

WHEREAS, pursuant to Resolution 2022-48, the Town and Contractor entered into that certain Professional Services Agreement dated April 28, 2022 ("Original Agreement") for the Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **TWO HUNDRED FORTY-FOUR THOUSAND FIVE HUNDRED SEVENTY-ONE DOLLARS AND NO CENTS (\$244,571.00)**; as part of the Design Services for the St. Vrain Trail Extension Project, Project # 21-SVRT-01 (the "Project"); and

WHEREAS Section 7.00 of the Original Agreement permits the Town to adjust the Contract Price and requires that the Town pay for the work beyond that described in the Original Agreement in a separate agreement signed by both of the Parties prior to the commencement of the additional work; and

WHEREAS, the Parties entered into a first amendment to the Professional Services Agreement in order to add scope and fee for additional environmental and survey services, as well as for as described in **Exhibits A** for an increase to the contract by **EIGHTEEN THOUSAND, ONE HUNDRED-THIRTY EIGHT DOLLARS AND NO CENTS (\$18,138)** for a total, not-to-exceed amount of **TWO HUNDRED-SIXTY TWO THOUSAND SEVEN HUNDRED NINE DOLLARS AND NO CENTS (\$262,709)** ("**First Amendment**"),

WHEREAS, the Parties entered into a second amendment to extend the term of the contract until May 30, 2025 at no increase to the contract for a total not-to-exceed amount of **TWO HUNDRED-SIXTY TWO THOUSAND SEVEN HUNDRED NINE DOLLARS AND NO CENTS (\$262,709)** and

WHEREAS, the Parties desire to enter into a third amendment to the Professional Services Agreement in order to add scope and fee for additional environmental, Sub Utility Engineering (SUE) and a rate increase from 2021 to 2023 for remainder of the contract as well as for as described in **Exhibits A** for an increase to the contract by **FORTY SIX THOUSAND EIGHT HUNDRED NINETEEN DOLLARS AND TWENTY-TWO CENTS (\$46,819.22)** for a total, not-to-exceed amount of **THREE HUNDRED NINE THOUSAND FIVE HUNDRED TWENTY EIGHT DOLLARS AND TWENTY-TWO CENTS (\$309,528.22)** ("**Third Amendment**"),

WHEREAS the Parties desire to enter into this Third Amendment to the Construction Agreement;

NOW, THEREFORE, for the consideration herein expressed, it is agreed by and between the Town and

the Contractor that the Agreement shall be amended as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as though set forth in full.
2. **Original Terms and Conditions.** Except as amended herein, the original terms and conditions of the Agreement remain in full force and effect.
3. **Scope of Work.** The second sentence of Section 2.1 of the Original Agreement entitled "Commencement of and Compensation for Services" is hereby amended to read in full as follows:

Compensation to be paid hereunder shall not exceed **THREE HUNDRED NINE THOUSAND FIVE HUNDRED TWENTY EIGHT DOLLARS AND TWENTY-TWO CENTS (\$309,528.22)** unless a different amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement.

4. **Contract Sum and Payment.** There is no change to the Contract Price with this amendment.
5. **Term.** Section 3.00 of the Original Agreement, entitled "Time and Commencement of Completion," is hereby amended to read in full as follows:

This Agreement shall be effective on the day of full signature execution and shall terminate at the earlier of the date on which all obligations of the parties have been met (to include all Services have been completed) or **11:59 p.m. on the 30th day of May, 2025**, or on a prior date of termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation. Those provisions that survive termination, to include the indemnification obligations and any warranty obligations, shall remain in effect past termination.

6. **Force and Effect of Amendment.** Notwithstanding anything in the Original Agreement to the contrary, the Original Agreement shall be amended such that all references in the Original Agreement to "Agreement" shall refer to the Original Agreement as amended by this Third Amendment.
7. **Conflict.** This Third Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this Third Amendment and the Original Agreement, the provisions containing such inconsistency shall be reconciled with one another to the maximum extent possible, and then to the extent of any remaining inconsistency, the terms of this Third Amendment shall control.
8. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this Third Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this Third Amendment may be executed by facsimile or electronic signature, and that any facsimile or electronic signature shall be binding upon the Party providing such signature as if it were the Party's original signature.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment to Professional Services Agreement, Project: Design Services for the St. Vrain Trail Extension Project, Project # 21-SVRT-01 to be effective as of the date of mutual execution by the Parties. By the signature of its representatives below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Third Amendment.

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SIGNATURE PAGE FOLLOWS

THIS THIRD AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS, COLORADO:

ATTEST:

Approval by:

Dolores M. Vasquez, CMC, Town Clerk

By: _____
Hollie Rogin, Mayor

Horrocks Engineers, Inc

Date of execution: _____, 2022

By: _____

Printed name: _____

Its: _____

STATE OF _____)
COUNTY OF _____) ss.

The foregoing Third Amendment to the Construction Agreement was acknowledged before me
this ____ day of _____, 2022, by _____ as _____ of
_____, a _____.

Witness my hand and official seal.
My commission expires: _____.

Notary Public
(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))