

Town of Lyons, Colorado

**SECOND AMENDMENT TO
CONSTRUCTION AGREEMENT WITH
MOUNTAIN CONSTRUCTORS, INC.**

**Project/Services Name: US36/Broadway Improvements & Multimodal
Project #: 23-US36/BRWY IMPRV-03 REBID #2**

This SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT ("Frist 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 Mountain Constructors, Inc., whose address is 622 Main St., Platteville, CO 80651 (the "Contractor"). The Town and Contractor may be referred to collectively as the "Parties" or each individually as "Party"

WITNESSETH

WHEREAS, pursuant to Resolution 2022-137, the Town and Contractor entered into that certain Construction Agreement dated May 1, 2023 ("Original Agreement") for the Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **ONE MILLION NINE-HUNDRED AND ELEVEN THOUSAND, FIVE-HUNDRED AND SIXTY DOLLARS AND FIFTY-THREE CENTS (\$1,911,560.53)**; as part of the Construction Services for the US36/Broadway Improvements and Multimodal Project, Project # 23-US36/BRWY IMPRV-03 REBID #2 (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 extend the term of the contract until May 20, 2024 at no increase to the contract for a total not-to-exceed amount of **ONE MILLION NINE-HUNDRED AND ELEVEN THOUSAND, FIVE-HUNDRED AND SIXTY DOLLARS AND FIFTY-THREE CENTS (\$1,911,560.53)**; and

WHEREAS, the Parties have negotiated a Second amendment to extend the term of the contract until June 28, 2024 at no increase to the contract for a total not-to-exceed amount of **ONE MILLION NINE-HUNDRED AND ELEVEN THOUSAND, FIVE-HUNDRED AND SIXTY DOLLARS AND FIFTY-THREE CENTS (\$1,911,560.53)**; and

WHEREAS, the Parties desire to enter into this Second 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.** There is no change to the Scope of Work with this amendment.
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 20th day of May, 2024**, 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 Second Amendment.
7. **Conflict.** This Second Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this Second 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 Second Amendment shall control.
8. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this Second Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this Second 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 Second Amendment to Construction Agreement, Project:US36/Broadway Improvements and Multimodal Project, Project # 23-US36/BRWY IMPRV-03 REBID #2; 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 Second Amendment.

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SIGNATURE PAGE FOLLOWS

THIS SECOND 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

Mountain Constructors, Inc.:

Date of execution: _____, 2024

By: _____

Printed name: _____

Its: _____

STATE OF _____)
COUNTY OF _____) ss.

The foregoing Second Amendment to the Construction Agreement was acknowledged before me
this ____ day of _____, 2024, 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)))
