

**TOWN OF LYONS, COLORADO
CONSTRUCTION AGREEMENT**
Project Number 24-ST VRAIN TRAIL EXT-01 ("Project")

This AGREEMENT is made and entered **into this _____ day of _____, 20____**, 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 Dietzler Construction Corporation, whose address is 100 Gateway Circle, Berthoud, CO 80 (the "Contractor") (each a "Party" and collectively, the "Parties").

WITNESSETH

WHEREAS, the Town desires to obtain all necessary components to complete the scope of work for a RFP or Bid Pack No.24-St Vrain Trail Ext-01 ("Bid Pack") issued by the Town;

WHEREAS, in response to the Bid Pack, the Town received bids or proposals, including one from Contractor ("Bid Proposal");

WHEREAS, the Town has reviewed the Bid Proposal from Contractor for the completion of said work, and the Town finds said Bid Proposal acceptable and deems it the lowest responsible and responsive Bid proposal received; and

WHEREAS, the Town desires to contract with Contractor subject to the terms of this Agreement and all other Contract Documents.

NOW, THEREFORE, for the consideration herein expressed, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.00 SCOPE OF WORK: Contractor will furnish all tools, equipment, machinery, materials, supplies, superintendence, insurance, transportation, other construction accessories, and services specified or required to be incorporated in and form a permanent part of the construction and completion of the work proposed to be done under this Agreement ("Work" or "Scope of Work"). In addition, Contractor shall provide and perform all necessary labor in a first-class and professional manner and in accordance with the conditions and prices stated in the Bid Proposal and the requirements, stipulations, provisions, and conditions of the Contract Documents and Design Documents, including Plans and Specifications, as defined in the attached General Conditions. Contractor shall further perform, execute, construct, and complete all things mentioned to be done by Contractor and all work covered by the Town's official award of this contract to Contractor, such award being based on the acceptance by the Town of Contractor's bid, or part thereof.

2.00 THE CONTRACT DOCUMENTS: This Agreement incorporates all the Contract Documents, which together represent the entire and integrated agreement between the parties hereto and supersede prior negotiations, written or oral representations, and agreements. The Contract Documents consist of this Construction Agreement, which Agreement also incorporates by this reference all of the instruments set forth in the Project Manual and Bid Documents as fully as if they were set forth in this Agreement in full. The documents consist of without limitation, the following documents:

1. Invitation to Bid and Instructions to Bidders
2. Contractor's Bid Form (with Unit Pricing as indicated)
3. This Construction Agreement and any Addendums or Attachments thereto including (if checked)
 - Attachment A, Federal Emergency Management Agency's ("FEMA") Grant Program Requirements for Procurement Contracts if FEMA funding is used for the Work
 - Attachment B, Colorado Community Development Block Grant Disaster Recovery Program funds (hereinafter referred to as CDBG-DR funds) Requirements for Contracts if CDBG-

DR funding is used for the Work

Attachment C, Colorado Department of Transportation ("CDOT") Form 1273 is CDOT Federal funding is used for the Work

4. Performance and Payment Bond
5. Bid Proposal
6. Notice of Award
7. Notice to Proceed
8. Bid Bond (Minimum 5% equivalent of the Bid Proposal price or as otherwise set forth in the Bid Bond form provided as part of the Bid Pack)
9. General Conditions
10. The Following Documents if the Box is Checked:
Special Provisions
Design Documents, including all Drawings and Plans
Specifications
Addendums to Specifications and Standards
Town of Lyons Manual of Design Criteria and Standard Specifications
Change Orders, Field Orders or other similar revisions properly authorized after the execution of this Agreement
Others: _____

3.00 TIME AND COMMENCEMENT OF COMPLETION: This Agreement shall commence as of the date the Agreement is fully executed by both parties and shall continue through July 31, 2025 or until the Scope of Work is completed.

4.00 LIQUIDATED DAMAGES: All time limits stated in this Agreement and the Contract Documents are of the essence of the Agreement. The Town and Contractor recognize the completion of the work as shown in the contractual time frame, or as extended, is important to the ongoing operations of the Town and its citizens. The Parties also recognize that delays include expenses to the Town for extended manpower commitments, outside consultant commitments, and potentially other legal fees to extend the project beyond the expected time period.

If this box is checked, in lieu of requiring any such proof and backup for such expenses, Contractor agrees that liquidated damages (not penalties) may be assessed by the Owner in the sum of **\$1,000.00 per day or per CDOT specifications** for each day after the contract time frame expires.

If this box is checked, in addition to or in lieu of the daily damages (if checked above), Contractor agrees that lump sum liquidated damages (not penalties) may be assessed by the Town in a *lump sum payment of \$_____ .00 if the work is not completed by _____, 20____.*

5.00 CONTRACT SUM AND PAYMENT: The Town shall pay to Contractor for performance of the Work encompassed by this Agreement, and the Contractor will accept as full compensation therefore the sum of: *One Million, Three Hundred Eighty-One Thousand, and Eighty-One Dollars and Fifteen Cents* (\$1,381.081.15) subject to adjustment as provided by the Contract Documents ("Contract Price").

a. Monthly, partial progress payments shall be made by the Town to Contractor for the percentage of the Work completed, subject to inspection by Town staff to verify percentage of completion. The Town alone shall determine when work has been completed and progress payments shall not constitute a waiver of the right of the Town to require the fulfillment of all terms of this Agreement and the delivery of all improvements embraced in this Agreement in a complete and satisfactory manner to the Town in all details. The Town, before making any payment, may require Contractor to furnish releases or receipts from any or all persons performing work under this Agreement or supplying material or services to Contractor, or any subcontractor if this is deemed necessary to protect the Town's interest. The Town, however, may in its discretion make payment in part or full to Contractor without requiring the Lyons Construction Agreement (Dietzler Construction Corporation)

furnishing of such releases or receipts.

b. By the 25th day of each month, Contractor shall submit to the Town for review and approval, an application for payment fully completed and signed by Contractor covering the work completed through the last day of the prior month and accompanied by such supporting documentation as is required by these Contract Documents, including without limitation, time sheets, invoices, receipts, bills of lading, and all other documents the Town may require. **These invoices for payment should be emailed to ap@townoflyons.com or mailed to Town of Lyons, P.O. Box 49, Lyons, CO 80540.** Materials on hand but not complete in place may or may not be included for payment at the discretion of the Town. Each subsequent application for payment shall include an affidavit of Contractor providing that all previous progress payments received on account of the work have been applied to discharge in full all of Contractor's obligations reflected in prior applications for payment. Notwithstanding the progress payments, it is the intent and purpose of the Town to withhold at least five percent (5%) of payments to Contractor for any contract exceeding One Hundred Fifty Thousand Dollars (\$150,000.00) in accordance with C.R.S. § 24-91-101, *et seq.*

c. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Lyons, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

6.00 ACCEPTANCE AND FINAL PAYMENT: Final payment may be requested by Contractor upon completion and acceptance, by the Town, of all work as set forth in the Contract Documents. The total amount of final payment shall consist of the Contract Price, as adjusted in accordance with approved change orders, if applicable, less all previous payments to Contractor.

7.00 MODIFICATIONS AND AMENDMENTS: Should work beyond that described in the Contract Documents be required, it will be paid for as extra work at a cost to be agreed upon in separate written agreement by the Town and Contractor prior to commencement of the additional work. Such additional agreements shall be executed and approved by all persons required by Town purchasing ordinances or policies. Unless specifically excluded, such written agreements shall be considered part of the Contract Documents.

8.00 CONTRACTOR'S REPRESENTATIONS: To induce the Town to enter into this Agreement, Contractor makes the following representations:

a. Contractor has familiarized itself with the nature and the extent of the Contract Documents, Scope of Work, the locality, all physical characteristics of the area of the work within the Scope of Work, including without limitation, improvements, soil conditions, drainage, topography, and all other features of the terrain, and with the local conditions and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the work, or apply in any manner whatsoever to the work;

b. Contractor has carefully considered all physical conditions at the site and existing facilities affecting cost, progress, or performance of the Work;

c. Contractor has given the Town written notice of all conflicts, errors, or discrepancies that it Lyons Construction Agreement (Dietzler Construction Corporation)
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has discovered in the Contract Documents and such documents are acceptable to Contractor; and

d. Contractor shall not extend the credit or faith of the Town to any other persons or organizations.

9.00 INSURANCE: Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all obligations assumed by Contractor pursuant to this Agreement. Contractor shall not commence work under this Agreement until it has obtained all said insurance required by the Contract Documents and such insurance has been approved by the Town. Contractor shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, Contractor must continuously maintain the insurance coverage required in this section, with the minimum insurance coverage listed below:

a. Worker's Compensation in accordance with the Worker's Compensation Act of the State of Colorado and any other applicable laws for any employee engaged in the performance of Work under this Agreement.

b. Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and of two million Dollars (\$2,000,000.00) aggregate, plus an additional amount sufficient to pay related attorneys' fees and defense costs. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

c. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

d. Builder's Risk insurance with minimum limits of not less than the insurable value of the work to be performed under this contract at completion less the value of the materials and equipment insured under installation floater insurance. The policy shall be written in completed value form and shall protect Contractor and the Town against risks of damage to buildings, structures, and materials and equipment not otherwise covered under Installation Floater insurance, from the perils of fire and lightning, the perils included in the standard coverage endorsement, and the perils of vandalism and malicious mischief. Equipment such as pumps, engine-generators, compressors, motors, switch-gear, transformers, panel-boards, control equipment, and other similar equipment shall be insured under Installation Floater insurance when the aggregate value of the equipment exceeds Ten Thousand Dollars (\$10,000). The policy shall provide for losses to be payable to Contractor and the Town as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Contractor or the Town.

e. If this box is checked, Professional Liability/Errors and Omission in an amount not less than _____ MILLION DOLLARS (\$_____,000,000).

Certificates of insurance shall be completed by Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. The policies required above shall be endorsed to include the Town and the Town's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any self-insurance pool of the Town, shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for paying all deductibles.

Each certificate of insurance shall identify this Agreement or the project set forth in the Scope of Work and shall provide that the coverage 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 Town. If the words "endeavor to" appear in the portion of the certificate of insurance addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

10.00 BONDS: Consistent with C.R.S. § 38-26-105, Contractor shall furnish a performance bond, payment bond, and warranty bond in an amount determined by the Town, but in any event at least equal to the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including but not limited to the guaranty period. These bonds shall remain in effect at least until one year after the date of final payment. All bonds shall be in the forms prescribed by the Contract Documents and be executed by such sureties as: (i) are licensed to conduct business in the State of Colorado; and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, amended, by the Audit Staff, Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of this section, Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be acceptable to the Town.

11.00 NO WAIVER OF GOVERNMENTAL IMMUNITY: The Parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Agreement or the remainder of the Contract Documents, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as from time to time amended, or otherwise available to the Parties, their officers, agents or their employees.

12.00 INDEMNIFICATION: Contractor agrees, to the fullest extent permitted by law, to indemnify, defend and hold the Town, the United States Government, FEMA (if FEMA funding is part of the funding for the Work), the State of Colorado, their agencies, employees, officials and agents ("Indemnitees") harmless from any and all claims, settlements, judgments, damages and costs, including reasonable attorney fees, of every kind and nature made, to include all costs associated with the investigation and defense of any claim, rendered or incurred by or on behalf of the Indemnitees, that may arise, occur, or grow out of any errors, omissions, or negligent acts, done by the Contractor, its employees, subcontractors or any independent consultants working under the direction of either the Contractor or any subcontractor in the performance of this Contract.. Contractor is not obligated to indemnify the Town for the Town's own negligence.

13.00 TERMINATION FOR CONVENIENCE: This Agreement and the performance of the Scope of Work hereunder may be terminated at any time in whole, or from time to time in part, by the Town for its convenience. Any such termination shall be affected by delivery to Contractor of a written notice ("Notice of Termination") specifying the extent to which performance of the Scope of Work is terminated and the date upon which termination becomes effective. If the Agreement is terminated, Contractor shall be paid on a pro-rated basis of work status satisfactorily completed, under the detailed Scope of Work. The portion of the Scope of Work satisfactorily completed but not yet accepted by the Town shall be determined by the Town.

14.00 EVENTS OF AND TERMINATION FOR DEFAULT:

a. The Town may serve written notice upon Contractor of its intention to terminate this Agreement in the presence of one of the following events of default:

- i. Contractor should fail to initiate the Scope of Work at the agreed upon time;
- ii. The performance of the Scope of Work is being unnecessarily or unreasonably delayed;
- iii. The Scope of Work is not completed within the time specified or within the time to which completion of the Scope of Work has been extended;
- iv. Contractor should fail to make prompt payments for labor, materials or to subcontractors;
- v. Contractor shall willfully violate this Agreement or disregard laws, ordinances or instructions of the Town;
- vi. Contractor shall abandon performance of the Scope of Work;
- vii. The Agreement or any part thereof has been assigned, transferred or sublet without Town approval;
- viii. Contractor shall become insolvent or adjudged bankrupt; or
- ix. Contractor shall refuse to remove materials or perform any work within the Scope of Work as shall have been rejected as defective or unsuitable.

b. Such written notice shall contain the reasons for the intention to terminate this Agreement and provide a five (5) business day period during which Contractor may cure the event of default. A failure to timely cure the event of default shall authorize the Town to immediately terminate this Agreement and take whatever steps it deems necessary to complete the Scope of Work, if so desired by the Town in its sole discretion. The costs and charges incurred by the Town, together with the costs of completion of the Scope of Work shall be deducted from any monies owed to Contractor. If the expense incurred by the Town is greater than the sums payable under this Agreement, Contractor shall pay the Town, within sixty (60) days of demand therefor the amount of such excess cost suffered by the Town.

15.00 LIABILITY FOR EMPLOYMENT-RELATED RIGHTS AND COMPENSATION: Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

The Town will not include Contractor as an insured under any policy the Town has for itself. The Town shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for Contractor or Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including without limitation coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors

and omissions insurance. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

To the maximum extent permitted by law, Contractor waives all claims against the Town for any Employee Benefits; Contractor will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for Contractor imposed on the Town; and Contractor will reimburse the Town for any award, judgment, or fine against the Town based on the position Contractor was ever the Town's employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.

16.00 GOVERNING LAW AND VENUE: Venue for any legal matters regarding or arising out of the transactions covered herein shall be solely in the District Court in and for Boulder County, State of Colorado. This transaction shall be governed by the laws of the State of Colorado.

17.00 ASSIGNMENT: Contractor shall not assign any of his rights or obligations under this Agreement without the prior written consent of the Town. Upon any assignment, even though consented to by the Town, Contractor shall remain liable for the performance of the work under this Agreement.

18.00 LAWFUL PERFORMANCE: It is further agreed that no Party to this Agreement will perform contrary to any state, federal, or county law, or any of the ordinances of the Town of Lyons, Colorado.

19.00 INVALID SECTIONS: Should any section of this Agreement be found to be invalid, it is agreed that all other sections shall remain in full force and effect as though severable from the invalid part.

20.00 NO WAIVER OF RIGHTS. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Board of Trustees or by a person expressly authorized to sign such waiver, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

21.00 BINDING EFFECT. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section shall not authorize assignment.

22.00 THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

23.00 SURVIVAL OF TERMS AND CONDITIONS. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

24.00 NOTICE: Any notice required or permitted by this Agreement shall be in writing and shall be Lyons Construction Agreement (Dietzler Construction Corporation)
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deemed to have been sufficiently given for all purposes if sent by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed facsimile or email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

The Town:

Town of Lyons
Attention: Town Administrator
432 5th Avenue
P O Box 49
Lyons, CO 80540

With copies to:

Attn: Town of Lyons Town Attorney Brandon Dittman
Wilson Williams Fellman Dittman
1314 Main Street, Suite 101
Louisville, CO 80027

Contractor:

Dietzler Construction Corporation
100 Gateway Circle
Berthoud, CO 80513

With a copy to:

Dietzler Construction Corporation
100 Gateway Circle
Berthoud, CO 80513

SIGNATURE PAGE FOLLOWS

THIS AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS

ATTEST:

By: _____
Dolores M. Vasquez, CMC, Town Clerk

Board of Trustees approval required per § 4-3-40 of the Municipal Code

By:
Hollie Rogin, Mayor

OR

Town Administrator approval required per § 4-3-40 of the Municipal Code

By: _____
Victoria Simonsen, Town Administrator

Date Executed by the Town of Lyons

CONTRACTOR:

By: _____

Printed name: _____

Its: _____

STATE OF)

COUNTY OF) ss.

The foregoing Construction Agreement was acknowledged before me this ____ day of
_____, 20____, by _____
of _____, a

Witness my hand and official seal.

My commission expires: _____.

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