

Town of Lyons, Colorado

**THIRD AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT WITH NV5, INC.**

Project/Services Name: Construction Management Services for Public Works Buildings

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 NV5, INC. with offices at 2650 18th Street, Suite 202, Denver, Colorado 80211 (the "Contractor"). The Town and the Contractor may be referred to collectively as the "Parties" and each individually as "Party".

WITNESSETH

WHEREAS, pursuant to Resolution 2019-06, the Town and Contractor entered into that certain Professional Services Agreement, Project/Service: Construction Management Services for Public Works Buildings dated January 7, 2019 ("Original Agreement") for Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **FIFTY THREE THOUSAND THREE HUNDRED DOLLARS AND NO CENTS (\$53,300.00)** as part of the Public Works Buildings Project (the "Project"); and

WHEREAS, The Town has requested additional Project Management Services to cover the responsibilities previously covered by the Town of Lyons Project Manager on the Public Works Buildings Site and will include waterline inspections services on the site.; and

WHEREAS, the add services will cost an additional **TWELVE THOUSAND FOUR HUNDRED NINETY-SIX DOLLARS AND NO CENTS (\$12,496.00)** pursuant to proposals submitted by the Contractor dated February 25, 2019 and March 4, 2019.; and

WHEREAS, Section 2.00 of the Original Agreement permits the Town to adjust the Contract Price, and Section 4.00 of the Original Agreement requires that the Town pay for work beyond that described in the Original Agreement in a separate agreement signed by both the Parties prior to the commencement of the additional work; and

WHEREAS, the Parties desire to amend the Original Agreement pursuant to the First Amendment to increase the Contract Price by **TWELVE THOUSAND FOUR HUNDRED NINETY-SIX DOLLARS AND NO CENTS (\$12,496.00)** for a new total not to exceed Contract Price of **SIXTY-FIVE THOUSAND SEVEN HUNDRED NINETY-SIX DOLLARS AND NO CENTS (\$65,796.00)**.

WHEREAS, The Town requested additional Project Management Services on the Public Works Buildings Site and will include coordinating the final walk through punch lists, Xcel Gas Meter installation, moving into the new buildings and TCO follow up; and

WHEREAS, pursuant to the proposal submitted by the Contractor dated June 27, 2019, outlined in **Exhibit A**, the additional services in the Second Amendment will increase the not-to-exceed amount by **Five Thousand Four Hundred Dollars (\$5,400.00)** to the total not-to-exceed contract total of **Seventy-One Thousand One Hundred Ninety-Six Dollars (\$71,196.00)**; and

WHEREAS, the Town requested additional Construction Management hours in the Public Works Replacement Building Project in order to support the completion of the Project; and

WHEREAS, the Project has unused Construction Management hours in Task 3 - Waterline Inspection Services, which the Contractor requested to be reallocated to the needed hours in Task 1, outlined in **EXHIBIT B- Revised Fee Schedule**; and

WHEREAS, the Contractor requires a Third Amendment to the Professional Services Agreement in order to reallocate unused hours in Task 3 in the amount of **Three Thousand Eight Hundred Fifty-Six Dollars (\$3856.00)** to Task 1 for completion of the project, outlined in **EXHIBIT A – Cost Justification**; and

WHEREAS, pursuant to this Second Amendment for reallocation of unused hours on the Project, there is no increase to the not to exceed total contract amount of **Seventy-One Thousand One Hundred Ninety-Six Dollars (\$71,196.00)**.

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 Original Agreement is hereby amended by adding the documents that indicate the correct quantities and costs for the Project as set forth specifically in documents attached hereto as **Exhibit A** to this Third Amendment and incorporated herein by reference.
4. **Contract Sum and Payment.** The first sentence of Section 5.00 of the Original Agreement entitled "Contract Sum and Payment" is hereby amended to read in full as follows:

The Owner shall pay to the Contractor for performance of the Work encompassed by this Agreement, and the Contractor will accept as full compensation therefore the not-to-exceed sum of: **Seventy-One Thousand One Hundred Ninety-Six Dollars (\$71,196.00)** subject to adjustment as provided by the Contract Documents ("Contract Price").

5. **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 the First Amendment, Second Amendment or this Third Amendment.
6. **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.
7. **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/Service: Construction Management Services for Public Works Buildings, 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.

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

TOWN OF LYONS, COLORADO:

ATTEST:

Approval by:

Debra K. Anthony, Town Clerk

By: _____

NV5, INC. :

By: _____

Printed name: _____

Its: _____

Date of execution: _____, 2019