

Town of Lyons, Colorado

**FIRST AMENDMENT TO
CONSTRUCTION AGREEMENT WITH DURAN EXCAVATING INC.**

**Project/Services Name: Longs Peak Drive Water and Sewer
Project #:21-LONGS-01**

This FIRST AMENDMENT TO CONSTRUCTION AGREEMENT ("First 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 Duran Excavating Inc. whose address is 14332 Co Rd 64 Greeley, CO 80631 (the "Contractor"). The Town and Contractor may be referred to collectively as the "Parties" or each individually as "Party".

WITNESSETH

WHEREAS, pursuant to Resolution 2021-81, the Town and Contractor entered into that certain Construction Agreement dated August 2, 2021 ("Original Agreement") for the Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **One Million Four Hundred Sixty-Four Thousand Four Hundred Fifty-Five DOLLARS and 00/100 DOLLARS (\$1,464,455.00)** as part of the Construction Services for the Longs Peak Drive Water and Sewer Project, # 21-LONGS-01 (the "Project"); and

WHEREAS, Section 7 of the Agreement requires that any amendment to the Agreement be in writing and signed by the Parties; and

WHEREAS, the contractor requires an amendment to extend the term of the contract until April 30, 2022 at no increase to the total not-to-exceed contract amount of **One Million Four Hundred Sixty-Four Thousand Four Hundred Fifty-Five DOLLARS and 00/100 DOLLARS (\$1,464,455.00)** and

WHEREAS, the Parties desire to enter into this First 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 the Original Agreement with this amendment.
4. **Contract Sum and Payment.** There is no change to the contract price of the Original Agreement with this amendment.
5. **Term.** Section 4.1 of the Original Agreement, entitled "Term," 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 April, 2022**, 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 First Amendment.
7. **Conflict.** This First Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this First 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 First Amendment shall control.
8. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this First Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this First 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 First Amendment to Professional Services Agreement, Project: *Design Services for Stormwater Improvements* 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 First Amendment.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

SIGNATURE PAGE FOLLOW

THIS FIRST AMENDMENT TO THE CONSTRUCTION AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS, COLORADO:

Approval by:

By: [Signature]
Victoria Simonsen, Town Administrator

Date of execution: 2/15, 2022

ATTEST:

Marissa Davis
~~Dolores M. Vasquez, CMG, Town Clerk~~
Marissa Davis, Deputy Town Clerk

DURAN EXCAVATION INC

By: [Signature]

Printed name: Josh Duran

Its: Project Manager

STATE OF Colorado)
COUNTY OF Weld) ss.

The foregoing First Amendment to the Construction Agreement was acknowledged before me
this 15th day of February, 2022, by Josh Duran as Project Manager of
Duran Excavating, Inc. a Corp.

Witness my hand and official seal
My commission expires: 6/30/22
[Signature]
Notary Public
(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))



