

Town of Lyons, Colorado

**FIRST AMENDMENT TO
CONSTRUCTION AGREEMENT WITH
NETWORK INFRASTRUCTURE CONSTRUCTION COMPANY, DBA, "NICX"**

**Project/Services Name: GOCO Black Bear Hole & 2nd Ave Trailhead Project
Project #: 21-BBH2NDAveTH-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 Network Infrastructure Construction Company, DBA "NICX", whose address is 12835 US Highway 285, Conifer, CO 80433 (the "Contractor"). The Town and Contractor may be referred to collectively as the "Parties" or each individually as "Party".

WITNESSETH

WHEREAS, pursuant to Resolution 2022-04, the Town and Contractor entered into that certain Construction Agreement dated January 20, 2022 ("Original Agreement") for the Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **Three Hundred Fifty-Five Thousand, Three Hundred Twenty-Three Dollars and Seventy-Four Cents (\$355,232.74)**; as part of the Construction Services for the GOCO Black Bear Hole & 2nd Ave Trailhead Project, Project # 21-BBH2NDAveTH-01 (the "Project"); and

WHEREAS, Section 7.00 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 add Minor Contract Revisions into the contract which should have been incorporated into the Original Agreement at a 10% increase to the original bid adding **Thirty-Five Thousand Five Hundred Twenty-Three Dollars and Twenty-Seven Cents (\$35,523.27)** for a total not-to-exceed contract amount of **Three Hundred Ninety Thousand, Seven Hundred Fifty-Six Dollars and One Cent (\$390,756.01)** ("First Amendment"); 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.** The Scope and Fee is updated with this amendment to include Minor Contract Revisions.
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 **Three Hundred Ninety Thousand, Seven Hundred Fifty-Six Dollars and One Cent (\$390,756.01)** subject to adjustment as provided by the Contract Documents ("Contract Price").

5. **Term.** There is no change to the Term of the Original Agreement.
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 the Construction Agreement, Project: Construction Services for the GOCO Black Bear Hole & 2nd Ave Trailhead Project, 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.

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SIGNATURE PAGE FOLLOW

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

TOWN OF LYONS, COLORADO:

ATTEST:

Approval by:

Dolores M. Vasquez, CMC, Town Clerk

By: _____
Nicholas Angelo, Mayor

Date of execution: _____, 2022

**NETWORK INFRASTRUCTURE
CONSTRUCTION COMPANY, dba "NICX"**

By: _____

Printed name: _____

Its: _____

STATE OF)
COUNTY OF) ss.

The foregoing First 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)))

EXHIBIT A