

**TOWN OF LYONS, COLORADO  
RESOLUTION 2021-01**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO RATIFYING THE FIRST AND  
SECOND AMENDMENTS TO THE CONSTRUCTION AGREEMENT WITH DAVEY TREE  
EXPERT COMPANY FOR 2<sup>ND</sup> AVENUE BRIDGE PROJECT**

**WHEREAS**, the Town of Lyons ("Town") has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

**WHEREAS**, the Town has obtained funding for the Project from the Federal Emergency Management Agency (FEMA); and

**WHEREAS**, pursuant to Resolution 2020-75, the Town and Davey Tree Expert Company ("Contractor") entered into that certain Construction Agreement, Project # 20-2AVE-BR-01, dated May 4, 2020 for Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **ONE THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$1,800.00)** ("Original Agreement") as part of the 2<sup>nd</sup> Avenue Bridge Project (the "Project"); and

**WHEREAS**, Section 7.00 of the Original Agreement allows for modifications to the contract beyond that described in the Original Agreement in a separate agreement signed by both the Parties; and

**WHEREAS**, the Town's Purchasing Policies allow the Town Administrator to authorize and sign amendments to construction contracts under \$10,000; and

**WHEREAS** the Contractor and the Town Administrator have executed an amendment to the Original Agreement in order to extend the contract term to July 31, 2020 due to delays for no additional cost to the total contract price of **ONE THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$1,800.00)** ("First Amendment"); and

**WHEREAS** the Contractor and the Town Administrator have executed an amendment to the Original Agreement in order to add scope and services to prune and remove trees for an increase to the contract by **THREE HUNDRED FORTY-FIVE DOLLARS AND NO CENTS (\$345.00)** for a total not-to-exceed contract price of **TWO THOUSAND ONE HUNDRED FORTY-FIVE DOLLARS AND NO CENTS (\$2,145.00)** ("Second Amendment"); and

**WHEREAS**, the Town Board of Trustees desires to ratify the First and Second Amendments in substantially the form attached hereto as **Exhibits 1 and 2** for the purpose of entering the Amendments into the permanent Town record;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO:**

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board of Trustees hereby:

- (a) Ratifies the First and Second Amendments to the Original Agreement in

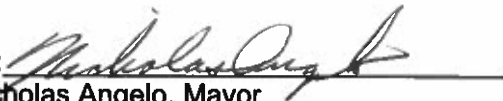
substantially the form attached as Exhibits 1 and 2.

(b) Authorizes the Town Administrator and the Town Attorney, in consultation with the Mayor, to make such changes as may be necessary to correct any non-material errors or language in the Original Agreement that does not increase the obligations of the Town.

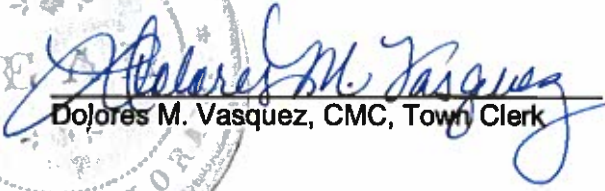
Section 3. This Resolution shall take effect immediately upon adoption.


**ADOPTED THIS 4<sup>th</sup> DAY OF JANUARY, 2021.**

TOWN OF LYONS

By:   
Nicholas Angelo, Mayor

ATTEST:

  
Dolores M. Vasquez, CMC, Town Clerk



**EXHIBIT 1 –  
DAVEY TREE EXPERT COMPANY  
Amendment 1**

**Town of Lyons, Colorado**

**FIRST AMENDMENT TO  
CONSTRUCTION AGREEMENT WITH DAVEY TREE EXPERT COMPANY, INC.**

**Project Name: Tree Removal for 2<sup>nd</sup> Avenue Bridge Project  
Project #: 20-2AVE-BR-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 Davey Tree Expert Company with offices at 6900 W. 117<sup>th</sup> Ave., Suite 100, Broomfield, CO 80020 (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 2020-75, the Town and Contractor entered into that certain Construction Agreement, Project # 20-2AVE-BR-01, dated May 4, 2020 ("Original Agreement") for Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **ONE THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$1,800.00)** as part of the 2<sup>nd</sup> Avenue Bridge Project (the "Project"); and

**WHEREAS**, the Town has obtained funding from the Federal Emergency Management Agency for this Project; and

**WHEREAS**, Section 7.00 of the Original Agreement allows for modifications to the contract beyond that described in the Original Agreement in a separate agreement signed by both the Parties; and

**WHEREAS**, the Contractor requires an amendment to the Original Agreement in order to extend the contract term to July 31, 2020 due to delays for no additional cost to the total contract price of **ONE THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$1,800.00)** ("**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.** There is no change to the original Scope of Work as described in the contract documents.

4. **Contract Sum and Payment.** There is no change to the contract price.
5. **Term.** Section 3.00 of the 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 31<sup>st</sup> day of July 2020**, 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.

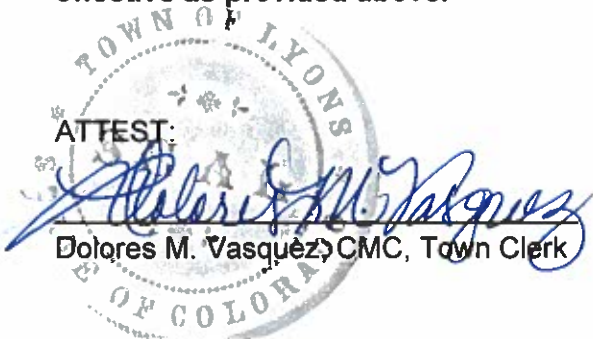
IN WITNESS WHEREOF, the Parties have executed this First Amendment to Construction Agreement, Project/Service: 2<sup>nd</sup> Avenue Bridge Project, 20-2AVE-BR-01, to be effective as of the date of mutual execution by the Parties. By the signature of its representatives below, each Party affirms that it has taken all necessary action to authorize said representative to execute this First Amendment.

*REMAINDER OF PAGE LEFT INTENTIONALLY BLANK*

*SIGNATURE PAGE FOLLOWS*

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

ATTEST:



Dolores M. Vasquez, CMC, Town Clerk

TOWN OF LYONS, COLORADO:

Approval by:

By: Victoria Simonsen  
Victoria Simonsen, Town Administrator

DAVEY TREE EXPERT COMPANY:

By: DAVID KALYAN DISTRICT MGR.

Printed name: DAVID KALYAN

Its: DISTRICT MANAGER

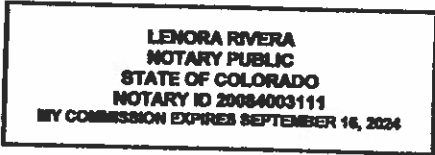
Date of execution: Nov. 12<sup>th</sup>, 2020

STATE OF )  
COUNTY OF ) ss.

The foregoing First Amendment to the Construction Agreement was acknowledged before me this 12<sup>th</sup> day of Nov, 2020, by Dave Kalyan as District manager of Davey Tree Expert Company, a \_\_\_\_\_.

Witness my hand and official seal,  
My commission expires: 9/16/2024

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



**EXHIBIT 2 –  
DAVEY TREE EXPERT COMPANY  
Amendment 2**

**Town of Lyons, Colorado**

**SECOND AMENDMENT TO  
CONSTRUCTION AGREEMENT WITH DAVEY TREE EXPERT COMPANY, INC.**

**Project Name: Tree Removal for 2<sup>nd</sup> Avenue Bridge Project  
Project #: 20-2AVE-BR-01**

This SECOND AMENDMENT TO CONSTRUCTION AGREEMENT ("Second 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 Davey Tree Expert Company with offices at 6900 W. 117<sup>th</sup> Ave., Suite 100, Broomfield, CO 80020 (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 2020-75, the Town and Contractor entered into that certain Construction Agreement, Project # 20-2AVE-BR-01, dated May 4, 2020 ("Original Agreement") for Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **ONE THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$1,800.00)** as part of the 2<sup>nd</sup> Avenue Bridge Project (the "Project"); and

**WHEREAS**, the Town has obtained funding from the Federal Emergency Management Agency for this Project; and

**WHEREAS**, Section 7.00 of the Original Agreement allows for modifications to the contract beyond that described in the Original Agreement in a separate agreement signed by both the Parties; and

**WHEREAS**, pursuant to the amendment provisions of the Agreement, the Parties entered into that certain **First Amendment** to Construction Agreement dated November 12, 2020 in order to extend the contract term to July 31, 2020 due to delays for no additional cost to the total contract price; and

**WHEREAS**, the Contractor requires another amendment to the Original Agreement in order to add scope and services to prune and remove trees for an increase to the contract by **THREE HUNDRED FORTY-FIVE DOLLARS AND NO CENTS (\$345.00)** for a total not-to-exceed contract price of **TWO THOUSAND ONE HUNDRED FORTY-FIVE DOLLARS AND NO CENTS (\$2,145.00)** ("**Second Amendment**"); 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** 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 the documents attached hereto as **Exhibit A** to this Second 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: **TWO THOUSAND ONE HUNDRED FORTY-FIVE DOLLARS AND NO CENTS (\$2,145.00)** subject to adjustment as provided by the Contract Documents ("Contract Price").

5. **Term.** There is no change to the term of the Agreement with this amendment.
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/Service: 2<sup>nd</sup> Avenue Bridge Project, 20-2AVE-BR-01, 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*

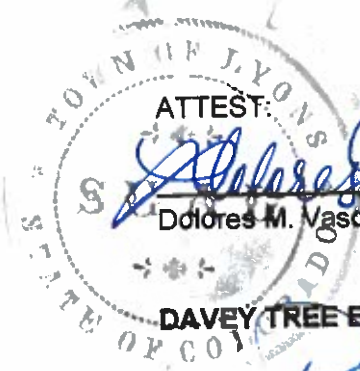
THIS SECOND AMENDMENT TO THE CONSTRUCTION AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS, COLORADO:

Approval by:

By: *Victoria Simonsen*  
Victoria Simonsen, Town Administrator

Date of execution: 12/9/2020



ATTEST:

*Dolores M. Vasquez*  
Dolores M. Vasquez, CMC, Town Clerk

DAVEY TREE EXPERT COMPANY:

By: *David Kalyan*

Printed name: DAVID KALYAN

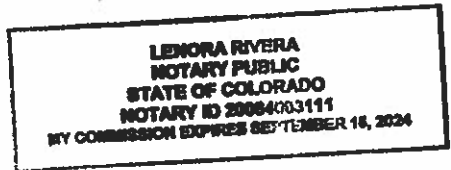
Its: DISTRICT MANAGER

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

The foregoing Second Amendment to the Construction Agreement was acknowledged before me this 3<sup>rd</sup> day of December 2020, by Dave Kalyan as District Manager of Davey Tree Expert Company, a \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires: 9/16/2024 *Lenora Rivera*

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



**EXHIBIT A**  
**Change Order**

# EXHIBIT A

## Davey Tree Expert Company

*Proven Solutions for a Growing World*

Town of Lyons  
Attn. Tracy Sanders  
[tsanders@townoflyons.com](mailto:tsanders@townoflyons.com)

August 03, 2020

**ADDENDUM TO: 2<sup>ND</sup> AVENUE BRIDGE TREE REMOVAL PROJECT (#20-2AVE-BR-01)**

**ADDITIONAL WORK DESCRIPTION:**

Prune 2 Crabapples south of original project spec's for Utility Clearance  
Remove additional Cottonwood stem in clump of Cottonwood and Willow north of bridge for  
Utility Clearance  
-Clean up all debris Additional Cost \$345.00

**Breakdown:**

\*Bucket Truck, Chip Truck, 3 Man Crew at \$230.00 hr. for 1.5 hours

If you have any other questions or I can be of further assistance, please feel free to contact me  
at 303-449-2525 ex. 5307 or [jdavid.kalyan@davey.com](mailto:jdavid.kalyan@davey.com).

Best Regards,

David Kalyan  
District Manager, Boulder #138531  
Davey Tree Expert Company  
ISA Certified Arborist #RM0109A  
TCIA-CTSP #2763