

**TOWN OF LYONS, COLORADO  
RESOLUTION 2020-83**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO APPROVING  
THE SIXTH AMENDMENT TO THE CONSTRUCTION AGREEMENT  
WITH WALSH CONSTRUCTION INC.  
FOR BOHN PARK PHASE II - PROJECT: PW20E-2**

**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 secured funding for the Project from the Federal Emergency Management Agency ("FEMA"); and

**WHEREAS**, pursuant to Resolution 2017-146A, the Town and Contractor entered into that certain Construction Agreement dated December 5, 2017 ("Original Agreement") for Contractor to provide construction work for the Lyons Bohn Park Flood Recovery Project, Phase II (PW20E-2) as specified in the Contract Documents ("Project"), for a not-to-exceed cost of **TWO MILLION SIX HUNDRED FIFTY-FOUR THOUSAND FIFTY-TWO DOLLARS AND FIFTY CENTS (\$2,654,052.50)**; and

**WHEREAS**, Section 5.00 of the Original Agreement permits the Town to adjust the Contract Price, and Section 7.00 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**, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **First Amendment** to the Original Agreement dated October 22, 2018 to extend the contract term to September 1, 2019 at no increase to the contract amount; and

**WHEREAS**, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Second Amendment** to the Original Agreement dated April 19, 2019 to account for the project being put on hold due to environmental compliance and in order to remobilize at an adjusted fair market value and to add additional scope of work including the half pipe and skate plaza for an increase to the contract amount by **ONE HUNDRED ELEVEN THOUSAND SIX HUNDRED TWENTY FIVE DOLLARS AND SIXTY-THREE CENTS (\$111,625.63)**; and

**WHEREAS**, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Third Amendment** to the Original Agreement dated September 16, 2019 to extend the contract substantial completion date through December 31, 2019 at no increase to the contract amount; and

**WHEREAS**, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Fourth Amendment** to the Original Agreement dated November 18, 2019 to extend the contract substantial completion date through May 30, 2020 at no increase to the contract amount; and

**WHEREAS**, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Fifth Amendment** to the Original Agreement dated April 20,

2020 for additional materials to meet the 2015 building code adopted by the Town of Lyons in 2018, and to increase the size of the infield at an increase to the contract amount by **FIFTY-NINE THOUSAND TWO HUNDRED NINE DOLLARS AND TWENTY CENTS (\$59,209.20)**; and

**WHEREAS**, the Contractor requires another amendment to the Agreement to extend the contract end date to August 1, 2020 due to construction delays at no increase to the total not-to-exceed contract amount of **TWO MILLION EIGHT HUNDRED TWENTY-FOUR THOUSAND EIGHT HUNDRED EIGHTY-SEVEN DOLLARS AND THIRTY-THREE CENTS (\$2,824,887.33)** ("**Sixth Amendment**"); and

**WHEREAS**, the Town Board of Trustees desires to approve the Sixth Amendment to the Construction Agreement with the Contractor and authorizes the Mayor to execute such Sixth Amendment on behalf of the Town.

**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 Town Board of Trustees hereby:

- (a) Approves the Sixth Amendment in substantially the form attached as in Exhibit 1.
- (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 Sixth Amendment that does not increase the obligations of the Town.
- (c) Authorizes the Mayor or Mayor Pro Tem to execute the complete Agreement on behalf of the Town after Contractor has signed the Construction Agreement and the Town Clerk to attest to such signature.

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

**ADOPTED this 18<sup>th</sup> day of MAY, 2020**

TOWN OF LYONS

By:   
Nicholas Angelo, Mayor



  
Dolores M. Vasquez, CMC, Town Clerk

**EXHIBIT 1**

**Walsh Construction, Inc.  
Amendment 6**

**TOWN OF LYONS, COLORADO**

**SIXTH AMENDMENT TO CONSTRUCTION AGREEMENT**

**Project Name: 20E-2 Bohn Park Phase II**

This **SIXTH AMENDMENT TO CONSTRUCTION AGREEMENT** ("SIXTH 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 **WALSH CONSTRUCTION, INC.**, a Colorado corporation whose address is 8135 Open View Place, Loveland, Colorado 80537 (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 2017-146A, the Town and Contractor entered into that certain Construction Agreement dated December 5, 2017 ("Original Agreement") for Contractor to provide construction work for the Lyons Bohn Park Flood Recovery Project, Phase II (No. PW: 20E-2) as specified in the Contract Documents ("Project"), for a not-to-exceed cost of **TWO MILLION SIX HUNDRED FIFTY-FOUR THOUSAND FIFTY- TWO DOLLARS AND FIFTY CENTS (\$2,654,052.50)**; and

**WHEREAS**, Section 5.00 of the Original Agreement permits the Town to adjust the Contract Price, and Section 7.00 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**, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **First Amendment** to the Original Agreement dated October 22, 2018 to extend the contract term to September 1, 2019 at no increase to the contract amount; and

**WHEREAS**, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Second Amendment** to the Original Agreement dated April 19, 2019 to account for the project being put on hold due to environmental compliance and in order to remobilize at an adjusted fair market value and to add additional scope of work including the half pipe and Skate Plaza for an increase to the contract amount by **ONE HUNDRED ELEVEN THOUSAND SIX HUNDRED TWENTY FIVE DOLLARS AND SIXTY-THREE CENTS (\$111,625.63)**; and

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**WHEREAS**, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Fourth Amendment** to the Original Agreement dated November 18, 2019 to extend the contract substantial completion date through May 30, 2020 at no increase to the contract amount; and

**WHEREAS**, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Fifth Amendment** to the Original Agreement dated April 20, 2020 for additional materials to meet the 2015 building code adopted by the Town of Lyons in 2018, and to increase the size of the infield at an increase to the contract amount by **FIFTY-NINE THOUSAND TWO HUNDRED NINE DOLLARS AND TWENTY CENTS (\$59,209.20)**; and

**WHEREAS**, the Contractor requires another amendment to the Agreement to extend the contract end date to August 1, 2020 due to construction delays at no increase to the total not-to-exceed contract amount of **TWO MILLION EIGHT HUNDRED TWENTY-FOUR THOUSAND EIGHT HUNDRED EIGHTY-SEVEN DOLLARS AND THIRTY-THREE CENTS (\$2,824,887.33)** ("**Sixth Amendment**"); and

**NOW, THEREFORE**, for sufficient consideration, it is agreed by and between the Town and the Contractor that the Original 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 Work with this Sixth Amendment.
4. **Contract Sum and Payment.** There is no change to the contract price with this Sixth Amendment.
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 that have been completed) or **11:59 P.M. on the 1<sup>st</sup> day of August, 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 Sixth Amendment.

7. **Conflict.** This Sixth Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this Sixth 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 Sixth Amendment shall control.
  
8. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this Sixth Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this Sixth 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 Sixth Amendment to the Construction Agreement, 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 Sixth Amendment.

*SIGNATURE PAGE FOLLOWS*

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

TOWN OF LYONS, COLORADO:

ATTEST:

Approval by:

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

By: *Nicholas Angelo*  
Nicholas Angelo, Mayor

WALSH CONSTRUCTION, INC.:

By: *Brian Becker*

Printed name: BRIAN BECKER

Its: CONSTRUCTION MANAGER

Date of execution: MAY 19<sup>th</sup>, 2020

STATE OF Colorado )

COUNTY OF Larimer ) ss.

The foregoing Sixth Amendment to Professional Services Agreement was acknowledged before me this 19<sup>TH</sup> day of May, 2020, by Brian Becker as Project Manager of Walsh Construction, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: 10/10/22

*Kathleen M. Harrison*

Notary Public

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

**KATHLEEN M. HARRISON**  
Notary Public  
State of Colorado  
Notary ID # 20184039913  
My Commission Expires 10-10-2022