

**TOWN OF LYONS, COLORADO  
RESOLUTION 2020-113**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO RATIFYING THE FIRST  
AMENDMENT TO THE CONSTRUCTION AGREEMENT WITH NA ALI'I CONSULTING AND  
SALES, LLC FOR THE ST. VRAIN CREEK RECOVERY 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 U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant - Disaster Recovery ("CDBG-DR") program under Boulder County Collaborative under sub-allocation INF-00066; and

**WHEREAS**, pursuant to Resolution 2020-39, the Town and Na Ali'i Consulting and Sales, LLC ("Contractor") entered into that certain Construction Agreement, Project/Service: St. Vrain Creek Recovery, 20-SVCR-02, executed March 23, 2020 ("Original Agreement") for Contractor to perform the Work as specified in the Contract Documents for a not-to-exceed cost of **THREE HUNDRED FIFTY-SIX THOUSAND FOUR HUNDRED FIFTY-EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$356,458.25)**; 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/or for date extensions; and

**WHEREAS**, the Contractor and the Town Administrator have executed an amendment to the Original Agreement in order to extend the contract term to October 31, 2020 due to construction delays within the creek channel caused by spring run-off for no additional cost to the total contract price of **THREE HUNDRED FIFTY-SIX THOUSAND FOUR HUNDRED FIFTY-EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$356,458.25)**; ("First Amendment"); and

**WHEREAS**, the Town Board of Trustees desires to ratify the First Amendment in substantially the form attached hereto as **Exhibit 1** for the purpose of entering the Amendment 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 Amendment to the Original Agreement in substantially the form attached as **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 Original Agreement that does not increase the obligations of the Town.

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

**ADOPTED THIS 20<sup>th</sup> DAY OF JULY, 2020.**

TOWN OF LYONS

By: Nicholas Angelo  
Nicholas Angelo, Mayor

ATTEST:  
Dolores M. Vasquez  
Dolores M. Vasquez, CMC, Town Clerk

**EXHIBIT 1:**

**NA ALI'I CONSULTING & SALES, LLC  
Amendment 1**

**Town of Lyons, Colorado**

**FIRST AMENDMENT TO  
CONSTRUCTION AGREEMENT WITH NA ALI'I CONSULTING AND SALES, LLC**

**Project Name: St. Vrain Creek Recovery  
Project #: 20-SVCR-02**

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 NA ALI'I CONSULTING AND SALES, LLC with offices at 12295 W. 48th Avenue, Wheat Ridge, CO 80033 (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 2020-39, the Town and Contractor entered into that certain Construction Agreement, Project/Service: St. Vrain Creek Recovery, 20-SVCR-02, executed March 23, 2020 ("Original Agreement") for Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **THREE HUNDRED FIFTY-SIX THOUSAND FOUR HUNDRED FIFTY-EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$356,458.25)**; and

**WHEREAS**, the Town has obtained funding for the St. Vrain Creek Recovery Project from the Department of Housing and Urban Development Community Development Block Grant Disaster Recovery (CDBG-DR) under Boulder County Collaborative Sub-allocation INF-00066; 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 October 31, 2020 due to construction delays within the creek channel caused by spring run-off for no additional cost to the total contract price of **THREE HUNDRED FIFTY-SIX THOUSAND FOUR HUNDRED FIFTY-EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$356,458.25)**; ("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 October, 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: Emergency Siren System Expansion, 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.



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

TOWN OF LYONS, COLORADO:

Approval by:

By: *Victoria Simonsen*  
Victoria Simonsen, Town Administrator

NA ALI'I CONSULTING AND SALES.:

By: *Cariann Ah Loo*  
Digitally signed by Cariann Ah Loo  
Date: 2020.08.14 07:19:18 -10'00'

Printed name: Cariann Ah Loo

Its: President

Date of execution: August 14, 2020

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

The foregoing First Amendment to the Construction Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of Na Ali'i Consulting & Sales, a \_\_\_\_\_ Company.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

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