

**TOWN OF LYONS, COLORADO
RESOLUTION 2020-140**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO APPROVING THE NINTH
AMENDMENT TO THE CONSTRUCTION AGREEMENT WITH WALSH CONSTRUCTION INC.
FOR BOHN PARK PHASE II**

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, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Sixth Amendment** to the Original Agreement dated May 19, 2020 to extend the contract end date to August 1, 2020 due to construction delays at no increase to the contract amount; and

WHEREAS, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Seventh Amendment** to the Original Agreement to add scope for a concrete dugout; intake structure; trail gates and fence entrance; a still well, piping and restoration; electrical for the pump house, and the construction of an interpretive sign and has submitted Change Order Proposals for a total increased amount of **SEVENTY-SIX THOUSAND NINE HUNDRED FORTY-FIVE DOLLARS AND SEVENTY-SIX CENTS (\$76,945.76)**; and

WHEREAS, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Eighth Amendment** to the Original Agreement to extend the contract term date until September 15, 2020 due to delays and no additional cost to the contract; and

WHEREAS, the Contractor requires another amendment to add scope for irrigation quantity overruns and additional sandstone, cobble and sod and has submitted a Change Order Proposal for **SEVENTY THOUSAND FIVE HUNDRED SEVENTY-ONE DOLLARS AND THIRTY-TWO CENTS (\$70,571.32)** for a total not-to-exceed contract amount of **TWO MILLION NINE HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED FOUR DOLLARS AND FORTY-ONE CENTS (\$2,972,404.41)** ("**Ninth Amendment**");

WHEREAS, the Town Board of Trustees desires to approve the Ninth Amendment to the Construction Agreement with the Contractor and authorizes the Mayor to execute such Ninth 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 Ninth 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 Ninth 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 8th DAY of SEPTEMBER 2020

TOWN OF LYONS

By: Nicholas Angelo
Nicholas Angelo, Mayor

ATTEST:

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

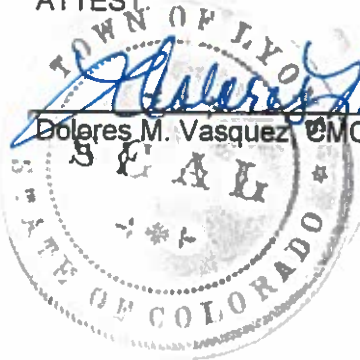
The seal of the State of Colorado is circular, featuring the word "SEAL" in the center, surrounded by "STATE OF COLORADO" and "TOWN OF LYONS" at the top. It includes decorative stars and a central emblem.

EXHIBIT 1

**Walsh Construction, Inc.
Amendment 9**

TOWN OF LYONS, COLORADO

**NINTH AMENDMENT TO CONSTRUCTION AGREEMENT
Project Name: 20E-2 Bohn Park Phase II**

This NINTH AMENDMENT TO CONSTRUCTION AGREEMENT ("NINTH 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

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, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Sixth Amendment** to the Original Agreement dated May 19, 2020 to extend the contract end date to August 1, 2020 due to construction delays at no increase to the contract amount; and

WHEREAS, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Seventh Amendment** to the Original Agreement to add scope for a concrete dugout; intake structure; trail gates and fence entrance; a still well, piping and restoration; electrical for the pump house, and the construction of an interpretive sign and has submitted Change Order Proposals for a total increased amount of **SEVENTY-SIX THOUSAND NINE HUNDRED FORTY-FIVE DOLLARS AND SEVENTY-SIX CENTS (\$76,945.76)**; and

WHEREAS, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Eighth Amendment** to the Original Agreement to extend the contract term date until September 15, 2020 due to delays and no additional cost to the contract; and

WHEREAS, the Contractor requires another amendment to add scope for irrigation quantity overruns and additional sandstone, cobble and sod and has submitted a Change Order Proposal as shown in **Exhibit A** for **SEVENTY THOUSAND FIVE HUNDRED SEVENTY-ONE DOLLARS AND THIRTY-TWO CENTS (\$70,571.32)** for a total not-to-exceed contract amount of **TWO MILLION NINE HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED FOUR DOLLARS AND FORTY-ONE CENTS (\$2,972,404.41)** ("**Ninth Amendment**");

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.** 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 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 MILLION NINE HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED FOUR DOLLARS AND FORTY-ONE CENTS (\$2,972,404.41)** subject to adjustment as provided by the Contract Documents ("Contract Price").

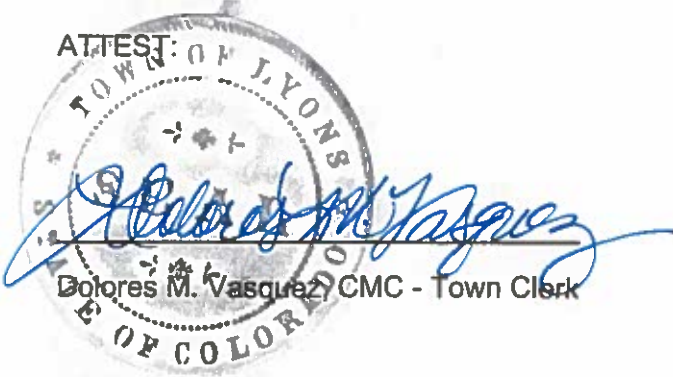
5. **Term.** There is no change to the Term of the Agreement with this amendment.
6. **Force and Effect of Amendment.** Notwithstanding anything in the Original Agreement to the contrary, the Original Agreement shall be amended such that all references in the Original Agreement to "Agreement" shall refer to the Original Agreement as amended by this Ninth Amendment.
7. **Conflict.** This Ninth Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this Ninth 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 Ninth Amendment shall control.
8. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this Ninth Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this Ninth 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 Ninth 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 Ninth Amendment.

SIGNATURE PAGE FOLLOWS

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

TOWN OF LYONS, COLORADO:



Approval by:

By: Nicholas Angelo
Nicholas Angelo, Mayor

WALSH CONSTRUCTION, INC.:

By: Brian Becker

Printed name: BRIAN G. BECKER

Its: CONSTRUCTION MANAGER

Date of execution: September 10, 2020

STATE OF Colorado)

COUNTY OF Larimer) ss.

The foregoing Ninth Amendment to Professional Services Agreement was acknowledged before me this 10th day of September, 2020, by Brian Becker as Construction Manager of Walsh Construction, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: 10/10/22.

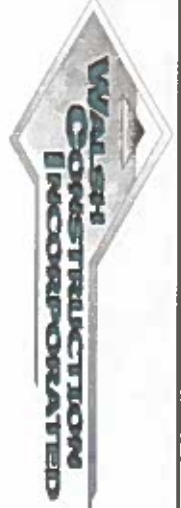
KATHLEEN M. HARRISON
Notary Public
State of Colorado
Notary ID # 20184039913
My Commission Expires 10-10-2022

Kathleen M Harrison

Notary Public

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

EXHIBIT A



CHANGE ORDER PROPOSAL

JOB NAME: Bohn Park Phase 2
 JOB NUMBER: 118-17
 ARCHITECT: DHM Design

DATE: 5/28/2020
 WCP# NUMBER: 118-17
 PROPOSAL NUMBER: COP 027 - Irrigation and Sandstone Overruns

DESCRIPTION	QTY	UNIT	U.P.L.	LABOR	U.P.M.	MATERIAL	U.P.E.	EQUIPMENT	U.P.C.	COMPLETE	TOTAL
Irrigation quantity overruns at Ballfields and Skatepark				\$ -		\$ -		\$ -		\$ -	\$ -
6" Gear driven rotor with nozzle and swing joint assembly (67sp + 84 BF)	151	EA		\$ -		\$ -		\$ -	52.67	\$ 7,953.17	\$ 7,953.17
2" Control valve with gravel sump, valve box	2	EA		\$ -		\$ -		\$ -	590.01	\$ 1,180.02	\$ 1,180.02
1" Class 200 BE PVC lateral with fittings (660sp + 720BF)	1380	LF		\$ -		\$ -		\$ -	6.01	\$ 8,293.80	\$ 8,293.80
1-1/4" Class 200 BE PVC lateral with fittings (740sp + 580BF)	1320	LF		\$ -		\$ -		\$ -	6.54	\$ 8,632.80	\$ 8,632.80
1-1/2" Class 200 BE PVC lateral with fittings (340sp + 580BF)	920	LF		\$ -		\$ -		\$ -	6.75	\$ 6,210.00	\$ 6,210.00
2" Class 200 BE PVC lateral with fittings (200sp + 0BF)	200	LF		\$ -		\$ -		\$ -	7.05	\$ 1,410.00	\$ 1,410.00
2-1/2" Class 200 BE PVC lateral with fittings (320sp + 80BF)	400	LF		\$ -		\$ -		\$ -	7.66	\$ 3,064.00	\$ 3,064.00
Sandstone Seatwall at Skatepark & Pavilion				\$ -		\$ -		\$ -		\$ -	\$ -
Procure sandstone seatwall from Blue Min Stone	28.5	Tons		\$ -		\$ -		\$ -		\$ -	\$ -
Installation of seatwall 2 guys 2.5 days (9 hr/day) + 1/2 day Ryan to pick out	49	HRS	50.00	\$ 2,450.00	70.00	\$ 1,995.00		\$ -	50.00	\$ 2,450.00	\$ 4,900.00
IF hills & out at contract on shing for 1 yr's Sandstone Seatwall	148	LF		\$ -		\$ -		\$ -	145.00	\$ 2,170.00	\$ 2,170.00
Cobble on Slope of 1/4 Pipe at Skatepark				\$ -		\$ -		\$ -		\$ -	\$ -
Provide labor to install cobble salvaged from site (4 guys, 3 days, 9hrs/day)	108	HRS	50.00	\$ 5,400.00		\$ -		\$ 2,700.00		\$ 2,700.00	\$ 8,100.00
1/4" Natural coal #1 purchased 5-1/2" river cobble for approx 20000 SF of coverage	125	ton		\$ -		\$ -		\$ 80.00		\$ 10,000.00	\$ 10,000.00
Sod at Skatepark				\$ -		\$ -		\$ -		\$ -	\$ -
Additional sod area around skatepark (27,500 SF estimated)	27500	SF		\$ -		\$ -		\$ -	0.48	\$ 13,200.00	\$ 13,200.00
Additional sod area around ballfields (4 locations - 11,111 SF estimated)	11111	SF		\$ -		\$ -		\$ -	0.48	\$ 5,333.28	\$ 5,333.28
TOTALS				\$ 7,850.00		\$ 1,995.00		\$ 5,150.00		\$ 86,447.07	\$ 70,272.07
WCI OH & P:				0% \$ -		15% \$ 299.25		0% \$ -		0% \$ -	\$ 299.25
GRAND TOTAL:											\$ 70,571.32

ADDITIONAL CONTRACT TIME: TBD DAYS

APPROVED BY: WALSH CONSTRUCTION, INC.

APPROVED BY: OWNER/ARCHITECT