

**Town of Lyons, Colorado
FIFTH AMENDMENT TO
DISASTER RECOVERY SERVICES AGREEMENT**

**INDEPENDENT CONTRACTOR
2ND Avenue Bridge Project Design**

THIS FIFTH AMENDMENT TO DISASTER RECOVERY SERVICES AGREEMENT

(“Amendment”) is entered into by and between the **TOWN OF LYONS**, a statutory town of the State of Colorado, with offices at 432 5th Avenue, Lyons, Colorado, 80540 (the “**Town**”), and **LORIS AND ASSOCIATES, INC.**, a Division of **OTAK, Inc.**, having a principal office address of 100 Superior Plaza Way, Suite 220, Superior, CO 80027-1974 (the “**Contractor**”). The Town and the Contractor are individually referred to herein as a “Party” and collectively referred to herein as the “Parties.”

RECITALS AND REPRESENTATIONS

WHEREAS, the Parties entered into that certain Disaster Recovery Services Agreement dated July 6, 2015 and executed by the Parties on July 10, 2015 (the “Agreement”); and

WHEREAS, the Agreement required the Contractor to design the capital improvements and other improvements as required for the 2nd Avenue Bridge (“Capital Improvements”) for the not-to-exceed amount of \$211,292.00, subject to the approval of the Federal Emergency Management Agency (“FEMA”); and

WHEREAS, to compensate the Contractor for re-designing the mitigation measures rejected by FEMA, the Parties modified the Agreement with the First Amendment to Disaster Recovery Services Agreement to increase the not-to-exceed amount of the Agreement from Two Hundred Eleven Thousand Two Hundred Ninety-Two Dollars (\$211,292.00) to Two Hundred Thirty-One Thousand Two Hundred Ninety-Two Dollars (\$231,292.00); and

WHEREAS, FEMA did not approve Contractor’s 30% redesign of mitigation measures as proposed due to insufficient freeboard, and to secure FEMA’s approval of the proposed mitigation measures, the Town will need to re-submit to FEMA portions of the 30% design FEMA with a revised bridge design, new plans and reports, and other related documents; and

WHEREAS, to compensate the Contractor for re-designing the mitigation measures rejected by FEMA, the Parties modified the Agreement with the Second Amendment to Disaster Recovery Services Agreement to increase the not-to-exceed amount of the Agreement from Two Hundred Thirty-One Thousand Two Hundred Ninety-Two Dollars (\$231,292.00) to Two Hundred Eighty-Three Thousand Four Hundred Ninety-Two Dollars (\$283,492.00); and

WHEREAS, at the Town’s request, Loris has proposed additional services to layout the options for the 2nd Avenue alleyway related to the revised 30% bridge design for the neighbors as an illustration of the proposed access impacts as set forth in Attachment D: Lyons-Capital Improvements and Drainage Design Services – 2nd Ave and Bridge LORIS’ Third Amendment Request Alley Layout Services; and

WHEREAS, to compensate the Contractor for these additional services, the Parties wish to enter into the **THIRD** Amendment to Disaster Recovery Services Agreement to increase the not-to-exceed amount of the Agreement by **One Thousand Seven Hundred Twenty Dollars**

(\$1,720.00) from Two Hundred Eighty-Three Thousand Four Hundred Ninety-Two Dollars (\$283,492.00) to **Two Hundred Eighty-Five Thousand Two Hundred Twelve Dollars (\$285,212.00)**; and

WHEREAS, during the time of delay in the Project's design approval with FEMA, new national legislation was passed in Congress regarding underground utility engineering and safety procedures; and

WHEREAS, in order to ensure the project complies with new 2018 national legislation law SB 18-167 regarding underground utility safety, a subsurface utility engineering (SUE) investigation of the project area must be completed and a report summarizing the findings must be recorded; and

WHEREAS, the Town requested a proposal from the Contractor, with a qualified engineering subcontractor familiar with and working in accordance with the new practices and procedures described in ASCE Publication CI/ASCE 38-02, to perform the required Subsurface Utility Engineering (SUE) investigation and report findings in the project area; and

WHEREAS, the Contractor provided a proposal for these necessary additional services; and

WHEREAS, to compensate the Contractor for these additional services, the Parties wish to enter into the **FOURTH** Amendment to Disaster Recovery Services Agreement to increase the not-to-exceed amount of the Agreement by **FORTY-ONE THOUSAND ONE HUNDRED SIXTY DOLLARS AND NO CENTS (\$41,160.00)** from Two Hundred Eighty-Five Thousand Two Hundred Twelve Dollars (\$285,212.00); to **THREE HUNDRED TWENTY-SIX THOUSAND THREE HUNDRED SEVENTY TWO DOLLARS AND NO CENTS (\$326,372.00)**; and

WHEREAS, during the delay of nearly two years in the project, natural environmental changes occurred within the project area, thus data collected in the area and reported previously needs to be updated; and

WHEREAS, the Town requested a proposal from the Contractor, for an environmental update on the project to meet the requirements of the 404 permit application, which ensures compliance with all State and Federal funding agency's environmental clearance rules and requirements on the Project; and

WHEREAS, the Contractor provided a proposal for these necessary additional services, outlined in **EXHIBIT A- Pinyon Revised Cost & Fee Schedule**; and

WHEREAS, to compensate the Contractor for these additional services, the Parties wish to enter into the **FIFTH** Amendment to Disaster Recovery Services Agreement to increase the not-to-exceed amount of the Agreement by **FOUR THOUSAND EIGHT HUNDRED EIGHTY-NINE DOLLARS AND NO CENTS (\$4,889.00)** from Three Hundred Twenty-Six Thousand Three Hundred Seventy-Two Dollars (\$326,372.00); to **THREE HUNDRED THIRTY-ONE THOUSAND THREE HUNDRED SIXTY- ONE DOLLARS AND NO CENTS (\$331,261.00)**; and

WHEREAS, Section 18 of the Agreement requires that amendments to the Agreement be in writing and signed by both Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties

hereto, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

A. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference as though set forth in full.

B. Amendment to Section 2.A of the Agreement. The second sentence of Section 2.A of the Agreement is hereby amended to read as follows:

“Compensation to be paid hereunder, inclusive of all reimbursable expenses estimated at 1.5% of the total design fee, shall not exceed **THREE HUNDRED THIRTY-ONE THOUSAND THREE HUNDRED SIXTY- ONE DOLLARS AND NO CENTS (\$331,261.00)**; unless such amendment is amended in accordance with the amendment requirements of this Contract.”

C. No Further Amendment. Nothing contained in this Fifth Amendment shall affect any other provisions of the Agreement except as specifically set forth herein. In the event of any conflict between this Fifth Amendment and the Agreement, the terms of this Fifth Amendment shall prevail.

IN WITNESS WHEREOF, the Parties have executed this FIFTH Amendment to this DISASTER RECOVERY SERVICES 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 FIFTH Amendment.

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SIGNATURE PAGE FOLLOWS

TOWN OF LYONS, COLORADO

ATTEST:

Debra K. Anthony, Town Clerk

By: _____
Victoria Simonsen, Town Administrator

LORIS AND ASSOCIATES, INC., a division of Otak Inc.

By: _____

Printed name: _____

Title: _____

STATE OF)
COUNTY OF) ss.

The foregoing Fifth Amendment to the Disaster Recovery Services Agreement was acknowledged before me this ____ day of _____, 2019, 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 –
Pinyon Revised Cost and Fee Schedule