

**Town of Lyons, Colorado**

**FIRST AMENDMENT TO  
CONSTRUCTION AGREEMENT WITH ZAK DIRT, INC.**

**Project/Services Name: Construction for 2<sup>nd</sup> Ave Bridge Replacement Project  
Project #: 2020-2ndAVE-BR-07**

This FIRST AMENDMENT TO PROFESSIONAL SERVICES 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 5<sup>th</sup> Avenue, Lyons, Colorado 80540 (the "Town"), and Zak Dirt, Inc. with offices at 14290 Hilltop Road, Longmont, Colorado 80504 (the "Contractor"). The Town and Contractor may be referred to collectively as the "Parties" or each individually as "Party".

**WITNESSETH**

**WHEREAS**, pursuant to Resolution 2020-132, the Town and Contractor entered into that certain Construction Agreement dated September 21, 2020 ("Original Agreement") for the Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **THREE MILLION TWO HUNDRED NINETY-SIX THOUSAND NINE HUNDRED SIXTY-THREE DOLLARS AND SEVENTY CENTS (\$3,296,963.70.00)**, for Construction Services for the 2<sup>nd</sup> Ave. Bridge Replacement Project, Project # 2020-2ndAVE-BR-07 (the "Project"); and

**WHEREAS**, Sections 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 the work beyond that described in the Original Agreement in a separate agreement signed by both of the Parties prior to the commencement of the additional work; and

**WHEREAS**, the Town has requested that the Contractor add additional scope for the Lyons Valley River Park Stream Maintenance Plan and the Contractor has submitted Change Order 008 – **Exhibit A** with an additional cost of **SEVENTEEN THOUSAND TWO HUNDRED FORTY-FIVE DOLLARS AND NO CENTS (\$17,245.00)** to be added to the Contract 2 budget of the Original Agreement and paid using Town funds; and

**WHEREAS**, the Parties desire to enter into an amendment of the Original Agreement to increase the scope and also to extend the term of the contract until July 31, 2021 for an increase to the Contract Price of **SEVENTEEN THOUSAND TWO HUNDRED FORTY-FIVE DOLLARS AND NO CENTS (\$17,245.00)** as outlined in **Exhibit A** to be paid using Town funds, for a total not-to-exceed contract amount of **THREE MILLION THREE HUNDRED FOURTEEN THOUSAND TWO HUNDRED EIGHT DOLLARS AND SEVENTY CENTS (\$3,314,208.70)** ("**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.** 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 – Change Order 008** to this First 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: **THREE MILLION THREE HUNDRED FOURTEEN THOUSAND TWO HUNDRED EIGHT DOLLARS AND SEVENTY CENTS (\$3,314,208.70)** subject to adjustment as provided by the Contract Documents (“Contract Price”).

5. **Term.** Section 4.1 of the Original Agreement, entitled "Term," 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, 2021**, 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: *Construction Services for the 2<sup>nd</sup> Ave. Bridge Replacement Project, Project # 2020-2ndAVE-BR-07* 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 PROFESSIONAL SERVICES AGREEMENT is executed and made effective as provided above.**

**TOWN OF LYONS, COLORADO:**

ATTEST:

**Approval by:**

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

By: \_\_\_\_\_  
Nicholas Angelo, Mayor

Date of execution: \_\_\_\_\_, 2021

**ZAK DIRT, INC.:**

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF )  
COUNTY OF ) ss.

The foregoing First Amendment to the Construction Agreement was acknowledged before me  
this \_\_\_\_ day of \_\_\_\_\_, 2021, 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 –  
Change Order 008**

# Change Order Request 008



**To:** Tracy Sanders  
 Town of Lyons  
 432 5th Ave. PO Box 49  
 Lyons, CO 80540

**Phone:** 303 823 6622  
**Email:** [tsanders@townoflyons.com](mailto:tsanders@townoflyons.com)

**From:** Ben Jordan  
 Zak Dirt, Inc.  
 14290 Hilltop Rd  
 Longmont, CO 80504

**Phone:** 970-219-9610  
**Email:** [bjordan@zakdirt.com](mailto:bjordan@zakdirt.com)

**Project No:** 2nd Ave Bridge Replacement  
**Job No.** 2020-2ndAVE-BR-03  
**Zak Job No:** 311.21  
**Date:** 03/09/21

**Description of Work:**

Below are the proposed cost to complete the work at the Lyons Valley River Park. The estimated cost of this work is \$17,245.00. Zak Dirt anticipates this work will take 8 working days to complete. All quantities and costs were developed using the Lyons Valley River Park Stream Maintenance Plan dated October 5th 2020. Final as-constructed quantities may vary from the quantities used to generate this cost estimate. Final quantities will be agreed upon by Zak Dirt and the Town of Lyons.

Description	Quantity	Unit	Unit Cost	Total Cost	Mark-Up	Total Price
Mobilization	1	LS	\$2,040.00	\$2,040.00		\$2,040.00
Scour Protection	67	CY	\$115.00	\$7,705.00		\$7,705.00
Reset Boulders Onsite	5	EA	\$195.00	\$975.00		\$975.00
Import Boulders 2nd Ave	43	TN	\$125.00	\$5,375.00		\$5,375.00
Regrade Crusher Fines Trail	1	LS	\$1,150.00	\$1,150.00		\$1,150.00
						<b>\$17,245.00</b>

<b>Grand Total</b>	<b>\$17,245.00</b>
--------------------	--------------------

**From:** Scott Shipley <scott@s2odesign.com>

**Sent:** Wednesday, March 10, 2021 10:50 PM

**To:** Dave Cosgrove <davec@townoflyons.com>

**Cc:** Nathan Werner <nathan@s2odesign.com>; Tracy Sanders <TSanders@townoflyons.com>

**Subject:** RE: Maintenance on drop structures

Dave-

I have been conducting regular inspections of the October and November Holes. As you know, S2o installed scour pads beneath these holes in order to prevent the toe of the structure from being exposed to erosive forces from the high velocity flows at the drop structures. The scour pad at the November Hole in particular, and partially at the October Hole, has settled. This is likely due to erosion in the lower pool (downstream of the scour pads) that has allowed rocks to displace downstream. S2o recommends that the scour pads be restored at both the October and November Holes to their design elevations and configuration as a regular maintenance item. As you recall, this was a maintenance need at the A-Hole prior to the flood (I will conduct inspections at this hole this summer).

The scour pad is a loose arrangement of rocks that are of sufficient size to prevent movement in the presence of high velocity flows. They function in much the same way that riprap works on embankments to prevent flows from eroding the soft soil. The rocks are ungrouted and tend to fall into places where they are needed most (self-healing). From time to time these types of armoring need maintenance and replenishment as is now advised.

Scott

**SCOTT SHIPLEY, M.S., P.E.**  
S2o Design and Engineering  
Physical Address: 429 Main Street  
Lyons, CO, 80540

Mailing Address: 318 McConnell Drive  
Lyons, CO. 80540

Phone: 303.819.3985  
Skype: shipleyscott

[www.s2odesign.com](http://www.s2odesign.com)

[scott@s2odesign.com](mailto:scott@s2odesign.com)