

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

Drainage Design Services: 2nd Avenue and Bridge Project

THIS TENTH 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 **OTAK, INC. (Formerly Loris and Associates, Inc.)**, having a principal office address of 371 Centennial Parkway, Suite 210, Louisville, CO 80027 (the "**Contractor**"). The Town and the Contractor are individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

WITNESSETH

WHEREAS, the Town entered into that certain Disaster Recovery Professional Services Agreement executed July 10, 2015 ("**Original Agreement**") with the Contractor to perform work as specified in the Contract Documents, for a not-to-exceed cost of **TWO HUNDRED ELEVEN THOUSAND TWO HUNDRED NINETY-TWO DOLLARS AND NO CENTS (\$211,292.00)**, subject to the approval of FEMA; and

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

WHEREAS, pursuant to Resolution 2017-21, the Town previously entered into that **First Amendment** to the Original Agreement dated January 30, 2017 to compensate the Contractor for re-designing the mitigation measures rejected by FEMA for an additional **TWENTY THOUSAND AND NO DOLLARS (\$20,000.00)**; and

WHEREAS, pursuant to Resolution 2018-62, the Town then entered into that **Second Amendment** to the Original Agreement dated July 19, 2018 to revise hourly rates and to compensate the Contractor for a third redesign of the bridge project, including new plans and reports and other related documents for an **additional FIFTY-TWO THOUSAND TWO HUNDRED DOLLARS AND NO CENTS (\$54,200.00)**; and

WHEREAS, pursuant to Resolution 2019-140, the Town then entered into that **Third Amendment** to the Original Agreement dated October 23, 2018 to add 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 for an additional **ONE THOUSAND SEVEN HUNDRED TWENTY DOLLARS AND NO CENTS (\$1,720.00)**; and

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

WHEREAS, the project must comply with SB 18-167 regarding underground utility safety and 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 then entered into that **Fourth Amendment** to the Original Agreement dated December 10, 2019 to include Subsurface Utility Engineering work and additional construction oversight add services in which the contract total amount was increased by **FORTY-THREE THOUSAND SEVEN HUNDRED THIRTY DOLLARS AND NO CENTS (\$43,730.00)**; and

WHEREAS, during the time of delay in the Project's design approval with FEMA (from 2016 to 2019), the endangered species habitat (Preble's Meadow Jumping Mouse), wetlands/ Waters of the US (WUS) and the overall environment within the project area have naturally changed over time, therefore the initial data collected in 2015 needed to be verified and updated in order to meet the 404 permit application requirements, and to allow the completion of the project's original scope of work; and

WHEREAS, pursuant to Resolution 2019-140 dated October 21, 2019, the Parties then entered into that **Fifth Amendment** to the Original Agreement with the Contractor for an environmental update which increased the contract total by **FOUR THOUSAND EIGHT HUNDRED EIGHTY-NINE DOLLARS AND NO CENTS (\$4,889.00)**; and

WHEREAS, pursuant to Resolution 2020-67 dated April 20, 2020, the Parties then entered into that **Sixth Amendment** to the Original Agreement with the Contractor to complete the scope of work and new design standards set forth in the new CDOT bridge codes and engineering standards due to an unavoidable lapse in time between the initial 30% design submittal (2017) and 90% design submittal (2020), including design services, bid assistance, construction administration, SUE field work, billing rate updates, schedule and scope adjustments which increased the contract total by **SEVENTY- NINE THOUSAND SIX HUNDRED FORTY-ONE DOLLARS AND NO CENTS (\$79,641.00)**; and

WHEREAS, pursuant to Resolution 2020-81 dated May 18, 2020, the Parties then entered into that **Seventh Amendment** to the Original Agreement with the Contractor to revise the design for stairs to provide access for a property owner for an additional **SIX THOUSAND NINE HUNDRED SIXTY-SEVEN DOLLARS AND NO CENTS (\$6,967.00)**; and

WHEREAS, pursuant to Resolution 2020-122 dated August 6, 2020, the Parties then entered into that **Eighth Amendment** to the Original Agreement with the Contractor to 1) add services including private property easement support, hydraulic support, environmental support, and electrical undergrounding design, 2) add CDBG-DR provisions to the contract, and 3) add a contract termination date of April 30, 2021 for an increase to the contract of **TWENTY-NINE THOUSAND THREE HUNDRED FORTY-THREE DOLLARS AND NO CENTS (\$29,343.00)**; and

WHEREAS, pursuant to Resolution 2021-15 dated January 21, 2021, the Parties then entered into that **Ninth Amendment** to the Original Agreement with the Contractor to realign the proposed storm sewer for an increase to the contract of **EIGHT THOUSAND FOUR HUNDRED FIFTY-SEVEN DOLLARS AND NO CENTS (\$8,457.00)**; and

WHEREAS, the Contractor requires another amendment to the Original Agreement in order extend the term to July 31, 2021 and to add scope to the Construction Administration budget as shown in **Exhibit A** for an increase to the contract by **NINETEEN THOUSAND EIGHT HUNDRED EIGHTY-THREE DOLLARS AND NO CENTS (\$19,883.00)** for a total not-to-exceed contract amount of **FOUR HUNDRED SEVENTY-EIGHT THOUSAND ONE**

HUNDRED TWENTY-TWO DOLLARS AND NO CENTS (\$478,122.00) (“Tenth Amendment”);

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:

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 Original Agreement remain in full force and effect.
3. **Scope of Work.** The Original Agreement is hereby amended by adding the documents that indicate the new revised fee schedule for the Project as set forth specifically in documents attached hereto as **Exhibit A** and incorporated herein by reference.
4. **Term.** Section 3 of the Agreement, entitled "Term of Agreement," 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 31st 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.

5. **Contract Sum and Payment.** The second sentence of Section 2.A of the Original 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 **FOUR HUNDRED SEVENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-TWO DOLLARS AND NO CENTS (\$478,122.00)** unless such amendment is amended in accordance with the amendment requirements of this Contract.”

- 6.
7. **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 Tenth Amendment.
8. **Conflict.** This Tenth Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this Tenth 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 Tenth Amendment shall control.

9. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this Tenth Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this Tenth 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 **Tenth 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 TENTH Amendment.

SIGNATURE PAGE FOLLOWS

THIS TENTH AMENDMENT TO THE DISASTER RECOVERY SERVICES AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS, COLORADO:

ATTEST:

Approval by:

Dolores M. Vasquez, CMC, Town Clerk

By: _____
Victoria Simonsen, Town Administrator

OTAK, INC.:

Date of execution: _____, 2021

By: _____

Printed name: _____

Its: _____

STATE OF _____)
COUNTY OF _____) ss.

The foregoing Tenth Amendment to the Disaster Recovery Services 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 – REVISED SCOPE AND FEE