

**TOWN OF LYONS, COLORADO
RESOLUTION 2020-81**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO APPROVING THE SEVENTH
AMENDMENT TO THE DISASTER RECOVERY SERVICES AGREEMENT WITH OTAK, INC.
(FORMERLY LORIS AND ASSOCIATES, INC.) FOR CAPITAL IMPROVEMENT AND
DRAINAGE DESIGN SERVICES - 2ND AVENUE AND BRIDGE PROJECT**

WHEREAS, the Town of Lyons ("Town") possesses the authority to contract for lawful purposes; and

WHEREAS, the Town has secured funding for capital improvement and drainage design services on the 2nd Avenue and Bridge Project (the "Project") from the Federal Emergency Management Agency ("FEMA") under PW 613; and

WHEREAS, pursuant to Resolution 2015-73 the Town of Lyons entered into that certain Disaster Recovery Professional Services Agreement dated July 6, 2015 ("**Original Agreement**") with OTAK, Inc., formerly known as Loris and Associates, Inc. ("**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)** as part of the Project, subject to the approval of FEMA; 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, the Contractor requires another amendment to the Original Agreement in order to revise the design for stairs to provide access for a property owner and provided a Proposal Request shown in **Exhibit 1** for an additional **SIX THOUSAND NINE HUNDRED SIXTY-SEVEN DOLLARS AND NO CENTS (\$6,967.00)** as outlined in the Revised Fee Schedule in **Exhibit 2** for a new not-to-exceed contract total amount of **FOUR HUNDRED TWENTY THOUSAND FOUR HUNDRED THIRTY-NINE DOLLARS AND NO CENTS (\$420,439.00)** ("**Seventh Amendment**"); and

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

WHEREAS, the Town of Lyons Board of Trustees desires to approve the **Seventh Amendment** to the Original Agreement with the Contractor, a copy of which is attached hereto, and authorizes the Mayor to execute such **Sixth 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 Seventh Amendment in substantially the form attached as in Exhibit 2.
- (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 Seventh Amendment that do 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 Agreement and the Town Clerk to attest such signature.

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

ADOPTED THIS 18th DAY OF MAY 2020

TOWN OF LYONS, COLORADO

By: *Nicholas Angelo*
Nicholas Angelo, Mayor

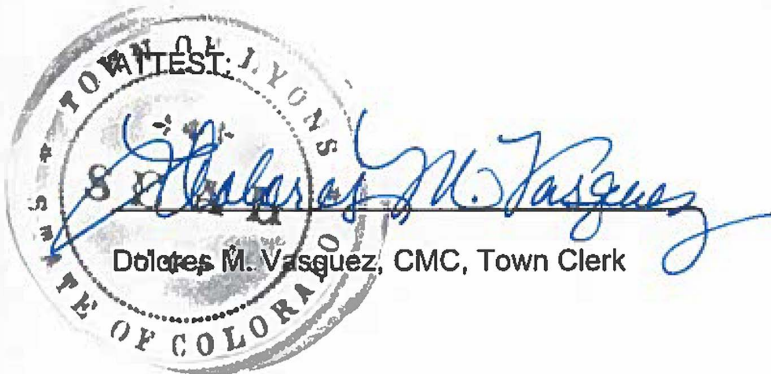


EXHIBIT 1:
OTAK, INC. – Proposal Request



April 30, 2020

Tracy Sanders
Town of Lyons
432 5th Avenue
Lyons, CO 80540

Re: **Town of Lyons ~ 2nd Avenue Bridge Replacement
Stair Design ~ Seventh Amendment Request**

Dear Ms. Sanders;

Otak is submitting the following Amendment Request:

1. Stair Design

During easement agreement negotiations with the property owners at 207 2nd Avenue and 196 2nd Avenue they requested access to their property from the proposed raised grade of 2nd Avenue. Due to FEMA requiring 4-feet of freeboard over the 100-year water surface elevation the retaining walls in front of the property owners is approximately 5-feet tall. Otak met with the property owners to discuss the stair design and incorporated the design into the 2nd Avenue Bridge Replacement plans. The stair design required revisions to the proposed retaining walls and pedestrian railing as well as custom detailing.

The total of this Additional Services request amounts to **\$6,967** for the above described tasks. Please see attached fee sheet for a detailed breakdown.

Seventh Amendment	\$6,967.00
TOTAL FOR Seventh AMENDMENT	\$6,967.00
Original Contract Amount	\$211,292.00
Previous Amendments	\$202,180.00
Sixth Amendment (This Request)	\$6,967.00
TOTAL REVISED CONTRACT AMOUNT	\$420,439.00

Please call or email if you have questions regarding this Additional Services Request.

Respectfully Submitted,

Sean Wilson
Civil Project Engineer
Otak, Inc.

EXHIBIT 2:
OTAK, INC. - AMENDMENT 7

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

Drainage Design Services – 2nd Avenue and Bridge Project

THIS SEVENTH 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**.”

RECITALS AND REPRESENTATIONS

WHEREAS, the Parties entered into that certain Disaster Recovery Professional 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 provide Drainage Design Services for the 2nd Avenue and Bridge Project (“**Capital Improvements**”) for the not-to-exceed amount of \$211,292.00, subject to the approval of the Federal Emergency Management Agency (“**FEMA**”) as the funding agency; 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 by an additional **TWENTY THOUSAND AND NO DOLLARS (\$20,000.00)**; 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 by an additional **FIFTY-TWO THOUSAND TWO HUNDRED DOLLARS AND NO CENTS (\$52,200.00)**;

WHEREAS, the Parties 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 Parties 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, the Contractor requires another amendment to the Original Agreement in order 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)** as outlined in **Exhibit A** for a new not-to-exceed contract total amount of **FOUR HUNDRED TWENTY THOUSAND FOUR HUNDRED THIRTY-NINE DOLLARS AND NO CENTS (\$420,439.00)** ("**Seventh Amendment**"); 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:

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 correct quantities and costs for the Project as set forth specifically in documents attached hereto as **Exhibit A** to this Seventh Amendment and incorporated herein by reference.

4. **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 TWENTY THOUSAND FOUR HUNDRED THIRTY-NINE DOLLARS AND NO CENTS (\$420,439.00)**; unless such amendment is amended in accordance with the amendment requirements of this Contract.”

5. **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 Seventh Amendment.

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

7. **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 **Seventh 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 **SEVENTH Amendment**.

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SIGNATURE PAGE FOLLOWS

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

TOWN OF LYONS, COLORADO:



Approval by:

By: Nicholas Angelo
Nicholas Angelo, Mayor

OTAK, INC.:

By: Christine Bisio Digitally signed by Christine Bisio
Date: 2020.05.20 08:08:41-0600

Printed name: Christine M. Bisio

Its: Colorado Region Manager

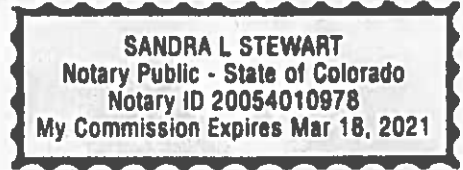
Date of execution: May 20th, 2020

STATE OF Colorado)
COUNTY OF Boulder) ss.

The foregoing Seventh Amendment to the Disaster Recovery Services Agreement was acknowledged before me this 20th day of MAY, 2020, by Christine M. Bisio as Colorado Region Manager of OTAK, INC., a Colorado Corporation.

Witness my hand and official seal.
My commission expires: 03/18/2021.

Sandra L. Stewart
Notary Public



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

EXHIBIT A –

OTAK- Revised Cost Schedule

EXHIBIT A

Town of Lyons ~ 2nd Avenue Bridge Replacement Sixth Amendment Request

TASK #	TASK NAME	TASK DETAIL	Civil Engineer VIII	Civil Engineer V	Engineering Tech VI	Project Admin Assistant	Otak Subtotal	Otak Expense	Otak Total	Lamp Star	SUBS Subtotal	TEAM TOTAL
			Matson	Wilson	Florian	Woods						
			Rates \$ 106	\$ 134	\$ 128	\$ 78						
1.0	Stair Design		3	12	34	1						
General	Project Management			6		1	\$ 1,161		\$ 1,161		\$ -	\$ 1,161
	Quality Control		2				\$ 332		\$ 332		\$ -	\$ 332
Stair	Site Meetings			4			\$ 536		\$ 536		\$ -	\$ 536
	Stair Design		2		32		\$ 4,364		\$ 4,364		\$ -	\$ 4,364
	Cost Estimate		2		2		\$ 584		\$ 584		\$ -	\$ 584
Total Hours			5	12	34	1	83					
Total Amount			\$ 996	\$ 1,608	\$ 4,284	\$ 78	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PHASE TOTALS												
	1.0	Stair Design	6	12	34	1	\$ 6,967	\$ -	\$ 6,967	\$ -	\$ -	\$ 6,967
TOTAL HOURS/FEE			6	12	34	1	\$ 6,967	\$ -	\$ 6,967	\$ -	\$ -	\$ 6,967
							\$ 6,967					

Original Contract	\$ 211,292.00
Previous Change Orders	\$ 202,180.00
Change Order 7	\$ 6,967.00
	\$ 420,439.00