

**Town of Lyons, Colorado
Board of Trustees
BOT Agenda Cover Sheet
Agenda Item No: VII. 1.
Meeting Date: June 3, 2024**

TO: Mayor Rogin and Members of the Board of Trustees

FROM: Tracy Sanders, Project Manager

DATE: May 24, 2024

ITEM: Resolution 2024-49 A Resolution of the Town of Lyons, Colorado, Approving the Fifth Amendment to the Professional Services Agreement with Horrocks Engineering for Design Services for St. Vrain Trail Extension

ORDINANCE
 MOTION / RESOLUTION
 INFORMATION

I. REQUEST OR ISSUE:

This resolution approves the Fifth Amendment to the Professional Services Agreement with Horrocks Engineering for the St. Vrain Trail Extension project, which is funded by CDOT, Boulder County, and Congressional Directed Funding.

II. RECOMMENDED ACTION / NEXT STEP:

Staff will support the Board decision on this amendment request.

III. FISCAL IMPACTS:

Expenses for this Professional Services Agreement are eligible for reimbursement through CDOT.

IV. BACKGROUND INFORMATION:

About This Project:

This project scope includes just short of a one-mile crusher fine trail with three ditch crossings. This multi-modal trail will ensure safe connectivity from the west end of Town to the east, ending at Hwy 66. This project is part of an overall regional trail connectivity initiative and will promote safety for all.

About This Amendment:

The design consultant is requesting a rate increase on the contract due to delays to the design schedule. The total contract amount will be a reduction of \$12.55.

Design Status: Horrocks has completed 100% of the design, and the bid package has been sent to CDOT for final approval before going to advertisement for a construction contractor.

Rate Adjustment: **\$12,611.85**

Horrocks signed a design contract in April 2022 with the intent to complete most of the design in 2022. Due to delays to the project, Horrocks had requested a rate increase in 2023 to bring the remaining work up to the 2023 rates instead of the original contract rate; this was approved by the Board of Trustees in November 2023. The Board approved the rate increase because the initial project delays were beyond the control of the design consultant, they were due to alignment conflicts and a funding shortfall. In addition to requesting a rate increase for the remaining work Horrocks requested retroactive payment for unplanned 30% design work performed and was paid at the original contract rates. The Board of Trustees denied the retroactive payment request but did approve the 2023 rates moving forward.

Horrocks is now requesting a second rate increase to adjust their rates from the 2023 fee schedule to their 2024 fee schedule. The requested rate increase will result in a reduction of the contract of \$12.55. However, the consultant is asking for retroactive payment for services rendered and paid. The original scope of work required minimal design work (for 30% of the design phase) because there were prior 100% plans from 2017/2018 that another design consultant completed for this same project. 30% design is a required review step by CDOT. Therefore, a 30% set of plans had to be submitted for CDOT review. After meeting with CDOT, the prior plans were missing information that CDOT required for their 30% review; therefore, Horrocks had to complete an unplanned engineering design for the project; this work has been billed and paid at the original contract rate.

With this amendment, Horrocks is requesting retroactive payment of the 30% design work at the 2023 rates instead of the original contract rates. As well as retroactive compensation for work performed in 2024 at the 2023 rates and allowing the 2024 rates for any remaining work to be performed.

The remaining work includes assistance with the bidding process and ongoing design support through construction, which may continue into early 2025.

Current Design Budget

Contract Amount	\$367,308.22
Paid to Date	\$267,068.61
Remaining	\$130,239.61

Paid to Date does not include:

- Engineering design for 100% plans completed in May 2024 (has not been billed yet)
- Future support for the bidding process, design support if design clarification is needed from the contractor, or design changes because of conflicts, and as-built drawings of the completed project.

Schedule Delays:

- Trail Alignment: In 2022, the project experienced initial delays due to trail alignment constraints that the town had to resolve. This was not in the control of the design consultant; the designer engineer was able to complete some design but was limited at a certain point until the alignment issues could be resolved. This was a consideration for the prior contract amendment that was granted by the

BOT to increase their rates from the original contract rates to 2023 rates for the remaining work.

- **Funding Shortfall:** In the same timeframe as the alignment delays, the project had a significant shortfall of funding, which again had to be addressed by the Town. The funding constraint was resolved in June 2023. This was not in the control of the consultant and, therefore, was a consideration for the prior contract amendment that was granted by the BOT to increase their rates from the original contract rates to 2023 rates for the remaining work. The rate increase was for the remaining design work for this project and was not retroactively paid for work in 2023.
- **Environmental Delay:** The Town of Lyons had received prior clearance from US Fish and Wildlife (USFWL) for the trail project that was designed in 2017/2018. This prior clearance could not be extended since several years had passed; however, the prior clearance and environmental review were worth consideration for a second clearance in the same location for the same project. Town staff forwarded this information to the design consultant staff and their environmental sub-consultant in 2022, 2023, and 2024. In January 2023 there was a virtual meeting with CDOT Environmental Unit to assess the environmental findings before consulting with USFWL. Horrock environmental sub-consultant presented information to CDOT that the trail location had potentially suitable habitat for Preble's Jumping Mouse (an endangered species).

Staff did let CDOT know about the prior clearance from USFWL (Including the potential Preble's habitat) and voiced concerns with being able to meet mitigation requirements because of many constraints. With this information presented to CDOT, they agreed with the consultant's findings that the eastern portion of the trail was potentially suitable habitat for the Preble's Mouse. Therefore, the consultant determined a full Biological Assessment would be needed and mitigation opportunities would need to be identified.

The task of trying to determine appropriate mitigation options fell on the Town staff to determine. Staff came up with 4 options for mitigation and each option was not deemed suitable by CDOT. If the mitigation options could not be determined there was a high probability of losing funding for the entire project. In January 2023 Town staff reached out to CDOT and voiced their concerns with the mitigation requirements and supplied CDOT with all the prior environmental documentation and clearances from 2017/2018. CDOT agreed with Town staff that a recommendation of "Not Likely to Adversely Affect" was a viable route to take with the USFWL clearance. Staff approached the design consultant (Horrocks) and they agreed, and they then talked with their environmental sub about considering this direction.

A site walk was coordinated with all parties. After walking the location, it was apparent that although the vegetation and access to the ditches for water may potentially be a good habitat for the mouse, there were other factors that did not support that location as a suitable habitat. The location has a highway to the north and east, which does not support connectivity to areas Boulder County has identified as priority Preble's habitat (east side of Highway 36). In addition, there are industrial businesses to the south and west of this location with heavy equipment moving through this area and other industrial activity. Because of these

challenges, everyone agreed to pursue the “Not Likely to Affect” option with USFWL.

In addition, there were several other projects in the same location and surrounding the area that had received concurrence from USFWL of “Not Likely to Effect” the potential Preble’s Habitat. On February 29, 2024, the environmental sub-consultant provided a USFWL clearance request letter, which was forwarded to USFWL by CDOT. The project received clearance from USFWL on April 9, 2024.

The project will need to implement conservation measures to minimize disturbance of potential habitat. However, mitigation is not required. This environmental delay did limit the amount of design the consultant could complete. Once this was fully resolved, they were able to provide 90% of the design plans in April 2024 and 100% of the plans in May 2024.

Contract Funding:

Original Agreement:	\$244,571.00
Amendment 1	18,138.00
Amendment 2	0.00
Amendment 3	\$ 46,819.22
Amendment 4	\$ 57,780.00
Amendment 5	-\$12.55
TOTAL:	\$367,295.67

V. LEGAL ISSUES:

None

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

Possible impacts to wetlands, historic areas, or Preble’s Jumping Mouse impact.

VII. SUMMARY AND ALTERNATIVES:

The design consultant is requesting approval for a rate increase allowing for a retroactive payment for the difference between services performed and paid at past rates versus their fee schedule rates for that year. This amount is approximately \$12,000. The alternative is to not approve the rate increase and continue payment of all services at the current contract rate. All services that have been billed have been paid to date. Therefore, no change to the current contract. There could be a savings of approximately \$12,000 if not amended retroactively.

PROPOSED MOTION:

“I move to approve Resolution 2024-49, A Resolution of the Town of Lyons, Colorado, Approving the Fifth Amendment to the Professional Services Agreement with Horrocks Engineering for Design Services for the St Vrain Trail Extension Project”.