

Town of Lyons, Colorado

**FIFTH AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT WITH ANDERSON CONSULTING ENGINEERS, INC.**

**Project/Services Name: Design Services for Stormwater Improvements
Project #:20-STRM-01**

This FIFTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT ("Fifth 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 5th Avenue, Lyons, Colorado 80540 (the "Town"), and Anderson Consulting Engineers, Inc. with offices at 375 East Horsetooth Road, Building 5, Fort Collins, CO 80525 (the "Contractor"). The Town and Contractor may be referred to collectively as the "Parties" or each individually as "Party".

WITNESSETH

WHEREAS, the Town of Lyons ("Town") has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

WHEREAS, pursuant to Resolution 2020-59, the Town and Contractor entered into that certain Professional Services Agreement dated April 7, 2020 ("Original Agreement") for the Contractor to perform the Work as specified in the Contract Documents, for a not-to-exceed cost of **One Hundred Fifty-Four Thousand Eight Hundred Sixty-Five and 00/100 Dollars (\$154,865.00)**; as part of the Design Services for Stormwater Improvements Project, Project # 20-STRM-01 (the "Project"); and

WHEREAS, Sections 1.3 and 10.12 of the Agreement require that any amendment to the Agreement be in writing and signed by the Parties; and

WHEREAS, expenses for this Professional Services Agreement are eligible for reimbursement through the Department of Housing and Urban Development Community Development Block Grant Disaster Recovery ("CBDG-DR") administered by the Boulder County Collaborative under the Intergovernmental Agreement between the Town of Lyons and the City of Longmont (INF-00068); and

WHEREAS, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **First Amendment** to the Original Agreement dated February 11, 2021 to extend the term of the contract until January 31, 2021 at no increase to the contract amount; and

WHEREAS, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Second Amendment** to the Original Agreement dated February 26, 2021 to add scope and fee for design services for the addition of Red Hill Gulch to the Project for an increase to the contract of **SIXTY-ONE THOUSAND FOUR HUNDRED FORTY-SEVEN DOLLARS AND FIFTY CENTS (\$61,447.50)**; and

WHEREAS, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Third Amendment** to the Original Agreement dated May 17, 2021 to extend the term of the contract until October 31, 2021 at no increase to the contract amount; and

WHEREAS, pursuant to the amendment provisions of the Original Agreement, the Parties entered into that certain **Fourth Amendment** to the Original Agreement dated September 28, 2021 to adjust final budget items at no increase to the contract amount; and

WHEREAS, the Contractor requires another amendment to add scope and budget for the Floodplain Development Permit Fee and to extend the term of the contract until December 31, 2021 for an increase of **FIVE HUNDRED DOLLARS AND NO CENTS** as shown in **Exhibits A and B** for a total not-to-exceed contract amount of **TWO HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED TWELVE DOLLARS AND FIFTY CENTS (\$216,812.50)** ("Fifth Amendment");

WHEREAS, the Parties desire to enter into this Fifth Amendment to the Professional Services 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 additional scope of work and the correct fee and rates for the Project as set forth specifically in documents titled **Exhibit A** and **Exhibit B**, copies of which are attached and incorporated herein by reference.
4. **Contract Sum and Payment.** The second sentence of Section 2.1 of the Original Agreement entitled "Commencement of and Compensation for Services" is hereby amended to read in full as follows:

Compensation to be paid hereunder shall not exceed **TWO HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED TWELVE DOLLARS AND FIFTY CENTS (\$216,812.50)** unless a different amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement.

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 31st day of December, 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 Fifth Amendment.
7. **Conflict.** This Fifth Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this Fifth 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 Fifth Amendment shall control.

8. **Counterparts; Facsimile or Electronic Signature; Authority.** The Parties hereto agree that this Fifth Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this Fifth 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 Fifth Amendment to Professional Services Agreement, Project: *Design Services for Stormwater Improvements* 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.

SIGNATURE PAGE FOLLOWS

THIS FIFTH AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS, COLORADO:

ATTEST:

Approval by:

By: Victoria Simonsen
Victoria Simonsen, Town Administrator

Date of execution: 12/23, 2021

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

ANDERSON CONSULTING ENGINEERS, INC.:

By: Jamie Darrow

Printed name: Jamie Darrow

Its: Treasurer / Principal Engineer

STATE OF)
COUNTY OF) ss.

The foregoing Fifth Amendment to the Professional Services Agreement was acknowledged before me

this 15 day of December, 2021, by Jamie Darrow as Treasurer of

Anderson Consulting Engineers, a Colorado Company.

LEAH A. FISKE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20204043659
MY COMMISSION EXPIRES DECEMBER 15, 2024

Witness my hand and official seal.
My commission expires: 12/15/2024

Leah A. Fiske
Notary Public

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

EXHIBIT A - SCOPE OF WORK

Amendment 5

Task 4: Permitting

Contract Amendment 2 was executed in February of 2021 and added scope and budget for the Red Hill Gulch Stormwater Improvements and the scope narrative indicated “....it is assumed that the Town will pay any permit fees directly to the permitting agency.” Later in the during permitting, it was determined the consultant should pay the Floodplain Development Permit Fee of \$500. This contract amendment increases the Permitting Task budget to accommodate that fee at the direct cost without mark-up.

Note that Amendment 4 provided additional detail regarding the scope and budget increases to the contract and discussed the out-of-scope fee paid, however the budget was never added to the contract and this amendment reconciles that error.

Exhibit B - Fee-Cost Schedule - Amendment 5
Anderson Consulting Engineers, Inc.

High Street Stormwater Improvements

Task	Description	Original Contract	Amendment 1	Amendment 2	Amendment 3	Amendment 4	Amendment 5	Total
1a	Project Kickoff	\$ 2,497.50		\$ 2,480.00			\$ -	\$ 4,977.50
2a	Design Services	\$ 8,492.50	Term Extension	\$ 1,705.00	Term Extension	Scope Detail & Clarification	\$ -	\$ 10,197.50
3a	Surveying and Utility Identification	\$ 18,770.00		\$ 14,740.00			\$ -	\$ 33,510.00
4a	Permitting	\$ 3,637.50		\$ 279.50			\$ -	\$ 3,917.00
5a	50% Design Package	\$ 14,917.50		\$ 2,362.50			\$ -	\$ 17,280.00
6a	100% Design Package	\$ 17,367.50		\$ 8,080.00			\$ -	\$ 25,447.50
7a	Bid Advertisement	\$ 1,275.00		\$ 645.00			\$ -	\$ 1,920.00
8a	Construction Administration Services	\$ 10,475.00		\$ 9,062.50			\$ -	\$ 19,537.50
	Subtotal	\$ 77,432.50		\$ -			\$ 39,354.50	\$ -

Red Hill Gulch Stormwater Improvements

Task	Description	Original Contract	Amendment 1	Amendment 2	Amendment 3	Amendment 4	Amendment 5	Total
1b	Project Kickoff	\$ 2,497.50	Term Extension	\$ 2,332.50	Term Extension	Scope Detail & Clarification	\$ -	\$ 4,830.00
2b	Design Services	\$ 8,492.50		\$ 1,677.50			\$ -	\$ 10,170.00
3b	Surveying and Utility Identification	\$ 18,770.00		\$ (3,755.00)			\$ -	\$ 15,015.00
4b	Permitting	\$ 3,637.50		\$ 1,718.00			\$ 500.00	\$ 5,855.50
5b	50% Design Package	\$ 14,917.50		\$ 10,982.50			\$ -	\$ 25,900.00
6b	100% Design Package	\$ 17,367.50		\$ 9,612.50			\$ -	\$ 26,980.00
7b	Bid Advertisement	\$ 1,275.00		\$ 650.00			\$ -	\$ 1,925.00
8b	Construction Administration Services	\$ 10,475.00		\$ (1,125.00)			\$ -	\$ 9,350.00
	Subtotal	\$ 77,432.50	\$ -	\$ 22,093.00	\$ -	\$ -	\$ 500.00	\$ 100,025.50
	Total	\$ 154,865.00	\$ -	\$ 61,447.50	\$ -	\$ -	\$ 500.00	\$ 216,812.50