

POSTED FEBRUARY 22, 2016 AT 8:30 AM

DRAFT AGENDA
TOWN OF LYONS

7:00 P.M., MONDAY, FEBRUARY 23, 2016

BOARD OF TRUSTEES MEETING
SHIRLEY F. JOHNSON COUNCIL CHAMBER
LYONS TOWN HALL, 432 5TH AVENUE, LYONS, COLORADO

- I. Roll Call and Pledge of Allegiance

- II. General Business
 - 1. Resolution 2016-24, a Resolution Approving the Primary Planning Area RFP
 - 2. Resolution 2016-21, a Resolution Approving an Intergovernmental Agreement with the City of Longmont, Colorado Regarding Delegation of Activities for the Boulder County Collaborative Community Development Block Grant Disaster Recovery Sub-Allocation Grant # B-13DS-08-001:INF-00023
 - 3. Resolution 2016-22, a Resolution Approving a Agreement with Michow, Cox & McAskin, LLP.
 - 4. Resolution 2016-23, a Resolution Authorizing Change Orders for Demolition to the Town's Contract with Peak Environmental for Demolition of Structures on Buyout Properties Within the Town of Lyons

- III. Other Items of Concern

- IV. Executive Session

Discussion of the possible sale or transfer of real or personal property and determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators, and receiving legal advice from attorneys representing the Town on any specific legal questions pursuant to C.R.S. Sec. 24-6-402(4)(a), Sec. 24-6-402(4)(e), and Sec. 24-6-402(4)(b), respectively, and specifically, discussion of the proposed sale of land owned by the Town, and obtaining advice as needed from the Town Attorney on any related legal issues.

- V. Adjournment

"The Town of Lyons will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. Persons needing accommodations or special assistance should contact the Town at hr@townoflyons.com as soon as possible, but no later than 72 hours before the scheduled event."

Agenda Item
11-1

TOWN OF LYONS, COLORADO
RESOLUTION 2016-24

A RESOLUTION AWARDING AND APPROVING A CONTRACT WITH _____ TO CREATE
A LYONS PRIMARY PLANNING AREA MASTER PLAN

WHEREAS, the Town of Lyons is authorized by C.R.S. Section 31-15-101 to enter into contracts for any lawful purpose; and

WHEREAS, to achieve certain goals identified in the 2010 Lyons Comprehensive Plan, the Town issued a Request for Proposals on January 25, 2016 for creation of the Lyons Primary Planning Area Master Plan ("Plan"), which proposals were due to the Town by 4:00 p.m. on February 16, 2016; and

WHEREAS, a committee composed of Town staff and local board and commission representatives ("Committee") has evaluated the proposals received to determine which proposal is responsible and most advantageous to the Town; and

WHEREAS, based upon an evaluation of the proposals submitted, the Committee has determined that (name of entity) submitted the proposal that is responsible and most advantageous to the Town and recommends that the Board of Trustees award the contract for creating the Plan to (name of entity); and

WHEREAS, (name of entity) represents that it possesses the skill and experience for creating the Plan in accordance with the requirements set forth in the Request for Proposals; and

WHEREAS, the Board of Trustees finds that (name of entity) submitted a responsible proposal in accordance with the terms and conditions set forth in the Request for Proposals that is most advantageous to the Town and therefore desires to enter into a contract with the (name of entity) to create the Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, THAT:

Section 1. The Board of Trustees hereby awards the contract to create the Lyons Primary Planning Area Master Plan to (name of entity) ("Contractor") in accordance with the terms and conditions set forth in the Request for Proposals, and authorizes Town staff to prepare and enter into a contract with Contractor for a not-to-exceed amount of \$ _____, pursuant to the terms and conditions of the Request for Proposals and the Contractor's proposal.

Section 2. The Board further authorizes the Mayor or Mayor Pro Tem to sign the contract and any other necessary documents necessary to implement this Resolution and authorizes the Town Clerk attest the Mayor or Mayor Pro Tem's signature.

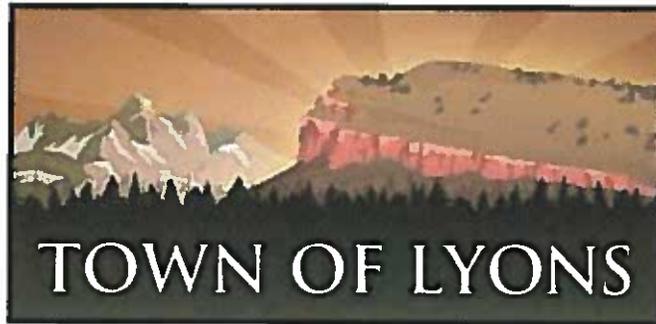
ADOPTED THIS 23rd DAY OF FEBRUARY 2016.

TOWN OF LYONS, COLORADO

John E. O'Brien, Mayor

ATTEST:

Debra K. Anthony, Town Clerk



Lyons Primary Planning Area Master Plan

Request for Proposals

Town of Lyons

432 5th Avenue, P.O. Box 49, Lyons, CO 80540

PH: (303)823-8250

www.townoflyons.com

PROPOSALS DUE:

Tuesday, February 16th, 2016 by 4:00 P.M. (MST)

Please Submit to:

Matthew Manley, AICP – Flood Recovery Planner

The Town of Lyons is inviting proposals from highly qualified teams with experience in community engagement, economic development, urban design, and land use planning to provide professional services in an effort to make recommendations for future development and annexation of areas within the Lyons Primary Planning Area. This solicitation has been developed specifically for a Request for Proposals intended to solicit competitive responses from planning consultants. All teams are urged to thoroughly review this solicitation prior to submitting.

Eligible Teams: A team may be either a for-profit or not-for-profit entity. The team must: be a proven land use planning and design entity; demonstrate professional public engagement experience; and prove ability to undertake planning and design projects of this size, type, complexity and uniqueness in process and scope.

I. BACKGROUND

Lyons, Colorado is a small town nestled in the foothills of the Rocky Mountains, at the confluence of the North and South St. Vrain Creeks. Historically a sandstone quarrying town, Lyons continues its rich sandstone production history and is also now a thriving community known for its arts, music, culture, and natural beauty. Visitors from across Colorado and the region flock to Lyons to attend our annual music festivals, visit our restaurants, shops, and businesses, and to enjoy the parks and outdoor amenities. Each summer, hundreds of thousands pass through Lyons on their way to Rocky Mountain National Park on either State Highway 7 or US Highway 36, lending us our nickname "The Double Gateway to the Rockies."

On September 12th, 2013, Lyons suffered one of the worst disasters in the town's history. Beginning September 9th, more than 17 inches of rain fell along the Colorado Front Range. This historic rainfall triggered flash floods across Boulder County and the surrounding region. By the evening of September 11th, the volume of water in the St. Vrain Creek was ten times its normal amount. Floodwaters quickly inundated the town, and Lyons was cut off from its neighbors and left without power, telephone service, potable water, or other basic services. The widespread damage to our local and regional infrastructure led to an evacuation of our entire town on September 14, 2013. The first residents were not able to return until late October, more than six weeks after the flood.

The September floods impacted nearly every aspect of our community. One of our cherished residents, Gerald Boland, perished in the flood. Hundreds more were physically or emotionally injured. Roads, bridges, infrastructure, and utilities suffered significant damage. More than 200 homes were damaged or destroyed. Our business community was doubly impacted, first by the floods and second by the loss of revenue from the evacuation and subsequent decline in customers. Some of our most important venues for music, arts, and cultural events were affected. Meadow Park and Bohn Park, the jewels of our community and lifeblood of our tourism economy, were devastated. Our river bottoms were scoured and many of our ponds destroyed, along with other environmental assets like trees and riparian habitats. Numerous public facilities were damaged or destroyed, including our public works building, sewage treatment plant, town hall, and historic library. Our schools were forced to evacuate for nearly three months, with significant impact on our youth and families.

Moving forward the Town of Lyons is dedicated to recovering stronger, more sustainably, and more resilient than before. We are a strong community, and have responded with great concern for one another. Volunteers and professionals provided emergency response, immediate needs and initial recovery. Our roads, bridges, utilities, and parks are in the repair

Request For proposal: Town of Lyons - 2016 Lyons Primary Planning Area Master Plan

process. Today, local businesses have reopened, residents have come back home, and our hardest-hit households and businesses have received the assistance they have needed to move forward.

II. PROJECT DESCRIPTION

The Town of Lyons shall hire consultants to create a Lyons Primary Planning Area (LPPA) Master Plan. This process will identify opportunities and constraints, as well as create an illustrative land use vision in the PPA to guide future growth and development. The Lyons PPA is made up by three “small areas” that are adjacent to the current town limits – the Eastern Corridor, Western Corridor and Apple Valley (See Attachments D and E for maps and photos). The PPA was established by an Intergovernmental Agreement (IGA) between the Town of Lyons and Boulder County in 2002; updated in 2012. Utility expansion to the Eastern Corridor is already underway as part of an existing EDA grant program. A Sanitary Sewer Expansion Feasibility Study for the Western Corridor and Apple Valley should be completed as a separate engineering project by June 2016 and the information from that effort should be provided to the planning consultant team for consideration in this planning effort.

The purpose of this project is to achieve the goals, objectives and strategies that were formally identified in the “Land Use and Growth” chapter of the 2010 Lyons Comprehensive Plan. Furthermore, with the loss of approximately 75 residential units (many of which were affordable housing units), the need for additional housing, specifically affordable housing, in Lyons has been magnified by the aftermath of the 2013 flood. Many residents are still displaced. Compounding this issue is the fact that numerous residential lots in Lyons, where flood-damaged homes are being demolished, will be converted to undevelopable open space and parks as part of the CDBG-DR 404 Buyout Program.

In addition to meeting the demand for housing, the Town of Lyons’ vibrant local economy needs room to grow as well. With real estate frontage along Highway 66/36, the Eastern Corridor has been identified as an area that is ideal for commercial/light industrial development. The area will also benefit from the installation of utilities which is being made possible by an Economic Development Administration (EDA) grant. Commercial growth in this district should compliment, rather than compete with, the downtown commercial district. Additionally, the Eastern Corridor serves as a gateway to the Town of Lyons. Future development plans will serve to enhance the entire Town by creating an aesthetically-pleasing and functional entryway to the town center.

This planning process will make considerations for connections and capacities for all utilities (water, electricity and sewer) in all areas of the Lyons PPA. However, while the Western Corridor and Apple Valley areas have existing infrastructure and connections to water and electricity, they are not connected to the municipal sanitary sewer system. Therefore the Sanitary Sewer Feasibility Study for those areas will be an important consideration for this project. It is expected that many of the basic land use data sets such as underlying property lines, steep slopes, limited access or right of way, will be shared data between the planning and engineering efforts.

In essence, the LPPA Master Plan will serve as a tool which will guide future annexation and development for the Town of Lyons. Before properties in the LPPA can become part of the Town of Lyons, the land uses and design recommendations for these parcels must be established in accordance with the Lyons 2010 Comprehensive Plan, Lyons-Boulder County IGA, Lyons Recovery Action Plan, Lyons Municipal Code, and other such documents.

The LPPA Master Planning project will take place in phases; with planning processes for each of the small area plans being staggered as follows:

- Phase I - Eastern Corridor & Gateway (complete in first 90 days),
- *Phase II - Western Corridor (complete in first 180 days), and
- Phase III - Apple Valley (complete in first 270 days).

*** The Sewer Expansion Feasibility Study should be completed by the beginning of Phase II.**

III. SCOPE OF SERVICES

The Consultants that are selected to produce the **Lyons Primary Planning Area Master Plan** Project shall:

- Analyze existing plans, policies, and regulations - including but not limited to:
 - The 2010 Lyons Comprehensive Plan
 - Lyons Recovery Action Plan
 - Lyons Municipal Code
 - Lyons Environmental Sustainability Action Plan
 - Lyons-Boulder County IGA
 - Boulder County Comprehensive Plan
 - Wastewater Treatment Plant Process Engineering Report
 - Wastewater Treatment Plant Upgrade feasibility Study
 - i. These documents are available online or by email and hard copies can also be made available by the town. See links in Attachment A.

- **Conduct Development Feasibility Assessment and Development Impact Analysis - Identify existing land uses and redevelopment constraints including utility capacity/connections and natural hazards (i.e., floodplain, steep slopes, etc.). Assess sites that are suitable for business and residential development as well as recreational uses. Results should be conveyed in a PowerPoint presentation and written report. Maps which illustrate opportunities and constraints should also be produced by the consultant team.**
 - As this planning process is taking place just after a devastating flood impacted so much of the Town of Lyons, the constraints assessment portion of this project is of primary consideration.
 - The opportunities assessment portion of this project shall be guided by the goals of the town’s primary planning documents
 - i. Focus Areas shall include but are not limited to:
 1. Land Use & Growth
 2. Economic Development
 3. Housing
 4. Environment
 5. Parks, Trails & Open Space, etc.
- **Engage stakeholders (see “Partners” list below) in refinement of the vision for the planning area. A *minimum* of three (3) public engagement sessions will be held for each of the “small area” plans, for a total of *at least* nine (9) public engagement sessions over the course of the entire PPA Master Planning project. Meeting facilitation, documentation of feedback and reporting of results will be the responsibility of the consultant team.**
 - The Town of Lyons is a community which consists of highly-engaged citizens. The involvement of residents and stakeholders is always of utmost importance for all planning processes.
 - Intergovernmental collaboration is a high-priority for the town and this commitment is clearly outlined in the Lyons-Boulder County IGA.
 - Town staff will assist in the scheduling and communicating of public feedback sessions and stakeholder interviews.
- **Conduct Market Analysis for each of the three (3) small areas with consideration to economic development, housing and recreation opportunities. Market Analysis results should be conveyed in PowerPoint presentations and written reports. Maps which illustrate land uses opportunities should also be produced by the consultant team.**
 - The Market Analysis portion of this project shall be guided by the goals of the town’s primary planning documents

- The Market Analysis should determine what economic development opportunities are available, the type and number of businesses that can be located in the area, the type and density of housing that can be located on site, other potential land uses, and whether or not these developments are financially sustainable for the town considering the required investment, installation and maintenance of infrastructure to these areas.
- Create conceptual designs for a variety of development options for all three (3) planning areas, as well as for gateway treatments along the Eastern Corridor Planning Area
 - Visual interpretations of appropriate development options and opportunities should be created based on public feedback and in accordance with the Sustainable Design and Development Principles that are outlined in Appendix D of the 2010 Comprehensive Plan.
 - Consultants should provide at least three (3) different conceptual designs *for each* small area plan which provide the town with illustrations of what new developments could look like.
- Recommend potential land use policy, design standards and regulation changes to implement the Plan (may include proposed overlay districts, design standards, amendments to the Lyons Municipal Code and language for adoption, etc). It is the intent of the Town of Lyons to have an enforceable planning document as a result of this project.

A final draft of The Lyons Primary Planning Area Master Plan shall include:

- a) Development Feasibility Analysis
- b) Development Impact Analysis
- c) Market Analysis
- d) Updated Land Use Map for the Planning Area
- e) Conceptual Designs for the proposed elements in the Eastern Corridor & Gateway, the Western Corridor and Apple Valley
- f) Proposed Policies and Regulations that allow for Implementation of the Plan

The Town of Lyons shall own the Final Plan, the conceptual designs, data, maps and any resulting reports.

III. PROPOSED PROJECT SCHEDULE

This project is time-sensitive and the selected team must be able to accomplish the scope of the project within the timeline provided. The following is a proposed schedule, but the consultant team may propose alternative approaches that meet the project's benchmarks.

Lyons Primary Planning Area Master Plan

Mid February 2016: Review Town of Lyons Planning and Development documents

Eastern Corridor Planning Area (February 2016 – April 2016)

Mid/Late February 2016: Begin Market Analysis for Eastern Corridor Planning Area

Late February 2016: Perform Assessment of Development Constraints and Opportunities for the Eastern Corridor Planning Area

Mid March 2016: Perform Assessment of Development Impacts for the Eastern Corridor Planning Area

Late March 2016: Public Engagement Session 1 - Presentation of Development Feasibility and Impact Analysis / Visioning for the Eastern Corridor Planning Area

Mid April 2016: Public Engagement Session 2 - Presentation of Market Analysis for the Eastern Corridor Planning Area

Late April 2016: Public Engagement Session 3 - Presentation of Conceptual Designs for the Eastern Corridor and Gateway / Presentation of Recommended Land Uses and Regulation Changes for the Eastern Corridor Planning Area

Western Corridor Planning Area (May 2016 – July 2016)

Mid April 2016: Begin Market Analysis for Western Corridor Planning Area

Mid May 2016: Perform Assessment of Development Constraints and Opportunities for the Western Corridor Planning Area (including results and information from Sewer Feasibility Study if available)

Late May 2016: Perform Assessment of Development Impacts for the Western Corridor Planning Area

Mid June 2016: Public Engagement 4 - Presentation of Development Feasibility and Impact Analysis / Visioning for the Western Corridor Planning Area (including results from Sewer Feasibility Study if available)

Late June 2016: Public Engagement 5 - Presentation of Market Analysis for the Western Corridor Planning Area

Mid July 2016: Public Engagement 6 - Presentation of Conceptual Designs for the Western Corridor / Presentation of Recommended Land Uses and Regulation Changes for the Western Corridor Planning Area.

Apple Valley Planning Area (July 2016 – September 2016)

Mid July 2016: Begin Market Analysis for Apple Valley Planning Area

Late July 2016: Perform Assessment of Development Constraints and Opportunities for Apple Valley Planning Area (including information from Sewer Feasibility Study if available)

Request For proposal: Town of Lyons - 2016 Lyons Primary Planning Area Master Plan

Mid August 2016: Perform Assessment of Development Impacts for Apple Valley Planning Area

Late August 2016: Public Engagement 7/ Presentation of Development Feasibility and Impact Analysis / Visioning for Apple Valley Planning Area (including results from Sewer Feasibility Study if available)

Late September 2016: Public Engagement 8 / Presentation of Market Analysis for the Apple Valley Planning Area

Late September 2016: Public Engagement 9 / Presentation of Conceptual Designs for the Apple Valley Planning Area / Presentation of Recommended Land Use and Regulation Changes for the Apple Valley Planning Area

IV. SELECTION PROCESS

PROJECT TIMELINE: This project timeline is on a tight schedule due to funding application deadlines and the complexity of the issues that the Town of Lyons has and is resolving throughout the disaster recovery process:

ACTIVITIES:	TIMELINE (all times MST)
RFP Released to Public	January 25 th , 2016
Pre-Proposal Meeting	Feb 3 rd , 2016 at 3:00pm
RFP Written Inquiries Due	February 5 th , 2016 by 5:00pm
Responses to Written Inquiries Published	February 9 th , 2016 by 5:00pm
Proposal Submission Deadline	February 16th, 2016 by 4:00pm
Finalist Interviews	February 22 nd , 2016
Determination of Selected Team/Proposal	February 22 nd , 2016
Contract Fully Executed (Town Board Approval)	February 23 rd or 24 th , 2016

V. PUBLIC INVOLVEMENT PROCESS:

The selected team will develop and utilize innovative and cost-effective methods to generate and maximize public participation in the development of this study. In addition, the team will

work with Lyons Staff, Boulder County Staff, Lyons Board of Trustees, Lyons Planning Commission and other Lyons boards and commissions, public officials and agencies, property owners, interested individuals and parties representing a wide range of interest during the planning process. During the conceptual design process, a series of design charrettes may be conducted by the team to allow Lyons residents, stakeholders and interested parties an opportunity to provide input during the process.

The Consultant Team will be responsible for the documentation and reporting of public feedback. However, the Town of Lyons Staff will be responsible for contacting key stakeholders and generating awareness amongst residents about the planning process.

VI. PARTNERS

The following is a list of potential partners that will be invited to participate in the development of a successful project and public involvement process:

- Property Owners within and adjacent to the LPPA
- Lyons Residents & Stakeholders
- Lyons Staff
- Lyons Boards and Commissions:
 - Board of Trustees
 - Housing Recovery Task Force
 - Planning and Community Development Commission
 - Sustainable Futures Commission
 - Utilities and Engineering Board
 - Economic Development Commission
 - Parks, Recreation and Culture Board
 - Others as needed
- Lyons Area Chamber of Commerce
- St. Vrain Creek Coalition
- Boulder County Land Use Department
- City of Longmont Redevelopment & Revitalization Division
- State of Colorado Department of Local Affairs

Note: This list should not be considered all-inclusive, as there may be other partners not listed here.

VII. PROGRESS REPORTING

The selected team and the Town of Lyons Flood Recovery Planner shall hold progress meetings as often as necessary, but in no case less than once every two (2) weeks with weekly conference calls, until the final plan is approved by the Lyons Board of Trustees for the purpose of progress reporting. The team shall supply the Flood Recovery Planner with at least three (3) copies of all completed or partially completed reports, studies, forecasts, maps or plans at least

one (1) working day before each progress meeting. The Flood Recovery Planner shall assist in scheduling all aforementioned staff, board and commission meetings and other meetings, as necessary, at key times during the planning process.

VIII. ITEMS AVAILABLE THROUGH THE TOWN OF LYONS AND OTHER WEBSITES

- Lyons 2010 Comprehensive Plan (with special consideration given to the following sections: Land Use & Growth; Economic Development; Environment; Parks, Trails & Open Space; Transportation; Community Portrait; Design Fundamentals; etc.)
- Lyons Recovery Action Plan
- Lyons Municipal Code
- Lyons Environmental Sustainability Action Plan
- Lyons-Boulder County IGA
- Boulder County Comprehensive Plan
- See list of all Plans and Documents listed on the Town of Lyons website.
- Links to related documents (please see Attachment A)

IX. PROPOSAL SUBMISSION

Submittals are due at the Lyons Town Hall, for time and date recording on or before 4:00PM MST on Tuesday, February 16th, 2016.

Proposals shall be submitted in a sealed package or email clearly marked as the "LYONS PPA MASTER PLAN PROJECT" to:

Matthew Manley, Flood Recovery Planner, 432 5th Avenue, Lyons, CO 80540
or mmanley@townoflyons.com

Hardcopy Submissions shall include the following:

- One (1) Original Proposal, identified as "Original"
- Five (5) Copies of Proposal
- One Copy of Proposal on a Flash Drive

All RFPs must be received and time/date recorded by authorized Town staff by the above due date and time. Sole responsibility rests with the proposal team to see that their RFP submission is received on time at the stated location. Any responses received after the specified due date/time will be considered at the discretion of the Town.

The Town of Lyons reserves the right to reject any and all responses, to waive any informalities or irregularities therein, and to accept the proposal that, in the opinion of the Town, is in the best interest of the Town of Lyons. Due to the complexity of work required, selection of a team or firm will not be based solely upon the evaluation scoring but will also take into account experience gained from work on similar projects, previous knowledge and experience working with the Town of Lyons and an understanding of the project goals and approach to the project.

Request For proposal: Town of Lyons - 2016 Lyons Primary Planning Area Master Plan

A minimum of two (2) proposal teams will be asked to participate in Finalist Interviews with the Town prior to the final determination of the selected proposal team.

To facilitate the evaluation, proposal teams shall submit and organize all responses in the same order as listed below in Response Format. Proposals that are determined to be at a variance with this requirement may not be accepted.

The outside of the package will include the following information:

- Company Name
- RFP Title
- Due Date and Time

X. RESPONSE FORMAT

The following items are to be included in your proposal, in the order listed. Deviation may render your proposal non-responsive. Maximum proposal length is 20 pages (excluding cover letter, Illegal Alien Certificate, Proposal Acknowledgement, and any attachments).

A. Cover Letter. Include a cover letter introducing your company, summarizing your qualifications, and detailing any exceptions to this RFP (please note that significant exceptions may make your proposal nonresponsive). This letter should also provide principal contact information for this RFP, including address, telephone number, fax number, e-mail, and website (if applicable).

B. Minimum Mandatory Qualifications. The lead proposer must specialize in project management, meeting facilitation, land use planning, urban design, site analysis and market analysis, and have successfully completed at least five similar projects in the past five years. The consultant's proposed Project Manager must have seven (7) years of experience (minimum) in project management and urban planning. Preference will be given to teams with at least one Certified Planner (AICP).

C. Company Information

- 1) Provide the following information as listed: Company Name, Address, Phone Number, and Names of Principals.
- 2) Identify the year in which your company was established and began providing consulting services.
- 3) Describe any pending plans to sell or merge your company.
- 4) Provide a comprehensive listing of all the services you provide.

D. Evaluation Criterion. The following are a list of evaluation criterion. Please include an itemized description of how your team meets or fulfills each of the criteria. Failure to meet or exceed these criteria will disqualify your response.

- 1) Evaluation Criterion #1 – Company and Personnel Qualifications.** Describe your business philosophy and identify the individuals who will be involved in the project, and their responsibilities. Include a brief description of the team’s previous experience with similar projects. Provide resumes or professional biographies of the key personnel that will be performing the proposed services, including the primary project manager. Changes in the project team may not be made unless conditions beyond the control of team develop, in which case, changes in above personnel may be made only upon advance written approval by Town. The Town reserves the right to request changes in personnel of team working under this Agreement.

Information should include, but is not limited to:

- a. The names and resumes of the key personnel that will be performing the proposed services, including the primary project manager;
- b. A demonstration that the proposer has the ability, skills, and experience necessary to perform the Contract, or can provide the services required to successfully complete this project.
- c. License information for Certified Planner (AICP) if applicable.

2) Evaluation Criterion #2 - Recent Experience with Planning & Design projects

- a. Discuss your familiarity with the Town of Lyons, Boulder County and small communities as they pertain to this project. The quality of performance on previous Town Contracts or services will be considered. Failure on the part of any team to carry out a previous contract satisfactory shall be deemed sufficient cause for disqualification.
- b. Additionally, provide a list of three (3) references/customers required by the Town under this RFP (list must include name, address, telephone number, email address and contact person). The Town reserves the right to contact the references provided in your proposal as well as other references without prior notification to you.
- c. Describe your team’s experience with Small Area Plans/Master Plans/Land Use Plans
- d. Document your direct experience with the Town of Lyons and/or Boulder County.
- e. Describe your firm's experience planning for sites with environmental constraints (steep slopes, floodplains, etc.)
- f. Describe your firm’s experience planning for sustainable development.
- g. Is your team currently involved in any lawsuits or litigation? If so, please summarize.

3) Evaluation Criterion #3 - Approach to Scope of Work

- a. Describe any project approaches or ideas that you would apply to this project that you feel would enhance the quality of your services. Provide detailed information about what makes your approach unique and best suited for this project.

- b. Describe how the team will accomplish the work in an effective and timely manner. Include design philosophy, project control, project schedule, and understanding of project scope, awareness of issues, and potential issues/problems that would need to be addressed early in the design process to prevent delays.
- c. Explain the proposed work plan with a detailed description of the specific tasks as noted in the Scope of Services of this RFP. Include additional tasks and their purpose as needed to explain completing the work. Include critical path items, milestones and completion dates on the schedule.
- d. Describe the methods and timeline of communication your firm will use with the Town's Flood Recovery Planner, other involved Town staff, Boulder County staff and other interested parties.
- e. Describe your team's experience with projects that have expedited timelines.

4) Evaluation Criterion #4 – Project Control

- a. Describe how your team will control costs for this project and meet tight deadlines and schedule requirements.

5) Evaluation Criterion #5 – Proposed Scope of Work and Fee

- a. Provide a detailed breakdown of fees and expenses to complete the scope of work identified. Include description of work items included in fee that are not specifically identified in the request, but the team believes are necessary to complete the scope. Include estimated costs for these other items separate from the base fee.

7) Illegal Alien Certificate. This required form is included as Attachment A.

8) Proposal Acknowledgement. Include this form as provided in Attachment B.

XI. EVALUATION AND AWARD:

A. Proposal Evaluation

All proposals submitted in response to this RFP will be evaluated by a committee of Town and local board and commission representatives. The team's proposals will be evaluated by the committee based on the criteria listed below. These criteria will be the basis for review of the written proposals and determine the short-list of teams for interviews (if required). Total scores will be tabulated, and the team with the proposal that is deemed to be the most advantageous to the Town will be selected. If the Town requests interviews or additional examples of past projects by short-listed teams, committee members may revise their initial

scores based upon additional information and clarification received in this phase. In preparing responses, teams should describe in great detail how they propose to meet the specifications as detailed in the previous sections.

Specific factors will be applied to proposal information to assist the Town in selecting the most qualified consultants for this contract. Evaluation criteria that will be used are as follows, listed in order of relative importance:

- 1) Evaluation Criterion #1 - Team and Personnel Qualifications**
 - a. Qualifications and abilities of professional personnel
 - b. Experience on similar projects as a team
 - c. Commitment of key members to project
 - d. Team's size, organizational structure and flexibility
 - e. Team's technical disciplines and capabilities of sub-consultants on team

- 2) Evaluation Criterion #2 - Recent Experience with Land Use/Master Plans**
 - a. Team's recent, relevant project history (Lyons, Boulder County, etc)
 - b. Demonstrated ability to control costs
 - c. Demonstrated ability to meet schedule
 - d. Demonstrated ability to do quality work

- 3) Evaluation Criterion #3 - Approach to Scope of Work**
 - a. Team's demonstrated clear understanding of the project goals
 - b. Aggressiveness of project schedule
 - c. Has the firm formulated a successful approach to the project?
 - d. Where appropriate, has the firm exhibited sensitivity to public concerns?

- 4) Evaluation Criterion #4 - Project Control**
 - a. Cost Control
 - b. Scheduling Method
 - c. Quality Control

- 5) Evaluation Criterion #5 - Proximity to Project Location**
 - a. Ability to respond to field conditions
 - b. Team's work location relative to the project location

- 6) Evaluation Criterion #6 – Proposed Scope and Fee**
 - a. Does the Scope of Work align with the Listed Scope and the Town's Goals?

- b. Has the consultant identified innovative alternatives or well thought out additions to the scope?
- c. Is the fee commensurate with the scale and type of work?

7) Evaluation Criterion #7 – Ability to meet project deadlines

- a. Does the team have the resources to move quickly and efficiently to achieve funding application deadlines?
- b. Does the team have experience in achieving tight project deadlines due to delays in securing funding, delays from outside consultants, etc.?

B. Determination of Responsibility of the Consultant

The Town awards contracts to responsible vendors only. The Town reserves the right to make its consultant responsibility determination at any time in this RFP process and may not make a responsibility determination for every Consultant. A “Responsible Consultant” is defined by this proposal as one who has “the capability in all respects to perform fully the contract requirements, presents, perseverance, experience, integrity, reliability, capabilities, facilities, equipment, and credit which will assure good faith performance.”

The Town reserves the right to request information as it deems necessary to determine a Consultant's responsibility. If the Consultant fails to supply the requested information, the Town shall base the determination of responsibility upon any available information or may find the Consultant non-responsible if such failure is unreasonable.

XIII. ADMINISTRATIVE INFORMATION:

A. Issuing Office:

The Town of Lyons agent listed herein is to be the sole point of contact concerning this RFP. Teams shall not directly contact other personnel regarding matters concerning this RFP or to arrange meetings related to such.

B. Official Means of Communication:

All official communication from the Town to teams will be via e-mail. The Town will post notices that will include, but not be limited to, any modifications to administrative or performance requirements, answers to inquiries received, clarifications to requirements, and the announcement of award.

C. Inquiries:

Prospective teams may make written inquiries by e-mail before the written inquiry deadline concerning this RFP to obtain clarification of requirements. There will be opportunity to make

Request For proposal: Town of Lyons - 2016 Lyons Primary Planning Area Master Plan

inquiries during the Pre-Proposal meeting on Wednesday, February 3rd at Lyons Town Hall at 3:00pm (MST) or Call-In (303) 823-6622. Additional inquiries regarding this RFP should be referred to: E-Mail: mmanley@townoflyons.com Subject Line: Lyons PPA Master Plan

No inquiries will be accepted after the deadline on Friday February 5th at 5:00pm. Response to teams' inquiries will be e-mailed in a timely manner. Teams cannot rely on any other statements that clarify or alter any specification or other term or condition of the RFP.

Should any interested team find any part of the listed specifications, terms and conditions to be discrepant, incomplete, or otherwise questionable in any respect, it shall be the responsibility of the concerned party to notify the Town of such matters immediately upon discovery.

D. Insurance:

The successful team will be required to provide a Certificate of Insurance or other proof of insurance naming the Town of Lyons and it's agents as "additional insured". Coverage must include COMMERCIAL GENERAL LIABILITY coverage with minimum limits of \$1,000,000, and WORKERS COMPENSATION coverage with limits in accordance with State of Colorado requirements. Team must provide Town with proof of EMPLOYER'S LIABILITY coverage with limits of at least \$500,000.

COMPREHENSIVE AUTOMOBILE LIABILITY with minimum limits for bodily injury and property damage coverage of at least \$1,000,000, plus an additional amount adequate to pay related attorneys' fees and defense costs, for each of Consultant's owned, hired or non-owned vehicles assigned to or used in performance of this Agreement. The Town, Boulder County, Colorado Department of Transportation (CDOT) shall be named as additional Insured for General and Auto Liability Insurance. Awarded Consultant must present the Town and CDOT with proof of PROFESSIONAL LIABILITY COVERAGE with a minimum limit of \$1,000,000.

E. Modification or Withdrawal of Proposals:

Proposals may be modified or withdrawn by the team prior to the established due date and time.

F. Minor Informalities:

Minor informalities are matters of form rather than substance evident from the response or insignificant mistakes that can be waived or corrected without prejudice to other vendors. The Town may waive such informalities or allow the vendor to correct them depending on which is in the best interest of the Town.

G. Responsibility Determination:

The Town will make awards only to responsible vendors. The Town reserves the right to assess team responsibility at any time in this RFP process and may not make a responsibility determination for every team.

H. Acceptance of RFP Terms:

A proposal submitted in response to this RFP shall constitute a binding offer. The autographic signature or electronic signature of a person who is legally authorized to execute contractual obligations on behalf of the team shall indicate acknowledgment of this condition. A submission in response to this RFP acknowledges acceptance by the team of all terms and conditions as set forth herein. A team shall identify clearly and thoroughly any variations between its proposal and the RFP in the cover letter. Failure to do so shall be deemed a waiver of any rights to subsequently modify the terms of performance, except as outlined or specified in the RFP.

I. Protested Solicitations and Awards:

Any actual or prospective team who is aggrieved in connection with either the solicitation or award of a contract may protest in writing to the Town's Administrator. The protest shall be submitted within three calendar days after such aggrieved person knows, or reasonably should have known, of the facts giving rise thereto. With regard to requirements or specifications set forth in this RFP, it is important for consultants to note that a challenge should be made within three (3) calendar days of when the item being protested is known.

J. Confidential/Proprietary Information:

It is not the intention of the Town to require the submission of confidential/proprietary information in response to this Request for Proposal. All proposals will be confidential until a contract is awarded and fully executed. At that time, all proposals and documents pertaining to the proposals will be open for public inspection, except for the material that is proprietary or confidential. Requests for confidentiality can be submitted to the Town provided that the submission is in accordance with the following procedures. This remains the sole responsibility of the team. The Town will make no attempt to cure any information that is found to be at a variance with this procedure.

The team may not be given an opportunity to cure any variances after proposal opening. **Neither a proposal in its entirety, nor proposal price information will be considered confidential/proprietary.** Questions regarding the application of this procedure must be directed to the contact for the Town listed in this RFP.

Procedure for requesting confidentiality:

1. The team will submit one (1) additional complete proposal clearly marked "FOR PUBLIC VIEWING." In this version of the proposal, the team will black out all text and/or

data that it wishes to be considered confidential and denote the information as “proprietary” or “confidential.”

2. A written description will accompany the “FOR PUBLIC VIEWING” copy of the proposal identifying the material that the team is considering proprietary or confidential. Specific reasoning as to why each item is to remain confidential, *other than* recitation of a specific state or federal statute, is required.

3. Where a team has submitted a “FOR PUBLIC VIEWING” version of their proposal, that version will be open to the public while the other copies of that team's proposals will be maintained as confidential material. Proposals that are determined to be at variance with this procedure may be declared non-responsive by the Town, and not given further consideration.

K. Acceptance of Proposal Content:

The contents of the proposal (including persons specified to implement the project) of the successful team shall become contractual obligations into the contract award. Failure of the successful team to perform in accordance with these obligations may result in cancellation of the award and such team may be removed from future solicitations.

L. RFP Cancellation:

The Town reserves the right to cancel this RFP at any time, without penalty.

M. Negotiation of Award:

In the event only one (1) responsive proposal is received by the Town, the Town reserves the right to negotiate the award for the services with the team submitting the proposal in lieu of accepting the proposal as is.

N. Contract:

Each team may submit a form of contract with its proposal. However, the Town reserves the right to use its own form of contract or to require that additional or different provisions be included in the final contract.

O. RFP Response/Material Ownership:

All material submitted regarding this RFP becomes the property of the Town of Lyons, unless otherwise noted in the RFP.

P. Incurring Costs:

The Town is not liable for any cost incurred prior to issuance of a legally executed contract and/or a purchase order.

Q. Utilization of Award by Other Agencies:

Request For proposal: Town of Lyons - 2016 Lyons Primary Planning Area Master Plan

The Town of Lyons reserves the right to allow other State and local governmental agencies, political subdivisions, and/or school districts to utilize the resulting award under all terms and conditions specified and upon agreement by all parties. Usage by any other entity shall not have a negative impact on the Town of Lyons in the current term or in any future terms.

R. Non-Discrimination:

The team shall comply with all applicable state and federal laws, rules and regulations involving nondiscrimination on the basis of race, color, religion, national origin, age or sex.

S. News Releases:

Neither the Town, nor the team, shall make news releases pertaining to this RFP prior to execution of the contract without prior written approval of the other party. Written consent on the Town's behalf is provided by the Public Information Office.

T. Taxes:

The Town of Lyons is exempt from all federal excise taxes and all Colorado State and local government sales and use taxes. Where applicable, the team will be responsible for payment of use taxes.

U. Assignment and Delegation:

Neither party to any resulting contract may assign or delegate any portion of the agreement without the prior written consent of the other party.

V. Availability of Funds:

Financial obligations of the Town of Lyons payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the Town.

W. Standard of Conduct:

The successful firm shall be responsible for maintaining satisfactory standards of employees' competency, conduct, courtesy, appearance, honesty, and integrity, and shall be responsible for taking such disciplinary action with respect to any employee, as may be necessary. The Town may request the successful firm to immediately remove from this assignment any employee found unfit to perform duties due to one or more of the following reasons:

- (1) Neglect of duty.
- (2) Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions or fighting.
- (3) Theft, vandalism, immoral conduct or any other criminal action.

- (4) Selling, consuming, possessing, or being under the influence of intoxicants, including alcohol, or illegal substances while on assignment for the Town.

Agents and employees of team working in Town facilities shall present a clean and neat appearance.

X. Unlawful Employees, Contractors and Subcontractors:

Team shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Team shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform work under this Contract or (b) fails to certify to the Team that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract.

Y. Verification Regarding Illegal Aliens:

Team has confirmed the employment eligibility of all employees newly hired for employment to perform work under this Contract through participation in either the E-verify program administered jointly by the United States Department of Homeland Security and the Social Security Administration or the employment verification program of the Colorado Department of Labor & Employment.

Z. Limitation Regarding E-Verify Program:

Team shall not use either E-verify or Colorado Department of Labor & Employment program procedures to undertake pre-employment screening of job applicants while performing this Contract.

AA. Duty to Terminate a Subcontract; Exceptions:

If Team obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Team shall, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien:

1. Notify the subcontractor and the Town within three (3) days that the Team has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
2. Terminate the subcontract with the subcontractor if, within three (3) days of receiving notice that the Team has actual knowledge that the subcontractor is employing or contracting with an illegal alien, the subcontractor does not stop employing or contracting with the illegal alien.

BB. Duty to Comply with State Investigation:

Team shall comply with any reasonable request of the Colorado Department of Labor & Employment made in the course of an investigation pursuant to C.R.S. 8-17.5-102 (5).

CC. Damages for Breach of Contract:

In addition to any other legal or equitable remedy the Town may be entitled to for a breach of this Contract, if the Town terminates this Contract, in whole or in part, due to the Team's breach of any provision of this Contract, Team shall be liable for actual and consequential damages to the Town.

DD. Other Statutes:

1. The signatory hereto avers that he/she is familiar with Colorado Revised Statutes , 18-8-301, et seq. (Bribery and Corrupt Influence) and 18-8-401, et seq. (Abuse of Public Office) as amended, and that no violation such provisions is present.
2. The signatory hereto avers that to his/her knowledge, no Town of Lyons employee has any personal or beneficial interest whatsoever in the service or property described herein. See CRS 24-18-201 and CRS 24-50-507.

Attachment A:

Links to Lyons Planning Documents

Online: [2010 Town of Lyons Comprehensive Plan](#)

[Lyons Recovery Action Plan](#)

[Lyons Environmental Sustainability Action Plan](#)

[Municipal Code of the Town of Lyons](#)

Request by Email: *2012 Intergovernmental Agreement for Boulder County – Lyons (IGA)*

Attachment B:

Illegal Alien Certificate

CONTRACTOR’S CERTIFICATION OF COMPLIANCE

Pursuant to Colorado Revised Statute, § 8-17.5-101, et seq., as amended 5/13/08, as a prerequisite to entering into a contract for services with the Town of Lyons, Colorado, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract for services and that the contractor will participate in the E-Verify Program or Department program, as those terms are defined in C.R.S. § 8-17.5-101, et seq., in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

Company Name

Date

Name (Print or Type)

Signature

Title

Attachment C:

Proposal Acknowledgement

PROPOSAL ACKNOWLEDGEMENT FORM

PROJECT NAME: _____

Failure to complete, sign and return this submittal page with your proposal may be cause for rejection.

Contact Information	Response
Company Name:	
Name and Title of Primary Contact Person:	
Company Address:	
Phone Number:	
Email Address:	
AICP License # (if applicable):	
Company Website:	

By signing below I certify that:

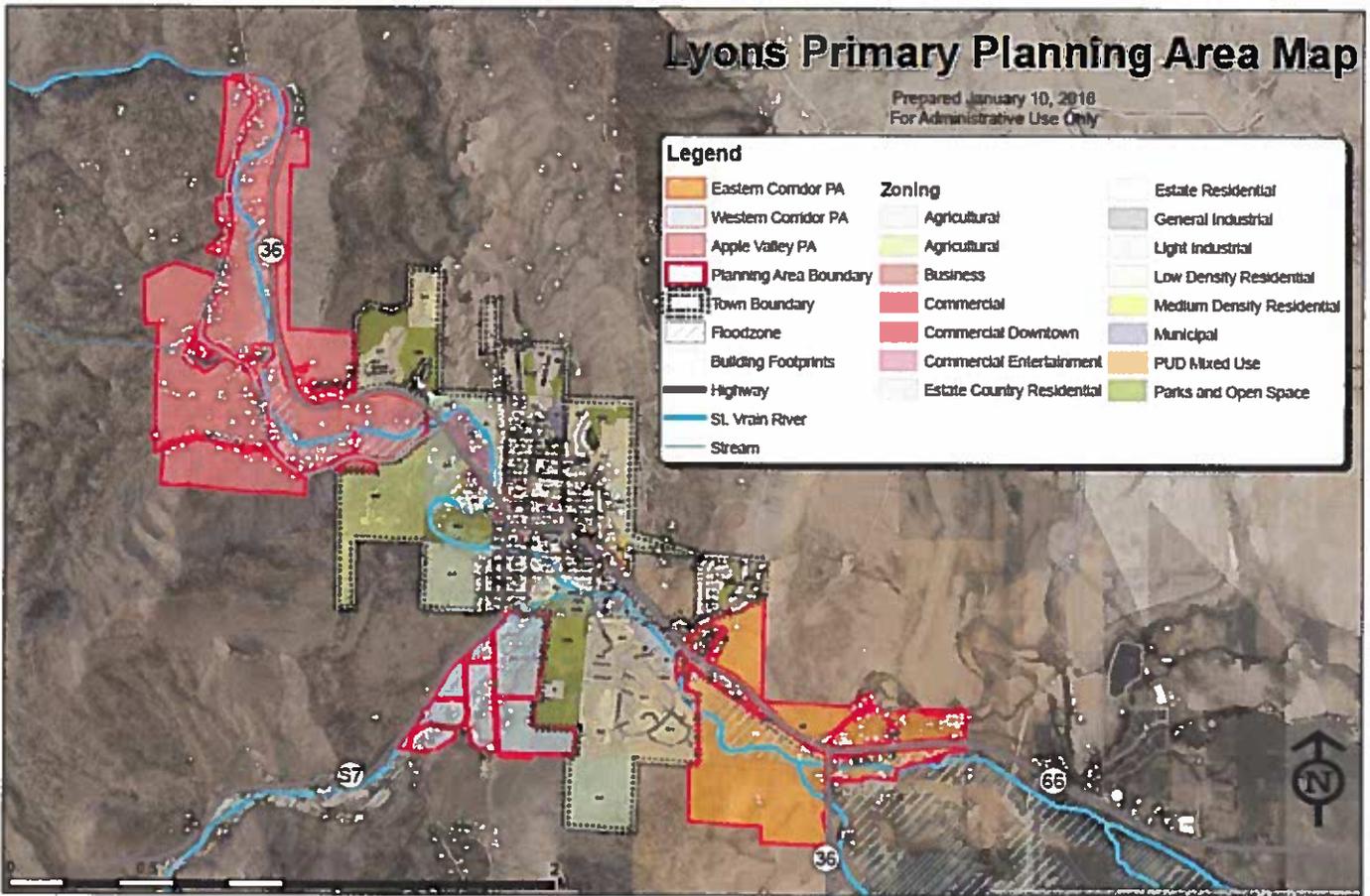
- I am authorized to bid on my company's behalf.
- I am not currently an employee of the Town of Lyons.
- None of my employees or agents is currently employees of the Town of Lyons.
- I am not related to any Town of Lyons employee or Elected Official.

Signature of Person Authorized on Company's Behalf

Date

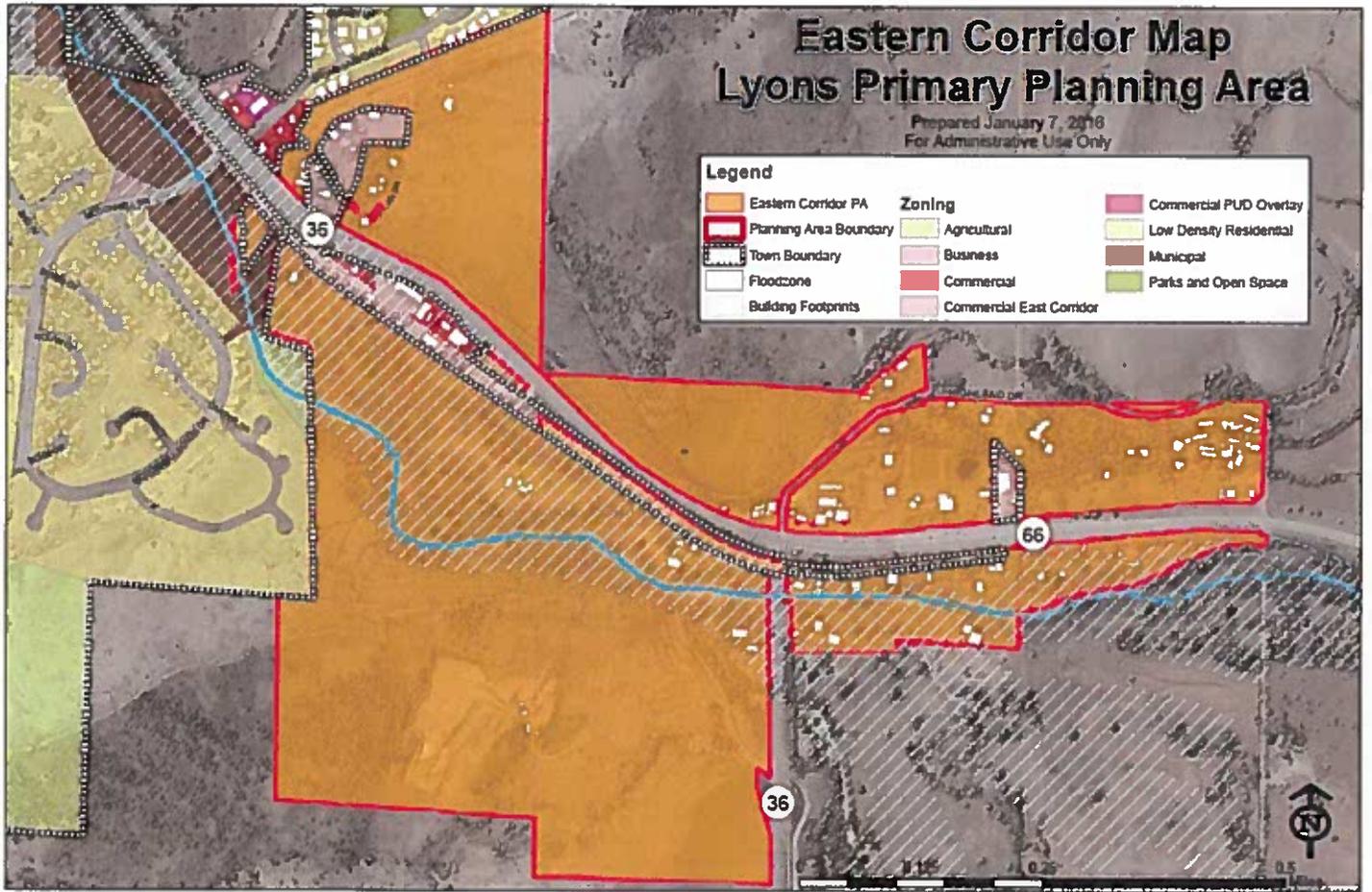
Note: If you cannot certify the above statements, please explain in the space provided below:

Attachment D:
Planning Area Maps



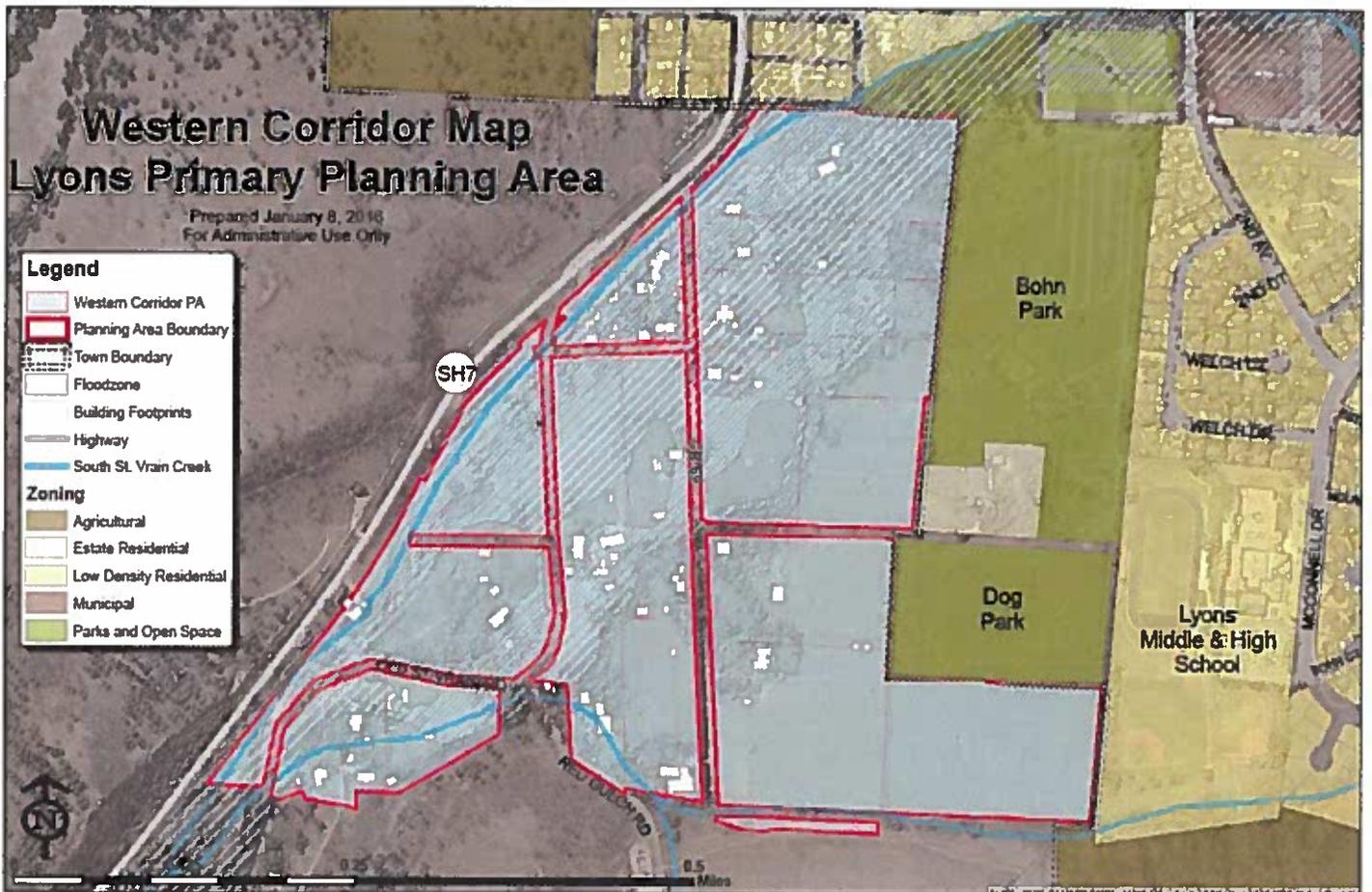
Request For proposal: Town of Lyons - 2016 Lyons Primary Planning Area Master Plan

Eastern Corridor



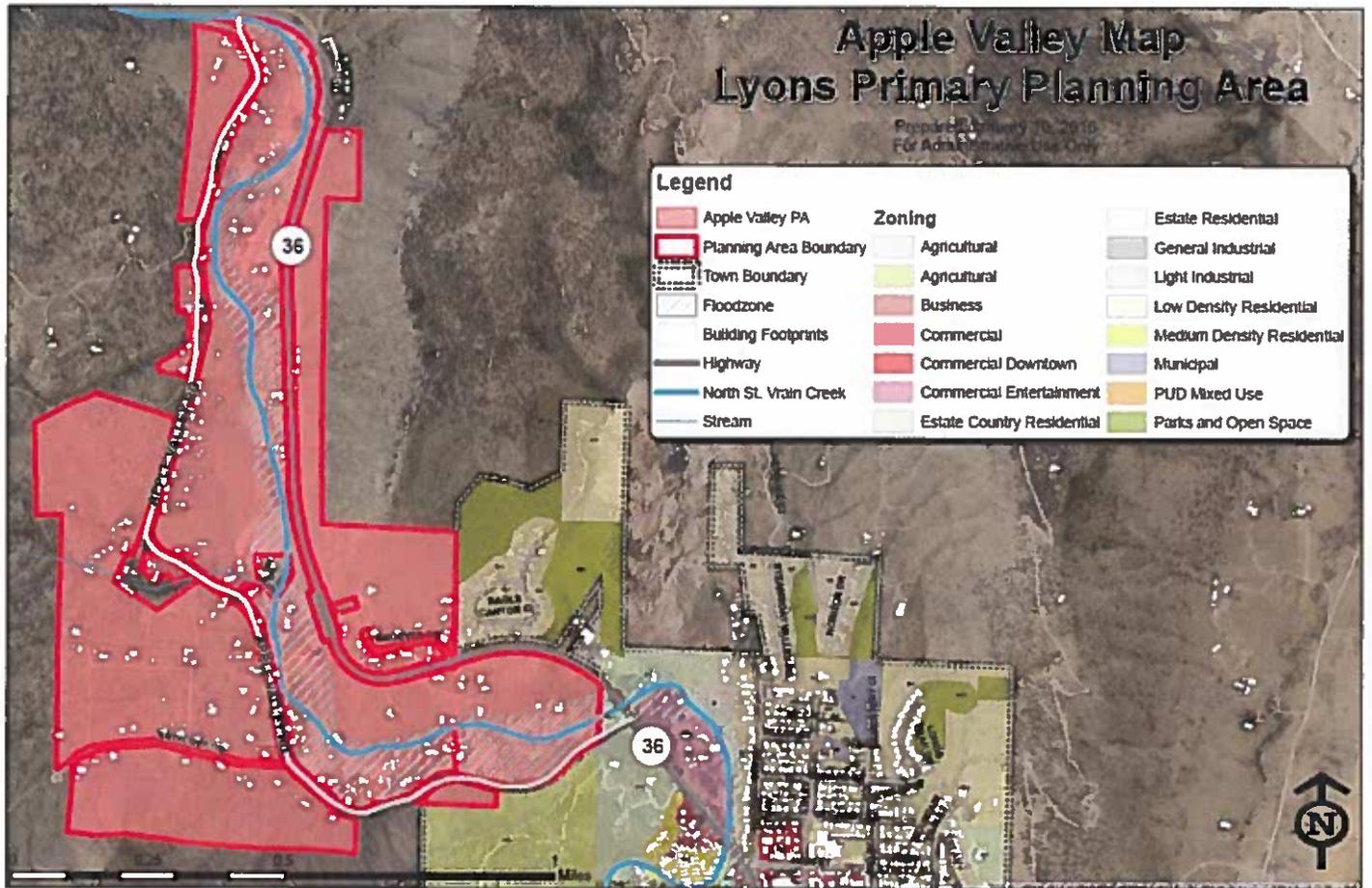
Request For proposal: Town of Lyons - 2016 Lyons Primary Planning Area Master Plan

Western Corridor



Request For proposal: Town of Lyons - 2016 Lyons Primary Planning Area Master Plan

Apple Valley

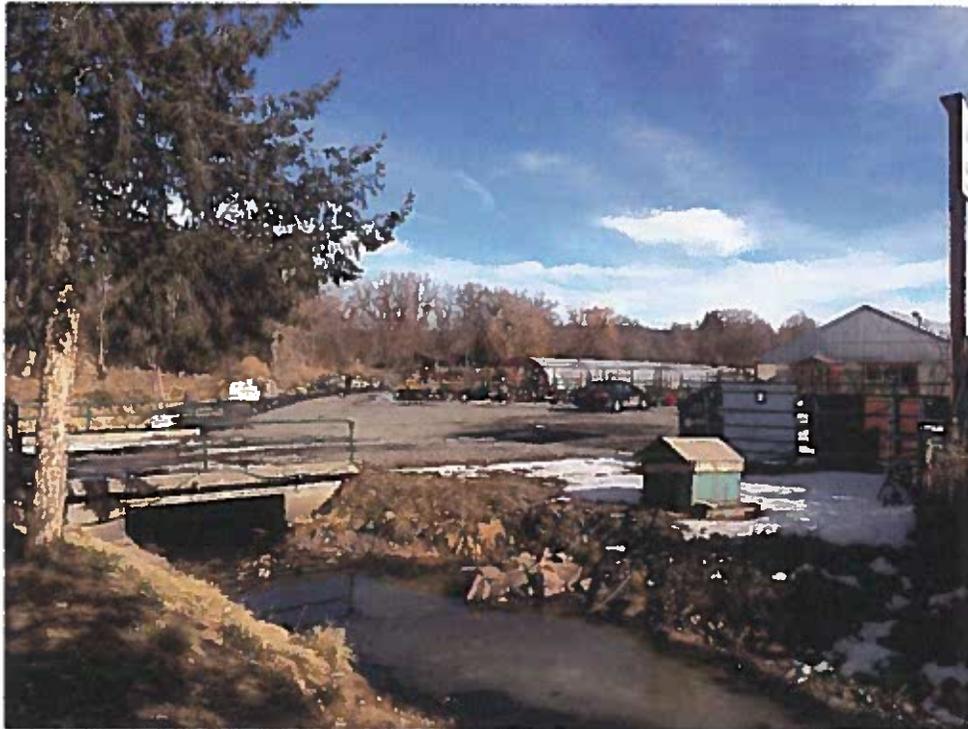
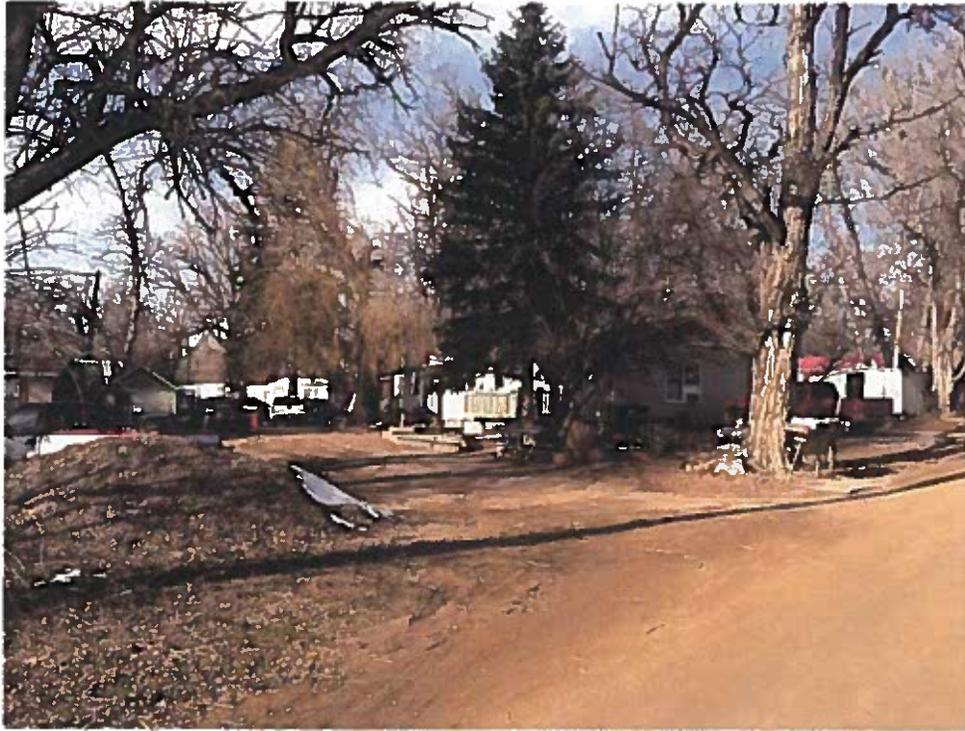


**Attachment E:
Planning Area Photos**

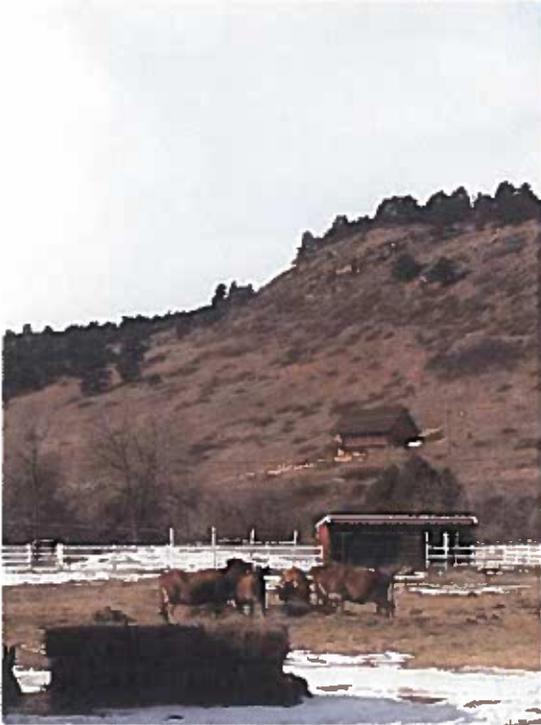
Eastern Corridor Planning Area



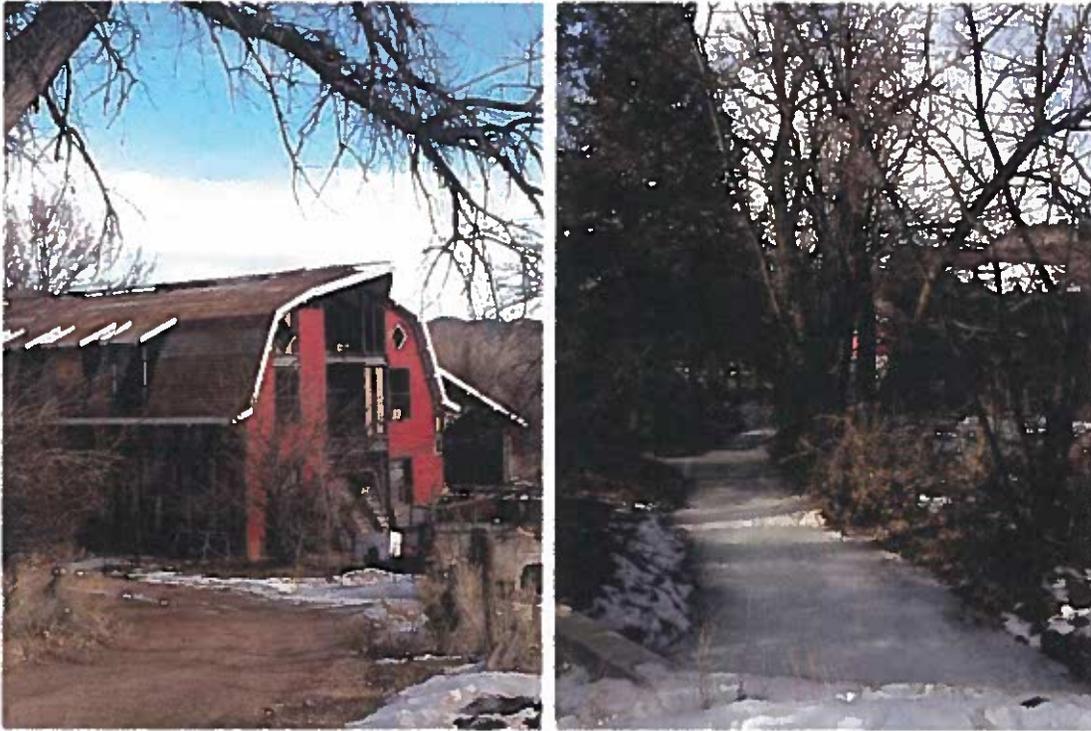




Western Corridor

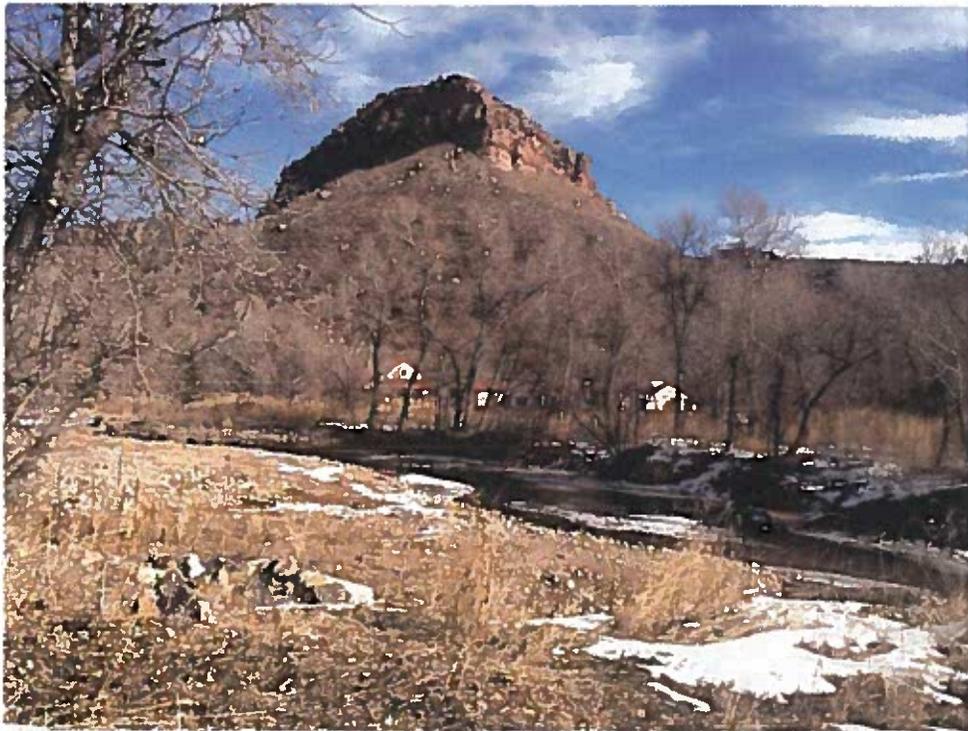


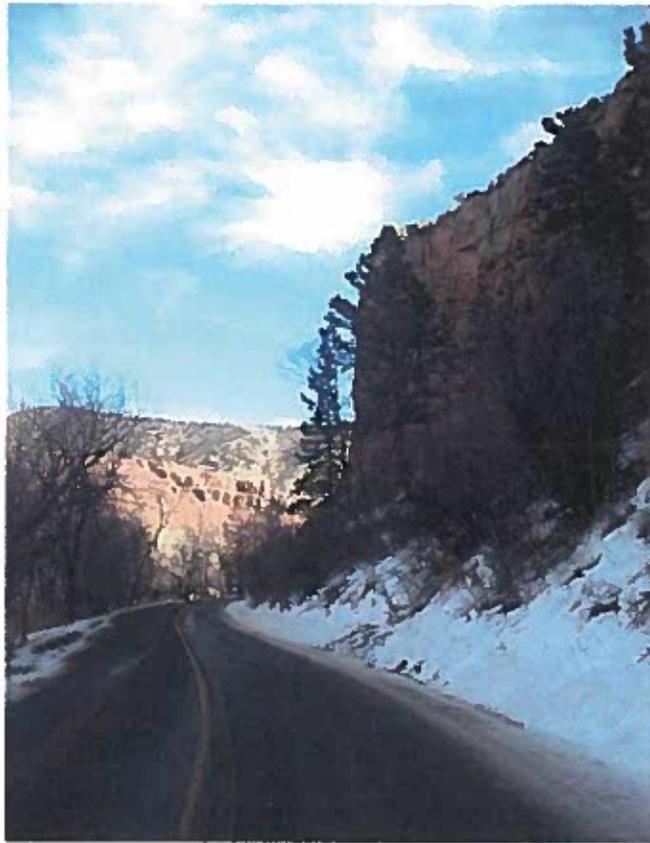
Request For proposal: Town of Lyons - 2016 Lyons Primary Planning Area Master Plan



Apple Valley







Agenda Item
11-2

**TOWN OF LYONS, COLORADO
RESOLUTION 2016-21**

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF LONGMONT, COLORADO REGARDING DELEGATION OF ACTIVITIES FOR THE BOULDER COUNTY COLLABORATIVE COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY SUB-ALLOCATION GRANT NO. B-13-DS-08-001

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

WHEREAS, § 29-1-201, *et seq.*, C.R.S., as amended, authorizes the Town to cooperate and contract with other governmental entities with respect to functions lawfully authorized to each of the parties, and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution, Article XIV, § 18 (2); and

WHEREAS, the Department of Housing and Urban Development (“HUD”) Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program has appropriated funds for disaster assistance and has allocated the State of Colorado CDBG-DR funds for recovery from the disasters in 2011, 2012, and 2013, and the State of Colorado’s Department of Local Affairs (“DOLA”) has allocated a sub-allocation of these funds to the Boulder County Collaborative (“Collaborative”); and

WHEREAS, the Collaborative has determined a method of distributing the sub-allocation based on its Intergovernmental Agreement detailing the targeted percentage amount each partner will receive for infrastructure and/or housing assistance projects; and

WHEREAS, the City of Longmont, Colorado (“City”) is the fiscal agent for the Collaborative CDBG-DR sub-allocation of DOLA funds from HUD and is responsible for the development, implementation, administration, and evaluation of HUD’s CDBG-DR funds on behalf of the Collaborative Partners (“Partners”); and

WHEREAS, the Town possesses the authority and management capability necessary to assist the City in executing its responsibilities as a CDBG-DR sub-grantee and has been determined by the City to be an appropriate party to assume the primary administration of an activity described as “Buyouts and Acquisitions in CDBG-DR Program Grant No. B-13-DS-08-001: INF-00023”; and

WHEREAS, the Town is authorized to enter into cooperative agreements pursuant to the Colorado Constitution, Article XIV § 18, and § 29-1-203, C.R.S.; and

WHEREAS, on February 16, 2016, the City approved an Agreement for Delegation of Activities for the Boulder County Collaborative Community Development Block Grant – Disaster Recovery Sub-Allocation Grant No. B-13-DS-08-001: INF-00023 (“Agreement”) with the Town, a copy of which is attached to this resolution; and

WHEREAS, the Board of Trustees desires to approve the Agreement and to authorize and direct the Town Administrator to act as the official representative of the Town pursuant to requirements in the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, THAT:

Section 1. The attached Agreement for Delegation of Activities between the Town and the City of Longmont, Colorado regarding Boulder County Collaborative CDBG-DR Sub-Allocation, Grant No. B-13-DS-08-001: INF-00023 ("Agreement") is hereby approved.

Section 2. The Mayor is hereby authorized to execute the Agreement approved by this resolution and the Town Clerk is authorized to attest the Mayor's signature.

Section 3. Pursuant to the Agreement, the Town Administrator is hereby authorized to enter into subsequent contracts, all understandings and assurances related thereto, and is directed and authorized to act in connection with the Agreement and to provide such additional information as may be required.

ADOPTED THIS 23rd DAY OF FEBRUARY 2016.

TOWN OF LYONS, COLORADO

John E. O'Brien, Mayor

ATTEST:

Deb Anthony, Town Clerk

AGREEMENT FOR DELEGATION OF ACTIVITIES

Boulder County Collaborative CDBG-DR Sub-Allocation Grant No. B-13-DS-08-001: INF-00023

THIS AGREEMENT, including attached conditions, is made by and between the City of Longmont, Colorado, a Colorado municipal corporation (“City”), and the Town of Lyons (“Delegate”).

WHEREAS, the City is the fiscal agent for the Boulder County Collaborative (“Collaborative” or “BCC”) Community Development Block Grant-Disaster Recovery (“CDBG-DR”) sub-allocation from the State of Colorado’s Department of Local Affairs (“DOLA”) funds from the U.S. Department of Housing and Urban Development (“HUD”) and is responsible for the development, implementation, administration, and evaluation of HUD’s CDBG-DR funds on behalf of the Collaborative Partners (“Partners”); and

WHEREAS, HUD has allocated the State of Colorado CDBG-DR funds for recovery from the disasters in 2011, 2012, and 2013, and DOLA has allocated a sub-allocation of these funds to the Collaborative through the State’s Third Amendment to the State’s Action Plan submitted to HUD dated June 26, 2015; and

WHEREAS, the Collaborative has determined a method of distribution of the sub-allocation based on its intergovernmental agreement detailing the targeted percentage amount each Partner will receive for infrastructure and/or housing assistance projects; and

WHEREAS, the Delegate possesses the authority and management capability necessary to assist the City in the execution of its responsibilities as a CDBG-DR sub-grantee and has been determined by the City to be an appropriate party to assume the primary administration of an activity described as Buyouts and Acquisitions in CDBG-DR Program Grant No. B-13-DS-08-001; and

WHEREAS, by this Agreement, the parties are making provisions for the administration and conduct of that activity by the Delegate.

THEREFORE, WITNESSETH, the City and the Delegate do mutually agree as follows:

1. **WORK TO BE PERFORMED.** The Delegate shall, in a timely and satisfactory manner, as determined by the City, perform the activities described in the work program set forth in **Appendix A**.

2. **COMPLIANCE WITH APPROVED PROGRAM.** All activities authorized by this Agreement will be performed in accordance with the goals and objectives set forth in **Appendix A**, the budget set forth in **Appendix B**, and the conditions, assurances, and requirements set forth in CDBG-DR Program Grant No. B-13-DS-08-001 as detailed in **Appendix C**. Prior to undertaking any activity or making any expenditure that is not clearly consistent with the terms and conditions of this Agreement, the Delegate shall, in writing,

request the written approval of the City. No reimbursement shall be made for any such expenditure or activity that does not receive this prior written approval of the City.

3. **FUNDS AUTHORIZED AND SCHEDULE OF PAYMENTS.** Subject to the receipt of funds from the State of Colorado, the City will reimburse the Delegate for expenditures verified by vouchers and similar documentation authorized in **Appendix A.**

For each month covered by this Agreement, the Delegate shall submit, as an invoice, a financial statement of expenses incurred in that month within ten (10) working days of the close of each month. Within ten (10) working days of receipt of the invoice, the City will determine in its reasonable discretion if those expenditures are authorized in **Appendix A**, and if so authorized, make payment of approved expenditures or notify the Delegate in writing of its decision to disapprove, and of any conditions to be met for approval. In no event will the Delegate receive reimbursement in excess of the total amount of CDBG-DR funds authorized by this Agreement and detailed in the budget set forth in **Appendix B.**

4. **PROGRAM INCOME.** Program income as defined in 24 CFR 570.504, generated by the Delegate, will be sent to the City while the Grant Agreement under B-13-DS-08-0011 with DOLA remains open and will be used for other CDBG-DR eligible activities under the sub-allocation as determined by the Collaborative. Program income received after the Grant Agreement with DOLA is closed out can be retained and used by the Delegate that is a CDBG entitlement jurisdiction for any CDBG eligible use. Program income received by the Delegate that is not a CDBG entitlement jurisdiction after the Grant Agreement with DOLA is closed out, will be returned to the City and the City will place the program income in the Countywide Down Payment Assistance Program account to be used throughout the county for down payment assistance. Appropriate documentation of the receipt and use of program income during the term of this Agreement will be provided to the City.

5. **REVERSION OF ASSETS.** Upon the expiration or termination of this Agreement, the Delegate shall transfer any CDBG-DR funds on hand at that time and any accounts receivable attributable to the use of CDBG-DR funds to the City. Any real property under the Delegate's control that was acquired or improved in whole or in part with CDBG-DR funds in excess of \$25,000 must either:

(A) Be used to meet one of the national objectives outlined in the March 5, 2013, Federal Register Notice (78 FR 14329) or 24 CFR 570.208 until five (5) years after the expiration of this Agreement. If however, the real property being acquired is part of a buyout or flood mitigation acquisition where the future and on-going use of the property is as open space, then the undeveloped real property will be considered to meet the HUD national objective;

OR

(B) Be disposed of in a manner that results in the City being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG-DR funds for acquisition of, or improvements to, the property.

If there is real property being acquired or improved under this Agreement with CDBG-DR funds, the Delegate and the City must have reached a prior agreement as to which of the above options will be used and enforced. The option for this Agreement is (A).

Paragraph 5 only applies to any funds or real property provided to or acquired by the Delegate under this Agreement.

6. REPORTS, RECORDS, MONITORING AND EVALUATION. The City will monitor, evaluate, and provide guidance, direction, and technical assistance to the Delegate in the conduct of activities listed in this paragraph. The Delegate will provide the following:

(A) Quarterly Reports. Within five (5) working days after the end of each quarter (by March 5, June 5, September 5 and December 5), the Delegate shall submit the following:

(1) Progress report of the Delegate's activities and accomplishments during the period with emphasis on the objectives of the project specified in **Appendix A.**

(2) Financial statement of CDBG-DR expenditures made by the Delegate during the period, including a comparison of accumulative CDBG-DR expenditures made in the conduct of the project to the specific cost categories and expenditure milestones set forth in the budget in **Appendix B.**

(3) Any special report made necessary by the imposition of the City or HUD, or additional reasonable requirements pursuant to CDBG-DR Program Grant No. B-13-DS-08-001.

(B) Project Completion Report. Within fifteen (15) days of the earlier of termination or completion of the project, the Delegate shall submit one (1) copy of the project completion report, and one (1) copy of the final financial status report. Electronic submission of these and all reports is encouraged. The project completion report shall contain a certification from the Delegate that the project is complete and all costs for reimbursement have been submitted to the City.

(C) Annual Audit. A complete annual audit is not required by federal law if the Delegate is a non-federal entity that expends less than \$750,000 in federal funds annually, including funds authorized by this grant. However, all financial and other records must be available for review or audit by appropriate officials of the City, State, HUD, and the General Accounting Office. If the Delegate will expend \$750,000 or more in federal funds during the calendar year in which the grant award made under this Agreement is expended, a single or program-specific audit must be submitted to the City for review immediately upon completion. The Delegate will include the activities delegated by the terms of this Agreement in its audit which shall be undertaken in accordance with the provisions of OMB Super Circular Title 2 of the CFR, Subtitle A, Chapter II, Part 200, and which shall include a compliance review as per 24 CFR 44.5.

(D) **Retain Records.** The Delegate will retain and permit access by the City, State, HUD, and the Comptroller General to inspect all program records pertaining to the grant for a period of at least four (4) years after the date of this grant close-out. Records to be maintained by Delegate will include, but are not limited to, the following: applications including eligibility determination, national objective and LMI determination, environmental clearance, duplication of benefit, beneficiary information, and other compliance documentation as required.

For housing projects/programs, the Delegate shall also retain and permit access by the City, State, HUD, and the Comptroller General to inspect all individual household assistance records pertaining to the grant for a period of at least ten (10) years after the date of this grant close-out.

(E) **Cooperate with Evaluation.** The Delegate will ensure the cooperation of its staff and other responsible officials in the efforts of the City to monitor and evaluate the Delegate's activities. The Delegate will actively assist the City in the following activities:

(1) On-site visits by the City made to monitor the progress of the activities delegated, to review compliance with the terms of this Agreement, and to offer assistance in the conduct of the project. Such on-site visits will be undertaken within ninety (90) days of this grant award, and then every six (6) months until grant close-out.

(2) Any special monitoring or evaluation activities made necessary by the imposition by the City, State, or HUD of additional reasonable requirements pursuant to HUD CDBG-DR Program Grant No. B-13-DS-08-001.

7. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.** The Delegate shall comply with all applicable federal, state, and local laws, rules, statutes, charter provisions, ordinances, regulations, policies, guidelines, and requirements with respect to the acceptance and use of federal funds for this federally assisted program. **Appendix C** requires that the Delegate assure and certify compliance with said requirements, including the following:

- (A) Residential Anti-Displacement and Relocation Assistance Plan included in **Appendix F.**
- (B) Affirmation of Duplication of Benefits included in **Appendix H.**
- (C) Financial Management Questionnaire to affirm proficient financial controls and procurement processes included in **Appendix I.**

8. **CHANGES.** This Agreement is an integration of the entire understanding of the parties, and any amendment must be signed by the authorized representative of both parties. Notwithstanding the foregoing, the City, State, or HUD may, from time to time, impose other reasonable conditions in connection with the activities delegated under the terms of this Agreement, and the Delegate will comply with such conditions upon receiving written notice from the City, State, or HUD or will agree to terminate this Agreement pursuant to Paragraph 11 herein.

The City Manager may approve and sign any amendments on behalf of the City that are consistent with the purposes of this Agreement and do not substantially increase the obligations of the City hereunder.

9. **NON-DISCRIMINATION.** In the performance of this Agreement, the Delegate shall not discriminate against any employee or applicant for employment with regard to race, color, religion, sex, national origin, disability, age, ancestry, or political belief. The Delegate further agrees that no person will be denied equal access to, excluded from participation in, or be denied the proceeds of any CDBG-DR funded project subject to this Agreement, and will adhere to the non-discrimination provisions promulgated pursuant to the Executive Orders and federal statutes referenced in **Appendix C.**

10. **ENFORCEMENT.** The City may, for cause and upon giving fifteen (15) days' written notice to the Delegate, undertake one or more of the following courses of action:

- (A) Withhold funds until the situation has been corrected;
- (B) Suspend the Delegate's authority to spend funds or to conduct the project until the situation is corrected; or
- (C) Terminate this Agreement in whole or in part.

Cause shall include, but not be limited to:

- (A) Failure, for any reason, of the Delegate to fulfill in a timely and proper manner its obligations under this Agreement;
- (B) Submission by the Delegate to HUD, the State, or to the City of reports that are incorrect or incomplete in any material respect;
- (C) Ineffective or improper use of funds provided under or generated by this Agreement; or
- (D) Suspension or termination by the State or HUD of the grant to the City under which this Agreement is made, or the portion thereof delegated by this Agreement.

Delegate shall comply with the provisions of the Recapture Plan in **Appendix G.**

11. **TERMINATION.**

(A) Either party may terminate this Agreement without cause upon thirty (30) days' written notice to the other party.

(B) The Delegate may terminate this Agreement, upon thirty (30) days' written notice to the City, if the Delegate is unable or unwilling to comply with such additional

conditions as may be lawfully applied by the City, State, or HUD. In such event, the City may require the Delegate to ensure that adequate arrangements have been made for the transfer of the delegated activities to another Delegate or to the City.

(C) In the event of any termination, all property and finished or unfinished documents, data, studies, and reports purchased or prepared by the Delegate under this Agreement shall become the property of the City, and the Delegate shall be entitled to compensation for any unreimbursed expenses reasonably and necessarily incurred in satisfactory performance of the Agreement. Notwithstanding the above, the Delegate shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the Delegate, and the City may withhold any reimbursement to the Delegate for the purpose of set-off until such time as the exact amount of damages due to the City from the Delegate is agreed upon or otherwise determined.

(D) In the event of any termination, the City shall de-obligate any remaining unexpended grant funds for the project, and shall provide notice to Delegate that such project has failed to meet its expenditure milestones (included in **Appendix B**) and the corresponding HUD timeliness requirements and that as a result, the Delegate is required to immediately return to the City any previously received funds for the project for re-allocation to another project.

12. **SUBCONTRACTING AND ASSIGNMENT.** The Delegate shall not assign, delegate, nor subcontract any of the work or services authorized by this Agreement without the prior written approval of the City.

13. **COPIES OF PLANS.** The City will be provided with copies of plans, reports, studies, or other documentation signifying and giving evidence of the completion of the activities authorized by the terms of this Agreement at such time as the Delegate has fulfilled its responsibilities in executing the terms of this Agreement.

14. **LIABILITY.** The Delegate and the City each assume responsibility for the actions and omissions of its own agents and employees in the performance or failure to perform work under this Agreement. It is agreed that such liability for actions or omissions of their own agents and employees is not intended to increase the amounts set forth in the Colorado Governmental Immunity Act, now existing, or as the same may be later amended. By agreeing to this provision, the parties do not waive nor intend to waive the limitations on liability which are provided to the parties under the Colorado Governmental Immunity Act § 24-10-101 et seq., C.R.S., as amended.

15. **INSURANCE.** The Delegate will procure and maintain in full force and effect such insurance or self-insurance that will insure its obligations and liabilities under this Agreement, including workers' compensation, automobile liability, and general liability.

16. **NOTICE.** Any notice provided for in this Agreement shall be in writing and shall be sufficiently given if delivered in person, by prepaid overnight express, or by registered or certified mail, postage prepaid, return receipt requested, and addressed to the following:

In case of the City, to:
Kathy L. Fedler
CDBG-DR Program Manager
Civic Center Complex
350 Kimbark Street
Longmont, CO 80501

In case of Delegate, to:
Victoria Simonsen
Town Administrator
Town of Lyons
432 5th Avenue
Lyons, CO 80540

Either party may designate another address by written notice as provided in this section.

17. **PROVISIONS CONSTRUED AS TO FAIR MEANING.** The provisions of this Agreement shall be construed as to their fair meaning and not for or against any party based upon any attribution to such party of the source of the language in question.

18. **HEADINGS FOR CONVENIENCE.** All headings, captions, and titles are for convenience and reference only and of no meaning in the interpretation or effect of this Agreement.

19. **NO THIRD PARTY BENEFICIARIES.** None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or Delegate receiving services or benefits under this Agreement shall be only an incidental beneficiary.

20. **WAIVER.** No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

21. **GOVERNING LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

22. **STATUS OF DELEGATE.** Delegate shall perform under this Agreement as an independent contractor and a separate entity and not as an employee or agent of the City. **Delegate's employees and volunteers are not entitled to City of Longmont workers' compensation benefits or its insurance carriers or funds. Delegate is obligated to pay federal and state income tax on money, if any, earned pursuant to this Agreement.**

23. **RELATIONSHIP OF THE PARTIES.** It is mutually agreed and understood that nothing contained in this Agreement is intended or shall be construed as in any way establishing the relationship of co-partners or joint ventures between the parties hereto or as construing the Delegate, including its agents and employees, as an agent of the City. The Delegate shall remain an independent and separate entity. When Delegate provides services as listed above, Delegate personnel shall do so as volunteers and not as paid employees.

24. **VERIFICATION OF LAWFUL PRESENCE.** Delegate shall verify the lawful presence in the United States of each natural person eighteen (18) years of age or older who applies for state or local public benefits or for federal public benefits for the applicant, prior to providing the benefits as required by Article 76.5 of Title 24 of the Colorado Revised Statutes, Restrictions on Public Benefits, C.R.S. 24-76.5-101, et seq. Delegate shall verify the lawful

presence in the United States of each such applicant by requiring the applicant to: 1) produce (i) a valid Colorado driver's license or a Colorado identification card, issued pursuant to Article 2 of Title 42, C.R.S.; or (ii) a United States military card or a military dependent's identification card; or (iii) a United States Coast Guard merchant mariner card; or (iv) a Native American tribal document; and 2) execute an affidavit in substantially the form shown on **Appendix E** stating: (i) that he or she is a United States citizen or legal permanent resident; or (ii) that he or she is otherwise lawfully present in the United States pursuant to federal law.

For an applicant who has executed an affidavit stating that he or she is an alien lawfully present in the United States, Delegate shall verify the applicant's lawful presence for federal public benefits or state or local public benefits through the federal Systematic Alien Verification of Entitlement Program ("Save Program"), operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence for purposes of this section. If Delegate is unable to use the Save Program after reasonable efforts are made to use the program, Delegate shall request the City to verify the lawful presence of the applicant through the Save Program.

35. EFFECTIVE DATES. This Agreement shall be in effect from February 23, 2016, through December 31, 2016.

Executed this _____ day of _____, 2016.

CITY OF LONGMONT:

MAYOR

DATE

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

CDBG-DR PROGRAM MANAGER

DATE

APPROVED AS TO INSURANCE PROVISIONS:

RISK MANAGER

DATE

CA File: 9939

State of Colorado)
) ss.
County of Boulder)

I attest that the foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, as the Mayor of the City of Longmont.

Witness my hand and official seal.

City Clerk, Notary Public

My commission expires _____.

APPENDIX A

WORK PROGRAM: INF-00023

Delegate: Town of Lyons

Project: CDBG-DR Buyouts and Acquisitions Program

Goal or Activity Description: The Town of Lyons will purchase one (1) mobile home park and approximately three (3) flood-impacted properties and those that are in hazardous locations, both inside and outside the floodplain. Properties will be purchased at pre-flood value and maintained in perpetuity as open space or other limited allowable use.

Area of Service: To be determined on a property-by-property basis.

National Objective:

Low/Mod Income Benefit: X **Percentage Met:** TBD

Urgent Need: _____

CDBG-DR Eligible Activity Pursuant to 24 CFR 570.201: (a) Acquisition
(d) Clearance/Demolition

Covered Project: No
(Major infrastructure project total cost of \$50 million or more, including at least \$10 million of CDBG-DR funds.)

Compliance with Davis Bacon Act Required: No

Compliance with Section 3 of the Housing and Urban Development Act of 1968 Required: Yes
(Refer to Title 24 CFR Part 135 and the Boulder County Collaborative Section 3 plan dated January 18, 2016.)

MBE/WBE Contract Statement Required: Yes
(Refer to Boulder County Collaborative CDBG-DR Required Bid and Contract Documents Instructions.)

Compliance with Resilience Performance Standards Required: No

Work Program

Completion Date

1. Household Assistance Programs

N/A

2. Environmental Review/Assessment

TBD (site specific)

3. Procurement & Contracting	TBD
4. Acquisition – Sub Allocation Round 1, Obligation 1	February 29, 2016
5. Acquisition – Sub Allocation Round 2, Obligation 1	November 30, 2016
6. Clearance & Demolition	November 30, 2016
7. Design/engineering	N/A
8. Construction	N/A
9. Project Delivery	December 31, 2016
10. Pre Agreement Tasks	
(A) Architectural/Engineering	
(B) Environmental Review/Assessment	X
(C) Real Property/Easement/Acquisition/Lease	X
(D) Permits/Surveys	X
(E) Legal/Bonding/Insurance	
(F) Construction Costs	
(G) Construction Management	
(H) Other (Please Specify)	

APPENDIX B

BUDGET: INF-00023

Delegate: Town of Lyons

Project: CDBG-DR Buyouts and Acquisitions Program

Task	Total Project Costs	CDBG-DR Funds	Other Funds	Other Funding Sources
CDBG-DR Buyouts and Acquisitions Program – Round 1, Obligation I	\$644,387	\$644,387	\$0	N/A
Project Delivery* (Not to exceed 15%)	N/A	N/A		
Subtotal	\$644,387	\$644,387		
CDBG-DR Buyouts and Acquisitions Program – Round 2, Obligation I	\$1,920,063	\$1,920,063	\$0	N/A
Project Delivery* (Not to exceed 15%)	N/A	N/A		
Subtotal	\$1,920,063	\$1,920,063		
Total	\$2,564,450	\$2,564,450	\$0	

CDBG-DR Funds on an Advance Basis: \$0
CDBG-DR Funds on a Reimbursement Basis: \$2,564,450

*Up to 15 percent of total project costs funded by CDBG-DR may be used for project delivery costs. Project delivery costs shall not exceed 15 percent of total project costs. Project delivery costs are those costs associated with implementing and carrying out eligible CDBG-DR activities and may include staff time, technical assistance, and consulting fees. Project delivery costs require sufficient documentation to be an acceptable reimbursable cost. Hours attributed to each project should be tracked daily and reported separately on an approved timesheet format. Project delivery will also include costs associated with charges incurred from Hagerty Consulting. These charges could include time directly spent on an activity or distributed on a fair share basis for program-wide implementation and monitoring. Excluding Hagerty Consulting costs, any project delivery costs not incurred by the Delegate will be applied to the project itself.

**Expenditure Milestones:
CDBG-DR Buyouts & Acquisitions Program – Round 1, Obligation 1**

	Date
50% draw down by:	February 29, 2016
75% draw down by:	February 29, 2016
Substantial Completion of Work Program and Submittal of Final Pay Request (date certain):	February 29, 2016

**Expenditure Milestones:
CDBG-DR Buyouts & Acquisitions Program – Round 2, Obligation 1**

	Date
50% draw down by:	June 30, 2016
75% draw down by:	September 30, 2016
Substantial Completion of Work Program and Submittal of Final Pay Request (date certain):	December 31, 2016

If target date for expenditure milestones are not met, the City has the authority to use any remedies stated in the Agreement including, but not limited to, those specified in §10(a).

Disposition of Program Income: No program income is anticipated.

APPENDIX C

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM CERTIFICATIONS

The Delegate hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements with respect to the acceptance and use of federal funds for this federally assisted program. Also, the Delegate gives assurances and certifies with respect to the grant that:

- A. It possesses legal authority to make a grant submission and to execute a community development and housing program;
- B. Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the Delegate to enter into subsequent contracts, all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Delegate to act in connection with the Agreement and to provide such additional information as may be required;
- C. It has developed its request for funds and funded project so as to give maximum feasible priority to activities which benefit low and moderate income families, or aid in the prevention or elimination of slums or blight;
- D. It will affirmatively further fair housing;
- E. It will minimize the displacement of persons as a result of activities assisted with CDBG-DR funds and will assist persons actually displaced as a result of such activities, as described in the Residential Anti-Displacement and Relocation Assistance Plan included as **Appendix F**;
- F. The Agreement will be conducted and administered in compliance with:
 1. Title VI of the Civil Rights Act of 1964 (Public Law 88-352), and implementing regulations issued at 24 CFR 570 Part 1;
 2. The Fair Housing Act (42 U.S.C. 3601-3619) and the Delegate will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
 3. Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto;
 4. Section 3 of the Housing and Urban Development Act of 1968, as amended, and implementing regulations issued at 24 CFR Part 135;

5. Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107, and implementing regulations issued at 41 CFR Chapter 60;
6. Executive Order 11063, as amended by Executive Order 12259, and implementing regulations issued at 24 CFR Part 107;
7. Section 504 of the Rehabilitation Act of 1973 (Public Law 92-112), as amended, and implementing regulations issued at 24 CFR Part 8;
8. The Age Discrimination Act of 1975 (Public Law 94-135), as amended, and implementing regulations issued at 24 CFR Part 146;
9. The acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR Part 24;
10. The labor standards requirements as set forth in 24 CFR Part 570, Subpart K, and HUD regulations issued to implement such requirements;
11. Executive Order 11988 relating to the evaluation of flood hazards, and Executive Order 11288 relating to the prevention, control, and abatement of water pollution;
12. The flood insurance purchase requirements of Section 202(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234);
13. The regulations, policies, guidelines, and requirements of 24 CFR Part 85 - Administrative Requirements and OMB Super Circular Title 2 of the CFR, Subtitle A, Chapter II, Part 200 as they relate to the acceptance and use of federal funds under this federally-assisted program;
14. Section 402 of the Vietnam Veterans Adjustment Assistance Act of 1974 (Public Law 93-508), as amended and implementing regulations when published for effect;
15. The Americans with Disabilities Act of 1990;
16. The regulations, policies, guidelines and requirements of OMB Super Circular Title 2 of the CFR, Subtitle A, Chapter II, Part 200. The grant activity will be part of the Delegate's annual audit and that audit will be submitted to the City for review;
17. The provisions of the National Environmental Policy Act of 1969, and the regulations issued pursuant thereto;

18. The Clean Air Act, as amended (42 U.S.C. 1857 et seq.), and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended;
 19. The Archeological and Historic Preservation Act of 1974 (Public Law 93-291), Public Law 89-665, Executive Order 11593, and the procedures described by the Advisory Council on Historical Preservation in 36 CFR Part 800.
- G. No member of or delegate to the congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from same;
 - H. No member, officer, or employee of the Delegate, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the program assisted under the grant, and that it shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this certification;
 - I. It will comply with the provisions of the Hatch Act which limits the political activity of employees;
 - J. It will give HUD and the Controller General or any authorized representatives access to and the right to examine all records, books, papers, or documents related to the grant, and that it will maintain such records, books, papers, or documents for three (3) years after the close of the project;
 - K. It will comply with the lead-based paint requirements of 24 CFR 570.608 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.);
 - L. It will not use CDBG-DR funds for publicity or propaganda purposes designed to support or defeat legislation pending with federal, state, or local governments;
 - M. Real or personal property purchased in whole or in part with CDBG-DR funds shall not be disposed of through sale, use, or location without the written permission of the City, State, and HUD. The proceeds from the disposition of real property shall be considered program income and subject to 24 CFR 570.504;
 - N. It will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds provided under Section 106 of the Housing and Community Development Act by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged

or assessment made as a condition of obtaining access to such public improvements, unless:

1. Funds received under Section 106 of the Act are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than Title I of the Act; or
 2. For purposes of assessing any amount against properties owned and occupied by persons of low and moderate income, the Delegate certifies to the City that it lacks sufficient funds received under Section 106 of the Act to comply with the requirements of Subparagraph 1 above.
- O. Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas for which the President declared a major disaster in the aftermath of the September 2013 floods, pursuant to the Stafford Act.
- P. The Delegate certifies that it has adopted and is enforcing the following policies:
1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and
 2. A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.
- Q. The Delegate will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the latest issued FEMA data or guidance which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.
- R. The Delegate certifies that it has reviewed the requirements of the March 5, 2013, Federal Register Notice (78 FR 14329) and the June 3, 2014, Federal Register Notice (79 FR 31964) and requirements of Public Law 113-2 applicable to funds allocated by this Notice, and that it has in place proficient financial controls and procurement processes (refer to **Appendix I: Financial Management Questionnaire**) and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act (refer to **Appendix H: Affirmation of Duplication of Benefits**), to ensure timely expenditures of funds and to detect and prevent waste, fraud, and abuse of funds.

APPENDIX D

MONITORING SCHEDULE

Delegate: Town of Lyons

Project(s): INF-00023 – CDBG-DR Buyouts and Acquisitions Program

At a minimum, the project will be visited within ninety (90) days of the date of this Delegation Agreement, and then at least every six (6) months until grant close-out.

The Delegate will be informed of the time of an on-site visit and the general subject matter to be covered. An exit review of tentative conclusions will be held with the Delegate to be followed by a formal communication within thirty (30) days.

The monitoring review(s) will cover:

- Review of accounting system.
- Review of Delegate's understanding of program financial requirements.
- Review of files for required policies and procedures and documentation.
- Review of records system for maintenance of appropriate documentation.
- Project/program review for compliance with all program requirements.

If it is determined that the Delegate has not met a requirement of the CDBG-DR Program, the City will provide written notice of this determination and give the Delegate an opportunity to demonstrate within a stated timeline that it has done so. If the Delegate is unable to demonstrate compliance, the City will take corrective action or remedial action. Said action will be designed to prevent a continuation of the deficiency, mitigate to the extent possible, its adverse effects or consequences, and prevent its recurrence.

Delegate may be required to submit and comply with proposals for action to correct, mitigate, and prevent a performance deficiency through one or more of the following:

- Prepare and follow a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;
- Establish and follow a management plan that assigns responsibilities for carrying out the remedial action;
- Cancel or revise activities likely to be affected by the performance deficiency before expending program funding for the activity.

APPENDIX E

AFFIDAVIT

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

- I am a United States citizen, or
 I am a Permanent Resident of the United States, or
 I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

Date

APPENDIX F

RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

Every effort will be made to minimize temporary or permanent displacement of persons due to a CDBG-DR project undertaken by the Delegate.

However, in the event of displacement as a result of a federally funded award, the Delegate will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, for any household regardless of income, which is involuntarily and permanently displaced.

If the property acquired is an occupiable lower-income dwelling but will not be used for low/moderate income housing under 104(d) of the Housing and Community Development Act of 1974, as amended, the displacement and relocation plan shall provide that before obligating and spending funds that will directly result in such demolition or conversion, the Delegate will make public and submit to Boulder County Collaborative CDBG-DR the following information:

- (A) A description of the proposed activity;
- (B) The general location on a map and appropriate number of dwelling units by number of bedrooms that will be demolished or converted to a use other than as low and moderate income dwelling units as a direct result of the assisted activity;
- (C) A time schedule for the commencement and completion date of the demolition or conversion;
- (D) The general location on a map and appropriate number of dwelling units by number of bedrooms that will be provided as replacement dwelling units;
- (E) Comparable replacement housing in the community within three (3) years of the commencement date of the demolition or rehabilitation;
- (F) The source of funding and a time schedule for the provision of replacement dwelling units;
- (G) The basis for concluding that each replacement dwelling unit will remain a low and moderate income dwelling unit for at least ten (10) years from the date of initial occupancy;
- (H) Relocation benefits for all low or moderate income persons shall be provided, including reimbursement for moving expenses, security deposits, credit checks, temporary housing, and other related expenses and either:
 - 1. Sufficient compensation to ensure that, at least for five (5) years after being relocated, any displaced low/moderate income household shall not bear a ratio of shelter costs to income that exceeds thirty (30) percent; or

2. If elected by a family, a lump-sum payment equal to the capitalized value of the compensation available under subparagraph 1. above to permit the household to secure participation in a housing cooperative or mutual housing association, or a Section 8 certificate of voucher for rental assistance.
- (I) Persons displaced shall be relocated into comparable replacement housing that is decent, safe, and sanitary, adequate in size to accommodate the occupants, functionally equivalent, and in an area not subject to unreasonably adverse environmental conditions;
 - (J) Provide that persons displaced have the right to elect, as an alternative to the benefits in subparagraph (H).2 above, to received benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 if such persons determine that it is in their best interest to do so; and
 - (K) The right of appeal to the Boulder County Collaborative where a claim for assistance under subparagraph (H).2 above, is denied by the Delegate. The Lead Agency's CDBG-DR Program Manager's decision shall be final unless a court determines the decision was arbitrary and capricious.
 - (L) Paragraphs a. through k. above shall not apply where the HUD Field Office objectively finds that there is an adequate supply of decent, affordable low/moderate income housing in the area.
 - (M) Consistent with the goals and objectives of activities assisted under the Act, the Delegate will take the following steps to minimize the displacement of persons from their homes:
 1. All public facilities projects (water, sewer, gas, etc.) will be designed so that there will be not displacement of any residences or business;
 2. No homes will be demolished that can be reasonably rehabilitated; and
 3. There will be no displacement of any residential or business occupants on CDBG-DR projects.

APPENDIX G

BOULDER COUNTY COLLABORATIVE RECAPTURE PLAN

Overview

The Boulder County Collaborative (“BCC”) is responsible for making a good faith effort to only fund eligible applicants and projects with the Community Development Block Group-Disaster Recovery (“CDBG-DR”) funds from the Department of Housing and Urban Development (“HUD”). The City is the Lead Agency for the BCC and is also responsible to monitor recipients of the CDBG-DR funds for compliance with the terms of their award. In the execution of these responsibilities, the City may on occasion seek to recapture funds awarded to residents or sub-grantees (“recipients”) who did not spend the funds according to the rules of the Program, or who were awarded funds erroneously. HUD does not distinguish between persons who received funds due to an error on the part of staff or an error on the part of the applicant, however HUD does have different recapture (“collection”) processes for residents who deliberately withheld or falsified information in the application process, as this is fraud.

HUD has no set guidelines or regulations for recapture of funds from individuals. This plan and timeframe was designed to be consistent with OMB Circular A-87 (2 CFR Part 225), OMB Circular A-85, 31 U.S.C.37.901, and 902, 24 CFR 17 Subpart C, 31 CFR, Forgivable Promissory Note, Homeowner/Contractor Agreement, closing documents and/or Grant Agreements signed by recipients of the program, and is designed to provide guidance on recapturing funds erroneously given out or erroneously spent through the HUD CDBG-Disaster Recovery Program (Program) from the 2013 flood in Boulder County.

The first part of this plan deals with recapture procedures for funds awarded erroneously or for Program non-compliance. The second part of this plan deals with the recapture of funds obtained fraudulently. In the third part of the plan, BCC puts forth the method by which it will redistribute the recaptured funds within the local community.

Background

The City of Longmont, as the Lead Agency for the BCC, conducts an internal review of Program files. The review is to determine that in the awarding and disbursing of Program funds, the files are documented according to program policies. Documentation must be in the files and the review is to determine whether safeguards exist to ensure that recipients use funds for their intended purposes.

The Statute of Limitations for initiating recapture proceedings is six (6) years following signature on the application forms [24 CFR 28.35(a)].

Choice to Not Recapture or Settle for Less than Whole Amount

The various federal regulations cited above establish the City as the Lead Agency with authority to recapture the full amount of ineligible assistance whether awarded due to errors by BCC Partners or a Housing Assistance Program recipient. However, for claims under \$100,000, if the City, State, or HUD determines that the recipient cannot repay ineligible grant assistance, BCC may choose to 1) forgive the funding; or 2) negotiate another amount. If negotiated, the City may defer the repayment to sale, refinance, or transfer of the existing home or otherwise place a lien on the property, or enter into a repayment plan with the recipient. BCC defines "ability to pay" as: "determined based on an assessment of the respondent's resources available both presently and prospectively from which BCC could ultimately recover the total award, which may be predicted based on historical evidence."

The City will make initial determinations and bring findings to the BCC in determining whether to recapture ineligible assistance. The BCC will consider the cost effectiveness of such action given the amount of ineligible assistance and the availability of records to support BCC's determination.

BCC may forgo collection of ineligible assistance if the following conditions are met:

1. A demand for recovery of the ineligible assistance was made; and
2. The ineligible assistance did not result from inaccurate or false information, knowingly or fraudulently, provided by the recipient; and
3. BCC determines that the recipient is unable to comply with the ineligible assistance repayment demand but is otherwise willing and able to meet BCC requirements; and
4. BCC determines that it is in the best interest of the Federal Government to forgo collection of the ineligible assistance for amounts less than \$5,000. BCC will normally return files concerning default amounts that are less than a threshold amount of \$5,000 because the minimum cost to pursue a legal proceeding to recover money is unlikely to be less than that amount.

Note that ALL FOUR conditions above must be met for forbearance.

BCC may elect to accept a compromise settlement. If a compromise amount is negotiated and then put on an installment plan, the executed contract must say that if the recipient defaults, the recipient will owe the ENTIRE amount of the originally determined ineligible assistance, not just the negotiated amount. Assessment of a recipient's negotiated compromise amount will be based on the recipient's financial statements, obtained on penalty of perjury, showing assets, liabilities, income, expenses, credit reports, and other pertinent financial information, 31 U.S.C. 902.2(g).

***Requirements for Recapturing Funds Awarded Erroneously or for
Non-Compliance with Program Rules***

Notification

The City will provide notice to recipients upon determining that ineligible assistance was received. The notice will be delivered by registered or certified mail, or will be delivered by some other means that can be confirmed and documented. The notice will:

1. Specify in detail the reason(s) that the assistance was determined to be ineligible, stating the amount of ineligible assistance to be repaid;
2. Offer a meeting for the recipient to discuss the basis for the claim giving the recipient an opportunity to provide facts, figures, written records, or other information that might alter the determination that the assistance was ineligible;
3. Outline the recipients appeal rights;
4. Specify the address to which a response must be sent;
5. Contain a statement that failure to submit an answer within fifteen (15) days of receipt of the letter may result in the imposition of the maximum amount of penalties, allowable by law/regulation, and assessments sought.

Generally, the City will set the meeting within thirty (30) days of the date of the initial letter. Upon request, the City may grant additional time for the recipient to assemble the necessary documentation. If additional time is granted, the recipient file will be documented, on a case-by-case basis, as to why additional time was granted.

Corrective Action

If the problem causing the assistance to be ineligible can be corrected, appropriate corrective action will be required. For example:

- Where the recipient is a homeowner and did not follow the Forgivable Promissory Note requirement to obtain flood insurance, the insurance must be obtained promptly, and upon demonstrating proof of insurance, the recipient will re-sign the Forgivable Promissory Note in order to restart the term of the loan, also known as the Effective Period.
- If the recipient is a homeowner and is not using the house as his or her primary residence, when the recipient proves (s)he has moved into the home permanently, the Forgivable Promissory Note document will be re-signed and the Effective Period will restart.
- If a sub-grantee executes a change order on an infrastructure project without a sufficient cost estimate and signatures, then the recipient will need to obtain a cost estimate that justifies the change in costs and also get appropriate signatures.

If the recipient is a homeowner and the problem causing the assistance to be ineligible cannot be corrected, a recipient who has defaulted on the requirements but wishes to remain in the dwelling may stipulate to reverting from the current loan structure and converting the loan into a conventional non-forgivable mortgage loan having a fixed term (between five (5) and fifteen (15) years), or into a deferred loan with repayment of principal and interest due at sale, refinance, or transfer of the property at the currently prevailing interest rate. Examples of an irremediable violation of a Forgivable Promissory Note are:

- The homeowner is renting the property and is unwilling to terminate the lease.
- The homeowner will not allow final inspection.
- The homeowner received more monies than what was reported in the application for federal assistance.

For recipients of assistance under the Buyout or Acquisition Programs, if the recipient refuses a repayment plan or ceases payments on the repayment plan, the City will institute legal proceeding to recover the funds since there will be no mechanism available for the City to lien a property that was already sold.

If a sub-grantee has expended funds ineligibly and a corrective action cannot be determined, then the City will negotiate a zero interest loan repayment plan with the sub-grantee.

Repayment Agreement

If violations are irremediable, then the City may seek repayment of all ineligible assistance received by a recipient, plus the cost of collection to the fullest extent permitted by law. The City's efforts to collect ineligible assistance may include repayment agreements, court orders, garnishment of wages and/or income tax returns, the use of private or public collection agents, intergovernmental agreements with the BCC Partner, and any other remedies available on a case-by-case basis.

The recipient may repay BCC in a lump-sum payment of the entire amount or by entering into a repayment agreement. A recipient who is a homeowner and who has defaulted on the rehabilitation requirements but wishes to remain in the dwelling, may agree to converting the current loan into a conventional non-forgivable mortgage loan having a fixed term (between five (5) and fifteen (15) years) at the currently prevailing interest rate.

A repayment agreement is a formal document prepared by the City and signed by the recipient, in which the recipient acknowledges the debt and the amount owed. The agreement specifies:

1. The amount to be paid, including processing fees;
2. How the amount owed is to be repaid;
3. Where payments are to be sent;
4. The specific date the payment is due each month; and
5. Consequences of delinquent or defaulted payments.

The terms will not require prohibitive payments for the homeowners that would force the recipient to sell the property (except in cases of fraud), and will be over a period of time consistent with the recipient's ability to pay. However, the City will not pursue the debt if notification of the right to collect the debt has not been communicated to the recipient within ten (10) years of the City's right to collect the debt first accrued, unless facts material to the City's right to collect were not known, 31 U.S.C. 901.4.

31 U.S.C. 901.8(g) allows the City to decide not to charge interest on the repayment agreement if it can be shown that interest is "against equity and good conscience." The recipient will pay a set fee each payment period equaling the repayment amount, plus the processing costs of collection, 31 U.S.C. 901.9(c). BCC approval of a repayment schedule will take into consideration the best interests of the recipient, the BCC, the State of Colorado, and the Federal Government.

A lien will be placed on the property for the duration of the payment schedule, 31 U.S.C. 901.8(c). The City will retain copies of all correspondence and a record of all conversations between the City and the recipient regarding ineligible assistance received by a recipient. If a recipient refuses to enter into a repayment schedule, the City will initiate enforcement actions such as civil or criminal penalties.

31 U.S.C. 3711(e) states that HUD, (the City in this case), must report the recipient to the Consumer Credit Reporting Agencies if the recipient goes past due on the payment plan or if a settlement is not reached.

Requirements for Collecting Ineligible Assistance Obtained by Possible Fraud:

NOTE: 24 CFR 28.10(d) states that no proof of specific intent to defraud is required to establish liability under this program.

If the BCC paid too much assistance on the recipient's behalf because of discrepancies in information furnished by the recipient, and if the City has sufficient evidence that the recipient intentionally misrepresented its circumstances, the City must pursue debt collection. In cases where the City has compelling evidence that the recipient knowingly omitted or falsified information in order to receive a Housing Assistance Grant, Buyout or Acquisition Assistance, Rental Assistance, or Infrastructure Grant, the City will seek repayment of all ineligible assistance received by the recipient by turning the case directly over to the HUD Office of Inspector General (OIG) and local law enforcement officials.

General Administrative Procedures

The City may choose to handle collections or may decide to hire a private collection agency to handle collections for this program, 31 U.S.C 901.5, as long as the following conditions are met in the contract with the collection agency:

1. The collection agency is a City-approved collector who can transfer funds to the City;

2. The City retains the right to resolve disputes, to compromise debts (negotiate settlement amounts less than the full amount), suspend or terminate collection, and refer debt for litigation;
3. The collection agency cannot offer debtors discounts or incentives;
4. The contract with the collection agency requires the collection agency to follow the Privacy Act of 1974 and state and federal laws for debt collection practices, including the Fair Debt Practices Act, 15 U.S.C., 1692; and
5. The collection agency accounts for all amounts collected.

The City will be responsible for file and documentation maintenance, communication with recipients, and arrangements for appeal hearings. The City is also responsible for reports to the State and/or HUD. The City will manage procurement of a private collection agency and payment of same, if this method of collection is chosen, and other financial matters associated with the Program, using approved BCC and federal procurement and financial accounting standards if it chooses to hire a collection agency.

The City will maintain full and complete documentation of all debts, calculations performed, and communications with recipients. In all communications, precaution will be taken to prevent the distribution of any Personally Identifiable Information (PII).

Administrative costs on recapture will reflect only the actual costs of recapture.

The City or designee will collect the monies due, and all collection data will be entered as a miscellaneous "Housing Program Collection," "Buyout Program Collection," or "Infrastructure Program Collection." This category will be added to the City's financial chart of accounts. The City will ensure that all money collected from the recipient is reported to the State and/or HUD and repaid to the State and/or HUD, if required.

Redistribution Plan

Any funds recaptured by the City through its efforts will be returned to the BCC account. These funds will be made available for redistribution by BCC within the Housing Assistance Program, Buyout and Acquisition Program, or the Infrastructure Program, whichever is applicable. Funds recovered from the program will be reassigned to the same Program. New recipients will be selected from the wait list in priority order based on the existing Program rules.

New recipients will be identified and contacted as funds become available. No commitments will be made based on projected collections.

If collected funds exceed eligible recipients at the Program end, remaining collected funds will be transferred to another CDBG-DR eligible activity after approval by the State or HUD of a substantial amendment.

BOULDER COUNTY COLLABORATIVE RECAPTURE PLAN

APPENDIX

STEPS IN THE PROCESS FOR THOSE ELIGIBLE TO RESTART THE EFFECTIVE PERIOD

1. Verify, to the extent possible, that all information in the recipient's file is current, complete, and accurate.

2. The City will send a certified *NOTICE OF CONCERNS REGARDING PROMISSORY NOTE EFFECTIVE PERIOD* letter to the recipient indicating the recipient is out of compliance with the Forgivable Promissory Note, but the five (5) year Effective Period can be restarted by having the recipient agree to comply with all provisions of the Promissory Note. Appeal information will also be included in the letter.
 - (A) If the recipient responds to the initial notification within fifteen (15) days of the date of the letter and agrees to restart the Effective Period, completes all required paperwork to document the resolution of the compliance issue(s), and re-signs the Promissory Note with the new Effective Date, no further action will be required and recapture will not be necessary.
 - (B) If the recipient responds to the initial notification within fifteen (15) days of the date of the letter and opts to appeal, (s)he must follow the procedure outlined in the BCC Housing Program Appeals Procedure, copies of which are available from the City.
 - (C) If the recipient responds to the initial notification within fifteen (15) days of the date of the letter and opts to pay back the funds, the City will work with the recipient to negotiate a repayment plan and complete necessary documentation. The City may negotiate a reduced or fully waived repayment under certain conditions of financial hardship proven by the recipient. Assessment of a recipient's negotiated compromise amount will be based on the recipient's financial statements, obtained on penalty of perjury, showing assets, liabilities, income, expenses, credit reports, and other pertinent financial information. This reduction of payment must have prior approval from the State or HUD. The City will place a lien on the property for the duration of the payment schedule, and release it once the debt is fully paid. Actual administrative costs of recapture may be added to the payment amount for each payment period.
 - (D) If the recipient does not respond within fifteen (15) days from the date of the first letter, a second certified *NOTICE OF SERIOUS ONGOING CONCERNS* letter will be sent to the recipient. This letter will clearly state the basis of the ineligible assistance determination and the amount of ineligible

assistance to be repaid, along with the recipient's appeal rights and the specific actions to be taken by the City. This letter will also specify a date and time for a meeting with BCC officials, approximately fifteen (15) days from the date of the letter, to discuss the issues stated in the letter. The recipient will have the opportunity to reschedule the meeting to a more convenient date and time, provided the response is prior to the originally scheduled meeting date.

- (E) If the recipient does not respond to the second letter within the allotted time period, a third certified *FINAL DETERMINATION NOTICE/DEMAND LETTER* will be sent to the recipient. This letter will state that recapture proceedings will be initiated thirty (30) days from the date of the letter unless the recipient initiates the formal appeal process before then. If there is no response from the recipient, the file will be turned over to the legal department or a collection agency for recapture. The City will report the recipient to Credit Reporting Bureaus.
3. If a compromise amount is negotiated and then put on an installment plan, the contract must say that if the recipient defaults, (s)he will owe the ENTIRE amount of the distribution, not just the negotiated amount.
 4. For any negotiated settlements where full payment is not immediate, upon discharge of the debt, the discharge must be reported to the State or HUD.

STEPS IN THE PROCESS OF RECAPTURING A NON-FRAUDULENT DISTRIBUTION

1. Verify, to the extent possible, that all information in the recipient's file is current, complete, and accurate.

For Housing Assistance or Buyout/Acquisition Program Recipients:

2. The City will send a certified *NOTICE OF CONCERNS* letter to the recipient detailing the specific compliance issue which compels recapture of the distribution.
 - (A) If the recipient responds to the initial notification within fifteen (15) days of the date of the letter and can provide documentation proving compliance with the Forgivable Promissory Note, or in the case of buyouts, documentation to the contrary of funds received, the City will update the file accordingly and document the satisfactory resolution.
 - (B) If the recipient responds to the initial notification within fifteen (15) days of the date of the letter and can show that the concern stated in the letter can, in fact, be remediated and the recipient is willing to do so and restart the Effective Period, refer to STEPS IN THE PROCESS FOR THOSE ELIGIBLE TO RESTART THE EFFECTIVE PERIOD for guidance.

- (C) If the recipient responds to the initial notification within fifteen (15) days of the date of the letter and opts to appeal, (s)he must follow the procedure outlined in the BCC Housing Program Appeals Procedure, copies of which are available from the City of Longmont.
- (D) If the recipient responds to the initial notification within fifteen (15) days of the date of the letter and opts to pay back the funds, the City will work with the recipient to negotiate a repayment plan and complete necessary documentation. The City may negotiate a reduced or fully waived repayment under certain conditions of financial hardship proven by the recipient. Assessment of a recipient's negotiated compromise amount will be based on the recipient's financial statements, obtained on penalty of perjury, showing assets, liabilities, income, expenses, credit reports, and other pertinent financial information. This reduction of payment must have prior approval from the State and/or HUD. The City will place a lien on the property for the duration of the payment schedule, and release it once the debt is fully paid. Actual administrative costs of recapture may be added to the payment amount for each payment period.
- (E) If the recipient does not respond within fifteen (15) days from the date of the first letter, a second certified *NOTICE OF SERIOUS ONGOING CONCERNS* letter will be sent to the recipient. This letter will clearly state the basis of the ineligible assistance determination and the amount of ineligible assistance to be repaid, along with the recipient's appeal rights and the specific actions to be taken by the City. This letter will also specify a date and time for a meeting with BCC officials, approximately fifteen (15) days from the date of this letter, to discuss the issues stated in the letter. The recipient will have the opportunity to reschedule the meeting to a more convenient date and time, provided the response is prior to the originally scheduled meeting date.
- (F) If the recipient does not respond to the second letter within the allotted time period, a third certified *FINAL DETERMINATION NOTICE/DEMAND* letter will be sent to the recipient. This letter will state that recapture proceedings will be initiated thirty (30) days from the date of the letter unless the recipient initiates the formal appeal process before then. If there is no response from the recipient, the file will be turned over to the legal department or collection agency for recapture.

For Sub-grantees (BCC Partners) Recipients:

3. The City will send a certified *NOTICE OF CONCERNS* letter to the recipient detailing the specific compliance issue which compels recapture of the distribution.
 - (A) If the recipient responds to the initial notification within fifteen (15) days of the date of the letter and can provide documentation proving compliance or a feasible alternative solution, the City will update the file accordingly and document the satisfactory resolution.
 - (B) If the recipient does not respond within fifteen (15) days from the date of the first letter, a second certified *NOTICE OF SERIOUS ONGOING CONCERNS* letter will be sent to the recipient. This letter will clearly state the basis of the ineligible assistance determination and the amount of ineligible assistance to be repaid, along with the recipient's appeal rights and the specific actions to be taken by the City. This letter will also specify a date and time for a meeting with BCC officials, approximately fifteen (15) days from the date of the letter, to discuss the issues stated in the letter. The recipient will have the opportunity to reschedule the meeting to a more convenient date and time, provided the response is prior to the originally scheduled meeting date.
 - (C) If the recipient does not respond to the second letter within the allotted time period, a third certified *FINAL DETERMINATION NOTICE/DEMAND* letter will be sent to the recipient. This letter will state that recapture proceedings will be initiated thirty (30) days from the date of the letter unless the recipient initiates the formal appeal process before then. If there is no response from the recipient, the file will be turned over to the legal department or a collection agency for recapture.
4. The City will maintain reports for collections not in default on a quarterly basis and aggregate the data.
5. The aggregated data will be reported quarterly to the State.
6. If a compromise amount is negotiated and then put on a repayment plan, the contract must say that if the recipient defaults, the recipient will owe the ENTIRE amount determined ineligible and not just the negotiated amount.
7. For any negotiated settlements where full payment is not immediate, upon discharge of the debt, the discharge must be reported to the State and/or HUD.

Approval and Revision Tracking

Policy and Procedure Name	BCC Recapture Plan	Original Approval Date	
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Complete the below for each revision:				
No.	Brief Description of Revision	Date sent for Approval	Signature of Person Approving	Date/Approval

APPENDIX H

DUPLICATION OF BENEFITS AFFIRMATION

SUBJECT: AFFIRMATION OF DUPLICATION OF BENEFITS FOR BOULDER COUNTY COLLABORATIVE CDBG-DR PROGRAM

Grant Recipient Local Government: **Town of Lyons**

By entering into this Agreement, the Delegate affirms the following:

The Delegate acknowledges the Lead Agency received CDBG disaster recovery funds through a contract with the State of Colorado on behalf of the Boulder County CDBG-DR Collaborative.

The Delegate hereby affirms that no additional sources or amounts of matching funds beyond those indicated at the time of this CDBG-DR award for housing, infrastructure, or other applicable disaster recovery assistance have been obtained or will be utilized for the project(s) authorized under this intergovernmental Agreement.

Duplication of Benefits sources include, but are not limited to, the Federal Emergency Management Agency (FEMA), Army Corp of Engineers (USACE), Federal Highway Administration (FHWA), private insurance companies, the National Flood Insurance Program (NFIP), state or federal grants, the Small Business Administration (SBA), and Not for Profit Agency Assistance.

The Delegate understands the responsibility to immediately notify the State of Colorado if any additional funds are received for the project(s) contained in the application cited above. In addition, the Lead Agency will follow its prescribed Recapture Plan, if and when it becomes necessary, to try to recoup funds that are a non-reported Duplication of Benefits from Delegate.

Under penalty of perjury of violation of federal and state laws applicable to the application for a grant under the program, the Delegate hereby states and certifies to the United States Department of Housing and Urban Development and the State of Colorado that by approving and signing this Agreement, the information included in this Agreement is true and accurate and that if at any time the Delegate becomes aware that the information included is inaccurate, it is the responsibility of the Delegate to bring the inaccuracy to the attention of the program.

APPENDIX I

FINANCIAL MANAGEMENT QUESTIONNAIRE

1. List those who will perform the following financial management functions and include titles.

- (A) *Signs contracts:*

Title: _____
- (B) *Receives invoices:*

Title: _____

Title: _____

Title: _____
- (C) *Approves payment of invoices/purchase orders:*

Title: _____

Title: _____
- (D) *Prepares requests for payment:*

Title: _____
- (E) *Signs requests for payment:*

Title: _____

Title: _____

Title: _____

Title: _____
- (F) *Makes journal entries:*

Title: _____
- (G) *Post to general ledger and/or prepares monthly financial statements:*

Title: _____
- (H) *Maintains custody of checkbook:*

Title: _____
- (I) *Signs checks (minimum of two):*

Title: _____

Title: _____
- (J) *Reconciles bank statements:*

Title: _____
- (K) *Compiles fiscal year-end financial statements:*

Title: _____

2. Identify by title the individuals who are covered by a bond or insurance and the amounts.
 Include Chief Elected Official/Chief Executive Officer if involved in financial transactions.

Attach copy of bonds or insurance

Title: _____ Amount: _____
 Title: _____ Amount: _____
 Title: _____ Amount: _____
 Title: _____ Amount: _____

3. Identify name of company that issued the bond or insurance policy.

Issue Date: _____ Expiration Date: _____
 Issue Date: _____ Expiration Date: _____

4. What is your fiscal year end date? _____
 5. The most recent audit covered what _____
 Identify name of firm that prepared the _____

6. Name and telephone number of local official to contact regarding this questionnaire.

Name	Title	Phone #
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I certify that this information is true to the best of my knowledge.

Signature: _____

Title: _____ Date: _____

Agenda Item: II - 3

Meeting Date: February 23, 2016

Subject: Resolution approving a legal services agreement with Michow Cox & McAskin LLP.

Background Information: It has been my honor and pleasure to serve as the Town Attorney for the Town of Lyons since 2005 through my firm Widner Michow & Cox LLP ("WMC"). Effective on March 1, 2016, WMC will be realigning into two law firms. Linda Michow, Marcus McAskin and Kathie Guckenberger will be joining me at a firm to be known as Michow Cox & McAskin, LLP. Robert Widner, Maureen Juran and Jill Hassman will be practicing at a firm to be known as Widner Juran LLP.

All of the attorneys at WMC believe that this realignment will allow us to continue to provide each of our clients with high quality, nimble and cost-effective representation and we expect the move to be a seamless transition.

Under the Colorado Professional Rules of Ethics, WMC is required to provide each of our clients with a notice of firm change, along with the opportunity to select which firm/attorney will continue to represent the City. The proposed legal services agreement with Michow Cox & McAskin LLP is attached for Council's consideration.

Marcus McAskin will be at Town Hall on the afternoon of February 23rd and is available to attend the special Board of Trustees meeting and answer any questions you may have.

Recommended Action: Approve Resolution 2016-22 approving a legal services agreement with Michow Cox & McAskin LLP.

**TOWN OF LYONS, COLORADO
RESOLUTION 2016-22**

**A RESOLUTION APPROVING A LEGAL SERVICES AGREEMENT WITH THE FIRM OF
MICHOW COX & MCASKIN LLP**

WHEREAS, in 2005 the Board of Trustees of the Town of Lyons appointed the firm of Widner Michow & Cox LLP as general counsel to the Town, with Tim Cox designated to serve as the Town Attorney, and the firm has served in such capacity since that time; and

WHEREAS, Mr. Cox and his colleagues are establishing a new firm known as Michow Cox & McAskin LLP, and the new firm desires to continue its representation of the Town of Lyons; and

WHEREAS, the Board of Trustees desires to approve a new legal services agreement with Michow Cox & McAskin LLP to continue providing legal services to the Town pursuant to the terms of that Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO, THAT:

Section 1. The Board of Trustees hereby approves a Legal Services Agreement between the Town and Michow Cox & McAskin LLP, in substantially the form attached hereto as **Exhibit A**, and authorizes the Mayor to execute the same on behalf of the Town.

Section 2. This Resolution is effective upon adoption.

ADOPTED this 23rd day of FEBRUARY 2016.

TOWN OF LYONS

By: _____
John E. O'Brien, Mayor

ATTEST:

Debra K. Anthony, Town Clerk

AGREEMENT FOR LEGAL SERVICES OF TOWN ATTORNEY

THIS AGREEMENT is made effective as of the 23rd day of February, 2016, between **MICHOW COX & MCASKIN LLP**, a Colorado limited liability partnership with its principal place of business at 6530 S. Yosemite Street, Suite 200, Greenwood Village, Colorado 80111 (the "Firm"), and the **TOWN OF LYONS, COLORADO**, a municipal corporation of the State of Colorado, with offices at 432 Fifth Avenue, Lyons, Colorado 80540 (the "Town").

WITNESSETH:

WHEREAS, the Town wishes to retain the Firm for the purpose of providing legal representation for the Town, and the Firm wishes to provide such representation subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for the consideration herein expressed, it is agreed as follows between the Town and the Firm:

1. APPOINTMENT OF GENERAL LEGAL COUNSEL

- A. The Firm is engaged and appointed as general legal counsel to represent and advise the Town with respect to legal matters referred by the Town to the Firm in accordance with this Agreement.
- B. Kathie Guckenberger is hereby designated and appointed as the Town Attorney for the Town of Lyons. The Firm may change the designation of the attorney to serve as the Town Attorney only with the express consent of the Town. The Firm may represent to third parties and identify in Firm advertising and other Firm-sponsored materials that the Firm serves or represents the Town as the Town Attorney unless the Town specifically directs the Firm not to make such representation on a particular matter or to a particular party.
- C. The Town Attorney and the Firm will work cooperatively and in concert with other Town-appointed attorneys who may be appointed by Town Board to represent the Town on specialized matters such as but not limited to specialized litigation or water matters.
- D. The Firm may utilize other qualified attorneys of the Firm to assist the Town Attorney and provide legal services to the Town as deemed appropriate by the Town Attorney, and such additional attorneys may be deemed "Assistant Town Attorneys" for such purposes. The Town shall retain the right to reasonably reject the assignment of any Firm-selected Assistant Town Attorney.
- E. The Town authorizes the Firm's attorneys to execute documents connected with the representation of the Town, including pleadings, applications, protests, contracts, commercial papers, settlement agreements and releases, verifications, dismissals, orders, and all other documents, and to represent the Town in matters associated with providing legal services to the Town.

2. SCOPE OF LEGAL SERVICES

- A. The Firm shall provide to and coordinate for the Town all usual and customary legal services authorized to and provided by a Town Attorney or Town Attorney's Office for comparable cities that engage a law firm on a contract basis for general legal services. The legal services shall include, but not be limited to:
- i. Representing the Town Board, the Town staff and the various Boards and Commissions of the Town, as may be created by the Town Board;
 - ii. Providing legal advice and services associated with land use, subdivision and other planning applications;
 - iii. Preparing or reviewing all ordinances, contracts, bonds and other written instruments as requested by the Town;
 - iv. Representing the Town in judicial and appropriate administrative proceedings;
 - v. Advising the Town on current municipal laws affecting the Town and changes or developments therein; and
 - vi. Providing advice and topical seminars to the Town Board and Town staff on a periodic basis.
- B. The Firm shall provide for support by any para-professional personnel in its representation of the Town as deemed necessary and cost effective by the Town Attorney.
- C. The Town reserves the right to engage special legal counsel on any matter deemed appropriate by the Town, following consultation with the Firm, to advise the Town or to assist the Firm.
- D. The Firm shall maintain working relationships with attorneys specializing in fields of interest to municipalities, including but not limited to condemnation, litigation, and water law. The Firm may recommend hiring special legal counsel with special knowledge and expertise to represent the Town or assist the Firm when it deems reasonable and in the best interest of the Town and in cases of conflict of interest by the Firm. The Firm may also recommend hiring special legal counsel to advise the Town or provide second opinions on matters of extraordinary importance to the Town, including matters involving complex litigation or a substantial financial or other impact on the Town or its residents, considering the Town's budget as a whole, or considering Town functions or programs as a whole, when such matters of extraordinary importance also involve legal uncertainties or complexities.
- E. Any attorneys who are not employed by the Firm, but who are employed by or retained by the Town to perform legal representation or to assist such employed or retained representatives, shall be under the general coordination of the Town Attorney although such non-Firm attorneys shall contract directly with the Town and the Firm shall not warrant the quality of work of such non-Firm attorneys or firms. Such coordination and supervision by the Firm shall not be undertaken when special legal counsel is appointed due to a conflict of interest on behalf of the Firm.

- F. Although the Firm actively seeks to avoid potential for conflicts, the Town understands and recognizes that unanticipated conflicts may arise that could impair the ability of the Town Attorney and the Firm to represent the Town on specific legal matters. In such event, the Town Attorney shall comply with the requirements of the Colorado Rules of Professional Responsibility in addressing such conflict with the Town. The Parties understand that the Town is not obligated to waive any conflict in order to permit the Town Attorney to represent the Town.

3. COMPENSATION

- A. The Town shall compensate the Firm for the services of the Town Attorney at a rate of \$185.00 per hour. For legal services provided in connection with a land use application (e.g., annexation, zoning, subdivision, special or conditional use permits, variances, right-of-way vacations and similar land use applications) for which the Town is in fact reimbursed by a developer/applicant, the rate of compensation for services performed by any Partner of the Firm shall be \$225.00 per hour and \$185.00 per hour for any Associate. Separate billing invoices may be established by the Firm for individual land use applications and for such other special matters as deemed necessary by the Town in consultation with the Firm.
- B. The Town shall compensate the Firm for the legal services of other attorneys or paralegals of the Firm at their standard billing rates, a copy of which is attached to this Agreement as **Exhibit A**. Attorney rates may be increased no more than once annually and by no more three percent in any calendar year.
- C. The Town shall not be required to compensate the Firm for:
- i. Electronic and hardcopy library and research materials and research librarian services except database access charges (e.g., Lexis/Nexis or Westlaw) for legal research billed at Firm cost without administrative mark-up;
 - ii. Employee benefits;
 - iii. Employee insurance, including malpractice insurance;
 - iv. Training and continuing legal education;
 - v. Bar and professional licensing expenses and registrations;
 - vi. Local professional memberships;
 - vii. Firm-owned electronic, computer and computer/network related communications equipment, hardware, software and information technology support services, systems training of Firm personnel, including personal computers, laptops, computer printers, telefax, PDAs and mobile telephones;
 - viii. Routine copying customarily performed in the day-to-day performance of legal services except those projects requiring outside copying and specialized printing services may be charged at cost. Large project copying (typically more than 300 pages/project) may be charged to the Town in accordance with the Firm's standard policies;
 - ix. Telefax expenses except for long-distance telefax charges which may be charged at the Firm's cost;

- x. Newspapers and professional periodicals;
 - xi. Postage for regular mail delivery by United States Postal Service except for mass mailings (with prior Town Administrator approval) and special, expedited, or overnight delivery services, which may be charged at cost;
 - xii. Office supplies used by the Town Attorney (to include items customarily associated with standard office operations and management such as paper, pens, notebooks, paper files, file folders, tape, paperclips, labels, etc.); and
 - xiii. Archival storage and retrieval of outdated client files performed in accordance with the Firm's standard client file storage policies; provided, however, that the Firm may return outdated files to the Town for storage.
- D. The Town shall compensate the Firm for out-of-pocket fees and costs incurred on the Town's behalf, including but not limited to filing fees, service of process, expert witness fees (only as pre-authorized by the Town), court reporter fees, transcript fees, recording fees, title company's fees for reports of title, and publication fees. Such fees will be billed to the Town at the Firm's cost without mark-up.
- E. The Town shall compensate the Firm for mileage expenses for personal use of private vehicles used by the Town Attorney, other Firm attorneys and paralegals for travel within the Denver metropolitan area incurred in the direct and exclusive performance of services for the Town. Mileage shall be charged at the Firm's standard mileage rate (not to exceed U.S. Internal Revenue Service published business travel mileage allowance).
- F. The Firm shall provide to the Town a detailed invoice for all legal services on a monthly basis. Such billings shall separate work and fees, including allocations associated with specific projects for which the Town accounts separately. The Town shall pay all undisputed billings from the Firm within thirty (30) days of receipt of invoice. If the Client fails to pay any charges within thirty (30) days of the date of the bill, the Firm may elect to stop all work for the Client. The Client's obligation to make prompt payment of all fees and charges does not depend upon achievement of any specific result.

4. AVAILABILITY

- A. The Town Attorney shall routinely attend regular Town Board meetings and be available to provide legal services for the Town's Board of Trustees. Upon reasonable notice provided, the Town Attorney will attend Town Board special meetings, study sessions, Board retreats, and other Town business meetings as requested by the Mayor, Town Administrator or Town's Board of Trustees.
- B. The Town Attorney shall be available to render the services required hereunder on an "on call" basis, and when necessary shall cause any Assistant Town Attorneys to be available by appointment for consultation with Town representatives.

- C. The Firm shall assign one or more Assistant Town Attorneys to be available to render the services required of the Town Attorney hereunder on an "on call" basis whenever the Town Attorney is unavailable.
- D. The Firm will employ or retain on contract at its discretion and own cost, at its office and during regular business hours, such administrative personnel as are necessary to support the Town Attorney.

5. TOWN DESIGNATED REPRESENTATIVE

In the interest of budget management, the Town Board hereby designates the Mayor and Town Administrator to serve as the primary contacts to the Town Attorney outside of the regular Town Board meetings.

6. INDEPENDENT CONTRACTOR

In performing the services herein specified, the Firm is acting as an independent contractor. Its attorneys adhere to the Colorado Rules of Professional Responsibility as approved and adopted by the Colorado Supreme Court, as they may be changed or revised from time to time.

7. NON-DISCRIMINATION

During the performance of this Agreement, the Firm shall:

- A. Not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, age, military service, veteran status, marital status, national origin, or disability.
- B. Comply with all state and federal laws, regulations and executive orders regarding non-discrimination applicable to the Town and its programs.

8. ASSIGNMENT

This Agreement for services is personal to the parties hereto and shall not be assigned by either party.

9. TERM AND TERMINATION

- A. This Agreement shall be effective as of March 1, 2016 and may be terminated by either Party, upon written notice, without cause or reason upon thirty (30) days prior written notice to the non-terminating Party. During such period following notice and prior to termination, the Parties shall coordinate the transfer of legal services and Client files from the Firm to the Town.
- B. The Parties understand and agree that the compensation to be provided by the Town pursuant to this Agreement is subject to annual appropriation by the Town. Although the Parties recognize that the Town may effectively terminate this Agreement through a refusal to appropriate funds for a given fiscal year, the Town agrees that its exercise of such authority will be undertaken in good faith

and in accordance with the provisions of Paragraph 9(A) above which would require the funding of services for the period of notice prior to termination.

- C. Nothing in this Section shall preclude or prevent the Parties from modifying any notice requirement or term of notice or negotiating other terms for a mutually acceptable termination.

10. CONFLICTS

Unless otherwise agreed by the Town, the Firm shall not accept work on behalf of any client that will create a conflict or the potential for a conflict with the Town.

11. MISCELLANEOUS PROVISIONS

- A. Arbitration. Although the Parties do not expect that any dispute will arise between the Parties, in the unlikely event of any dispute under this Agreement, including a dispute regarding the amount of legal fees or costs owed to the Firm or the quality of the Firm's services, including any claim of malpractice, such dispute shall be subject to binding arbitration. The Town and the Firm acknowledge that they are waiving their right to seek remedies in court, including the right to a jury trial. This clause does not prevent the Town and the Firm from trying to resolve any dispute through voluntary mediation, but there is no requirement to do so.

Any dispute concerning fees or costs or concerning the quality of the Firm's services, including malpractice claims, shall be submitted to a single arbitrator and the decision of the arbitrator shall be final and binding on both parties. A final judgment can be entered on the arbitration award by a court of competent jurisdiction. The arbitrator shall be selected from the Judicial Arbiter Group, Denver, Colorado, unless the parties agree otherwise. If the parties do not agree on the selection of a single arbitrator within ten (10) days after a demand for arbitration is made, then the arbitrator shall be selected by the Judicial Arbiter Group from among its available professionals.

All arbitrations shall be held in Denver, Colorado, unless the parties mutually agree on some other location. All arbitrations shall proceed under the Commercial Arbitration Rules of the American Arbitration Association, except as modified in this Agreement, unless otherwise agreed by the parties. The arbitrator shall have the discretion to order that the costs of arbitration, fees (including expert witness and reasonable attorneys' fees), and other costs shall be borne by the losing party. Any filing fees or other administrative costs of arbitration shall be divided equally between the Town and the Firm. Arbitration of all disputes, and the outcome of the arbitration, to the extent legally permissible, shall remain confidential between the parties.

- B. Privacy Policy. The Firm's "Privacy Policy Notice" is attached to this Agreement as **Exhibit B**. The Firm will conduct its representation of the Town in accordance with this policy.

- C. Document Ownership. Files maintained by the Firm as the result of the performance of services for the Town shall be the property of the Town. Upon termination of this Agreement, the Firm shall deliver such files to the Town.

- D. Prohibition Against Employing Illegal Aliens. The Firm shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Firm shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (b) fails to certify to the Firm that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Firm shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. § 8-17.5-102 (5).

IN WITNESS WHEREOF, the parties hereto have set their hands this ____ day of February, 2016.

ATTEST:

By: _____
Debra K. Anthony, Town Clerk

TOWN OF LYONS

By: _____
Victoria Simonsen, Town Administrator

MICHOW COX & MCASKIN LLP

By: _____
Timothy P. Cox, Partner

EXHIBIT A

ATTORNEY RATES PER HOUR FOR GENERAL MUNICIPAL LEGAL SERVICES¹

Kathie Guckenberger	\$185.00
Tim Cox	\$185.00
Linda Michow	\$185.00
Marcus McAskin	\$185.00
Other Associates	\$185.00
Paralegal/Research Professional	\$ 70.00

¹ See Section 3 of this Agreement regarding rates for specialized services.

EXHIBIT B

MICHOW COX & MCASKIN LLP

PRIVACY POLICY NOTICE

Attorneys, like other professionals, who advise on certain personal matters, are required by federal law to inform their clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by federal law. Maintaining your trust and confidence is a high priority to our law firm. The purpose of this notice is to comply with the federal law by explaining our privacy policy with respect to your personal information.

NONPUBLIC PERSONAL INFORMATION WE COLLECT:

In the course of providing services to our clients, we collect personal and financial information about our clients that is not available to the public and which is provided to us by our clients or obtained by us with their authorization or consent.

PRIVACY POLICY:

As a current or former client of Michow Cox & McAskin LLP, please be assured that all nonpublic personal information that we receive from you is held in confidence, and is not released to people outside the firm, except as agreed to by you, or as is permitted or required by law and applicable ethics rules.

CONFIDENTIALITY AND SECURITY:

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. We restrict access to nonpublic, personal information about you to those people in the firm who need to know that information to provide services to you (and their support personnel). In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards as well as federal regulations.

Please call the attorney you work with if you have any questions. Your privacy, our professional ethics, and the ability to provide you with quality service are very important to us.

Michow Cox & McAskin LLP

Item # II-4

February 22, 2016

To: Victoria Simonsen, Administrator
Lyons Town Board of Trustees

Reference: Buy Out Demolition Contract

On January 27th, bids were received for the Buy-Out Demolition Project, publically opened and read aloud. The contract was awarded to Peak Environmental. As a result of the ongoing environmental analysis by the Town's Consultant, SJR Environmental, additional hazardous materials were identified.

The majority of the work required was for 341 Park Street, with over \$22,000 of additional asbestos removal. The remaining funds are for various minor quantity adjustments. The funds have been identified and the contract amount is within the amount already approved by the Board.

RESOLUTION 2016-23

A RESOLUTION AUTHORIZING CHANGE ORDERS TO THE TOWN'S CONTRACT WITH PEAK ENVIRONMENTAL FOR DEMOLITION OF STRUCTURES ON BUYOUT PROPERTIES WITHIN THE TOWN OF LYONS

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

WHEREAS, the Town has completed the acquisition of numerous buyout properties in the areas most damaged by the September 2013 flood and is working toward acquiring the remaining buyout properties; and

WHEREAS, in order to complete the requirements of the buyout process, the Town must contract with a contractor who can demolish and remove all structures from the properties and restore the properties to their natural state; and

WHEREAS, the Town entered into an agreement with Peak Environmental to perform the demolition work,

WHEREAS, the Town, through its Consultant, SJR Environmental, has identified more hazardous materials that need to be removed than was anticipated at the time it entered into the agreement with Peak Environmental; and

WHEREAS, change orders have now been presented to Town staff in the amount of \$27,671.00; and

WHEREAS, Town staff anticipates that a need for additional change orders may arise in the coming week in an amount not to exceed \$5,600.00; and

WHEREAS, the Town's Board of Trustees desires to remove all hazardous materials from the buy-out properties; and

WHEREAS, if the Board approves the change orders, received and anticipated by town staff, the new contract amount will remain within the maximum total amount already approved by the Board for this contract.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, THAT:

Section 1. The Town Board of Trustees authorizes the Town Administrator to execute a change order for Demolition Services between the Town of Lyons and PEAK ENVIRONMENTAL in an amount not to exceed \$33,271.00.

ADOPTED THIS 23rd DAY OF FEBRUARY 2016.

TOWN OF LYONS, COLORADO

John E. O'Brien, Mayor

ATTEST:

Debra K. Anthony, Town Clerk

Town of Lyons Demo Program - Change Order Tracking Summary

Date: 2/22/2016

Original Bid Quantity		Contractor Bid Price			Change in Contract			Final Contract Value	Notes	
					Final Quantity	Diff in Qty	Diff in Price			
HMGP Phase 1										
Item No	Description	Quantity	Units	Unit Price	Total	Final Quantity	Diff in Qty	Diff in Price		
5	Demolish Structure 1st floor	22902	Sq.Ft.	\$7.10	\$162,604.20	0	\$0.00	\$162,604.20	329 5th Ave to be measured again	
10	Demolish Structure 2nd Floor	2437	Sq.Ft.	\$7.10	\$17,302.70	0	\$0.00	\$17,302.70	329 5th Ave to be measured again	
15	Demolish Carport	448	Sq.Ft.	\$7.10	\$3,180.80	0	\$0.00	\$3,180.80		
20	Demolish Detached Garage	4854	Sq.Ft.	\$7.10	\$34,463.40	0	\$0.00	\$34,463.40		
25	Demolish Enclosed Porch	91	Sq.Ft.	\$7.10	\$646.10	0	\$0.00	\$646.10		
30	Demolish Patio	1586	Sq.Ft.	\$7.10	\$11,260.60	0	\$0.00	\$11,260.60		
35	Demolish Porch	986	Sq.Ft.	\$7.10	\$7,000.60	0	\$0.00	\$7,000.60		
40	Demolish Shed	1448	Sq.Ft.	\$7.10	\$10,280.80	0	\$0.00	\$10,280.80		
45	Demolish Studio	1245	Sq.Ft.	\$7.10	\$8,839.50	0	\$0.00	\$8,839.50		
50	Supply & install topsoil on lots	684	C.Y.	\$12.50	\$8,550.00	0	\$0.00	\$8,550.00		
55	Erosion Control per Lot	17	Each	\$625.00	\$10,625.00	0	\$0.00	\$10,625.00		
60	Seeding	4.1	Acre	\$1,500.00	\$6,150.00	0	\$0.00	\$6,150.00		
65	Mulching	4.1	Acre	\$1,500.00	\$6,150.00	0	\$0.00	\$6,150.00		
70	Asbestos Materials - Remove texture	3040	Sq.Ft.	\$21.00	\$63,840.00	2990	-50	-\$1,050.00	50 more at 340 Park, reduce by 100 at 509 Evans	
75	Asbestos Materials - Remove blown on acoustical	1125	Sq.Ft.	\$19.00	\$21,375.00	0	\$0.00	\$21,375.00		
80	Asbestos Materials - Remove Soil	100	Sq.Ft.	\$30.00	\$3,000.00	0	\$0.00	\$3,000.00		
85	Asbestos Materials - Remove Sheet Vinyl	1375	Sq.Ft.	\$16.00	\$22,000.00	1381	6	\$96.00	6 SF additional at 319 5th Ave	
90	Asbestos Materials - Remove Pipe Insulation	25	LF	\$35.00	\$875.00	35	10	\$350.00	10 LF additional at 319 5th Ave	
95	Asbestos Materials - Remove Transite	1535	Sq.Ft.	\$6.00	\$9,210.00	0	\$0.00	\$9,210.00		
100	Asbestos Materials - Remove Duct Insulation	1	Lump Sum	\$250.00	\$250.00	0	\$0.00	\$250.00		
105	Mobilization	1	Lump Sum	\$0.00	\$0.00	0	\$0.00	\$0.00		
110	Removal of Regulated Building Materials (by Lot)	14	Per Lot	\$229.00	\$3,206.00	11	-3	-\$687.00	There are only 11 lots in the RBM list for this phase	
				Total Base Bid	\$410,809.70			-\$1,291.00	\$409,518.70	NEW Contract Value

CDBG Phase 1

Item No	Description	Quantity	Units	Unit Price	Total	Final Quantity	Diff in Qty	Diff in Price		
115	Demolish Structure 1st floor	3224	Sq.Ft.	7.76	\$25,018.24	0	\$0.00	\$25,018.24		
120	Demolish Detached Garage	528	Sq.Ft.	7.76	\$4,097.28	0	\$0.00	\$4,097.28		
125	Demolish Porch	144	Sq.Ft.	7.76	\$1,117.44	0	\$0.00	\$1,117.44		
130	Demolish Shed	120	Sq.Ft.	7.76	\$931.20	0	\$0.00	\$931.20		
135	Demolish Studio	396	Sq.Ft.	7.76	\$3,072.96	0	\$0.00	\$3,072.96		
140	Supply & install topsoil on lots	90	C.Y.	12.5	\$1,125.00	0	\$0.00	\$1,125.00		
145	Erosion Control per Lot	3	Each	625	\$1,875.00	0	\$0.00	\$1,875.00		
150	Seeding	0.49	Acre	1500	\$735.00	0	\$0.00	\$735.00		
155	Mulching	0.49	Acre	1500	\$735.00	0	\$0.00	\$735.00		
160	Asbestos Materials - Remove texture	525	Sq.Ft.	21	\$11,025.00	1,425	900	\$18,900.00	900 additional at 221 Park	
165	Asbestos Materials - Remove Transite	2300	Sq.Ft.	6	\$13,800.00	0	\$0.00	\$13,800.00		
170	Asbestos Materials - Remove shield	1	Lump Sum	100	\$100.00	0	\$0.00	\$100.00		
175	Mobilization	1	Lump Sum	0	\$0.00	0	\$0.00	\$0.00		
180	Removal of Regulated Building Materials (by Lot)	1	Per Lot	229	\$229.00	0	\$0.00	\$229.00		
				Total Base Bid	\$63,861.12			\$18,900.00	\$82,761.12	NEW Contract Value

Town of Lyons Demo Program - Change Order Tracking Summary

Date: 2/22/2016

Original Bid Quantity	Contractor Bid Price	Change in Contract			Final Contract Value	Notes
		Final Quantity	Diff in Qnty	Diff in Price		

CDBG Phase 1 (341 Park Only)

Item No	Description	Quantity	Units	Unit Price	Total					
185	Demolish Structure 1st floor	1825	Sq.Ft.	3.35	\$6,113.75		0	\$0.00	\$6,113.75	
190	Demolish Porch	88	Sq.Ft.	3.35	\$294.80		0	\$0.00	\$294.80	
195	Supply & install topsoil on lots (6" topsoil across lot)	4146	C.Y.	12.5	\$51,828.13		0	\$0.00	\$51,828.13	
200	Erosion Control per Lot	1	Each	625	\$625.00		0	\$0.00	\$625.00	
205	Seeding	5.14	Acre	1500	\$7,710.00		0	\$0.00	\$7,710.00	
210	Mulching	5.14	Acre	1500	\$7,710.00		0	\$0.00	\$7,710.00	
215	Asbestos Materials - Remove texture	220	Sq.Ft.	21	\$4,620.00		-220	-\$4,620.00	\$0.00	
220	Asbestos Materials - Remove blown on acoustical	100	Sq.Ft.	19	\$1,900.00		-100	-\$1,900.00	\$0.00	
225	Asbestos Materials - Remove Transite	100	Sq.Ft.	6	\$600.00		-100	-\$600.00	\$0.00	
	CO 1 - Adjustment to abatement Work	1	Lump Sum	1	\$0.00		1	\$22,782.00	\$22,782.00	
230	Mobilization	1	Lump Sum	0	\$0.00		2	\$0.00	\$0.00	
Total Base Bid					\$81,401.68			\$15,662.00	\$97,063.68	NEW Contract Value

CDBG Phase 2

Item No	Description	Quantity	Units	Unit Price	Total					
5	Demolish Structure 1st floor	2790	Sq.Ft.	4.2	\$11,718.00		0	\$0.00	\$11,718.00	
10	Demolish Structure 2nd Floor	744	Sq.Ft.	4.2	\$3,124.80		0	\$0.00	\$3,124.80	
20	Demolish Detached Garage	804	Sq.Ft.	4.2	\$3,376.80		0	\$0.00	\$3,376.80	
30	Demolish Patio	200	Sq.Ft.	4.2	\$840.00		0	\$0.00	\$840.00	
35	Demolish Porch	488	Sq.Ft.	4.2	\$2,049.60		0	\$0.00	\$2,049.60	
40	Demolish Shed	240	Sq.Ft.	4.2	\$1,008.00		0	\$0.00	\$1,008.00	
55	Supply & install topsoil on lots	1355	C.Y.	12.5	\$16,939.93		0	\$0.00	\$16,939.93	
50	Demolish Mobile Homes	3	Each	10000	\$30,000.00		0	\$0.00	\$30,000.00	
60	Erosion Control per Lot	3	Each	625	\$1,875.00		0	\$0.00	\$1,875.00	
65	Seeding	1.68	Acre	1500	\$2,520.00		0	\$0.00	\$2,520.00	
70	Mulching	1.68	Acre	1500	\$2,520.00		0	\$0.00	\$2,520.00	
75	Asbestos Materials - Remove texture	336	Sq.Ft.	21	\$7,056.00		0	\$0.00	\$7,056.00	
80	Asbestos Materials - Remove blown on acoustical	90	Sq.Ft.	19	\$1,710.00		0	\$0.00	\$1,710.00	
90	Asbestos Materials - Remove Sheet Vinyl	100	Sq.Ft.	16	\$1,600.00		0	\$0.00	\$1,600.00	
100	Asbestos Materials - Remove Transite	168	Sq.Ft.	6	\$1,008.00		0	\$0.00	\$1,008.00	
110	Mobilization	1	Lump Sum	0	\$0.00		0	\$0.00	\$0.00	
Total Base Bid					\$87,346.13			\$0.00	\$87,346.13	NEW Contract Value

Town of Lyons Demo Program - Change Order Tracking Summary

Date: 7/22/2016

Original Bid Quantity		Contractor Bid Price		Change In Contract			Final Contract Value	Notes
				Final Quantity	Diff in Qty	Diff in Price		
HMGP Phase 2								
Item No	Description	Quantity	Units	Unit Price	Total			
5	Demolish Structure 1st floor	600	Sq. Ft.	5.65	\$3,390.00	0	\$0.00	\$3,390.00
20	Demolish Detached Garage	200	Sq. Ft.	5.65	\$1,130.00	0	\$0.00	\$1,130.00
55	Supply & Install topsoil on lots	16	C.Y.	12.5	\$200.00	0	\$0.00	\$200.00
60	Erosion Control per Lot	1	Each	625	\$625.00	0	\$0.00	\$625.00
65	Seeding	0.1	Acre	1500	\$150.00	0	\$0.00	\$150.00
70	Mulching	0.1	Acre	1500	\$150.00	0	\$0.00	\$150.00
75	Asbestos Materials - Remove texture	72	Sq. Ft.	21	\$1,512.00	0	\$0.00	\$1,512.00
80	Asbestos Materials - Remove blown on acoustical	50	Sq. Ft.	19	\$950.00	0	\$0.00	\$950.00
100	Asbestos Materials - Remove Transite	50	Sq. Ft.	6	\$300.00	0	\$0.00	\$300.00
110	Mobilization	1	Lump Sum	0	\$0.00	0	\$0.00	\$0.00
Total Base Bid					\$8,407.00		\$0.00	\$8,407.00
								NEW Contract Value

Phase 5

Item No	Description	Quantity	Units	Unit Price	Total			
5	Demolish Structure 1st floor	865	Sq. Ft.	3.82	\$3,304.30	0	\$0.00	\$3,304.30
30	Demolish Patio	300	Sq. Ft.	3.82	\$1,146.00	0	\$0.00	\$1,146.00
55	Supply & Install topsoil on lots	24	C.Y.	12.5	\$300.00	0	\$0.00	\$300.00
60	Erosion Control per Lot	1	Each	625	\$625.00	0	\$0.00	\$625.00
65	Seeding	0.1	Acre	1500	\$150.00	0	\$0.00	\$150.00
70	Mulching	0.1	Acre	1500	\$150.00	0	\$0.00	\$150.00
90	Asbestos Materials - Remove Sheet Vinyl	350	Sq. Ft.	16	\$5,600.00	-350	-\$5,600.00	\$0.00
110	Mobilization	1	Lump Sum	0	\$0.00	0	\$0.00	\$0.00
Total Base Bid					\$11,275.30		-\$5,600.00	\$5,675.30
								NEW Contract Value
PROJECT TOTAL					\$663,100.93		\$27,671.00	\$690,771.93