

**2016 Lyons Bohn Park Flood Recovery Final Design and Bid Project  
Request for Proposal  
Project Number: PW 20E**

Town Contact: Sloane Nystrom, Parks Project Manager or Dave Cosgrove, Director of Parks  
Email Address: [snystrom@townoflyons.com](mailto:snystrom@townoflyons.com) or [DaveC@townoflyons.com](mailto:DaveC@townoflyons.com)  
Telephone Number: (303) 823-6622 ex 16, (303) 823-6622 ex 20

**Pre-Proposal Conference:**

A Pre-Proposal Conference will be held on **February 10, 2016, @ 1 pm MST** at the Town of Lyons Town Hall, 432 5<sup>th</sup> Avenue, Lyons, CO. The purpose of this conference will be to discuss this RFP and to provide assistance to consultants in the interpretation of this Request for Proposal (RFP) or any terms and conditions contained herein.

**Proposals must be received no later than: February 25, 2016 at 3 pm MST.**

*Proposals received after this date and time will only be considered at the Town's discretion.* Copies of bidding documents obtained from any source other than the Town of Lyons or Rocky Mountain E-Purchasing are not considered authorized copies. Only vendors who obtain bidding documents from either the Town or Rocky Mountain E-Purchasing system are guaranteed to receive addendum information, if such information is issued. **If you have obtained this document from a source other than the Town of Lyons or the Rocky Mountain E-Purchasing system, it is recommended that you obtain an official copy.**

**The TOWN will only accept proposals in bound hard copy format and does not accept proposals submitted via fax, email, or other electronic means. Proposals are to be submitted in a sealed Package with the following on the outside of the envelope:**

Company Name  
RFP Title  
RFP Number  
Due Date and Time

**Package must include:**

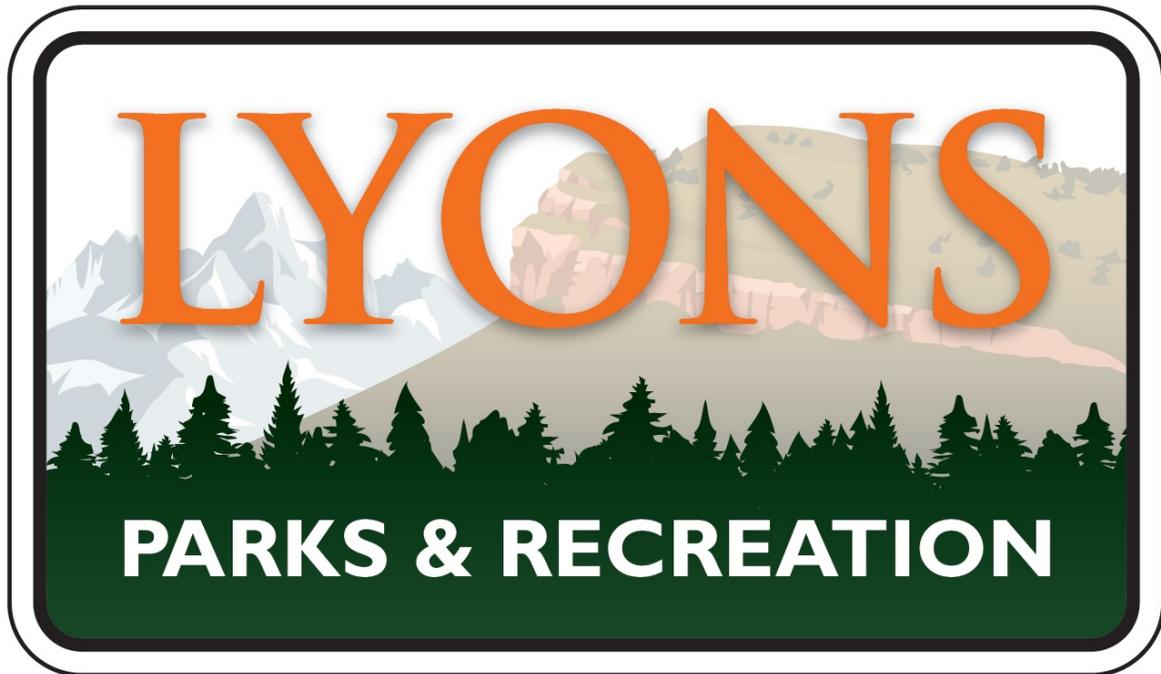
- One (1) Original Proposal, identified as "Original"
- Five (5) Copies of Proposal
- One copy of Proposal on a CD-ROM-Include both original and public viewing versions, if applicable

**Deliver proposals to:**

Town of Lyons Department of Park, Recreation and Cultural Events  
Sloane Nystrom, Parks Project Manager  
432 5<sup>th</sup> Avenue  
Lyons, CO 80540

**Schedule of Events (subject to change) All times are given in local Colorado time (AMEND AS NEEDED):**

RFP Issued	February 3, 2016
Pre-Proposal Conference	February 10, 2016 @ 1 pm MST
Deadline for Questions	February 17, 2016 by 3 pm MST
Final Addendum Issued	February 19, 2016 by 3 pm MST
Proposal Due Date and Time	February 25, 2016 by 3 pm MST
Approximate Contract Approval	March 7, 2016
Notice to Proceed	Week of March 14, 2016



**2016 Lyons Bohn Park Flood Recovery Final Design and Bid Project  
Request for Proposal**

**Town of Lyons-Department of Parks, Recreation and Cultural Events**

**432 5<sup>th</sup> Avenue, P.O. Box 49, Lyons, CO 80540**

**PH: (303)823-6622**

[www.townoflyons.com](http://www.townoflyons.com)

**Project Number: PW 20E**

**PROPOSALS DUE: February 25, 2016 at 3 pm MST**

The Town of Lyons is inviting proposals from highly qualified 'Teams' to provide final design and bid services for flood recovery efforts for Bohn Park, which was damaged as a result of the September 2013 flood. Design teams will focus on the final detail design to include final construction documents, drawings and specifications for the construction of Lyons Bohn Park based on the 30% concept plan recently completed as part of the Lyons Parks Flood Recovery Planning Process. The final design will address goals and priorities associated with the Parks Flood Recovery Planning Process, FEMA Project Worksheets and Project Scopes, the Lyons Recovery Action Plan (LRAP), associated Program Development Guides (PDG's), existing Town master plans, comprehensive plans and other relevant documentation and studies. Teams will assist the Town of Lyons through the bidding process and with associated construction administration related to the design as required.

## **Section I. BACKGROUND**

The Town of Lyons was devastated by the Colorado floods of 2013. In the early morning hours of September 12<sup>th</sup>, 2013, following several days of record rainfall totaling an astonishing 17 inches of rain, the North and South St. Vrain Creeks, the confluence of which occurs in Bohn Park in Lyons, flooded their banks. Stream flows within the Town of Lyons crested above 26,500 CFS easily surpassing the previous record set in 1941. This is incredible considering typical stream flows for the St. Vrain average 67 CFS (USGS Data) for the month of September.

Lyons' parks system was absolutely decimated, accruing over \$25 million dollars in damages. Nearly all community parks and facilities were affected in some way. Of the 80 acres of developed/in-development community parkland, 39 acres were severely impacted. Unfortunately, the 39 acres impacted the most house most of Lyons' major park facilities. The other 40 were acquired for future development and house only a few facilities and amenities. The following is a synopsis of Lyons park damages:

- Of nearly 5 miles of trails, only 1.2 miles have been unaffected by the flood. Most trails are completely gone or are inaccessible. This includes the destruction of Lyons' main arterial trail, the St. Vrain Corridor Trail which served as Lyons' major source of connectivity to neighborhoods, schools, parks, businesses and even Boulder County's Picture Rock Trail in Heil Valley Ranch Open Space, Hall Ranch and other future regional connections.
- Infrastructure to parks has been washed away; water, sewer, gas and electric will all have to be replaced at nearly all park facilities.
- Athletic fields are buried under feet of cobble and debris. Irrigation provided to 5 of Lyons 6 athletic fields and most other irrigated portions of parkland is either gone or no longer functional.
- Shelter facilities have been washed away and/or were flooded and no longer useable.
- Additional park features that are damaged or lost to flood damage include, among others: 14 whitewater features, 2 ponds, 2 pedestrian bridges, volleyball court/ice rink, batting cage, dog park, several parking lots, tent and RV camping facilities, picnic areas, 2 playgrounds, community garden, sheds and storage facilities, numerous benches, bleachers, signage and other park amenities that are associated with these park facilities.

## **Section II. PROJECT DESCRIPTION**

Lyons residents have identified the immediate rebuilding of Bohn Park, a river park located on the south side of Lyons, as a vital priority for parks recovery to be completed beginning in 2016. Bohn Park provides for major economic impacts for the Lyons community; it provides significant local and visitor recreational opportunities; and it provides ample opportunities to mitigate future flooding and to restore the river corridor's habitat. The selection of this park as the next priority in Lyons parks recovery efforts is supported heavily by both the Town government and the public at large.

Though Lyons' population is small, just over 2000 residents, the outdoor recreational opportunities here are immense and this project will ultimately serve a much greater "community." Tens of thousands of hikers, runners, bikers, kayakers, tubers, anglers, spectators and wildlife enthusiasts are drawn to Lyons each year. Many head straight to Bohn Park because of its available amenities. Because the St. Vrain River is such a vital attraction, a myriad of water lovers also float, kayak, swim or fish in the park. The park's large, open areas enables the Town to attract thousands of festivalgoers and mountain sports enthusiasts to the Lyons Outdoor Games, Lyons Good Old Days, Rocky Grass Festival, Folks Festival, and numerous other special events held by the town.

Bohn Park, located on the southwest side of Lyons, is the town's largest park at approximately 50 acres. Three new housing developments are in close proximity to the park, in addition to the Lyons Middle/Senior High School. Lyons Valley Village is located to the immediate south entrance of the park. It consists of eight duplex homes and two single family homes. It houses approximately 26 residents. Lyons Valley Park is located just three blocks to the south and across the street from the Lyons Middle/Senior High School. 50+ homes have been built in the last seven years. It is in its final phase of building and has approximately 80 homes left to be built. Approximately 582 residents live in this area. Stone Canyon, located a bit further to the east, completed the building of 65 homes in 2007. Approximately 200 residents live in this development. That's over 210 homes in the past 9 years in the Bohn Park area. Although this may not be a staggering number for a larger community, consider that Lyons had an average number of only nine homes built each year from 2000-2004. Recent census data shows that Lyons' population has grown by nearly 500 residents in the last ten years (1,585 in 2000 to 2,033 in 2010), more rapidly than estimates have anticipated. Many new residents have younger families as school enrollment also seems to be on the rise. The influx of families with children under the age of 5 increased from 88 in 2000 to just under 200 in 2010 (10% of total population versus 7% statewide). Average family size has increased from 2.3 to 2.9.

A noticeably increasing number of residents and visitors continue to be drawn to the area by the town's increasing number of special events, development of homes, improvements to the downtown district, connectivity to area open spaces, and improvements to park amenities.

Bohn Park is Lyons' largest and most popular park. It is not uncommon to see the park filled throughout the day with anywhere from 200 to 400 residents and visitors on any given weekend during the summer months. Consisting of over 50 acres Bohn Park is home to most of Lyons major athletic facilities. Pre-flood, there were two baseball/softball fields, batting cage, playground, multi-use soccer field, concession stand, whitewater features, picnic areas, shelters, restrooms, Lyons Dirt Jump Bike Skills Park, Bohn Bark Dog Park, Lyons Community Garden, and a multi-use sport court.

Lyons being only a mile square, residents and visitors alike easily access Bohn Park using either the St. Vrain River Corridor Trail, one of Lyons main trails which intersects the park, or the main entrance off of Second Avenue, one of the town's main collector streets. Parking for existing facilities and town special events exists at Bohn Park. Connecting sidewalks and trails from adjacent neighborhoods, the downtown district, and the neighboring Middle/Senior High School lead people to Bohn Park easily and most are just a few minutes away. Recently, Lyons worked with Boulder County Parks and Open Space to create a trail link to Heil Valley Ranch Open Space via the Picture Rock Trail and many residents and visitors utilize Bohn Park and its amenities before and after their journey.

Bohn Park is ideally located in southwest Lyons and is easily accessible by car and foot because it is:

- Within easy walking distance (3 blocks) of downtown
- Adjacent to Lyons Middle/Senior High School (the Town and the St. Vrain Valley School District have a Joint Use Agreement for the sharing of facilities that allows the coordination of programming for the amenities at the school and Bohn Park)
- Adjacent to Boulder County open space

The Town of Lyons recently completed the Lyons Parks Flood Recovery Planning Process ([www.lyonsparksmp.com](http://www.lyonsparksmp.com)) which included a series of public meetings that assisted in the development of several concept plans for all flood recovery areas related to parks. This process took several months to complete and involved soliciting input and feedback of the public, town staff, Town of Lyons board/commissions and the design team. The Bohn Park Flood Recovery Plan Preferred Alternate map is included with this document along with the Lyons St. Vrain Corridor Trail 6f boundary map.

The Bohn Park Flood Recovery Final Design and Bid Project will address the following fundamental goals outlined in the Lyons Recovery Action Plan and Lyons Parks Flood Recovery Planning Process for ensuring that Bohn Park continues to meet local and regional demands:

- 1) Reconstruction of facilities in Bohn Park to address the immediate recreational needs of Lyons, especially active/athletic uses. We will create a place to gather and play as a community again.
- 2) Creation of an attraction that will draw visitors to our Town. This is essential to ensure that the Town will remain economically viable and maintain its reputation and brand as a destination for healthy, active, outdoor lifestyles.
- 3) Reestablish trail connectivity, both locally and regionally, include loop trails.
- 4) Restore and augment river access and river habitat.
- 5) Restore/Replace picnic opportunities, including shelters and increase size.
- 6) Re-establish natural areas and consider wetlands.
- 7) Installation of public art along trails.

### **Section III. PROJECT TIMELINE**

The Town of Lyons intends to select a qualified bidder and award a notice to proceed at an approximate date of the week of March 14, 2016. It is anticipated that the final construction design and bid process will take place from March 2016 through July 2016. The Town intends to put the project out to bid for construction in July/August 2016 in order to award a contract for construction to begin construction no later than September of 2016 in order to have the park open to the public in the summer of 2017. An initial conceptual plan for Bohn Park is available by PDF-Bohn Park Flood Recovery Planning Process Plan- Preferred Alternate.

It is anticipated that final construction of Bohn Park will be completed no later than July 1, 2017. Therefore, the Town of Lyons anticipates restoration to begin late summer of 2016 (August/September). Given the complexity and quantity of design work needed to complete the process, including public input, permitting, and bid process, the Town recognizes that successful firms may choose to split the process into two designs and separate bid documents: One that focuses on the stream restoration and whitewater features in preparation for work to begin in the Fall/Winter of 2016, and a second that focuses on the interior park design in preparation for work to begin in the summer of 2016. The Town is willing to consider various proposals in order for the project to stay on its projected timeline.

### **Section IV. SCOPE OF WORK**

The Town of Lyons is issuing a Request for Proposals ("RFP") from qualified 'teams' to provide Disaster Recovery Design Services related to the flood disaster of September 2013 which caused extensive damage throughout Lyons.

The Town will serve as the lead agency during design, and with the input of Town Boards and Commissions, will choose a consultant. Funding for the project will come from FEMA, Town insurance and various other grant sources. The consultant will be required to provide reporting and accounting of the project design to facilitate the funding sources in order for the Town to be reimbursed for this work. The design must comply with the Town of Lyons Manual of Design Criteria and Standard Specifications for the Construction of Public Improvements, all other applicable Town, County and State design criteria, and other recognized parks and recreation design standards in-line with local and metro park development including ADA guidelines.

The Town of Lyons reserves the option to award contracts to multiple Teams but would prefer to award to a single Team that is able to provide all of the services requested.

Lead firms shall specialize in LANDSCAPE ARCHITECTURE/LANDSCAPE PLANNING AND STREAM RESTORATION, employing a capable team of civil, structural and hydraulic engineers (as needed), along with supporting ancillary trades, to complete the final design and prepare a complete, stamped set of construction plans usable for construction, specifications and bid documents for this project. The Town anticipates executing a contract with the top-ranked proposer and issuing a Notice to Proceed as soon as possible. Right-of-way (ROW) or easement acquisition is not expected, but may be needed. The consultant's design schedule should be as aggressive as practical.

The selected team shall perform or supply all necessary products and services as specified in this document with regards to surveying, research, public outreach, analysis, design,

geotechnical investigation, specification preparation, exhibits and sketches, environmental permitting, permitting, utility coordination, storm water modeling, right-of-way services, public process, and other associated engineering work.

All work shall be performed under the direction and supervision of a Licensed Professional Engineer (or Surveyor, Architect, or Landscape Architect), registered with the Colorado State Board of Registration for Professional Engineers and Professional Land Surveyors. Some activities may require work on land not controlled by the Town which would require owner permission to enter. In such cases, the Consultant shall obtain the necessary written permission to enter the premises on forms provided by the Town. Included in this written permission will be the names and telephone numbers of persons to contact should notification prior to entry be necessary. These written permissions will apply to Town of Lyons personnel as well as Consultant personnel. Signed copies of the written permission will be submitted to the Town's Project Manager prior to entering private property for any work.

A Pre-Proposal Meeting will be held to ensure that the Consultant is familiar with the existing conditions as well as the project requirements and Town/FEMA goals. This meeting will be coordinated by the Town.

The proposed work shall include, but is not limited to, the compilation of data; performing necessary field work (e.g. surveying, utility locating & potholing, etc.); designing all elements for the proposed improvements; preparing construction plans, specifications and bidding documents; utility coordination; cost estimating; project coordination and any needed public involvement or process.

As part of the proposal, the Consultant shall develop and submit a detailed scope of work and fee that meets the requirements of the FEMA Public Assistance Worksheets and the Town of Lyons Design Standards and Construction Specifications. The scope of work should include, but may not be limited to, the following tasks:

1. Providing extensive knowledge, experience and technical competence in dealing with design and construction of community parks, irrigation systems, earthwork, grading, drainage, erosion control, stream channel restoration, whitewater features and related structures.
2. Evaluating/confirming the extent of flood damage in relation to pre-flood conditions as it relates to the Town of Lyons Parks System. Damage to the following features/amenities includes, but is not limited to:
  - Parking Areas/Access Roads
  - Trails, Trail Heads and Pedestrian Bridges
  - Baseball Fields/Athletic Fields
  - Tennis Courts/Multi-Use Sport Courts
  - Concession Area/Food Truck Area
  - Batting Cage
  - Restroom Facilities
  - Park Host Area(s)
  - Picnic Areas
  - Any irrigation ditches that are located through the park-ditch systems/reconnections

- Retention Pond(s), Water Features
  - Irrigation Systems and System Components
  - Irrigation Pump Stations and Filtration Systems
  - Siltation, erosion and debris deposits resulting in damage and degradation to the existing stream channel
  - Whitewater/River Features
  - ADA Fishing Structure/River Overlook
  - Siltation, erosion, and debris deposits to entire park area
  - Flower Beds, Planters and Memorials
  - Trees, Vegetation and Landscape
  - Displacement and loss of park signage, benches, trash receptacles, access gates, grills, picnic tables, dog bag dispensers, drinking fountains, and all other park amenities
  - Existing Playground Facilities and Surfacing
  - Shelter and Storage Facilities
  - Utilities-water, sewer and electric to all buildings and areas needing service
3. Reviewing FEMA damage assessment documents provided by the Town giving itemized and detailed cost estimates of pre-flood conditions to better understand the park, its functions and previous uses.
  4. Reviewing and understanding recent Lyons Parks Flood Recovery Planning Process public input, preferred alternate plans, and overall process.
  5. Incorporating design for fish habitat for the St. Vrain River through Bohn Park which will include the scope of an existing Colorado Parks and Wildlife Fishing is Fun Grant that the Town of Lyons has been awarded (2014 Fishing is Fun Grant-Lyons St. Vrain Aquatic Restoration Project).
  6. Incorporating design for the reconstruction of the St. Vrain Corridor Trail to include the scope of a Colorado Parks and Wildlife State Trails Grant funded through the Land and Water Conservation Fund (2013 Lyons St. Vrain Corridor Trail Recovery Project).
  7. Incorporation of design of the park area east of the Second Avenue Bridge as depicted in the Bohn Flood Recovery Plan.
  8. Consultation with the "Stream Team" currently engaged in the CDBG-DR Stream Restoration Project in Lyons to ensure that design objectives are being met by both groups, projects align, future project impacts can be minimized, and sequencing of projects can be maximized.
  9. Reviewing and understanding of existing Parks, Open Space and Trails (P.O.S.T.) Master Plan documents-2000 and 2008.
  10. Reviewing and understanding Lyons Recovery Action Plan (LRAP) with a focus on the Parks and Recreation Section/Parks and Recreation Recovery Working Group Program Development Guides (PDG's) section, namely the Meadow Park Flood Recovery Project PDG.
  11. Reviewing Lyons Ecology Board's Sustainable River Corridor Action Plan.
  12. Understanding park design in relation to Town of Lyons Comprehensive Planning Goals-2010.
  13. Consulting with the St. Vrain Master Plan Team (Collaborative Decision Resources and Baker and Associates) to understand the current finding of the St. Vrain Master Plan Process as it relates to Bohn Park Design.

14. Working cooperatively with Colorado Parks and Wildlife on design of Whitewater Features to ensure inclusion of fish passage and other necessary environmental and habitat considerations.
15. Contacting and working cooperatively with local ditch companies to ensure reconnection and alignment of ditches through Bohn Park. Explore best case scenarios for fish passage, recreational consideration, and other habitat concerns regarding diversion structures.
16. Facilitating all necessary pre-permit meetings with Colorado Parks and Wildlife, Army Corps, USFWS and any other necessary agencies as appropriate.
17. Facilitating any needed public meetings to gather input in order to work from concept to final design phase.
18. Presenting concepts and final designs to Parks and Recreation Commission for recommendation and to Board of Trustees for final approval.
19. Reviewing trash and recycling collection with inclusion of design for on-site dumpsters.
20. Reviewing parking payment system with goal of instituting design for automated or gated system for vehicles at entrance and exit.
21. Designing improvements to park entrance.
22. Providing design development, construction plans/documents and specifications sufficient to complete bidding process and final construction of Bohn Park.
23. Providing construction plans/documents and specifications to reclaim and stabilize the St. Vrain Stream Channel in accordance with state and federal regulations.
24. Providing construction plans/documents and specifications to rebuild all access road and parking areas.
25. Taking responsibility for coordination of submittal reviews and ALL permitting processes including local flood plain permits, Army Corp 404 permits, environmental permitting, and so on.
26. Providing quantity take off's, volume calculations, pricing information and supporting documentation to the Town for its records and submittal to the Federal Emergency Management Agency ("FEMA") and other agencies for reimbursement of costs related to the flood disaster.
27. Providing a detailed project schedule highlighting the critical path and milestones.
28. Holding weekly progress meetings, record and distribute meeting minutes.
29. Preparing presentation materials, (graphics, charts, electronic presentation materials etc. as needed) and presenting to the Lyons community at stakeholder meetings, Parks and Recreation Commission, Lyons Town Board of Trustees and other stakeholders as requested.
30. Assisting the Town in determining "enhancements" to pre-flood conditions in the design phase to better determine which funding sources might be used to better fund components of the project.
31. Preparing and implementing detailed Bid Documents to include all design elements on drawings and specifications.
32. Evaluating bid documents and preparation of recommendation to Lyons staff.
33. Keeping and providing a project file or binder with all relevant project documentation.
34. Provide construction drawings stamped by designer/engineer and architect as required to include updated details, drawings, and current date.
35. Assisting the Town of Lyons with any construction administration that may be needed once the project is awarded for construction, including assisting with any ASI's, RFI's,

missing detail, or changes that may result during the construction phase as a result of lack of plan detail, needed updates or needed field adjustments.

## **Progress Reporting**

The Consultant and the Town of Lyons project manager shall hold progress meetings as often as necessary, but in no case less than once a week until the final plan is approved by the Lyons Board of Trustees for the purpose of progress reporting. The consultant shall supply the project manager with at least two (2) copies of all completed or partially completed reports, studies, forecasts, maps or plans at least one (1) working day before each progress meeting. The project manager shall assist in scheduling all aforementioned staff, board and commission meetings and other meetings, as necessary, at key times during the development of the final plans and bid documents.

Consultant qualifications must, at a minimum, include the following:

- Demonstrated experience in developing and implementing successful innovative solutions to complex community park redevelopment and renovations and the ability to identify, recommend and implement cost-effective improvements that can be easily maintained with minimal staff while keeping sustainability and longevity in mind.
- Ability to work collaboratively with Lyons staff, Board and Commission members, Lyons residents, and various other stakeholders.

## **A. ITEMS TO BE PROVIDED TO THE TOWN OF LYONS:**

**At a minimum**, the following items will be required as deliverable products for this project:

- 1) Public Outreach and Diagrams** are required to depict the general work area and should include an aerial image underlay of the proposed line work for the roads and drainage features. The exhibit should be prepared on 24" x 36" or larger with a scale to fit the work area onto one or two sheets. The Consultant will also be required to provide a narrative that discusses the key and salient issues with this project including, but not limited to, drainage; construction sequencing, neighborhood impacts, user impacts and mitigation.
- 2) Drainage and Hydraulic Report** of work area and upstream tributary basin including the reconciliation of the drainage features upstream, determining flow rates for minor and major storms, design the drainage system to fit within the existing lands owned by the Town including runoff mitigation detention ponds or similar. Consultant will work with the Town Engineer to determine limits of the basin in consideration of the Town's Drainage Master Plan and current conditions. The report shall include calculations and sketches of the existing and proposed hydraulic structures and the 100-year floodplains.

Hydraulic models (HEC-RAS) of the selected alternative shall be prepared to compare the existing and proposed condition with the historic condition floodplain models. The Town will provide an "Existing Conditions" model. The Consultant will be required to provide a No-Rise certification based on the selected alternative and supporting conditions. This no-rise will be with respect to the current effective flood plain, as in place prior to the flood. The no-rise will be based on the current flow rate for the entire Town and not the recently adopted higher flow rate. If the consultant is not able to demonstrate no-rise, then a CLOMR/LOMR may be necessary for the project and would be accommodated by amendment to the contract.

## **Hydraulic Study**

### Existing Flood Plain Model

Using HEC-RAS, re-configure and update the Town's effective hydraulic model for this reach based on the new survey and mapping including the importing of the cross sectional data, and then adjusting the model to account for ineffective flow areas, obstructions, cross section data and other elements of the model that would need to be adjusted for the flood plain analysis for current FEMA rules and regulations.

### Baseline Modeling

Run the new model to determine the effect of the current regulatory 10-year, 100-year and 500-year flood plains and the floodway and compare that to the current model and FIS Mapping.

### Planning

Create options to build into the model to evaluate criteria as required in the restoration design of the various elements of infrastructure, creek structures and parks, including mitigation options. Complete an updated model in HEC-RAS to support the chosen design options. Determine if proposed improvements create a rise in the flood plain versus the current FIS. If so, consult with Town on process and if a CLOMR will be necessary. If not, provide a no-rise certification for the Town records. Expect iterations in this process to fine tune design. The desire is to avoid a CLOMR/LOMR process. Modeling efforts are expected to extend to tie into existing HEC-RAS conditions in the provide model of record.

- 3) **Geotechnical Report** showing the results of borings as needed for the project. The report shall provide recommendations for the required pavement thickness, foundations and related items for all project work. For this project, anticipate adequate borings (no less than three) for service roads, new shelter facilities/foundations, footers for play equipment, and various other park amenities.
- 4) **Utility Investigation Report** summarizing utility coordination contacts, results and descriptions of anticipated utility impacts, conflicts and relocations. In preparing the report the Consultant will locate and pothole existing utilities and irrigation structures and or ditches to identify any conflicts the proposed design. If conflicts are identified the Consultant will provide feasible solutions and coordinate the design with utility owners and irrigation ditch owners. The Consultant shall incorporate comments/solutions into the final design. All design services to relocate impacted utilities or supply new utilities for new facility design shall be included in this scope.
- 5) **Survey Work:** Design survey of work area depicted in concept plan extending offsite to including recently completed park improvements, creek cross sections, structures in creek and upstream/downstream bridges. Include above and below ground utilities. Include all above ground features and structures. All trees shall be surveyed and labeled by caliper and common name identified on the plan. Playground equipment and other existing park amenities shall be surveyed in sufficient detail to allow for expansion and further design purposes. Check with Town as some survey information is available for this area. The Town of Lyons has completed survey work of the area and that survey is available upon request. Supplemental surveying needs shall be identified and included as part of the proposal. A licensed

professional land surveyor in the State of Colorado shall prepare an updated land survey map focusing on the area of the project from Park Street south to the Bohn Park Entrance.

The Consultant shall research plats and county records to confirm the existing right-of-way, easements, property lines and ownership. Consultant shall update and provide a property ownership map based on tax records and determine if any additional right-of-way and/or easement is required to construct the proposed improvements. This work shall be conducted in an aggressive manner to allow adequate time for any land acquisition or easement acquisition process if deemed necessary. If additional right-of-way or easement is required for the improvements, the Consultant will be asked to provide a proposal to prepare ROW and/or easement plans, hold a plan review with Town and land acquisition personnel to determine the sufficiency of ROW and or easement plans.

The Consultant shall plot existing and required right of way/easement, property lines and ownership information, on a right of way map. Calculate areas of parcels, easements and remainders using the CDOT Right of Way Manual as a guide. Prepare legal descriptions and exhibits, as necessary.

#### Creek and In-Creek Structures

- Collect cross sections and structure data for creek. Cross sections will be located at approximately 200' intervals and should include cross sections at existing FIS locations. Cross sections are generally located within the creek erosion zone.

#### Deliverables

- Autocad based survey with surface model and point data, layering per AIA for all existing features. Files shall be in town approved coordinate and datum and including all monuments and a minimum of four reference control points.

**6) Final Plans and Specifications** should have formatting and guidelines that at minimum should include (but may not be limited to):

- Cover Sheet
- Standard Plans List
- Typical Sections
- General Notes and Abbreviations
- Survey Control Diagram
- Removal/Demolition Sheets
- Plan and Profile Sheets
- Grading and Drainage Sheets, along with 3d model of site, 2<sup>nd</sup> sections as necessary
- Erosion Control and Scour Sheets
- Construction Phasing Plans
- Park Layout Plans
- Building Design Package including Specs
- Creek Design Plans and Whitewater Feature Designs

- Design and Specs for all individual Park Amenities-playgrounds, buildings, fences, gates, signage, grills, tables, etc.
- Erosion Control and Storm Water Management
- Detail Sheets
- Signing and Striping Plan
- Lighting and Electrical Plans
- Construction Traffic Control/Phasing Plan
- Erosion Control Plan & Details
- Cross Sections

**7) Environmental Documentation** including investigation and completion of all environmental documentation deemed necessary for constructing the project. The Consultant will perform and coordinate all environmental clearances for the project. The Town of Lyons will provide existing FEMA REC and other appropriate funding source documentation for guidance. Consideration of the consequences and impacts of the proposed project with respect to the following items is required and paramount: land use, air quality, floodplain/wetland, T&E species, noise impacts, hazardous waste, cultural/historical resources, impacts to existing residents, and flood mitigation/recovery. The FEMA *Record of Environmental Consideration (REC) Report* will be provided to guide the consultant through the required clearances and processes.

The consultant will be responsible for investigating applicable requirements, and preparing documents in accordance with current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) and current revisions.

If existing wetlands within the project area are disturbed, the Consultant will conduct a wetland determination, and if needed, a wetland delineation survey. The wetland delineation shall be conducted in accordance with the federal guidelines of the U.S. Army Corps of Engineers. Wetland boundaries will be surveyed and inserted into the project plan sheets, and temporary and/or permanent impacts determined. Please see **Attachment D**, Environmental Clearance Requirements.

**8) Erosion Control Plan** for all project work will be submitted. The Erosion Control Plan will include permanent water quality features, suggested erosion and sediment control devices for construction the bridge and may be used by the construction contractor in developing the Storm Water Management Plan (SWMP).

**9) Final (Construction Documents and Bid Documents) Review** include construction plans, specifications and cost estimates for completeness and accuracy. The Consultant will deliver project Technical Specifications and Special Provisions and the final Engineer's Opinion of Cost estimate in hard copy and in electronic spreadsheet files. The Consultant will prepare 95% construction documents, including plans, tabulation sheets of all construction quantities and traffic control devices for the project, details, technical specifications and Special Provisions, and cost estimates for a final review.

The Consultant will prepare 100% construction documents, including plans, tabulation sheets of all construction quantities and traffic control devices for the project, details, technical specifications and Special Provisions, and cost estimates for a final review.

These documents when complete will be complete and sufficient to issue for bidding as well as stamped and useable construction documents.

**10) Design Standards for Park Amenities-**The consultant will work with town staff to update its existing "kit of parks" or parks design standard booklet (in compliance with state and federal guidelines including ADA standards) for trash and recycling stations, signage, picnic tables, benches, restroom features, etc. This will assist Lyons parks in its recovery process and assist with future operations.

**11) Park Signage Plan-**The consultant will work with Town Staff to ensure the park can fully operate upon construction by establishing a signage plan for traffic flow, pedestrian flow, and all facilities and amenities.

**12) Project Binder** must be prepared by the consultant in the form provided by the Town. The project binder is a comprehensive record of the project from design through construction. Consultant will prepare the binder and turn it over to the Town upon the completion of the design services. The binder includes primary and critical documents and photographs for the project including studies, reports, correspondence, contracting and other critical tracking items. At the end of this phase, all documents leading to the bidding phase will be included however the remainder through bidding and construction will remain vacant. The consultant will need to provide two versions of the project binder with a CD-ROM/flashdrive including pdf's and autocad files of all project data.

**Required Submittals-**All submittals are subject to approval by the Town of Lyons Project Manager.

The following is a list of items, at a minimum, to be submitted by the Consultant. The omission of an item from this list does not relieve the Consultant from preparing and submitting any required information to complete this project.

- Drainage/Hydraulic Report
- Geotechnical Report
- Utility Investigation Report
- Survey Report(s)
- Progress Reports
- Permission(s) to Enter Property
- Traffic Control Plan(s)
- Project Control Diagram Plan
- Copies of Research Documents (Plats, Deeds, etc.)
- Preliminary Ownership Map(s)
- Existing/Proposed Right of Way Plans
- Technical Specifications/Special Provisions
- Opinion of Probable Costs
- Environmental Documentation/Reports/Permitting
- Project Binder
- Park Standard Specification Book (Update)
- Park Signage Plan
- Final (95%), and 100% Design Plans
- Bid Documents

Electronic Data Submittals Electronic Data shall be submitted in a format that is usable by the Town of Lyons. The primary windows based computer software that is currently used by Town of Lyons is:

- Drafting –AutoCAD Civil 3D 2012 or greater
- Plotting -Adobe PDF
- Word Processing -Microsoft Word 2010
- Spreadsheets -Microsoft Excel 2010

## **B. ITEMS TO BE PROVIDED BY THE TOWN OF LYONS**

- Lyons Flood Recovery Bohn Park Plan-Preferred Alternate
- Lyons Flood Recovery Planning Process-Public Comment, Information and Plans [www.lyonsparksm.com](http://www.lyonsparksm.com)
- Lyons Recovery Action Plan (including Program Development Guides-PDG's) and Implementation Table in PDF Format
- 2014 Colorado Parks and Wildlife Fishing is Fun Grant-Lyons St. Vrain Aquatic Restoration Project
- Colorado Parks and Wildlife State Trails Grant-2013 Lyons St. Vrain Corridor Trail Recovery Project
- Lyons Parks, Recreation and Cultural Events Parks, Open Space and Trails (P.O.S.T.) Master Plans-2000 and 2008
- Lyons Valley River Park Master Plan
- Lyons Comprehensive Plan-2010
- Parks Damage Assessments for FEMA PW20 and PW35
- Lyons PW20 Hazard Mitigation Proposal for Meadow Park Whitewater Features
- Post-Flood LiDAR
- Draft of St. Vrain Watershed Masterplan
- Ecology Board's Sustainable River Corridor Action Plan
- All applicable FEMA Forms and information regarding program guidelines
- Basic Contract Forms for inclusion in the Project Manual – Contract; General Conditions; Invitation to Bid; Instructions to Bidders; Notice to Proceed; Notice of Intent to Award; Conditional and Final Lien Waiver Forms; Change Order Form
- Town of Lyons Design and Construction Standards in pdf form
- Special Details of the Town of Lyons in pdf form
- Construction plans for the St. Vrain Stream Restoration project along with all modeling of flows

## **Section V. RFP PROPOSAL RESPONSE**

Submittals are due at the Lyons Department of Parks, Recreation and Cultural Events Office for time and date recording on or before **3 P.M. Mountain Time on Monday, February 25<sup>th</sup>, 2016 by 3 pm MST.**

**Deliver Six (6)** bound copies of your submittal and an electronic version on a CD ROM/flash drive, submitted in a sealed envelope, clearly marked as **2016 Lyons Bohn Park Flood Recovery Final Design and Bid Project PW20E**, to the Parks and Recreation Department, 432 5<sup>th</sup> Avenue, Lyons, CO 80540.

All Proposals must be received and time and date recorded by authorized Town staff by the above due date and time. Sole responsibility rests with consultant/team to see that their RFP response is received on time at the stated location. Any responses received after due date and 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 lowest responsible bid 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.

Digital copies of the Bidding Documents will be available beginning **February 3, 2016** on-line on the Town of Lyons website @ [www.townoflyons.com](http://www.townoflyons.com)

## **Section VI. PROPOSAL SUBMISSION**

Following are the response requirements for this RFP. All specific response items represent the minimum information to be submitted. Deletions or incomplete responses in terms of content or aberrations in form may, at the Town's discretion, render the proposal non-responsive.

### **Offerors shall submit in a sealed package:**

- One (1) Original Proposal, identified as "Original"
- Five (5) Copies of Proposal
- One Copy of Proposal on a CD-ROM/flashdrive – Include both original and public viewing versions, if applicable

To facilitate the evaluation, offeror shall submit and organize all responses in the same order as listed below in Response Format-Section VII. Proposals that are determined to be at a variance with this requirement may not be accepted. The Town only accepts proposals in hard copy format and does not accept proposals submitted via fax, email, or other electronic means.

The outside of the package will include the following information:

- Company Name
- RFP Number
- RFP Title
- Due Date and Time

## **Section VII. 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 35 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. Use of Subcontractors/Partners**

There may be areas for use of subcontractors or partners in this project. If you are utilizing this approach, your proposal must list the subcontractors/partners, their area(s) of expertise, and include all other applicable information herein requested for each subcontractor/partner. Please keep in mind that the Town will contract solely with your company, therefore subcontractors/partners remain your sole responsibility.

**C. Minimum Mandatory Qualifications of Offeror.** The lead proposer must specialize in providing LANDSCAPE ARCHITECTURE/LANDSCAPE PLANNING AND STREAM RESTORATION services and have successfully completed the design of at least two similar projects in the past five years. The Consultant's proposed Project Manager must have five (5) years of experience (minimum) in designing/managing similar projects. The Consultant team shall perform all work under the direction and supervision of a Licensed Professional Engineer, Surveyor, Architect, and Landscape Architect, registered with the Colorado State Board of Registration (DORA) currently licensed with the State of Colorado.

Include an itemized description of how your company meets the minimum mandatory qualifications. Failure to meet or exceed these requirements may disqualify your response.

## **D. 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.

**E. Evaluation Criterion #1 – Company and Personnel Qualifications.** Describe your business philosophy and identify the individuals who will be involved in the project, their responsibilities and amount of time each is expected to spend on the project. Include a brief description of the design team's previous experience with similar projects. Provide resumes 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 Consultant 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 Consultant working under this Agreement.

Information should include, but is not limited to:

1. Provide the names and resumes of the key personnel that will be performing the proposed services, including the primary project manager and the percentages of time they will be involved with the project.
2. Provide a complete list of all sub-consultants the lead firm will use for the project along with an organizational chart showing relationship of each consultant to the lead firm. Include the amount of time that each is expected to spend on the project.
  - a. Provide a statement of past projects where the team or members of the team have worked together and identify which team members were involved and the name and location of those projects.

- b. Indicate for each sub-consultant team member, the primary contact and names and titles of their work group members.
  - c. Provide a chart showing each sub-consultant, primary contact name, phone number, email address, and mailing address.
  - d. Provide a short statement for the lead consultant and each sub-consultant noting their expertise in their area of consulting and why they have been selected as part of the project team. It is important to clarify each team member's qualifications and experience in their area of responsibility.
3. Demonstrate the ability, capability and skills necessary to perform the Contract or provide the services required to successfully complete this project.

**F. Evaluation Criterion #2 - Recent Experience with Similar Projects.**

1. Demonstrate the ability, capability and skills necessary to perform the Contract or provide the services required to successfully complete this project.
2. List a minimum of two (2) projects of similar nature to this project that the lead consultant and the sub-consultants have had DIRECT involvement within the past five years. Be specific on why the referenced projects are similar to this project. Include the referenced project name, a brief description, original budget, final cost, if the project was completed on time and a reference name and phone number.
3. Discuss your familiarity with the Town of Lyons, Boulder County, CDOT Local Agency Projects and local construction conditions 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 Consultant to carry out a previous contract satisfactory shall be deemed sufficient cause for disqualification.
4. Additionally, provide a list of three (3) references/customers that either have received or are currently receiving services similar to the scope of services 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.

**G. Evaluation Criterion #3 - Approach to Scope of Work.**

1. Describe any project approaches or ideas that you would apply to this project that you think would enhance the quality of your services. Provide detailed information about what makes your approach unique and best suited for this project.
2. Describe how the firm will accomplish the work in an effective and timely manner. Include design philosophy, project control, project schedule, 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.
3. 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.
4. Describe the methods and timeline of communication your firm will use with the Town's project manager, other involved Town staff, and other interested parties.

#### **H. Evaluation Criterion #4 – Project Control.**

1. Describe how your firm will control costs for this project and meet schedule requirements.
2. Describe what software or methods your company utilizes to establish and track the project timeline/schedule. Identify how the design schedule (internal checks & balances) is monitored to ensure that key milestone dates are met. Indicate if any previous project designs exceeded the project schedule and if so, explain why and what steps have been taken to ensure it does not occur on the future projects.

#### **I. Evaluation Criterion #5 – Proposed Scope of Work and Fee.**

1. 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 proposer believes are necessary to complete the scope. Include costs for these other items separate from the base fee. The Town is budgeting 3% of the design costs for reproduction and advertising and the consultant shall indicate if they believe this to be sufficient for their scope of work.

**J. Illegal Alien Certificate.** This required form is included as **Attachment A**.

**K. Proposal Acknowledgement.** Include this form as provided in **Attachment B**.

**L. Affirmative Action Steps.** Include this form as provided in **Attachment C**.

**M. CONTRACTOR'S CERTIFICATION OF COMPLIANCE.** Include this form as provided in **Attachment D**.

**N. ATTACHMENT ENVIRONMENTAL CLEARANCE REQUIREMENTS.** **Attachment E**.

**O. FEMA Requirements.** This required form is included as **Attachment F**.

### **Section VIII. 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, in accordance with the criteria described below. These criteria will be the basis for review of the written proposals and for determining the short-list of consultants for interviews (if required). Total scores will be tabulated, and the consultant with the proposal that is deemed to be the most advantageous to the Town will be selected. If the Town requests presentations by short-listed offerors, committee members may revise their initial scores based upon additional information and clarification received in this phase. In preparing responses, offerors 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 offeror for this contract. Evaluation criteria that will be used are as follows, listed in order of relative importance:

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

## **2. Evaluation Criterion #2 - Recent Experience with Similar Projects**

- Firm's recent, relevant project history (Town, CDOT – Region 4, etc.)
- Demonstrated ability to control costs
- Demonstrated ability to meet schedule
- Demonstrated ability to do quality work
- **Evaluation Criterion #3 - Approach to Scope of Work**
- Firm's demonstrated clear understanding of the project goals
- Aggressiveness of project schedule
- Has the firm formulated a successful approach to the project?
- Where appropriate, are possible design alternatives suggested?
- Where appropriate, has the firm exhibited sensitivity to public concerns?

## **3. Evaluation Criterion #4 - Project Control**

- Cost Control
- Scheduling Method
- Quality Control

## **4. Evaluation Criterion #5 – Proposed Scope and Fee**

- Does the Scope of Work align with the Listed Scope and the Town's Goals
- Has the consultant identified innovative alternatives or well thought out additions to the scope
- Is the fee commensurate with the scale and type of work

*A presentation and/or demonstration may be requested by short-listed offerors prior to award. A presentation/demonstration may not be required, and therefore, complete information should be submitted with your proposal.*

## **B. Determination of Responsibility of the Offeror**

The Town awards contracts to responsible vendors only. The Town reserves the right to make its offeror responsibility determination at any time in this RFP process and may not make a responsibility determination for every offeror. As used in this RFP, "Responsible offeror" is 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 an offeror's responsibility. If the offeror fails to supply the requested information, the Town shall base the determination of responsibility upon any available information or may find the offeror non-responsible if such failure is unreasonable.

## **C. Period of Award**

The effective date of providing the required product and services shall be from award of the contract through completion of final design services.

## Section IX. ADMINISTRATIVE INFORMATION

### A. Issuing Office:

The Town of Lyons agent listed herein is to be the sole point of contact concerning this RFP. Offerors 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 offerors 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 offerors 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 inquiries during the pre-proposal conference, if any. No inquiries will be accepted after the deadline. Inquiries regarding this RFP (be sure to reference RFP number) should be referred to:

E-Mail: [Snystrom@townoflyons.com](mailto:Snystrom@townoflyons.com)

Subject Line: **2016 Lyons Bohn Park Flood Recovery Final Design and Bid Project PW20E**

Response to offerors' inquiries will be e-mailed in a timely manner. Offerors cannot rely on any other statements that clarify or alter any specification or other term or condition of the RFP.

**Should any interested offeror, sales representative, or manufacturer 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 contractor will be required to provide a Certificate of Insurance or other proof of insurance naming the Town of Lyons and its 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. Contractor must provide Town with proof of EMPLOYER'S LIABILITY coverage with limits of at least \$500,000.

COMPREHENSIVE AUTOMOBILE LIABILITY is also required, 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, and Colorado Department of Transportation (CDOT) shall be named as additional insureds for General and Auto Liability Insurance. Awarded offeror 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 offeror 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 offeror responsibility at any time in this RFP process and may not make a responsibility determination for every offeror.

#### **H. Acceptance of RFP Terms:**

A proposal submitted in response to this RFP shall constitute a binding offer. The autographic signature of a person who is legally authorized to execute contractual obligations on behalf of the offeror shall indicate acknowledgment of this condition. A submission in response to this RFP acknowledges acceptance by the offeror of all terms and conditions as set forth herein. An offeror 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 offeror 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 offerors 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:**

The Town neither requests nor encourages the submission of confidential/proprietary information in response to this RFP. 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. However, requests for confidentiality can be submitted to the Town provided that the submission is in accordance with the procedures in this section. Any such requests shall be the *sole responsibility* of the offeror. The Town will make no attempt to cure any information that is found to be at a variance with this procedure. The offeror 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 protection of confidential material:***

1. The offeror will submit one (1) additional complete proposal clearly marked "FOR PUBLIC VIEWING." In this version of the proposal, the offeror 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 offeror 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 an offeror has submitted a "FOR PUBLIC VIEWING" version of their proposal, that version will be open to the public while the other copies of that offeror'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.

Notwithstanding the foregoing procedure, the Town is a public entity subject to the provisions of the Colorado Open Records Act (CORA), and is not waiving either the protections or the obligations of CORA.

**K. Acceptance of Proposal Content:**

The contents of the proposal (including persons specified to implement the project) of the successful contractor shall become contractual obligations into the contract award. Failure of the successful offeror to perform in accordance with these obligations may result in cancellation of the award and removal of such offeror 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 offeror submitting the proposal in lieu of accepting the proposal as is.

**N. Contract:**

The successful proposer must enter into a contract with the Town of Lyons in a form to be provided by the Town.

**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:**

The Town of Lyons reserves the right to allow other Federal, 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 offeror 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 offeror, 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 Communications Specialist.

**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, Contractor 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 Contractor or Consultant working in Town facilities shall present a clean and neat appearance. Prior to performing any work for the Town, the Contractor or Consultant shall require each of their employees to wear ID badges or uniforms identifying: the Contractor or Consultant by name, the first name of their employee and a photograph of their employee if using an ID badge. Their employee shall wear or attach the ID badge to the outer garments at all times.

#### **X. Unlawful Employees, Contractors and Subcontractors:**

Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor 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 Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract.

##### **1. Verification Regarding Illegal Aliens:**

Contractor 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.

##### **2. Limitation Regarding E-Verify Program:**

Contractor 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.

##### **3. Duty to Terminate a Subcontract; Exceptions:**

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

- a. Notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract with the subcontractor if, within three days of receiving notice that the Contractor 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.

##### **4. Duty to Comply with State Investigation:**

Contractor 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).

#### **Y. 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 Contractor's breach of any provision of this contract, Contractor shall be liable for actual and consequential damages to the Town.

#### **Z. 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 of 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.

### **Section X. GENERAL REQUIREMENTS OF THE SELECTED PROPOSING FIRM**

1. Teams are encouraged to familiarize themselves with the Town of Lyons and its parks system in order to evaluate/confirm the extent of flood damage in relation to pre-flood conditions. Failure to do so will be at the Team's risk.
2. Each proposer shall furnish the information required in the proposal.
3. The Contract/Purchase Order will be awarded to that responsible proposer whose submittal, conforming to the Request for Proposals, will be most advantageous to the Town of Lyons, price and other factors considered.
4. The Town of Lyons reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received, and to accept any portion of or all items proposed if deemed in the best interest of the Town of Lyons to do so.
5. Late or unsigned RFP responses will only be accepted and considered at the Town's discretion. It is the responsibility of proposers to ensure that the RFP response arrives at the Parks & Recreation Office no later than the time indicated in the "Request for Proposal."
6. The proposed price shall be exclusive of any Federal or State taxes from which the Town of Lyons is exempt by law.
7. Any interpretation, correction or change of the RFP documents will be made by Addendum. Interpretations, corrections and changes of the RFP documents made in any other manner will not be binding, and proposer shall not rely upon such interpretations, corrections and changes. The Town's Representative will not be responsible for oral clarification.
8. The successful proposer must maintain and submit to the Town a valid certificate of insurance coverage for the duration of the contract period as outlined in this RFP.

9. The successful proposer will operate as an independent contractor and will not be considered employee(s) of the Town of Lyons, CO.
10. The successful proposer will be paid on actual invoices as work is completed on a monthly basis upon receipt and acceptance.

**Attachment A  
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 B  
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	Response
Company Name	
Name and Title of Primary Contact Person	
Company Address	
Phone Number	
Email Address	
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 are 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 C**  
**FEMA CFR 13.36**  
**Affirmative Steps Taken**

**Project Name and Number:**

**Contractor:**

1. Place or source you found qualified small and minority businesses and women's business enterprises on solicitation lists? How was this accomplished (please add supporting documentation if applicable)? If this was not done explain why.
  
2. Assure that small and minority businesses, and women's business enterprises are solicited whenever there are potential sources. How did you reach out to these businesses (add documentation if applicable)? If this was not done explain why.
  
3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises? What requirements were broken out into smaller tasks or quantities? If this did not occur please explain why.
  
4. Establish delivery schedules, where requirement permits, which encourages participation by small and minority businesses, and women's owned business enterprises. Were you able to established delivery schedules that encouraged these businesses to participate? If not explain why.

5. Use the Small Business Administration and Minority Business Development Agency of Department of Commerce to solicit these businesses. Please confirm these sites were utilized, if they were not please explain why.
  
6. Require prime contractors to take these steps in subcontracting. Please document that you have encouraged your prime contractors take the five affirmative steps listed above to reach out to small and minority and women's owned business enterprises.

Prepared By: \_\_\_\_\_

Date: \_\_\_\_\_

Reviewed By: \_\_\_\_\_

Date: \_\_\_\_\_

Approved By: \_\_\_\_\_

Date: \_\_\_\_\_

**\*\*For each step enter what actions were taken to meet the requirement**

**\*\*If the step could not be fulfilled enter reason why in detail**

**\*\*Attach any supporting documentation or reports or responses of the businesses contacted**

**\*\*EVERY REQUIREMENT HAS TO BE ADDRESSED**

T. Sanders 7/16/15



## **ATTACHMENT E ENVIRONMENTAL CLEARANCE REQUIREMENTS**

The consultant will be responsible for preparing documents in accordance with the National Environmental Policy Act of 1969 (NEPA) and federal, state and local environmental regulations. Most local agency projects will be covered by a Categorical Exclusion (Cat Ex). These documents will be in CDOT's format and the following clearances are expected:

### **Threatened or Endangered Species**

If it is determined that habitat for any threatened or endangered (T&E) species could potentially occur within the project footprint or adjacent to the project site, a biologist qualified to conduct T&E assessments and/or surveys will need to be retained. It will be the biologist's responsibility to follow survey protocol and obtain all applicable permits to conduct the survey.

### **Wetlands**

If it is determined that wetlands exist within the project area, a wetland ecologist or other qualified person will conduct a wetland determination and if needed, a wetland delineation. The wetland delineation shall be conducted according to the guidelines outlined in the 1987 Corps of Engineers (Corps) Wetland Delineation Manual. Wetland boundaries will be surveyed into the project plan sheets, and temporary and/or permanent impacts determined. If the wetlands are jurisdictional, project activities will be subject to Section 404 permitting through the U.S. Army Corps of Engineers (Corps).

### **Section 404 Permitting**

If a Section 404 permit is required, the applicant will be responsible to ensure all conditions of the permit are adhered to, including preparation of a mitigation plan. CDOT requires a copy of the Corps permit.

### **Noxious Weeds**

A noxious weed survey and management plan will be completed if directed. Noxious weed surveys and management plans will only be completed if there is a heavy weed infestation.

### **Senate Bill 40**

Senate Bill 40 requires any state, or state funded project to obtain wildlife certification from the

Colorado Division of Wildlife when construction is planned in any stream, streambanks or tributaries, either under CDOT Programmatic protocol or a formal request, if required. Documentation will consist of the letter sent to the Colorado Division of Wildlife under the Programmatic agreement or a response from the Colorado Division of Wildlife if a formal request was made.

### **Storm water Discharge Permit Associated with Construction Activity (CDPS)**

A CDPS permit is required. A Storm Water Management Plan (SWMP) is one of the requirements for the CDPS permit. All SWMP's must be approved by the Town.

**Paleontology**

If the project requires any type of excavation (six inches or greater in ground that is not on fill or will affect substrate that is not fill), a Paleontological Survey is required.

**Archaeology**

If the project requires any type of excavation (six inches or greater in ground that is not on fill or will affect substrate that is not fill), an Archaeological Survey and coordination with the SHPO in accordance with Section 106 of the National Historic Preservation Act must be conducted.

**Other**

Based on the preliminary determinations regarding the anticipated environmental clearances for a project, additional environmental clearances may be required. The additional environmental clearances could include Environmental Justice, Water Resources, Visual/Aesthetics, Socioeconomic regarding business access changes, etc.

## Attachment F

### ADDENDUM TO CONTRACT FEDERAL EMERGENCY MANAGEMENT AGENCY'S GRANT PROGRAM REQUIREMENTS FOR PROCUREMENT CONTRACTS

This is an addendum to the \_\_\_\_\_ Agreement between ("Contractor"), and Town of Lyons, (the "TOWN").

The parties acknowledge that the above-referenced contract is subject to the provisions of 44 CFR § 13.36 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

This addendum is hereby expressly incorporated into the agreement between the TOWN and the Contractor. To the extent that the terms of the Agreement and this Addendum conflict, the terms of this Addendum shall control. Nothing in this Addendum shall be construed as making this Agreement contingent upon a Presidential disaster declaration or FEMA's approval or obligation of funds.

The following provisions are hereby added and incorporated into the above-referenced Agreement:

- 1. Contracting with small and minority firms, women's business enterprise and labor surplus area firms.** (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. 44 CFR§13.36 (e) Procurement, (vi) Requiring the prime contractor, if subcontractors are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.
- 2. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (*applicable to all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 44 CFR§13.36(i)(3)*)

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).

- 3. ANTI-KICKBACK ACT COMPLIANCE** (*applicable to all contracts and sub-grants for construction or repair; 44 CFR§13.36(i)(4)*)

Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

#### 4. ACCESS TO RECORDS

- A. The Contractor agrees to provide the Town, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. 44 CFR§13.36(i)(10).
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date Town makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the Town, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.44 CFR§13.36(i)(11)

#### 5. **CONTRACT WORK HOURS AND SAFETY STANDARDS** applicable to construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2500 *for other contracts which involve the employment of mechanics or laborers; 44 CFR §13.36(i)(6)*

Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

#### **NOTICE OF REPORTING REQUIREMENTS**

- A. Contractor acknowledges that it has read and understands the reporting requirements of FEMA stated in 44CFR§ 13.40 et seq., 13.50-13.52 and Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.
  - B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions
5. **PATENT RIGHTS** *(applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(i)(8))*
- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Town and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.

- B. Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Town and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.
- C. The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

## **6. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS**

A. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

- (1) The copyright in any work developed with the assistance of funds provided under this Agreement;
- (2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 44 CFR §13.34, 13.36(i)(8)- (9).

- C. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **8. ENERGY CONSERVATION REQUIREMENTS**

A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 44 CFR § 13.36(i)(13).

B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**9. CLEAN AIR AND WATER REQUIREMENTS** (*applicable to all contracts and subcontracts in excess \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year; 44 CFR §13.36(i)(12))*)

A. Contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

B. Contractor agrees to report each violation of these requirements to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.

C. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**10. TERMINATION FOR CONVENIENCE OF TOWN** *(applicable to all contracts in excess of \$10,000;44 CFR §13.36(i)(2))*

**A.** Town shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Town shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective

**B.** Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Town and to minimize the liability of Contractor and Town to third parties as a result of termination. All such actions shall be subject to the prior approval of the Town. Such actions shall include, without limitation:

**(1)** Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Town.

**(2)** Not placing any further orders or subcontracts for materials, services, equipment or other items.

**(3)** Terminating all existing orders and subcontracts.

**(4)** At Town's direction, assigning to Town any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Town shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

**(5)** Subject to Town's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

**(6)** Completing performance of any services or work that Town designates to be completed prior to the date of termination specified by Town.

**(7)** Taking such action as may be necessary, or as the Town may direct, for the protection and preservation of any property related to this Agreement which is in the possession

**C.** Within 30 days after the specified termination date, Contractor shall submit to Town an invoice, which shall set forth each of the following as a separate line item:

**(1)** The reasonable cost to Contractor, without profit, for all services and other work the Town directed Contractor to perform prior to the specified termination date, for which services or work Town has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

Taking such action as may be necessary, or as the Town may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Town has or may acquire an interest.

**(2)** A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Town, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

**(3)** The reasonable cost to Contractor of handling material or equipment returned to vendor, delivered to the Town or otherwise disposed of as directed by the Town.

**D.** In no event shall the Town be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Town, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or

unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

**E.** In arriving at the amount due to Contractor under this Section, the Town may deduct:

**(1)** All payments previously made by Town for work or other services covered by Contractor's final invoice;

**(2)** Any claim which Town may have against Contractor in connection with this Agreement; **(6)** Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and

**(3)** In instances in which, in the opinion of the Town, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Town's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

**F.** The Town's payment obligation under this Section shall survive termination of this Agreement.

## **11. TERMINATION FOR DEFAULT**

Contractor's failure to perform or observe any term, covenant or condition of this document (Federal Emergency Management Agency's Emergency Management Performance Grant Program Requirements for Procurement Contracts) shall constitute an event of default under this Agreement.

**A.** Each of the following shall also constitute an event of default ("Event of Default") under this Agreement:

**(1)** Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from the Town to Contractor.

**(2)** Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

**(3)** A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

**B.** On and after any Event of Default, Town shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement.

In addition, the Town shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to the Town on demand all costs and expenses incurred by Town in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Town shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Town and Contractor all damages, losses, costs or expenses incurred by the Town as a result of such

Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

**C.** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy Except as modified herein, all terms and conditions of the existing contract between the parties remain in full force and effect.

Accepted by Contractor and Accepted by Town of Lyons on \_\_\_\_\_, 2015

By: \_\_\_\_\_

By: \_\_\_\_\_

Contractor

Town Administrator