

SPECIAL BOARD OF TRUSTEES MEETING
DRAFT AGENDA

TOWN OF LYONS

5:15 PM - 6:00 P.M., MONDAY, AUGUST 26, 2019

BOARD OF TRUSTEES MEETING

SHIRLEY F. JOHNSON COUNCIL CHAMBER

LYONS TOWN HALL, 432 5TH AVENUE, LYONS, COLORADO

- I. Roll Call And Pledge Of Allegiance
- II. Reflective Moment Of Silence
- III. Approval Of The Agenda
- IV. General Business
 - IV.1. Resolution 2019-89, A Resolution Of The Town Of Lyons, Colorado To Execute A Temporary Construction Staging Easement With Planet Bluegrass Annex, LLC For The Apple Valley Water Line PW900

Documents:

[89-BOT COVER SHEET__TEMPORARY STAGING EASEMENT_8.26.19.PDF](#)
[89-RESO 2019-XX PLANET BLUEGRASS TEMPORARY CONSTRUCTION STAGING EASEMENT \(DITTMAN DRAFT 8-24-2019\).PDF](#)
[89-TEMPORARY STAGING EASEMENT AGREEMENT 8.23.19.FINAL.PDF](#)
 - IV.2. Resolution 2019-90, A Resolution Of The Town Of Lyons, Colorado To Execute A Temporary Construction Access Easement With Planet Bluegrass Annex, LLC For The Apple Valley Water Line PW900

Documents:

[90-BOT COVER SHEET__TEMPORARY CONSTRUCTION EASEMENT_8.26.19.PDF](#)
[90-RESO 2019-XX PLANET BLUEGRASS TEMPORARY CONSTRUCTION ACCESS EASEMENT \(DITTMAN DRAFT 8-24-2019\).PDF](#)
[90-TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT 8.23.19.FINAL.PDF](#)
 - IV.3. Resolution 2019-91, A Resolution Of The Town Of Lyons, Colorado To Execute A Permanent Utility Easement Agreement With Planet Bluegrass Annex, LLC For The Apple Valley Water Line Project PW900

Documents:

[91-BOT COVER SHEET__UTILITY EASEMENT PLANET BLUEGRASS_8.26.19.PDF](#)
[91-RESO 2019-XX PLANET BLUEGRASS PERMANENT UTILITY EASEMENT AGREEMENT \(DITTMAN DRAFT 8-24-2019\).PDF](#)
[91-GRANT OF UTILITY EASEMENT 8.23.19.PDF](#)
- V. Adjournment

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

Town of Lyons, Colorado
Board of Trustees
BOT Agenda Cover Sheet
Agenda Item No: IV - 1
Meeting Date: August 26, 2019

TO: Mayor Sullivan and Members of Board of Trustees
FROM: Tracy Sanders, Recovery Manager
DATE: August 26, 2019
ITEM: Resolution 2019-89, a Resolution of the Town of Lyons, Colorado to Execute a Temporary Construction Staging Easement with Planet Bluegrass Annex, LLC for the Apple Valley Water Line PW900

ORDINANCE
 MOTION / RESOLUTION
 INFORMATION

I. REQUEST OR ISSUE:

This resolution would grant a temporary construction staging easement on the Planet Bluegrass property to allow materials to be stored for the construction of the Apple Valley Water Line Relocation project.

II. RECOMMENDED ACTION / NEXT STEP:

Resolution 2019-89, a Resolution of the Town of Lyons, Colorado to Execute a Temporary Construction Staging Easement with Planet Bluegrass Annex, LLC for the Apple Valley Water Line PW900

III. FISCAL IMPACTS:

The property owner is requesting \$5,000 for the use of his property.

IV. BACKGROUND INFORMATION:

The Town is currently relocating the water transmission line away from the river to Apple Valley Road. The water line will be in a more resilient location with less risk of being damaged in the case of another flood event. The Town needs to store construction materials near the construction location. Boulder County is not an option therefore this is the only available location to store materials otherwise the contractor will have to truck in material from other locations therefore causing time delays and extra costs.

IV. LEGAL ISSUES:

None.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

None.

VII. SUMMARY AND ALTERNATIVES:

Town staff is recommending approval of the resolution.

VIII. PROPOSED MOTION:

“I move to approve Resolution 2019-89, a Resolution of the Town of Lyons, Colorado to Execute a Temporary Construction Staging Easement with Planet Bluegrass Annex, LLC for the Apple Valley Water Line PW900”

**TOWN OF LYONS, COLORADO
RESOLUTION 2019-89**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO TO EXECUTE A TEMPORARY
CONSTRUCTION STAGING EASEMENT WITH PLANET BLUEGRASS ANNEX, LLC FOR
THE APPLE VALLEY WATER LINE PW900**

WHEREAS, pursuant to C.R.S. § 31-15-101 (1)(d), the Town of Lyons ("Town") is authorized to acquire and dispose of real property; and

WHEREAS, Planet Bluegrass Annex, LLC ("Planet Bluegrass") owns property in the Town which they use for the purpose of hosting of musical festivals; and

WHEREAS, an existing water pipeline owned by the Town crosses property owned by Planet Bluegrass; and

WHEREAS, the existing water pipeline must be relocated pursuant to a Town project ("Project"); and

WHEREAS, the Town has obtained funding for the Project from the Federal Emergency Management Agency ("FEMA") and Housing and Urban Development Community Development Block Grant Disaster Response ("CDBG-DR"); and

WHEREAS, the Town is not currently authorized to construct, maintain, and operate utility infrastructure in the area where the water pipeline will be relocated to; and

WHEREAS; Planet Bluegrass has agreed to permit staging of construction materials for the water pipeline pursuant to a Temporary Construction Staging Easement, in a form substantially attached hereto as **Exhibit A**; and

WHEREAS; the Town Board of Trustees desires to execute the Temporary Construction Staging Easement, in accordance with the terms and conditions set forth therein.

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

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board of Trustees hereby:

- a. approves the Temporary Construction Staging Easement.
- b. authorizes Town Staff in consultation with the Town Attorney and the Mayor to make such changes as may be necessary to correct any non-material errors or

language in the to the Temporary Construction Staging Easement which do not increase the financial obligations of the Town.

c. authorizes the Mayor or Mayor Pro Tem to execute the Temporary Construction Staging Easement substantially in the form of the attached **Exhibit A** and for the Town clerk to attest to that signature.

d. Authorizes Town Staff to take all actions necessary to implement the Agreement consistent with the intent of the Resolution.

Section 3. This resolution shall take effect immediately upon its approval by the Board of Trustees.

ADOPTED AND APPROVED THIS 26th DAY OF AUGUST 2019

TOWN OF LYONS, COLORADO

Connie Sullivan, Mayor

ATTEST:

Deb Anthony, MMC – Town Clerk

EXHIBIT A

TEMPORARY STAGING EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT (this “Agreement”) is entered into this 3rd day of September, 2019, by **Planet Bluegrass Annex, LLC**, whose legal address is 500 Main Street, Lyons, Colorado 80540 (the “Grantor”), and the **TOWN OF LYONS**, a statutory municipality of the State of Colorado, whose address is 432 5th Avenue, Lyons, CO 80540 (“Town” or “Grantee”) (collectively, the “Parties”).

In consideration of the sum of Five Thousand Dollars (\$5,000.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and the further consideration of the covenants and agreements set forth below, Grantor hereby sells, conveys, transfers, and delivers to the Grantee its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successor and assigns, a non-exclusive Temporary Construction Staging Easement (the “Temporary Construction Staging Easement”) for the real property described in **Exhibit A**, a copy of which is attached and incorporated by this reference (the “Temporary Easement Property”), to facilitate the Town’s construction of public utility lines and other related improvements in the vicinity of the Temporary Easement Property (the “Project”).

This Temporary Construction Staging Easement is granted in accordance with, and subject to, the following terms, conditions, requirements, and limitations:

1. The Temporary Construction Staging Easement is granted for vehicular and pedestrian ingress and egress to and from the Temporary Easement Property and for Grantee’s use to do all things reasonably necessary stage materials to construct and install the Project including, but not limited to, the transport, stockpiling, staging, and storage of construction materials, soil, equipment and vehicles. Upon expiration of the Temporary Construction Staging Easement, the Grantee, at its sole cost and expense, shall restore the Temporary Easement Property to substantially the same condition it was in prior to Grantee’s use. Grantee shall not leave any rubbish or debris on or about the Temporary Easement Property. Grantee agrees to pursue remedies under its performance bond or construction bond, as applicable, with its contractor to guarantee performance of these obligations. The term of this Agreement shall begin upon the date of mutual execution hereof and shall extend until December 31, 2019, or until the Project has been completed, whichever first occurs.

2. The Town agrees that all work associated with the Project on the Temporary Easement Property shall be completed by November 30, 2019.

3. Upon termination of this Agreement, all covenants in this instrument are released (other than Grantee’s restoration obligations set forth in Paragraph 1, Grantee’s obligations set forth in Paragraph 4, and the cost recovery provision set forth in Paragraph 13, all of which shall survive the expiration or termination of this Agreement) and the Temporary Easement Property shall be considered free and clear of any restriction or any right or privilege attaching to the grant of the Temporary Construction Staging Easement set forth

in this Agreement. Upon request by Grantor following the term of the Agreement described above, Grantee shall execute any documents reasonably requested by Grantor to confirm the termination of this Agreement.

4. The Temporary Construction Staging Easement shall allow the Town and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, agents, and assigns thereof to use the Temporary Easement Property during the completion of the Project. Grantee shall use the Temporary Easement Property for the purposes described in Paragraph 1. In no event may any use of the Temporary Easement Property by the Town and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, agents, and assigns thereof violate any applicable law, rule or regulation relating to the Temporary Easement Property or materially impact Grantor's normal business operations in the adjacent property. The Town assumes all risk of damage to property or injury to persons, in or upon the Temporary Easement Property arising from this Agreement and the Town's use of the Temporary Easement Property pursuant to this Agreement.

5. Grantor covenants and agrees that it is the fee owner of the Temporary Easement Property and that it has the authority to grant this Temporary Construction Staging Easement to the Town.

6. Grantor warrants that no building, structure, or other above or below ground obstruction that may interfere with the purposes for which this Temporary Construction Staging Easement is granted may be placed, erected, installed or permitted upon the Temporary Easement Property during the term hereof except for existing improvements, if any. The Grantor further agrees that in the event the terms of this Temporary Construction Staging Easement are violated, that such violation shall immediately be corrected by the Grantor at Grantor's sole expense upon receipt of written notice from Grantee.

7. Grantor reserves all rights attendant to its ownership of the Temporary Easement Property, including but not limited to the use and enjoyment of the Temporary Easement Property for all purposes not inconsistent with the terms and conditions of this Agreement.

8. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return

receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

If to Grantor: Craig Ferguson
354 Apple Valley Road
Lyons, CO 80540

If to Grantee: Town of Lyons
Attn: Town Administrator
432 5th Street
Lyons, CO 80540

With a copy to: Town of Lyons
Town Attorney
c/o Kissinger & Fellman, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209

9. This Agreement represents the entire agreement between the Grantor and the Town as relates to the Temporary Construction Staging Easement and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and signed by both the Mayor and the Grantor.

10. Each and every term, condition, or covenant of this Agreement is subject to and shall be construed in accordance with the provisions of Colorado law. Venue for any action arising out of this Agreement shall be in the District Court in the County of Boulder, Colorado.

11. The benefits and burdens of the Temporary Construction Staging Easement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12. This Agreement shall not be recorded, but shall nevertheless become effective upon full execution by all parties and delivery of same to the Town.

13. In the event of litigation between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. The obligation in the immediately preceding sentence shall survive any termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

GRANTOR:

Craig Ferguson

GRANTEE:

TOWN OF LYONS, COLORADO

By: _____
Connie Sullivan, Mayor

ATTEST:

Deb Anthony, Town Clerk

APPROVED AS TO FORM:

Brandon Dittman, Town Attorney

[Notary blocks for all signatories to this document follow].

GRANTOR:

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement was acknowledged before me this ____ day of _____,
20__, by _____, on behalf of _____.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

**GRANTEE
THE TOWN OF LYONS, COLORADO:**

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement was acknowledged before me this ____ day of _____,
20__, by Connie Sullivan as Mayor of the Town of Lyons, Colorado, for and on behalf of the Town.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

EXHIBIT A

Temporary Easement

Town of Lyons, Colorado
Board of Trustees
BOT Agenda Cover Sheet
Agenda Item No: IV - 2
Meeting Date: August 26, 2019

TO: Mayor Sullivan and Members of Board of Trustees
FROM: Tracy Sanders, Recovery Manager
DATE: August 26, 2019
ITEM: Resolution 2019-90, a Resolution of the Town of Lyons, Colorado to Execute a Temporary Construction Access Easement with Planet Bluegrass Annex, LLC for the Apple Valley Water Line PW900

ORDINANCE
 MOTION / RESOLUTION
 INFORMATION

I. REQUEST OR ISSUE:

This resolution would grant a temporary construction easement on the Planet Bluegrass property to allow for the water line tie in for the Apple Valley Water Line Relocation.

II. RECOMMENDED ACTION / NEXT STEP:

Approve Resolution 2019-90, a Resolution of the Town of Lyons, Colorado to Execute a Temporary Construction Access Easement with Planet Bluegrass Annex, LLC for the Apple Valley Water Line PW900

III. FISCAL IMPACTS:

None

IV. BACKGROUND INFORMATION:

The Town is currently relocating the water transmission line away from the river to Apple Valley Road. The water line will be in a more resilient location with less risk of being damaged in the case of another flood event. The current water line ties into the Town system on the Planet Bluegrass property, the new line needs to tie in at this same location. The Town needs a temporary easement agreement in order to complete the construction of this water line.

IV. LEGAL ISSUES:

None.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

None.

VII. SUMMARY AND ALTERNATIVES:

Town staff is recommending approval of the resolution.

VIII. PROPOSED MOTION:

“I move to approve Resolution 2019-90, a Resolution of the Town of Lyons, Colorado to Execute a Temporary Construction Access Easement with Planet Bluegrass Annex, LLC for the Apple Valley Water Line PW900”

**TOWN OF LYONS, COLORADO
RESOLUTION 2019-89**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO TO EXECUTE A TEMPORARY
CONSTRUCTION ACCESS EASEMENT WITH PLANET BLUEGRASS ANNEX, LLC FOR
THE APPLE VALLEY WATER LINE PW900**

WHEREAS, pursuant to C.R.S. § 31-15-101 (1)(d), the Town of Lyons ("Town") is authorized to acquire and dispose of real property; and

WHEREAS, Planet Bluegrass Annex, LLC ("Planet Bluegrass") owns property in the Town which they use for the purpose of hosting of musical festivals; and

WHEREAS, an existing water pipeline owned by the Town crosses property owned by Planet Bluegrass; and

WHEREAS, the existing water pipeline must be relocated pursuant to a Town project ("Project"); and

WHEREAS, the Town has obtained funding for the Project from the Federal Emergency Management Agency ("FEMA") and Housing and Urban Development Community Development Block Grant Disaster Response ("CDBG-DR"); and

WHEREAS, the Town is not currently authorized to construct, maintain, and operate utility infrastructure in the area where the water pipeline will be relocated to; and

WHEREAS; Planet Bluegrass has agreed to permit construction of the water pipeline pursuant to a Temporary Construction Access Easement, in a form substantially attached hereto as **Exhibit A**; and

WHEREAS; the Town Board of Trustees desires to execute the Temporary Construction Access Easement, in accordance with the terms and conditions set forth therein.

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

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board of Trustees hereby:

- a. approves the Temporary Construction Access Easement
- b. authorizes Town Staff in consultation with the Town Attorney and the Mayor to make such changes as may be necessary to correct any non-material errors or

language in the to the Temporary Construction Access Easement which do not increase the financial obligations of the Town.

c. authorizes the Mayor or Mayor Pro Tem to execute the Temporary Construction Access Easement substantially in the form of the attached **Exhibit A** and for the Town clerk to attest to that signature.

d. Authorizes Town Staff to take all actions necessary to implement the Agreement consistent with the intent of the Resolution.

Section 3. This resolution shall take effect immediately upon its approval by the Board of Trustees.

ADOPTED AND APPROVED THIS 26th DAY OF AUGUST 2019

TOWN OF LYONS, COLORADO

Connie Sullivan, Mayor

ATTEST:

Deb Anthony, MMC – Town Clerk

EXHIBIT A

TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT (this “Agreement”) is entered into this ____ day of __, 2019, by **PLANET BLUEGRASS ANNEX, LLC**, whose legal address is 500 Main, Lyons CO 80540 (the “Grantor”), and the **TOWN OF LYONS**, a statutory municipality of the State of Colorado, whose address is 432 5th Avenue, Lyons, CO 80540 (“Town” or “Grantee”) (collectively, the “Parties”).

In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and the further consideration of the covenants and agreements set forth below, Grantor hereby sells, conveys, transfers, and delivers to the Grantee its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successor and assigns, a non-exclusive Temporary Construction Access Easement (the “Temporary Construction Easement”) for the real property described in **Exhibit A**, a copy of which is attached and incorporated by this reference (the “Temporary Easement Property”), to facilitate the Town’s construction of public utility lines and other related improvements in the vicinity of the Temporary Easement Property (the “Project”).

This Temporary Construction Easement is granted in accordance with, and subject to, the following terms, conditions, requirements, and limitations:

1. The Temporary Construction Easement is granted for vehicular and pedestrian ingress and egress to and from the Temporary Easement Property and for Grantee’s use to do all things reasonably necessary to construct and install the Project including, but not limited to, the transport, stockpiling, staging, and storage of construction materials, soil, equipment and vehicles. Upon expiration of the Temporary Construction Easement, the Grantee, at its sole cost and expense, shall restore the Temporary Easement Property to substantially the same condition it was in prior to Grantee’s use. Grantee shall not leave any rubbish or debris on or about the Temporary Easement Property. The term of this Agreement shall begin upon the date of mutual execution hereof and shall extend until November 30, 2019 or unless notified in writing of a needed extension.

2. The Town agrees that all work associated with the Project on the Temporary Easement Property shall be completed by November 30, 2019 unless this Temporary Construction easement is extended pursuant to Paragraph 1.

3. Upon termination of this Agreement, all covenants in this instrument are released (other than Grantee’s restoration obligations set forth in Paragraph 1, Grantee’s obligations set forth in Paragraph 4, and the cost recovery provision set forth in Paragraph 13, all of which shall survive the expiration or termination of this Agreement) and the Temporary Easement Property shall be considered free and clear of any restriction or any right or privilege attaching to the grant of the Temporary Construction Easement set forth in this Agreement. Upon request by Grantor, Grantee shall execute any documents reasonably

requested by Grantee to confirm the termination of this Agreement.

4. The Temporary Construction Easement shall allow the Town and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, agents, and assigns thereof to use the Temporary Easement Property during the completion of the Project. Grantee shall use the Temporary Easement Property for the purposes described in Paragraph 1. In no event may any use of the Temporary Easement Property by the Town and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, agents, and assigns thereof violate any applicable law, rule or regulation relating to the Temporary Easement Property or materially impact Grantor's normal business operations in the adjacent property. The Town assumes all risk of damage to property or injury to persons, in or upon the Temporary Easement Property arising from this Agreement and the Town's use of the Temporary Easement Property pursuant to this Agreement.

5. Grantor covenants and agrees that it is the fee owner of the Temporary Easement Property and that it has the authority to grant this Temporary Construction Easement to the Town.

6. Grantor warrants that no building, structure, or other above or below ground obstruction that may interfere with the purposes for which this Temporary Construction Easement is granted may be placed, erected, installed or permitted upon the Temporary Easement Property during the term hereof except for existing improvements, if any. The Grantor further agrees that in the event the terms of this Temporary Construction Easement are violated, that such violation shall immediately be corrected by the Grantor at Grantor's sole expense upon receipt of written notice from Grantee.

7. Grantor reserves all rights attendant to its ownership of the Temporary Easement Property, including but not limited to the use and enjoyment of the Temporary Easement Property for all purposes not inconsistent with the terms and conditions of this Agreement.

8. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return

receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

If to Grantor: Craig Ferguson
1101 5th Ave
Lyons, CO 80540

If to Grantee: Town of Lyons
Attn: Town Administrator
432 5th Street
Lyons, CO 80540

With a copy to: Town of Lyons
Town Attorney
c/o Kissinger & Fellman, P.C.

9. This Agreement represents the entire agreement between the Grantor and the Town as relates to the Temporary Construction Easement and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and signed by both the Mayor and the Grantor.

10. Each and every term, condition, or covenant of this Agreement is subject to and shall be construed in accordance with the provisions of Colorado law. Venue for any action arising out of this Agreement shall be in the District Court in the County of Boulder, Colorado.

11. The benefits and burdens of the Temporary Construction Easement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12. This Agreement shall not be recorded, but shall nevertheless become effective upon full execution by all parties and delivery of same to the Town.

13. In the event of litigation between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. The obligation in the immediately preceding sentence shall survive any termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

GRANTOR:

[Craig Ferguson]

GRANTEE:

TOWN OF LYONS, COLORADO

By: _____
Connie Sullivan, Mayor

ATTEST:

Deb Anthony, Town Clerk

APPROVED AS TO FORM:

Brandon Dittman, Town Attorney

[Notary blocks for all signatories to this document follow].

GRANTOR:

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement was acknowledged before me this ____ day of _____,
20__, by _____, on behalf of _____.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

**GRANTEE
THE TOWN OF LYONS, COLORADO:**

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement was acknowledged before me this ____ day of _____,
20__, by Connie Sullivan as Mayor of the Town of Lyons, Colorado, for and on behalf of the Town.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

EXHIBIT A

Temporary Easement

Town of Lyons, Colorado
Board of Trustees
BOT Agenda Cover Sheet
Agenda Item No: IV - 3
Meeting Date: August 26, 2019

TO: Mayor Sullivan and Members of Board of Trustees
FROM: Tracy Sanders, Recovery Manager
DATE: August 26, 2019
ITEM: Resolution 2019-91, a Resolution of the Town of Lyons, Colorado to Execute a Permanent Utility Easement Agreement with Planet Bluegrass Annex, LLC for the Apple Valley Water Line Project PW900

ORDINANCE
 MOTION / RESOLUTION
 INFORMATION

I. REQUEST OR ISSUE:

This resolution would grant an utility easement on the Planet Bluegrass property

II. RECOMMENDED ACTION / NEXT STEP:

Approve Resolution 2019-91, a Resolution of the Town of Lyons, Colorado to Execute a Permanent Utility Easement Agreement with Planet Bluegrass Annex, LLC for the Apple Valley Water Line Project PW900

III. FISCAL IMPACTS:

The property owner is requesting \$10,000 to allow Town access for maintenance of Town utilities.

IV. BACKGROUND INFORMATION:

The Town if Lyons currently has an easement agreement in place with Planet Bluegrass for access to maintain Town of Lyons water, sewer and electric utilities. The boundaries of this easement needs to be adjusted to allow for access to the existing utilities as well as the new water line tie in from the Apple Valley water line relocation project.

IV. LEGAL ISSUES:

None.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

None.

VII. SUMMARY AND ALTERNATIVES:

Town staff is recommending approval of the resolution.

VIII. PROPOSED MOTION:

“I move to approve Resolution 2019-91, a Resolution of the Town of Lyons, Colorado to Execute a Permanent Utility Easement Agreement with Planet Bluegrass Annex, LLC for the Apple Valley Water Line Project PW900”

**TOWN OF LYONS, COLORADO
RESOLUTION 2019-91**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO TO EXECUTE A PERMENANT
UTILITY EASEMENT AGREEMENT WITH PLANET BLUEGRASS ANNEX, LLC FOR THE
APPLE VALLEY WATER LINE PW900**

WHEREAS, pursuant to C.R.S. § 31-15-101 (1)(d), the Town of Lyons ("Town") is authorized to acquire and dispose of real property; and

WHEREAS, Planet Bluegrass Annex, LLC ("Planet Bluegrass") owns property in the Town which they use for the purpose of hosting of musical festivals; and

WHEREAS, an existing water pipeline owned by the Town crosses property owned by Planet Bluegrass; and

WHEREAS, the existing water pipeline must be relocated pursuant to a Town project ("Project"); and

WHEREAS, the Town has obtained funding for the Project from the Federal Emergency Management Agency ("FEMA") and Housing and Urban Development Community Development Block Grant Disaster Response ("CDBG-DR"); and

WHEREAS, the Town is not currently authorized to construct, maintain, and operate utility infrastructure in the area where the water pipeline will be relocated to; and

WHEREAS; Planet Bluegrass has agreed to permit relocation of the water pipeline pursuant to a Grant of Permanent Utility Easement Agreement, in a form substantially attached hereto as **Exhibit A**; and

WHEREAS; the Town Board of Trustees desires to accept the Permanent Utility Easement Agreement, in accordance with the terms and conditions set forth therein.

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

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board of Trustees herby:

- a. approves the Permanent Utility Easement Agreement.
- b. authorizes Town Staff in consultation with the Town Attorney and the Mayor to make such changes as may be necessary to correct any non-material errors or

language in the to the Permanent Utility Easement Agreement which do not increase the financial obligations of the Town.

c. authorizes the Mayor or Mayor Pro Tem to execute the Permanent Utility Easement Agreement substantially in the form of the attached **Exhibit A** and for the Town clerk to attest to that signature.

d. Authorizes Town Staff to take all actions necessary to implement the Agreement consistent with the intent of the Resolution.

Section 3. This resolution shall take effect immediately upon its approval by the Board of Trustees.

ADOPTED AND APPROVED THIS 26th DAY OF AUGUST 2019

TOWN OF LYONS, COLORADO

Connie Sullivan, Mayor

ATTEST:

Deb Anthony, MMC – Town Clerk

EXHIBIT A

GRANT OF PERMANENT UTILITY EASEMENT AGREEMENT

THIS GRANT OF UTILITY EASEMENT AGREEMENT (“Agreement”) is made this 19th day of August, 2019, by and between **PLANET BLUEGRASS ANNEX, LLC** (“Grantor”), whose legal address is 500 West Main Street, Lyons CO 80540 and **THE TOWN OF LYONS COLORADO**, a municipal corporation (“Town”), whose address is 432 5th Ave, Lyons, Colorado 80540.

For and in consideration of the sum of Ten Dollars (\$10,000.00) and other good and valuable consideration set forth herein, the sufficiency and receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants, bargains, sells, and conveys to the Grantee a perpetual Non-Exclusive Easement, as more particularly described in and shown on **EXHIBIT A** attached hereto and incorporated herein by this reference (the “Easement”) for the construction and continued operation, maintenance, relocation, access, inspection, repair, alteration, and replacement of Town-Owned Utility Systems across, through, upon, and under the real property of Grantor; provided, however, that the Town shall restore the ground surface to its prior condition after disturbing same. The Town shall have access across lands owned by Grantor outside of the Easement area for purposes of constructing, maintaining, inspecting, accessing, and repairing the Town-Owned Utility Systems.

The Town agrees to vacate and to waive the rights granted by Grantor in the Trail Easement Agreement recorded with the Boulder County Clerk and Recorder on January 4, 2018, at Reception No. 03634305; specifically, the contemplated 10’s trail shall begin and end on Apple Valley Road on Grantor’s property, and shall in no way interfere with Grantor’s exclusive use of its trail from Planet Bluegrass to this subject property, specifically including any pedestrian bridge to be used by Grantor. Grantee shall confirm that existing “right of way” is intended to be “right of way” and not fee simple interest conveyed to grantee.

The Town assumes all risk of damage to property or injury to persons, in or upon the Easement Property arising from this Agreement and Town’s use of the Easement pursuant to this Agreement.

The term “Town-Owned Utility Systems,” as used herein, shall include above- and below-ground wires, lines, cables, ducts, conduits, pipes, pedestals, risers, poles, vaults, manholes, devices, water mains, fire hydrants, and all other equipment, appurtenances, and structures associated with electric, water, wastewater, telecommunications, and storm water systems which are owned and operated by the Town. The term “Non-Exclusive Easement,” as used herein, shall mean that any above or below ground utility systems and appurtenances and other above or below ground permanent or substantial structures not owned and maintained by the Town shall not be installed or encroach upon any portion of the easement unless first approved in writing by the Town, the approval of which shall not be unreasonably withheld. The Easement conveyed by Grantor is appurtenant and is a covenant intended to run with the land.

The easement hereby granted, situated in Boulder County, Colorado, is described

as follows:

Exhibit A – Easement Description and Drawing

TO HAVE AND TO HOLD said easement unto the Town, its successors, and assigns forever. Grantor does hereby covenant with the Town that it is lawfully seized and possessed of the real property above described, that it has a good and lawful right to convey the easement herein granted, that the easement is free and clear of all liens and encumbrances, and that it will forever warrant and defend the title thereto against lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has executed this Grant of Utility Easement the day and year first above written.

GRANTOR:

PLANET BLUEGRASS ANNEX, LLC,
a Colorado limited liability company

By: _____
Print Name: Craig Ferguson, Manager

TOWN OF LYONS, COLORADO

Connie Sullivan, Mayor

ATTEST:

Deb Anthony, Town Clerk

APPROVED AS TO FORM:

Brandon Dittman, Town Attorney

[Notary blocks for all signatories to this document follow].

GRANTOR:

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement was acknowledged before me this ____ day of _____, 20__, by _____, on behalf of _____.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

**GRANTEE
THE TOWN OF LYONS, COLORADO:**

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Easement was acknowledged before me this ____ day of _____, 20__, by Connie Sullivan as Mayor of the Town of Lyons, Colorado, for and on behalf of the Town.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public